

**Kingston Planning Board
Public Hearing/Meeting
December 6, 2016**

The Chairman called the hearing to order at 6:50 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Glenn Coppelman, Chair
Peter Coffin
Chris Bashaw
Peter Bakie

Adam Pope
Carol Croteau
Ernie Landry (Alternate)

Members absent: Mark Heitz, BOS rep., Rich St. Hilaire, alternate

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer; Ellen Faulconer, Board Alternate/Admin. Asst.

**Environmental Compliance Specialists, Inc.
111 Route 125
Tax Map R10 Lot 2**

Mr. Coppelman explained that this was a continuation from a previous hearing regarding possible revocation of the site plan due to non-compliance. Mr. Quintal's current site inspection report was reviewed; he went to the site today as well as yesterday. Mr. Wright told him during the visit that he was surprised that more progress had not been done. Mr. Wright arrived at the hearing at this time.

Mr. Quintal stated that the same amount of equipment, cars and boats were still on the site; additional vehicles, bus and trucks had been added to the gravel area in the back. He stated that some trees had been cut but not enough and no other excavation work had been done. While on the site, Mr. Quintal had been told that Mr. Melvin had left to get hay bales. Mr. Coppelman confirmed with Mr. Quintal that more vehicles had been brought to the site, a bus, trucks and more trailers since the last meeting; he suggested that there was probably no need for a lot of discussion but if Mr. Wright had any comments, the Board would hear them.

Mr. Wright said he arrived after Mr. Quintal had left; Mr. Melvin was digging and trying to address erosion control and the settling pond to make sure there was better erosion control. He confirmed that Mr. Melvin had brought hay bales and re-established the perimeter of the pond and removed the trees and excavation was under way for the pond. He said he has an agreement with Mr. Melvin to continue working on it. He said that some work had been done and Mr. Melvin asked to store things in the yard; Mr. Wright told the Board that he told Mr. Melvin that it was okay to store vehicles on the site. Mr. Wright said if he wasn't going to complete the site, he wouldn't have started working on it in August; he said that bringing Mr. Melvin in has complicated the situation but he is sincere and capable of getting things done. Mr. Coppelman suggested that the occupancy issue should have been addressed already.

Mr. Coffin said that at the previous meeting, Mr. Pope had referred to significant work being done; the work done during the week has not risen to significant work. Mr. Pope expressed concern that revocation means the work isn't finished. Mr. Coffin said a new site plan will be required for any business on the site and erosion control may be different dependent on the use; he did not believe there was any downside to revocation as he doubts the work can be done in a week. Mr. Coffin suggested that the property owner still has requirements for erosion control. Mr. Greenwood said that upon revocation there is no commercial approval on the site. Mr. Greenwood said that revocation was for the use on the site and once revoked, the Board could not require the improvements that were specific for the commercial approval. Mr. Pope suggested a cease and desist would have been the appropriate action; he added that the site could come into compliance without an active business on the site. Mr. Greenwood said the business appears to be being changed out; some remediation should take place since the site is now destabilized. Mr. Quintal is not comfortable with the way it is now. Mr. Bakie agreed with Mr. Pope about requesting a cease and desist noting that the Board has been very fair; he expressed concern with bringing more problems to the site; he stated that the cease and desist must stop the work on site immediately adding that any other use has to come to the Board for approval. Mr. Bakie noted that the whole front parking is full of vehicles; he re-iterated that a cease and desist should be done immediately. Mr. Coppelman explained that would need to be a request to the BOS. Mr. Bakie said it was in the best interest to have the Cease and Desist and get the Storm Water Management done. Mr. Coppelman explained to Mr. Wright that he could only do what there was an approval for and any other activity would need approval from the Board.

