

**Kingston Planning Board  
Public Hearing  
January 4, 2011**

The Chairman called the hearing to order at 6:33 PM. There were no changes to the legality of the hearing.

Members in attendance:

Richard Wilson, Chairman	Ernie Landry
Jay Alberts, Vice Chairman	Glenn Coppelman
Chuck Hart, Selectmen's Representative	Dan Mastroianni
Adam Pope, Alternate	Richard St. Hilaire, Alternate

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Ellen Faulconer, Administrative Assistant.

Mr. Wilson stated that Mr. Pope would be a voting member during this evening's meeting.

**Critical Correspondence/Board Business**

- Purchase Order for Wall Calendar approved and signed.
- Letter received from BOS re: First Congregational Church; asking for the Planning Board to delay any decision at the Jan. 18<sup>th</sup> public hearing while awaiting determination from attorney of property ownership.
- Letter received from BOS re: Attorney's review of the Citizen's petition; the Chairman will read the letter when the public hearing on this petition is opened.
- Memo: re: procedure for asking Health Officer to come to Planning Board meeting; Mr. Hart informed the Board that a formal procedure is not required the Board can either inform the Selectmen's representative or contact the Health Officer.
- Letter received and read from RPC regarding the Regional Impact review of the Danville proposal. Mr. Greenwood reported that the Regional Impact Committee was concerned with Danville's cavalier attitude concerning a development that will have such an impact on their Town; he explained that the proposal adds 10% more to the housing stock in Danville and they had recommendations regarding assessing the impacts of this development; however, the Danville Planning Board Chairman was not receptive to the comments of the Regional Impact Committee. Mr. Greenwood informed the Board that there was a second aspect of the proposal that is being reviewed in January by the Regional Impact Committee as a shopping/restaurant complex is also being proposed.
- A draft Calendar for the Board was reviewed and approved.
- Mr. Wilson asked the Board's pleasure about continuing the start time of the meetings at 6:30 PM; the Board will re-assess this in April concerning summer start times.
- Mr. Greenwood summarized his meeting with Danna Truslow and PREP re: the "Aquifer" grant; there are a number issues that the Board discussed as possibly being accomplished and they are asking the Board to establish the priorities. This discussion will continue later in the meeting.

Mr. Wilson handed out a copy of the warrant as presented at this time; he stated that the Citizens' Petition was scheduled first for discussion. Mr. St. Hilaire asked to confirm that the hearing had been posted correctly; Ms. Faulconer explained that the hearing was posted on the Planning Board bulletin board, at the Post Office and was published in the Carriage Towne News.

### **Public Hearing – Warrant Articles**

**Public Hearing for Citizen Petitioned Warrant Article** (By Board vote on 2/1/11, the comments pertaining to the citizens petition have been transcribed verbatim)

**Mr. Wilson:** We will go into our first and our only Citizen Petition and we sent, well it goes to Selectmen automatically and last meeting it had not been to Selectmen so we delayed anything on it until this meeting.

**Mr. Alberts:** I'm going to recuse myself at this moment.

**Mr. Wilson:** Okay. And the Selectmen sent it to Sumner for an opinion and, I'll pass this around if someone wants to read the whole thing, but basically what it says is to the Selectmen that they don't have the right to alter or pass any decision on the warrant article as far as whether it's legal or not and the Board of Selectmen are the same way, I mean the Board of, Planning Board is the same way. He raises two questions in here, uh, one is that the line that says, the petitioners agree that they will not object to, if the first signer of this petition wishes to withdraw this petition from the warrant article. Um, it does not say that the petitioners agree to let him alter, which altering is what he was talking about doing; meaning Jay Alberts who presented this. And, what that means, Jay, is that the line that you were going to take out, this passage of this warrant article will supersede any other zoning definition of these lots as voted on March, 2011 cannot be taken out. But, how I am reading this, and Chuck can jump in there any time; I'm reading that we can't tell you to take it out or to leave it in but he doesn't think you can take it out based on what's there and he says that it is our job to present this to decide whether we are for it or against it and that's it and that any conclusion about whether it is legal comes from the Supreme Court later.

**Mr. Alberts:** uh-huh, okay.

**Mr. Wilson:** And the other one, there was two things, oh, the part about superseding any other warrant article, well, the good news in that, for you, is there was no other warrant article so you couldn't have had it overruling another article at the same time. So, since there wasn't one..

**Mr. Alberts:** Right.

**Mr. Wilson:** it's kind of null and void anyway. So, you have the appropriate signatures and, has everybody read this? And knows what it is? And, there are copies. That's the top page copy, that doesn't have all the signatures, but the signatures are there and they have been authenticated, I would assume, by the Selectmen's office but they had, had the originals, so, I think they had 30

**Ms. Faulconer:** The originals went to the Selectmen.

**Mr. Wilson:** The original had 35 signatures so it was basically ten over in case there were any that were thrown out. So, we have, um, I'm assuming that you are here for this? All nods for yes. (Some background talking not captured by the recorder)

**Mr. Wilson:** Do you want a chance to read that if you haven't seen it.

**Mr. Alberts:** Yeah, I understand, Jay Alberts, I'm submitting a citizen's petition on behalf of the necessary 35 signators of the petition to change three lots, one out of rural residential, one out of single family residential and another out of what is currently delineated as rural residential and historic district I into all C-II. This is the first time that I have seen Sumner Kalman's letter, when I just briefly looked over it, my first reaction was it does not specifically authorize petitioner's and the second part where it says Nor does the statute address the legality of the language stating the passage of this warrant article shall supersede any others; what it doesn't say is that it is illegal.

**Mr. Wilson:** Right.

**Mr. Alberts:** It is like saying, it also doesn't say that you can't go out and run over somebody with your car.

**Mr. Wilson:** Right, he's just bringing up those two comments about whether it is or isn't

**Mr. Alberts:** Yuh

**Mr. Wilson:** and saying that we have no jurisdiction to decide that anyway.

**Mr. Alberts:** Right. Now I will be more than happy to leave the last line in providing I am able to get a vote tonight, if I have to.

**Mr. Wilson:** I think that you have to make a decision on your own

**Mr. Alberts:** I think my decision to alter it in any way, based on any perceived legal action, would be based on whether the Planning Board or not deems that I must, um, um, I will not get it if I do remove that last line or put it back in; it would have to be re-posted and re-heard on January 18<sup>th</sup>.

**Mr. Wilson:** Glenn, have you read this letter from Sumner?

**Mr. Alberts:** It just came in. And, also, may I point out one thing while you are asking Glenn this question is..

**Mr. Greenwood:** I read one this afternoon.

**Mr. Alberts:** And also I believe It was Glenn Greenwood who, you know, didn't prompt me one way or the other, but did say, has, tell me how it's been done in the past and he said, well, I'll give you one example and showed it to me, not being for it or against it of course and that was the part about, um, altering, giving the lead signator the right to make any amendments to this.

**Mr. Wilson:** But that's not what you said, that's the problem was the wording that you used, you didn't leave it as the right to alter

**Mr. Alberts:** Then, I am willing to leave the petition as is.

**Mr. Wilson:** All right, I want to ask Glenn...

**Mr. Greenwood:** Without any change.

**Mr. Wilson:** Without the Change?

**Mr. Alberts:** Uh-huh.

**Mr. Wilson:** Okay. All right, then if you are willing to do that then I don't need to ask my question.

**Mr. Greenwood:** Yeah, I think that just took away what you were going to ask.

**Mr. Wilson:** I don't think we can tell you one way or the other or guide you one way or the other at all, it has to be your decision and then we have to decide where to go from there.

**Mr. Alberts:** Uh-huh.

**Mr. Wilson:** Comments, Board? Rich?

**Mr. St. Hilaire:** I'm just looking at the tax maps, sorry.

**Mr. Wilson:** Do you want me to tell you the three lots that they are?

**Mr. Coppelman:** Yes, could we just get a description of the lots.

**Mr. Wilson:** It's the Sleep Center, Carriage Towne Plaza and the Alberts' property.

**Mr. Alberts:** If I, If, I can go on just a little bit more before you ask questions if you'd like.

**Mr. Wilson:** Yeah, just say anything that you want to.

**Mr. Alberts:** Just to give you a little bit of history. First of all, Carriage Towne Plaza, this was not anything that was discussed with Mark Heitz in any way, Mark is not a signator of this and to me it just makes common logical sense that development that is purely, obviously commercial should not be in the rural residential zone; it abuts Route 125 and it should be commercial, obviously, it's just, it just makes good common sense and we're trying to go around and straighten out all of our zoning, there is one that is, that, you know, whether Mark likes it or not, it should be a commercial zone and if Mark has an objection I'm sure he will state so himself. As far as the Sleep Center is concerned, that has been commercial, I think, since I was a kid, I remember the Plaistow Bank and Trust, was it in the 70's or the early 70's, it was commercial and it shouldn't be single family residential because it has been a bank and a Dutch Ophthalmologic Warehouse and Sale Center and now it has become a Sleep Clinic and the other lot, since 2003, when the proposal for this land which is owned by, uh, well, now the Amy L. Alberts

revocable trust, since that piece of , since 2003, when that was first proposed for a grocery store, I have never once spoken publicly or written anything in papers, or even as a member of the audience or member of the Planning Board or ZBA, ever said one word about this piece of property cause I felt that it was best for me to just stand back from the whole process but this is a piece of property that is without any buildings on it or any structures. My dad bought it in 1957; in 1957 he bought it with the purpose for his retirement investment and in 1995, we attempted to work through the Historic District Commission to put up a, um, a, um, pharmacy in the shape of a railroad station and I really appreciated and liked the design, but there were a number of people that, uh, uh, a number of abutters, specifically, and members of the Historic, they told me to go see the Historic District Commission first before I went in front of the Planning Board with that design and I had left Town for over 20 years, had just moved back and I said what is the Historic District Commission and they said it's a legal commission within the Town and I started looking back through the records and the last time I found that they actually held a meeting was in 1990 but in 1995, all of a sudden, the Historic District Commission, uh, had blossomed again and, uh, surprisingly enough, it's members were basically people that were against the development of that property. That was voted down and then that piece of property, uh, was being considered in 2003 for a grocery store, in which I felt, uh, Hannaford was willing to make, uh, tremendous amount of concessions to the Town that went on ad infinitum, as far as even changing the, uh, uh, Route 125 and Route 111 and Main Street intersection. Uh, offering monies to uh, do traffic study counts, even spent three weeks with about 10 to 12 people doing archaeological studies looking for dead Indians and cannonballs and didn't find any. Uh, the piece of land is, uh, obviously been approved, so, in spite of the fact that the Historic District Commission voted it down, uh, the Zoning Board of Adjustment overturned that decision, it has been to court; now, Superior Court twelve times with, I think that is it; it has gone to Supreme Court twice, all the decisions in favor of the Town which is defending itself against abutters, some members of the Historic District Commission. Sumner Kalman, as a matter of fact, I'm looking at this letter and am a little bit concerned because Sumner Kalman also represented the Historic District Commission, uh, but at first glance, I don't see anything that is a conflict of interest in what he is saying in this letter, but it does bother me that they did elect to go to see Sumner Kalman in regards to that, since he did represent the Historic District Commission against the development of that property. Um, the land itself, and besides that, instead of contributing what was estimated to be over \$60,000 a year in taxes to the Town of Kingston, because of the ensuing legal battles, basically over the overturning of the Historic District Commission's decision, instead the taxpayers paid over \$65,000, out of their pockets, to defend themselves. I would be foolish to say that the Historic District Commission is broken; it is a flawed system, I find that those that come out against it are generally people, take a look behind me, that live in the neighborhood and have publicly stated that I don't want it and still vote on it. It's a flawed system, but the flawed system itself should not be the reason why you consider this for C-II property. The C-II property, number one, has been approved; the courts have approved any decision, and, and, certainly enjoined by anything this, um, Konover has offered the Town, as far as making it, for the first time that it was turned down there was no discussion about facades, type of materials, how it would look, it was just a, well, all out decision to find out how we can actually stop the store and then when the Supreme Court overturned the decisions then all of sudden, then it was a second or a third bite of the apple, actually, by calling in the Army Corps of Engineers and that's when they started addressing things like the façade and things that should have been done the first time around. So, in spite of that, the property itself, it is a commercial piece of property and the area's, nothing that can be done as far as, other than building a, I think, two house lots, perhaps three, it's only about 11.1 acres, I think we need three for the Aquifer Zone as far as houses are concerned, so maybe it's two, maybe it's three. I was reading the Master Plan, and the Master Plan said one of the things the Town should do is not, um, is try to keep the numbers of

driveways accessing the roadways, limited, you know, don't try to put too many driveways at intersections, of course, and again, if somebody can afford to buy a piece of property or buy a piece of property for the development of a house, somebody with that money is not going to want to live right next to a, a, bustling highway which gets noisier all the time. Like I say, I left for 25 years, when I was born here, Route 125 went through there, through the center of Town and when the rains came, the field used to fill up with water, my Dad's field, and we could take out flat-bottomed boats and row out to our next door neighbor's house which was located in the middle of Route 125, but of course, when the new highway came in, that was gone and that chunk of, that quietness, peacefulness, was also gone. And I left for 20 years and I remember coming back and sitting at my Dad's house by the pool and saying, Dad, doesn't the noise from the highway kill you, but he had grown up with it and he said, no, you know, it's just, been like that and you get used to it after a period of time. Um, I was reading the information that the Historic District Commission had handed out, I think it was for the Kingston Days, and, the interesting thing I found about this, I'm going to pass this around, and I'm sure the Kingston Historic District will probably be <speaker stepped away from the microphone>.... see this become commercial because the, if you notice on this Walking Tour map, they talk about that field as once being a, that field was once a racetrack, it was a commercial racetrack. We had the archaeologist come in and do the digging, they found nothing of primitive value worth, uh, rehabilitating for the sake of historic purposes but it was a store. The land across the street was Chase's uh, carriage house, and this was a, uh, also, I believe, uh, uh, a tavern of sorts. The house next to it, my parent's house, was a tavern; the Magnusson house was a carriage building facility and obviously, back in the olden days, back in those Historic days, as you'll see from the Historic District Commission's map, this was a, uh, commercial part of Town and certainly be making it commercial again, well, we always realized that there is going to be some sort of changes and life goes on and of course, we're not going to be putting taverns there and we're not going to be putting carriage houses there. Time goes on but so far, we've had two people very interested in that, in that land, who were more than cognizant and more than conscientious about, um, trying to make it fit in with the historic character of the Town, however, the lawsuits persisted and finally, the last, uh, potential tenant, ended up walking away and you know, he said to me, quite frankly, and everybody is going to go well, they walked away because of Market Basket. Yeah, I would say that the straw that broke the camel's back but they said, I'll tell you what, if we had gotten all of our approvals six months prior, this store would be in, people would have jobs, and, uh, the cruisers would have all of its repeater systems; there would be illuminated, I mean, walkways that were safer on the way to school; the Town would have their money for their flowers in the center of Town and whatever else Konover promised them or Hannaford promised them and um, and again, I just want to tell you that the court cases have not stopped, although, Hannaford has announced they have gone away. There is still one more case pending in front of the New Hampshire Supreme Court and, again, all of this would not have happened had this been zoned C-II in the first place, so I think, on one side, yes, the Historic District Commission is broken; yeah, it would take a long time to fix. At one point, I was thinking of making the elector, submitting a petition to making them elected officials but realized that would take too long as every person is entitled to fill out their terms, uh, somebody said to me at one point, why don't you just take your land and make your land, make the, ask, put a petition in stating that the Historic District starts at the very first house, which also happens to be our family house but on a separate lot. Well, on the surface, that sounds like a good idea, but the, what are you going to do with that piece of land, you can't zone it, if you go back to Rural Residential, and it's out of the Historic, you can't build there as far as any commercial activity is concerned which is what this spot is now designed for and um, uh, and somebody said, is it a case of spot zoning. Well, just look at what we did at New Boston, I mean, there again, we made three lots commercial because it just made good common sense for Bump and Grind, the antique tool sales people, who sell the antique tools there and Comac Well and

Pump. So now we have another intersection, just like many other intersections in Town that adjoin 125, and, uh, may have made them commercial and it just stands to reason that, uh, uh, Carriage Towne Plaza, it's obviously commercial, not rural residential; the Sleep Center, it's been commercial for all the years since I was a teenager and also, the land, which is obviously, desirably, commercially; life goes on, we must continue and hopefully, uh, the next person that comes along that is interested in it, uh, we will be able to say to them, as well, and the Planning Board, now, would have an opportunity, if it is C-II, to hold them to the same standards that, that the other applicants were willing to adhere to, to give that piece of property a historical flare. And, then I will reserve any other comments until after you've heard from the rest of the people.