Ms. Croteau asked how much longer the Board was going to continue on with this adding that she felt the Board was being "strung along" and what was the point if not implementing the Town's ordinances. Mr. Pope said the Board could be asking for a cease and desist for businesses operating on the site; revoking the site plan means the work the Board is asking to be done won't be finished. Mr. Pope explained that the revocation of the site plan eliminates all activity and the work cannot be completed this way; the only leverage is to require the cease and desist on the unauthorized activity and bring the site into compliance. Mr. Coffin suggested that the Board could continue to next week. Mr. Bashaw said his major concern with the Cease and Desist is that this is not a business that appears to be continuing on; it has been 13 years since the approval; he feels the Board has been extremely lenient with the half-hearted attempts to placate the Board. Mr. Bashaw continued that after a revocation, a new business will need a site plan review; he stated that this has been going on and on with no real progress with no motivation to do the right thing adding that in order for the site to move forward, a site plan will be required. Mr. Bakie asked if all the stuff is gone, who will stabilize the site. Mr. Bashaw said that there doesn't seem to be a way to properly motivate the owner to prepare the site. Mr. Pope suggested that a cease and desist with a daily fine could be the proper motivation that also leaves the door open to remediate the site. He noted that revoking means all the work stops and no remediation takes place all during the winter; he wants to provide motivation to Mr. Wright. Ms. Faulconer suggested giving the owner a week to see if he can get the site in compliance as the Board meets next week. Mr. Pope suggested that the cease and desist could still be requested and allow Mr. Wright to finish the excavation and get the equipment off the site. Mr. Wright said he could probably get the storm water mgmt. done in a week but might take an additional week to remove the equipment. Mr. Wright confirmed that Mr. Melvin was hoping to occupy the site.

Ms. Faulconer reviewed the file and reminded the Board that the Compliance Enforcement Request had already been requested in January, 2016 with the BOS sending out a Cease and Desist in February; the revocation hearing was scheduled due to the owner ignoring the cease and desist's requirements. Mr. Pope suggested go back to enforcement with the BOS as the alternative is a worse place. Mr. Coppelman said that he thinks the Town will wind up in the same place either way. He explained that the Board has options that include continuing to next week, voting to revoke, asking for another cease and desist or combination of some of the options. Mr. Pope recommended enforcement action and continuing for one more week.

MM&S to send an enforcement action request to the Board of Selectmen specifically for a Cease and Desist on non-conforming uses and unapproved businesses on the site and recommend including enforcing financial penalties and continue the revocation hearing to next week. (Motion by Mr. Pope, second by Mr. Coffin) Discussion: Mr. Coffin clarified that excavation work needed to be done and the vehicles taken off the site to be compliant. Mr. Coppelman suggested that Mr. Wright would know enough people to get the vehicles off the site in a day adding that if the excavation work is done, the cease and desist will still be in place for anything not in compliance with the approved site plan. Ms. Faulconer expressed concern with environmental issues on the site with the number of vehicles present.
Vote on the motion: In favor: Mr. Bakie, Mr. Pope, Mr. Coffin; Opposed: Mr. Bashaw, Mr. Coppelman, Ms. Croteau. Motion ties 3-3; Motion fails.

MM&S to revoke the site plan for non-compliance and the multiple issues noted during the Board's dealing with this site for months. (Motion by Mr. Bashaw, second by Ms. Croteau)
In favor: Mr. Coffin, Mr. Bashaw, Ms. Croteau, Mr. Coppelman; Opposed: Mr. Pope, Mr. Bakie. Motion carries 4-2.

Mr. Coppelman explained that the Board had voted to revoke the site plan; no more work can be done on the site; no storage of vehicles are permitted. Mr. Wright asked for a few days; Mr. Bashaw said it has been a few days for 13 years, then a few days for a few months, then the past two months and then weekly; he said that there is no pattern of coming into compliance. Mr. Wright said that he has made a lot of headway in two months and said he was 6 or 7 days from having the stormwater under control; he asked the Board to give him 7 days. Mr. Bashaw answered that he can't see the site compliance happening. Mr. Coppelman explained that the motion had been made and voted unless someone who voted in favor wanted to make a motion to reconsider. Mr. Bashaw said that Mr. Wright was very fortunate to have other businesses interested in the site but at this point there is no existing approval and there would need to be an approval for a business to operate on the site. Mr. Wright said that a construction company would probably occupy the site in the future. Mr. Coppelman said the Planning Board would need to vote on an approval for a site plan for that use. Mr. Pope said the site had come closer in the last two months; some progress had been made but there was a bump in the road; he expressed concern that there would now be a site that is not stabilized with the earliest a business could be reviewed would be February. Mr. Coppelman explained that this was a tough decision for the Board that had wrestled with it for months.