**Mr. Wilson:** Okay, and I think the only thing that I want to comment on that you said is about Sumner and I, I take his letter to be, kind of not saying much of anything so I don't think he really stated anything that could be considered diplomatic to you or pro or con or anything else. I think he is basically saying that we're not going to make a decision. He's telling us how to act, not what he thinks.

**Mr. Alberts:** And that's why I said I was surprised at first to see Sumner's name and then I read it, briefly, just now, when you did and I said I don't see anything controversial or a conflict of interest in that letter at all.

**Mr. Wilson:** Okay.

**Mr. Alberts:** Okay.

**Mr. Wilson:** I'm assuming several people would like to speak and the only thing that I would hope is that you don't repeat what the person before you said. I mean, I know you all have your opinion as he had his and we will listen to all of them but, Virginia do you want to start.

**Ms. Morse:** I do not, thank you .

**Mr. Wilson:** Okay. Scott, state your name and all that other junk and. ...

**Mr. Ouellette:** Good evening, my name is Scott Ouellette, 189 Main Street. I am here to speak against this petition and really, there are many reasons to speak against it, I'll try to be as clear and concise as I can but you really have to start with the Master Plan. And, any piece of zoning that is done, isn't about Mr. Alberts; isn't about me; isn't about any of the citizen's directly affected by it; it's about the Town. This is a planning effort, this is about the Town's future. Um, the Master Plan was put together with that in mind. And it has aspects of all parts of Town. It's not just about Historic, it's not just about Commercial, it's not just about Agricultural or, uh, recreation. It's got all those things into it and when you make any zoning petition, whether it is by this Board or by citizen petition, you need to take that into account. And, you really don't have to go far into this to look at page V-1, in the Vision, goal number 2, to preserve and enhance the rural, recreational and historic character of Kingston. This one lot may be the last lot in the Historic District, but it is in the Historic District and studies have shown, even by Mr. Alberts' appraisers or reviewers, have shown that Kingston's got a huge asset here; the Historic District is really valuable; it is a collection of old homes, that really is unlike any other place in New Hampshire. The common, the collection, all the way from start to finish, and even could be extended beyond its boundaries, so that is an asset that the Town has. The Planning Board or the zoning should be looking on ways to, to protect or develop that asset, not in ways to harm it and if you

take this one spot, Mr. Alberts' property, take this one spot and you zone it C-II and you run down the list of everything that is allowed in C-II, it's all big box commercial, it's not meant for this area of Town. It's meant for the landfill area, the Magnusson farm, the properties across the street, that's what it was originally designed for, that's what the writers originally came up with for that area of Town, where there aren't a lot of residential properties, there aren't a lot of historic properties. This area that he has chosen, or this area that this lot is in, is right in an area surrounded by homes, the only other parcel that is not a home is across the intersection in the Single Family Agricultural zone and I don't have to read too much farther to get preserve and protect farms; preserve and protect agricultural land. If we allow, if this Board recommends this petition, and we allow this to go forward, we'll have one lot on either side of the intersection, a spot, spot zoning, different from everything else around it and what always happens when you see one big box store go in, you see another, and another and another. If you take the whole Master Plan into account, and you read through section after section and the next line down, maintain the integrity of the Historic District; these aren't my words, these are words by people that developed this plan years and years before I was involved in Town politics. Um, you really have to, you really have to take the whole plan into effect, the whole Master Plan into effect. Envision Kingston was a big process done so that we could ideas from all over Town; people all over, all walks of life, if you will. It was, ironically, hosted by Mrs. Alberts and the conclusion of that, which are also boiled into this Master Plan, say don't do this; don't develop an intense commercial venture within an area that is historically sensitive or agriculturally sensitive. Some of the quotes are There should be controlled residential expansion with a blend of responsible business; industrial parks are encouraged but should be away from residential areas; maintain rural character; preserve rural quality; preserve working farms; re-zone for the tax base that you can't see; that's along that industrial line; preserving rural character including Historic District and Plains; continue and expand activities; I mean, I could go on and on reading sections in here and it's not just sections on historic or farming, there's also sections on business development. You know that, we want a business plan, we want to, um, a grocery store is listed right out as a desirable thing but you have to take the whole plan into, into consideration, you can't just pick out one sentence and say, oh, it says grocery store, that must mean I can put it anywhere. No, it means you need to balance those things and the current zoning we have does that. We have commercial zones in the north end of Town, the south end of Town, embracing what's already there. We have Historic and Single Family in the center of Town, we have areas for agricultural, we have areas for conservation. Now, this can be a win-win situation. This petition, I mean, Mr. Alberts talked a lot about his lot, but there are three lots involved here and, come to find out, that Mr. Alberts included those other two properties without talking to those owners. It might have been a mask to try to avoid the spot zoning moniker but this is spot zoning anyways and I can't imagine having someone pick other people's lots without telling them or consulting them; they are not signed on the petition and re-zoning those. I think I see Mr. Lynch behind me but I remember when the Sleep study came in, they were very sensitive about the area that they wanted to be in, they did not want to be in a big industrial park; they are trying to get people to sleep and trying to study their habits, right, so you remember those comments.

**"Unidentified" speaker:** Yes.

**Mr. Ouellette:** Remember the house that is right behind them, the house is not very far at all, I mean it's only a few feet off their back corner, very concerned about impact and lighting and what would the atmosphere be. This C-II change opens the door for any big box; Dunkin' Donuts, it would be allowed; a trucking terminal would be allowed on the Alberts' property. Can we all sit here and say, hmm, that seems to make sense, that seems to go with that area, of course not. This is a self-interested zoning petition. This is someone trying to re-zone their own personal land and it really sets a bad precedent.

What if, what if, um, you know, there was a pattern to this. We might have a parade this time every year, and say, okay, if you're staying in Town, line up on this side of the room, you must want to zone your house to single family; if you're leaving Town and you want to sell, line up on this side of the room, you're zoning your house to commercial. I mean, I'm joking, but really, that's what this is, a single owner trying to re-zone his own personal property for his own personal agenda, that's not what zoning is about. Zoning is supposed to be a group, a community effort, that's what the Master Plan is, that's what the Envision Kingston was about. This petition doesn't go along with any of that, it contradicts all of that. Chuck, did you, did you raise your hand.