Mr. Coppelman said a letter would be written to Mr. Wright with the Board's decision and the minutes a copy of the letter would be given to the Board of Selectmen. Mr. Wright confirmed that this decision meant that there was no approval for the site now. Mr. Greenwood said that all vehicles need to be removed; no shovel in the ground. Mr. Wright said that he wants to finish the settling pond; he said it could be done in 7 days adding that he can't say what is going to happen to the property; he re-iterated that he wants another 7 days. Mr. Coppelman said that at this point, there is no commercial approval for the site; any conversation needs to be with the Board of Selectmen regarding fixing the stormwater management. Mr. Coppelman explained that the vote has been taken; a member who voted in favor would have to ask for another vote and no one is willing to do it. He confirmed that per the vote, the site plan is revoked; there is no commercial activity approved for the site; he noted that the hearing ends at this point and is not continued. He said he is sorry for the way it ended.

Public Meeting

Ordinances and Regulations

HDCI: Mr. Coppelman briefly reviewed Envision Kingston II and that HDC I was the focus of the charrette with certain things identified for possible improvements. He reminded the Board that Bed and Breakfasts had been added as a permitted use. Ms. Merrill, resident and local realtor, reviewed issues regarding restrictions for B&B's being unprofitable with the inability for functions, weddings, etc. Virginia Morse, chair of the HDC, reviewed the process of adding B&S's with the idea to start small; she was excited by the ideas from Envision Kingston II for revitalizing the center; she liked the idea of removing the restrictions to allow events such as weddings. She said the HDC was meeting on Wednesday and she would discuss this with the Commission. She is in favor of broadening the base and making it easier to participate. The proposed draft was reviewed. Mr. Pope asked about allowing new structures for functions. Ms. Merrill said the idea had been to add a tent not build an additional structure. The waiver/variance process was reviewed. There was discussion of adding "inn" with bed and breakfasts. Ms. Morse discussed the Wakefield Inn as an example of inn that has a restaurant open to the public on Fridays, Saturdays and Sundays. Mr. Pope said that an inn would have a restaurant open to the public. Ms. Morse noted that there would be an increase in parking requirements for an inn. Mr. Coppelman said the working should include what we would encourage. He said that the requirements are not "restrictions", they are "standards". Mr. Pope suggested having the permitted use in the zone with the standards in the regulations. Mr. Coppelman used C-III as an example with the permitted uses, not the standards, in the zone. There was discussion regarding "special exceptions" instead of a "variance". Mr. Coppelman said that he thinks that the Town is interested in a B&B as a commercial use but an "inn" actually works better as it has a full commercial kitchen with restaurant activities; a B&B is a home with a couple of rooms, not a tie-in with weddings and other activities. Mr. Pope said it sounded like the Town was interested in an "inn". He suggested adding "inn" to B&B in the permitted uses and moving the standards out and into the regulations; the Board would need to define Bed and Breakfast and Inn. Ms. Morse said that she thinks this captures the enthusiasm to make this an inviting place while protecting what the Town and make it easy to eat, sleep and do activities here. Mr. Greenwood said that the Town, historically, used to have taverns which is closer to an inn than a B&B; he thinks both should be included as a permitted use. Ms. Merrill suggested that the Assisted Living project came in without rules and the process has been going

smoothly adding that this could be the case with an “inn”. Mr. Coppelman explained the HDC and ZBA process they had to go through. Ms. Merrill suggested broadening the B&B and work on the “inn” concept for the following year. Mr. Pope re-iterated putting the standards in the regulations suggesting reviewing them to bring to the HDC. “Air” B&B’s were briefly reviewed with the Board waiting until the State recommendations are done in June.