**Mr. Hart:** No.

**Mr. Ouellette:** And, let's not forget, well, let me, uh, just bring up one point. The four corners on the corner of New Boston Road that were re-zoned, citizen's petition. It wasn't just a couple of lots, it was seven lots, okay, and it was not recommended by the Planning Board because it wasn't done in accordance with the other zoning activities we had done. That's what this Board should do as well, it was not recommended. Ultimately, it passed but it was not recommended and that's what this Board should do. And, the C-III zone has got very specific limits on, if I pick a parcel, that parcel can't expand, it can't expand or contract the zone; none of that was in the New Boston four corners and none of that's in Mr. Alberts' petition, let's not forget that. The lot numbers are part of the petition, but this is the same situation where we should say, you know, the Sleep Center sells to Dunkin' Donuts, Dunkin' Donuts buys the house behind it, buys the house behind that, the next thing you know, I've got a five or six acre parcel and as long as it has that same lot number, you know, it could be something much bigger than anything that could ever fit on that half acre lot today. Um, I think the Board really has to step back and take this for what it is. There are people in Town, there are groups in Town, some are pro-commercial, some are pro-residential, no matter what side you are on, we can find common ground, we can work together and if you look at the current zoning map, it is a combination of compromise. But there are some points where it's just going to be a fight and if you think about it, Mr. Alberts has caused these two groups to fight at their expense for his potential benefit. That's not what zoning, that's not what community is supposed to be about at all. Um, legal issues, potential legal issues, I'm not saying that this is going to happen but if there are already legal questions about this, and this Board is trying to protect the Town from any future legal proceedings, and Chuck, here as a Selectmen should be concerned as well, he shouldn't recommend this. I mean, it has wording problems, you should withdraw it, have the Board do it right, it they are going to do it. I think the Carriage Towne Plaza might be a fine candidate for C-II, I don't think the other lots belong in C-II at all. Rural residential allows some commercial uses, historic allows a ton of commercial uses, he just got his supermarket approved. I mean, you can't say I'm really hamstrung by these zoning restrictions because he's already got some things approved.

<End of Side One>

**Mr. Ouellette:** ...(beginning of Mr. Ouellette's statement not caught on the tape)...from the New Hampshire Preservation Alliance and the Trust, National Trust for Historic Preservation; these people know historic districts a lot better than anyone else in this room and they don't live here and what they basically say is don't do this; um, "a community's distinctiveness begins to erode when development that is out of scale and out of character for a location is allowed, experience has proven that only rarely, if ever, is there only one new big box store built, if one goes in, there will undoubtedly be proposals for additional chain store construction. This is not to say that there should not be any development,

rather, this is an opportunity for the Town to exercise its right to guide development to appropriate areas that will not detract from the qualities that define it and to encourage new construction that will visually and functionally connect with the existing fabric". And that says it all right there, you can do this, you can have big box construction in Kingston but you have to consult the Master Plan and find the appropriate areas. This was written about the, the um, the Hannaford proposal. I'm going to forward this around to the Board, but it is clearly appropriate to this application and I'm going to stop right there. I can literally go on for hours but this is just not the right way to go about this. I'll take any questions if you have any, from the Board.

**Mr. Wilson:** Anybody?

**Mr. Ouellette:** No? Thank you.

**Mr. Wilson:** Stanley.

**Mr. Shallette:** Good evening, uh, Mr. Chairman and members of the Planning Board. My name is Stanley Shallette, I live on 1 East Way, I've lived there for like 25 years, since the road was put in and it's really a nice residential neighborhood, I enjoy it very much and I'm an abutter to the Alberts' property and I am very concerned about the re-zoning of lot 71B which is the lot that Mr. Alberts wants to take out of the Historic District and redesignate that as Commercial II. I'm trying to say that this is not in the best interest of the Town but only for the, I shouldn't say a greedy purpose, but the individual purpose of the landowner and I don't see why this land should be taken out of the Historic District, uh, and be made Commercial II by popular vote and I know if this was passed by the voters in the March election, I'd say that such zoning would be spot zoning and subsequently illegal and unreasonable. It would devalue the residential, historical neighborhood as it stands now and also my property values as well. For these reasons, the Planning Board should vote not to recommend this article. Furthermore, if that article were to pass in the March election, such an article would be invalid because it is not in accordance with a comprehensive plan which we know as the Master Plan. Um, zoning changes can be justified if they are for the purpose of promoting health, safety, morals, or the general welfare of the community. Now, this article is not for these purposes because there are Commercial II areas elsewhere in Town, why make another Commercial II. Basically, the zoning change must be for the public good. Furthermore, such spot zoning can be challenged in court if that area, Lot 71B, is singled out for a treatment different from that of similar surrounding land. If you look at similar surrounding land, you know that it is densely residential, it's been historical for about 300 years and why the change now? And, it cannot be justified unless it's on the basis of health, safety, morals or the general welfare of the community and basically, this is not in accordance with our Master Plan. What I'm trying to say is, we have over a hundred acres of Commercial II property that are vacant today that can be used for Commercial II purposes and, um, I can't see why lot 72B has to be re-zoned as Commercial II. Is there really a public need or a compelling reason to rezone this 11 acre lot from Historic I to Commercial II. In effect, this would take away from the protection of the historical layer it now has. I would suggest to the Planning Board that the Planning Board seek the advice of its legal counsel in order to seek legal opinion on something that could land up in court. Again, please vote to stamp your disapproval or non-recommendation on this ballot proposal as it is not in the best interests of the Town but only suits the financial, in quotes, financial pockets of the landowner. And I want to back this up, Peter Loughlin would say the same thing because this is in Volume 15 of NH Practice, Land Use Planning and Zoning, 3<sup>rd</sup> edition, written by Peter J. Loughlin, he says the antithesis of zoning by district is spot zoning. This is the term used by the courts to describe a zoning amendment that is invalid because it is not in accordance

with a comprehensive plan. It is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of such property and to the detriment of other landowners. And, um, there are two cases, *Bosse vs. Portsmouth*, here the legislative body rezoned an area surrounded by a single family residential to light industrial though hundreds of acres of industrial property were vacant so again, is there a need to zone a historical section into a commercial II and then in *Monger vs. Exeter*, the court found no public need or compelling reason for the rezoning of a half lot from residential to commercial, the court remanded the case to the Superior Court with instructions to vacate the decision of the Town meeting and so, there is a good legal precedent that what's going on today is definitely something that is unreasonable, something that's unlawful and something that should not be recommended by the Planning Board because it doesn't fit in with the best interests of the Town. Thank you for listening to me. Do you have any questions?

**Mr. Wilson:** Nope. Anybody else, questions?

**Ms. Ruben:** I'm Judy Ruben, I live at 14 Exeter Road and I'm a member of the Historic District Commission. Um, mathematicians will tell you that you should never listen to statistics 'cause you can always make statistics say the things you want and I thank Mr. Alberts tonight for bringing the map; I brought our Historic District map for, certainly, a different reason. I wanted to tell you all how lovely and vibrant our Historic District Commission is and the point of this was to point out how important the Historic District is to the Town of Kingston. If you do your homework and read this, you are going to find that all but six homes along this trail, there are 74 items listed on this, all but six homes pre-date 1918. So that whole piece of property is hugely historic and certainly important to our Town and I have copies for all of you as well. But, I wanted to give you my take on the Historic District Commission. I was not on the Commission during the whole fight and the battle on getting Hannaford's there. I believe that that was one of the most devisive decisions ever to come to the residents of Kingston; everyone in Town, I can tell you, would love to have a supermarket in Kingston. The battle was does it belong on that corner lot. I was not part of that, but what I was part of, the planning of the Hannaford's building as it came to be done and Jay Lord and Phil Hastings, the two representatives from Konover and Hannaford worked with us so diligently because there were restrictions on this particular piece of property at Hannaford, we were able to talk to them, we were able to tell them what was going to be, I don't want to say acceptable, but what would be better for the Historic District. You couldn't take Hannaford's out of there, we were gonna have a Hannaford's so I felt it was my job to represent the people of all of Kingston and try to make a building that would get us a supermarket and still protect the Historic District. Time and again, those people came back to us; I showed them one night a gooseneck lighting, I think you could put this on the front of it and it would be acceptable. Yes, they came to us with a sign, it's too big, can you do little lights, they wanted illuminated lights, could you tone that down, we softened the roof line, we added more windows and throughout the whole process, these people kept saying to us, we want to be friendly, Kingston, commercial residents; we want you to like us and because we were the Historic District and because there was that restriction on the property, we could build something that was acceptable to the entire community in Kingston and I think that's what you have to look at as a Board; you are serving many, many people here and that's what I looked at on the Board, I put my own personal preference aside and I said, we're gonna have this Hannaford let's make it be acceptable and I can't tell you how important that is, to have, I don't want to use the word leverage, but just a sense of discussion with the people as to what might be okay in that area. You make it Commercial II, you take that out of anybody's hand, nobody gets a say, nobody gets a compromise, nobody gets a suggestion and I honestly believe if Hannaford's had continued with their plan and built that, everyone would have been happy. We wouldn't have been excited to have it in the Historic