Current Board recommendations: put “j” as a permitted use of Bed and Breakfast/Inn; define B&B, define Inn, add to definitions section (Two ordinance changes: HDC and Definitions); in January, begin regulations so they are done by Town meeting to adopt if Town Meeting approves the ordinance changes. Ms. Morse agreed to removing the restrictions as proposed in the draft – remove 4 guest room restriction; add “consecutive” to no more than 30 days. Ms. Morse said she wanted to think about putting B&B’s and Inns together as she hadn’t thought a lot about it. Mr. Greenwood disagreed with previous comments about the Assisted Living process adding that the process the Board is proposing is very good and the regulations should be able to be done by March. He added that there egregious shortcomings happened with the Assisted Living review especially with regard to density. Mr. Pope agreed that it is not the way it is supposed to work at the ZBA. Mr. Greenwood explained that what happened was spot zoning without a vote of the Town; while the proposal may be a good thing, the process was not. Mr. Bashaw said that the Board should not hash out the details but convey the idea to the HDC. Mr. Pope agreed that the HDC should convey any concerns to the PB. Mr. Bakie said that functions and dinners fall on “inns” not a B&B. Mr. Bashaw suggested that the HDC may want an inn to be owner occupied/permanently occupied by the owner of the property. Ms. Morse said that the HDC had not discussed this at all adding that she appreciated Ms. Faulconer bringing it to support Envision Kingston. Mr. Pope said the regulations could be made to be more restrictive and adjust as needed. Ms. Morse said that the HDC will have a lot to discuss at their meeting.

Building Lot Size: Mr. Greenwood suggested tabling the discussion for now so the Board could concentrate on any ordinance changes/updates as the lot size issue was a regulation that did not need Town meeting approval. The Board will continue its review at a later date; Mr. Greenwood will ask Mike Cuomo to attend the meeting with the Board; Mr. Greenwood will coordinate Mr. Cuomo’s schedule with the Board’s to arrange the meeting.

Impact Fees: Mr. Greenwood spoke with Bruce Mayberry about impact fees for accessory dwelling units and additional bedrooms. Mr. Mayberry said the current ordinance has an assessment for any dwelling units so ADU’s are already subject to the assessment without any changes to the ordinance; he recommends the Impact Fee assessment be 1/3 the value of the apartment assessment. He continued that additional bedrooms can only be assessed if the assessing is done by square footage and ours is not structured that way. Information will be giving to the BOS and Inspectors that Accessory Dwelling Units are assessable and suggest they contact Bruce Mayberry regarding the assessment.

The Impact Fee ordinance will move forward to the public hearing prior to adding to the warrant per the Board’s previous discussion.

Accessory Dwelling Units: Ms. Merrill provided the Board with photographic examples of Accessory Dwelling Units. The Board reviewed changes: any reference to accessory family

apartment to be changed to accessory dwelling unit. The Board discussed allowing in detached structures and if just allowed or other requirements; the unit is still tied in size to 1/3 of the overall square footage of the original structure to ensure that it is subordinate. The Board discussed the detached structures concerns. Mr. Greenwood said that it becomes similar to a duplex. Mr. Coppelman suggested that the Board could add requirements for detached units. Mr. Quintal said that SB146 allows municipalities control to maintain a single family home which is where the “character” comes into play at a special exception for the ZBA. He said the Town can incorporate it into the ordinance or have to go to the ZBA. Mr. Bashaw said that it shouldn’t look like a house and a mini-house; it should look like a barn or carriage house. Mr. Coffin said that presently only those ACU’s in SF or SF/AGR needed to go to the ZBA. The Board reviewed previous changes in this ordinance pertinent to the RR zone and accessory dwelling units; the size requirements for a detached unit is for SFR zones only; duplexes aren’t allowed in those zones; there was no need to require additional requirements in the RR zone. Mr. Greenwood suggested he bring language back to the Board to review that allows detached units but tying them to units allowed in the SFR zones. Mr. Coppelman referred Mr. Greenwood to language in Hampton Falls’ ordinance that may be helpful. Mr. Greenwood will bring the language to the next Board meeting.

Correspondence:

- Invoice from CCM for the Assisted Living review approved to pay
- J&M Auto Sales license review; Mr. Greenwood said while they are not dramatically out of compliance, all spaces are being used for display including residential spaces; if the bus is moved there will be enough space; Ms. Faulconer said that there were cars parked outside of the fence today. Mr. Faulconer will call the owner regarding compliance and Mr. Greenwood will review on Monday and let the Board know if back in compliance.
- Ms. Merrill asked for the Board’s opinion on the language on a proposed citizen’s petition; she will review with Mr. Greenwood.

MM&S to adjourn at 10:01. (Motion by Mr. Pope, second by Mr. Bashaw) **PUNA**