District, but it would have been a building and a location and something that we could kind of hide behind a, oh, and six foot fence. They wanted to put a six-foot fence, we asked, you know, the abutters could you make it an eight-foot fence, they said yes, they made all of those concessions, all of those compromises to make it acceptable to the Historic District. If you do your homework, and you go back, in every one of the Town district books and you look at the votes that were made by the townspeople with the Historic District, every single Historic District warrant article, except one, was voted on favorably by the residents in Kingston, saying overwhelmingly, for the last twenty years, we want to protect the Historic District and so I ask you not to support this, leave the restrictions on that commercial property so that our very viable Historic District Commission can do their job. Thank you.

**Ms. Saunders:** Janet Saunders, 187 Main Street of 2 King Pine Way. First of all, Happy New Year to you all, it's been awhile. Hoping I can remember what everybody else has said so I might be able to comment on it and I'll try not to be too redundant. Four points I want to make. I'm here to address and oppose the citizen's petition before the Board tonight; said petition, an attempt to change, as in spot zone, three discreet and disparate lots in the Town of Kingston, those lots being 1, 54 and 71B. Again, I'll briefly address four issues. The concept of an edge town, the ramifications of and specific concerns regarding this petition, the collective duty of you, the members of the Planning Board, with regards to this petition and a brilliant recent Supreme Court ruling regarding the CUP granted for the proposed development and/or filling of the wetlands at 71B, the property owned by our primary petitioner. Point 1, many times over the last few years, we have heard the phrase "gateway parcel", it's been specifically used for our purposes to describe lot 71B's unique position as the literal and figural gateway to Kingston village and its Historic District I. The term Gateway project is also actually used, most often by preservation experts and urban planners to describe the first and significant development that occurs in the creation of what is known as an edge city or town. Edge towns occur as a result of stretch living and commercialism, sprawl. Our two best and closest examples are Epping and Plaistow. Such commercial sprawl occurs as a result of an accumulations, and I quote, "of random, private development schemes which almost always arise out of spot zoned parcels, not as a result of a public planning process that adheres to the thoughtful implementation of a community's Master Plan", which we certainly have, combined with the adoption of what are known as formed based codes. If you want to know more about that, you can get to me later. Such codes reflect the desired overall look of a town's buildings and streetscapes, otherwise, development occurs on a parcel by parcel basis according to land use codes with no thought for the look of the streetscape. Such development usually starts at the site of a desirable rural crossroads, and I've got that in big capital letters here, hence the term, gateway project because it's exactly what we're looking at here. The scheme that is being launched is not only the potential destruction of one desirable crossroads but two are at stake. When poorly implemented edge towns, what happens is they are left with a critical mass of odds and ends of retail establishments all with diversity of use and separated by empty lots of land, wasteful land use patterns that result in low density sprawl development and natural and built resources destroyed. This type of adverse development is always exacerbated by huge amounts also of attendant skyglow. People won't be able to sleep. If we don't call a halt now, we stand every chance here in Kingston of being consumed in the sprawling edge towns that we now see as Epping and Plaistow and we will lose the economically valuable and viable rural and historical resources that is Kingston Village. Second point, the short petition before you has interesting characteristics, some we've kind of discussed. Three lots are listed, two of them are grandfathered, there is no need for any re-zoning, spot or otherwise. This really is, as its been said, a badly disguised attempt to spot zone a pivotal lot in an under the radar manner. Additionally, the owners of those two properties, as has been said, apparently neither knew of nor joined the effort as signatories. There really are only a couple of signatories that have any connection to

the Historic District; it's, they're all legal signatories but no connection to the Historic District or 71B and those two are really on their way out of Town, there's really no other way to say it. We're all aware of the proposed development at lot 71B, isn't it funny, we started with three lots and all the conversation is just directed now at 71B. Since the inception of the application, the applicant's and the property owner didn't want to deal with the constraints of the rural residential so we had to look at it from a historic basis and, of course, the rural residential did comprise the bulk of the parcel. At that time, it suited their collective purpose to have the parcel considered, again, historic. Now we have new historic district regulations passed last year in January which would specifically prohibit such development at that parcel if a new application were to come forward or be required. Mr. Hart was a member of the Board that unanimously passed those regulations. I would hope that he would see it as a bit contradictory to vote to change the zoning to C-II at that parcel but now we are looking at no recourse but to change the zoning and carve out of Historic District I the village's gateway parcel, a parcel that is considered the most significant site in the Historic District that has been deemed eligible in its entirety for the National Register of Historic Places. The self-interested attempt even goes so far as to try to subvert the Conservation District overlay which exists to protect the health, safety and property of King, Kingston's citizens and the Town's natural resources. It's been, it's taken out but I'll still address it, that of course is the line amended and quote" officially with, at last minutes meeting, Mr. Alberts amended and officially withdrew the last sentence of the petitioned article and I would say, as Mr. Kalman, by what legal means did Mr. Alberts do this. He was given purview by the other petitioners to withdraw the petition not amend it. Other citizen's in the past, wanting to amend their petitions, just a bit, have been told to come back next year. So, we now know that has not in front of you now in its amended fashion, but there still may be some legal concerns. Point three, in the petition, there was mention made of it being replaced by an article by you, the Planning Board, first again is to your duty which is to uphold the Town's Master Plan, ordinances and public policy with regard to long-term vision planning. Kingstonians have always vocalized their desire to have Kingston retain its rural and historic character. With regards to the proposed construction of the grocery store, many citizens would have liked to have had the grocery store just not at the proposed location. The Master Plan, which was adopted by this Board a mere three years ago, speaks volumes to that sentiment as we have heard. It specifically says that commercial development shall be directed away from the wetlands and wetland buffers. Also, commercial development shall be directed away from the Historic Districts and again, very specifically, where there is a conflict between commercial development, which I happen to love and the protection of the historic resources which I love equally in their proper places, Kingston's historic resources takes precedence and commercial projects are to be directed to the ample areas set aside for such development. Taking that into account, I fail to see how you, in carrying out the duty with which you've been charged, could either recommend the article in front of you or draft one of your own. My last point, if you are intent on taking action in favor of this petition, I'd ask that you render a very thorough reading and I don't know if you are aware of it, of the recent Supreme Court ruling. It makes it quite clear that the CUP which was granted is to be vacated and the matter remanded back to you. I will be very interested to see how the Board responds in light of the fact that there is a present no tenant and no plan to approve. The ruling also makes it clear that there is no reason to pursue this exercise and rezone this as commercial. Remember the other two lots don't need it because there is no way, according to the ruling, that the wetlands can be filled. Even if the Commercial II zoning is put in place at 71B, the Supreme Court decision states clearly that the wetland and I quote, ordinance is not satisfied unless it can be said that construction within the wetlands is quote essential to any, my emphasis, productive use of the land. A drive through vegetable stand at that parcel meets the criteria. A couple of points as far as revisiting old history. Um, we all love Kingston, Mr. Alberts I'm sure did also in coming back after so many years away. I did find it curious to know that he was not aware of the activities of

the Historic District Commission since his own family, chiefly his Dad, was so active in its creation, its implementation and its sustenance over several decades. And even when that area was threatened by a C-II project, a 3,000 square foot professional office building, Mr. Alberts was known to have said allowing such development would make a mockery of the Historic District, I quote. The second point I would like to make, um, we've heard much tonight, other things around Town as well as other members, I won't mention names, about the cost which the Town has borne to support the legal efforts which have been on-going. I would also like to say, and we're not going to survey and I'm not going to give figures, but do know that there are those of us individuals, individually who have spent more than the Town itself has incurred in the manner of legal costs, that is how much Kingston means to us. The final thing was that, um, the Courts have spoken, there is one more left to go. They were a little bit constrained at first, I would also like to say that now, yes, we do have a Supreme Court ruling that is extremely brilliantly written and I guess you could say it provides y'all with a bit of sticky wicket. That's all I can say. Um, as somebody said to me and I'm gonna, everything I've said I said could be encapsulized in one classic comment as somebody said to me in talking about this, they said it's a little bit like trying to take Goldilocks and turn her into Lady GaGa. So I said if we, I guess we're trying to take 71B and turn her into Lady Gaga, not so quite sure it fits into Kingston's Master Plan. So, it's clear, your duty is not to recommend the, the petitioned article and not to have any part in drafting an article which presents and supports, supports this scheme which has been presented. Thank you for your consideration.

**Mr. Wilson:** Questions for her? Okay. Next. Virginia.

**Ms. Morse:** I'm Virginia Morse, I live at 188 Main Street but I am speaking as Chairman of the Historic District Commission. Um, a great deal has been said and I will honor your request not to repeat that.

**Mr. Wilson:** Say you agree with it (laugh).

**Ms. Morse:** I agree with many of the things that have been said. I'd like to take exception to the fact that the Historic District Commission is a flawed system. I think it's never been stronger, has never been more responsible, has never been truer to its commission than it is right now and has been growing and growing over the last few years. Certainly there is an ebb and flow of any board or commission but, um, the Commission vote exists by a vote of this Town and we are the Commissioners who are held accountable to uphold the ordinance. When growth pains hit an area and we know that many prime New Hampshire lots are suffering these growth pains, then all groups become more active. So there may be a lull and there may be an active time for any Board such as the Historic District Commission but we need to remember that it is a legal entity of this Town, it is a land use commission, um, and that the townspeople voted repeatedly to support the Historic District Commission and all that it stands for. The, um, State statutes say that the members on the Commission need to be knowledgeable about historic issues, about properties, about preservation and I think the Board members that we have currently and those in the recent past have been working hard to be knowledgeable and work to that end so I think that they have been carrying out their responsibilities that they swore to upheld in a very responsible way. This is a multi-use area, HD I is a multi-use, um, zone therefore there are many, many various uses that can be done here. The fact that several have been turned down on this particular lot, too, that Mr. Alberts spoke about really is not pertinent to changing the zoning. Judy Ruben pointed out that when it became clear that the Hannaford grocery store would be there, we were able to use the criteria both of the ordinance and the regulations to craft the very best visual and impact on the Historic District, for that commercial use, that we could. That was a really powerful thing to be able to do and,

yes, it was a tough battle and yes, we know, there were many meetings and I attended all of them but it was a wonderful way to say if there is going to be some commercial development here this is the way it should look, this is the way it should act, this is the way it should fit in. Now commercial in the past, when there were taverns, carriage stalls, road houses, was not what commercial is now so our commercial districts, our commercial zones, have larger signs, brighter lights, longer hours of operation, lots of , um, ways to help those commercial districts be viable and make those businesses run and run well. That's not what a historic district needs for a multi-use and I think that the Sleep Center is a wonderful example of a viable business with a quiet, low profile that has traffic in and out, but not lots of traffic, modest signs, etc. There is no reason why some business could not come in to that corner lot that Mr. Alberts is proposing to be a commercial lot that wouldn't fit in. One more think I'd like to say is, yes, of course, the abutters are here tonight. Often, they are referred to as NIMBY's, not in my back yard and I believe, and since you all know that I live in the Historic District, I am proud to be a NIMBY and the reason I am is that the citizens of the Town of Kingston said that there are places for certain uses and not certain uses and that we pick and chose where we live and that if we chose to live in a particular place that's what zoning is all about and the townspeople said we will protect a certain part of our Town, HD I, very historic, HD II with a little different flavor and when people chose to live there they have a right to be proud that certain things won't be in their back yard, not only for their own personal well-being but they are proud that their town has made a plan for rural residential all the way to industrial uses and I am proud of this Planning Board for the amount of effort, I know because my husband's been on the Board, I've worked with Glenn Coppelman for so many years as he's been our representative to the Historic District Commission, um, the three Selectmen have rotated, I know the amount of work that has gone into the kind of Town planning that this Planning Board has done and I hope you will keep that in mind as you look at this spot zoning and remember that it's a multi-use zone and we would welcome a development there that would fit in very nicely. Thank you.

**Mr. Merritt:** Good evening, my name is Michael Merritt and live at 25 Hooke Avenue in Kingston; I'm sorry, it's Michael Merritt and 25 Hooke Avenue in Kingston. Um, I'd like to address this Board and first off, thank you for the time and effort you've put in. I know it's a lot of time, there's a lot of listening you have to put through it, I'll try to make it brief. Um, first, I'm here to address and oppose the citizen's petition. First off, if we look for one of the primary reasons it was put forth earlier, it was to, if the sites are already commercial, we should zone them commercial, well that's not the role that I understand zoning to be about. Continued use is allowed, so that, those sites are already protected. The idea of zoning as is part of the Master Plan lays out is where do we want the future to be and I would hope that we follow that, I have read the Master Plan, I went over that over a year ago, um, I sit on the School Board, I'm also the Head of the Strategic Plan for the Facilities for the School Board and we're looking at the redevelopment of the site that is also on Main Street. I live, personally, quite a long way from this site so I'm not a NIMBY, not in my back yard, I have children that go to school here, that have attended, that currently attend the Bakie School, that have played sports on Main Street on the Plains, we attend Kingston Days, we go to the fireworks at the back of Bakie when they're launched off. We're developing a Middle School, right now we have a Charter School at that location across from Bakie. Developing a commercial property at the end of Main Street will drive increased traffic and I've read the traffic report that was done prior and it's significantly flawed, I'd be more than happy to address that to anyone that wants to, but it made certain assumptions that were just crazy. Um, and then they built a whole bunch of statistical plans based on an assumption that was flawed. We all know that if we put a bunch of big box stores at the end of Main Street it will increase traffic right next to our elementary school, right next to our future middle school, the current charter school, next to homes that bought there thinking that they had a quiet, peaceful neighborhood. If you think about Kingston and again the Master Plan takes

all this into, uh, account but I think its, there's so few towns that you are anchored at one end of the Town by a State Park, you have a grassy strip, the Plains that runs the whole length of it, we have pedestrian activity there. Our children can play on Chase Field while another child in the family is at Bakie while another one is on the Plains and they can walk and ride their bikes safely. That goes away, is that what we want for Kingston in ten years or twenty years, when we have the, uh, Kingston Days we have to fence around the Plains to keep our children safe because of the level of traffic and activity and the number of visitors that come there. We set up the Master Plan and the zoning to put proper purpose, proper activity and proper spaces. Commercial is something we need in this town, I run a business, I'm a business man, I love commercial activity, I think it's great but there's a place for it. Right next to our elementary school, right next to our schools, at the end of the Plains that runs from a State Park through that makes our Town absolutely unique, forgetting Historic District, pedestrian; this is a place to raise kids, it's a place to let your family play on the Plains while one kid's got a soccer game there and another one is over at the fields at Bakie and the families can be there and they can commute by bike, they can walk without all the traffic and bustle. Imagine big box stores creeping into that, we would change that forever and therefore, forgetting for a moment, the historic concerns, forgetting those people who live in that neighborhood who I think their rights should be protected, as a member of this community with children who have gone through it, it would dramatically change the only pedestrian area that our Town has. Where else can we spread out as a community playing sports and doing other activities, ride our bikes, a lot of the rural roads and main streets aren't well-suited for it; come down to the Plains and that's where families gather and we could potentially grow that to do even more in the future as a Town and part of our plan to make this a better place. But if we co-locate that with C-II commercial, it just doesn't work. So, I would ask you to please oppose that. Thank you.

**Mr. Wilson:** Thank you. Anybody else? The Board have comments?

**Mr. Ouellette:** Did Mr. Heitz leave a letter to be read?

**Mr. Wilson:** Did he what?

**Mr. Ouellette:** Did Mr. Heitz leave a letter to be read?

**Mr. Alberts:** (asking to speak again, exact language not heard on the tape)

**Mr. Wilson:** No, it's about another issue.

**Mr. Alberts:** (regarding speaking again, exact language not heard on the tape)

**Mr. Wilson:** Um, my only warning is not to argue anything they've stated ; everything is opinions, we don't need to get into...

**Mr. Alberts:** Okay

**Mr. Wilson:** ... an argument about anything as far as you telling your pro side of it and we're staying away from whether anybody said something that was right or wrong.

**Mr. Alberts:** Okay, may I continue?

**Mr. Wilson:** You may.

**Mr. Alberts:** I'd just like to say that I respect anyone's opinion and the right of anyone to disagree with my premise as far as this is concerned and certainly respect their right to do so. The most interesting comment was the voters voted, and they decided on some other lots as commercial and I only say, now it's about time that we let the voters vote and make the decision on how they feel.

**Mr. Wilson:** Okay.

**Mr. Alberts:** Would you like me to leave the thing

**Mr. Wilson:** Doesn't matter if you sit there if you're quiet (laugh). Judy?

**Ms. Ruben:** Am I allowed to ask a question?

**Mr. Wilson:** Yes, would you come up to the mike so it's...

**Ms. Ruben:** I guess I direct the question to the Board, with everything that you have heard tonight, I'm still perplexed as to why you might want to support this article. Am I allowed to ask that? What do you see as a benefit of this particular thing, I'm not asking Jay, I'm asking you as a Board, if you were to support this, give me a reason why this is a good warrant article. Can I ask that? I can ask it, but you won't answer – okay.

**Mr. Wilson:** Well, I guess that's probably what we're all sitting here trying to decide, is whether this is a good or a bad warrant article and that's what our vote will be. Yes.

**Ms. Saunders:** Can I make one point that I forgot to make that....(can't hear comments)...minutes?

**Mr. Wilson:** If it's very quick....

**Ms. Saunders:** Okay, I.....

**Mr. Wilson:** We can't keep going back and forth all night....

**Ms. Saunders:** Can I stand here.....

**Mr. Wilson:** No, we need you to the mike.

**Ms. Saunders:** I was perusing the minutes from the last one and it was interesting, I was looking at the project that had been proffered, the C-III project on the oil facility and the appraisal that had been done pertinent to that and I found it interesting that the appraisal said that there would be no effect as to the value of the property because while it stood to reason it always happens that the property values surrounding the project would go down, they would then go up as they attained value as commercial property. It's very important to remember that right within Kingston's Master Plan and the ordinances, that the Town is charged with maintaining this area and the respective homes, the value of those homes as residential property and not commercial.

**Mr. Wilson:** Okay, we have not had an oil situation come before us....

**Ms. Saunders:** There was, wasn't there something.....

**Mr. Wilson:** ...that went to the ZBA.

**Ms. Saunders:** Same thing, same thing...

**Mr. Wilson:** Okay...

**Ms. Saunders:** Same point is made though....

**Mr. Wilson:** Didn't come here....

**Ms. Saunders:** Point's made....

**Mr. Wilson:** It will, but it didn't. Um, okay. I'm open for comments from the Board, if anybody has any.

**Mr. St. Hilaire:** I have two questions.

**Mr. Wilson:** Okay.

**Mr. St. Hilaire:** Some guidance from our Circuit Rider. Um, as to what is our job as the Planning Board, describe the process and the decision or do we even have to make a decision, one way or the other.

**Mr. Greenwood:** The Planning Board is responsible to receive the petitioned warrant article from the Board of Selectmen, hold the mandatory required public hearing.....

**Mr. St. Hilaire:** Which this is.

**Mr. Greenwood:** Which we are doing right now and then at the end of that public hearing and in the past, it's happened immediately following the public hearing, it has in the past, also, on very rare occasions resulted in a continued discussion but the Planning Board is required to come up with a notation that's going to be placed on the ballot immediately following the question as to whether or not they approve or disapprove of the petitioned warrant article.

**Mr. Wilson:** Is it approve or support?

**Mr. Greenwood:** No, it's, because I anticipated the question, I went and got the RSA book to make sure that I gave you the right counsel and it's, the wording is approve or disapprove and that, you, the Board has to, has to say, one way or the other, and that gets printed on the, on the ballot so the Townspeople know that the Planning Board has discussed the petitioned warrant article and has weighed in on it in some manner.

**Mr. St. Hilaire:** All right. Second question, is basically to the Board, um, I'm getting ahead of myself and looking at the proposed articles that we want to amend the zoning articles and change lots and I go to page three and it says that on Tax Map R34, the following lots are to be entirely zoned as HD I and one

of those lots is 71B so this Board is gonna make a proposal, I believe tonight, to change the zoning of 71B to entirely HD I.

**Mr. Wilson:** I can kind of answer this because we talked about this at the last meeting.....

**Mr. St. Hilaire:** And I wasn't here....

**Mr. Wilson:** Right. What we did, and jump right in if I say this wrong, what we did on the changes in zoning, if the public's not aware if you haven't read this, but we went through every map in Town, every property in Town and we took everything that was split-zoned and put it in an individual zone so we got rid of all the dual zones with the exception of HD I and HD II. All we did to those, is we clarified what our rules and regulations already said which that is if the frontage of that zone is HD I then the entire lot is HD I so what we are doing to those lots is we are going to change our tax maps to where instead of a line going right through the middle of the lot, it includes the whole lot and it was kind of talked about last week or last meeting, not last week, but where this article says in the last line, uh, supercede any other, whether that was a conflict with what we were doing and we're not changing the zoning in HD I and II at all, we're clarifying that. Did I say that okay?

**Mr. Greenwood:** Yes, right, because the present language in the zoning ordinance says if the frontage for your property lies in HD I then the entire lot is considered to be HD I. We just wanted to end up listing those lots so there was not confusion.

**Ms. Faulconer:** Is that in the warrant now? That language, to change those; I should know, we just did them.

**Mr. Greenwood:** Yes, it is.

**Ms. Faulconer:** Why would it be?

**Mr. Wilson:** I brought that up, too, a couple of meetings ago; I said why does it need to be in there and Glenn and other people....

**Mr. Greenwood:** The reason being every time we have one come up where we have the discussion about whether or not it's in, if the zoning ordinance actually said, the entire lot here is in Historic District I and....

**Ms. Faulconer:** It's already being changed by the map maker.

**Mr. Greenwood:** So, that's good.

**Ms. Faulconer:** So, why would that be voted on again, is my only question.

**Mr. Greenwood:** Because it, it, eliminates the issue of people who think they've seen a, a plan with a line drawn through it because when we get these new tax maps people are still going to be referring to old ones if they are the ones they have in their.....

**Ms. Faulconer:** What if it fails?

**Mr. Greenwood:** We would be back to where we were, that as people came in and asked us questions, we would go to that line in the zoning ordinance that said if your frontage is in, your entire lot is in.

**Mr. Wilson:** Well, the zoning map line will still change because we just clarified what our rules already say.

**Ms. Faulconer:** The zoning map is already changing because the Board re-read the language and realized that it wasn't an issue, they already are in the zone.

**Mr. Greenwood:** All I'll say is that what we are attempting to do is make it as brutally clear as possible for someone who would see there lot and wonder where they lie.

**Mr. Wilson:** And I presented this same argument a couple of meetings ago when we first started doing this and I was kind of overruled that this would clarify it and simplify it.

**Ms. Faulconer:** And my argument to you, playing Devil's Advocate, if indeed the Town is voting on this again and if, indeed, it would mean that if it failed, somehow you go back to original zoning then it does create a conflict.

**Mr. Wilson:** No.

**Mr. Greenwood:** No, because the original zoning still said that the lot is in....

**Mr. Wilson:** We're saying the exact same thing as we've got...

**Mr. Greenwood:** We are and the text actually says to eliminate confusion, what we're doing is stating right now, these lots are all Historic District I. And if that fails, it's going to go back to only having the zoning ordinance say.....

<End of Side Two>

**Mr. Greenwood:** (continuation as tape was changed).....now, in the zoning ordinance, people still converse about it, endlessly, even though it seems like they shouldn't, perhaps...

**Mr. Wilson:** I want to correct something that I said, I said that we went through every map and changed every lot to one zone and that's not true, we did have two or three, we did have two or three lots in Town that we virtually could not figure out how to put them in one zone and uh, so we left them how they were and maybe we'll attack those two or three lots this coming year and figure out what to do but they were in, I think there were two lots and they were both all in three zones and they were almost equal in zone so, I just wanted to clarify that. Anybody else? Back to this, Glenn?

**Mr. Coppelman:** Okay, I, I mean for me, it's pretty simple. We've heard a lot of, um, um, obviously, a lot of history, a lot of personal feelings, but, uh, and there is no need for me to go back through any of that but we're faced with a petition that calls for the rezoning of three non-contiguous lots all of which have commercial use now or have an approved commercial use by the Town so I don't see it as depriving the landowners of any of those three lots of, of, of full use of the property. It does bother me

that the petitioners did not seek, or at least have discussion with, if that in fact is true, the other two lots. But, be that as it may, I think that, I think if you look at, at, uh, for instance, changing commercial zone, changing the lot that the Sleep Center is on to Commercial II, that's a very tiny lot surrounded by residential, yes, but I mean, practically, it, it, it hardly makes sense for any kind of heavy-duty commercial activity. I think the commercial activity that has been on-going there, be it the bank, be it the ophthalmic business or the Sleep Center that's there now, are, are, are appropriate, they blend well with the residential area that they're in and should the Sleep Center leave and another business need to come in, or want to come in there, there would, you know, if it were a similar type of use, they would be allowed to continue that commercial use. I think that, you know, of this whole petition, the one lot, and other folks have stated it, but, but, it's my feeling also, that, that would probably make reasonable sense, especially if the landowner were interested in doing it, uh, would be for Carriage Towne Plaza to perhaps be included in Commercial Zone II because it's right in an area where other properties around it are also Commercial II. Just one more comment and that is, and I know someone else quoted from this same piece, but I brought it with me tonight and it's from Peter Loughlin's text and it says a bunch of things, but one of the things that it says is that adjoining property owners are entitled to rely on the rule that a classification once made, in other words a zoning classification, will not be changed unless the change is required for the public good and you've heard a lot of people talk about this. I'm not convinced that these, that this proposed change, is for the public good. Um, so, I guess I, I don't feel that I can support the citizen's petition, I would encourage my fellow Board members to also consider that position and I, I'm going to editorialize here just at the end, um, and that is, I don't think the citizen's petition is the best way for the Town to do municipal zoning and that does bother me a bit, but, none the less, we're faced with this petition and that's my take on it.

**Mr. Wilson:** Left side? We've heard from the right. Does the left want to speak? Is that a no, Chuck?

**Mr. Hart:** Just from the Selectmen's perspective, we do get the petition, albeit, second rather than first, but, we looked at it, verified, or the office verified the signatures, um, the concern that the Board had when we looked at it was, not so much the content of the verbage, but rather that it was crossed out and initialed and it was done, kind of after the article had been turned in so it kind of tweaked us to find out what ramifications there may or may not be for the petition or the Town and we did send it to Sumner who, who did send the answer back. Other than that, uh, our only thought or suggestion was if it is going to be submitted by the petitioner that it is the way it is with the cross-out being taken out, in its originality and let it fall where it is. If it gets approved, then the DA turns it down or whatever, um, obviously withdraw the whole thing and/or develop a new one that would be done by the Planning Board being that they have a couple more weeks to do it if they were going to support it and wanted to reword it or put it in themselves. I mean, those were the three options that we discussed and as indicated we don't make a decision on it or have an opinion on it so, um, that was our input as a Board from the other night.

**Mr. Wilson:** Any other comment? If you don't I'll make one. I think that there are several people in this room that kind of wish that maybe they could turn back time if we had of, maybe approved a drugstore many years ago, we wouldn't be sitting here at this time and would have had a small situation. I think that, uh, this petition was brought on because, as somebody said, the Historical District worked with the Konover group but maybe pushed them too far and that's why, I feel, the petitioner's looking for some relief in the future to keep that from happening again. I mean, I feel like every time Konover reached an agreement and the guy from the Army Corps stated that in a meeting, that every time an agreement is almost reached then somebody asked for more and I think that's why we're here. Um, I've gone back

and forth and around and around over this, and I, I can't see any benefit in approving it. In fact, I think if we don't approve it, then we are right back where we were, we haven't done anything but we've protected that lot to at least have some eyes on it, may be the way to put it, just that there are certain people that are going to keep an eye on that. Whether or not, everybody else stated their opinion, I'll state mine, maybe those eyes got a little too deep and a little too hard of a look at it and went a little further than they should have and that's why we're here. People did want a grocery store. I mean, I was on the Board, I was not in this position at the time, I must have gotten twenty or thirty calls a week supporting Hannafords and at the same time, I got some opposed. Um, I wish at the time we could have put the ballot question out that said do you want a Hannafords on this lot and left it to the voters, but we couldn't. So, that's kind of how I stand on it and uh, for what it's worth. So, Adam is our voting member because you weren't here at the time we decided that and.....

**Mr. Landry:** Isn't he a voting member, too, since he's recused.

**Mr. Wilson:** Yes, that is correct.

**Mr. St. Hilaire:** I'd just as soon not be a voting member (Laughter).

**Mr. Wilson:** So, if anybody, are you ready to vote on this or do you want to delay it? I don't see much reason in delaying it, but....

**Mr. Coppelman:** You probably should take a motion.

**Mr. Wilson:** Okay.

**Mr. Coppelman:** Well, since nobody is jumping in....

**Mr. Wilson:** You're probably the one who should make it. (Laughter).

**Mr. Coppelman:** I guess I'll do it. Um, I'll make a motion that the Planning Board, it's either approve or not approve?; that the Planning Board not approve this citizen's petition.

**Mr. Greenwood:** Approve or disapprove.

**Mr. Coppelman:** What?

**Mr. Greenwood:** Approval or disapproval.

**Mr. Coppelman:** So, should the motion be that the Planning Board,

**Mr. Greenwood:** Disapprove

**Mr. Coppelman:** That is what I said.

**Mr. Greenwood:** Okay.

**Mr. Wilson:** So we're looking for a second?

**Mr. Landry:** I'll second it.

**Mr. Wilson:** Ernie seconds it. Any further discussion? Okay, I'll take a show of hands. All those that are in favor of his motion to not support this motion, kind of tricky wording, raise your hand. So that's one, two, three, four, five. All that are in favor, one. I'm assuming that you're abstaining, since you didn't vote – no, okay.

**Ms. Faulconer:** I didn't see what Adam voted.

**Mr. Wilson:** Adam voted with, so it was 5-2-0. And a hush came over the room.

**Ms. Faulconer:** So the motion to disapprove, carries.

**Mr. Wilson:** Right.

**Mr. Greenwood:** We should, I mean, it should be made clear that the citizen's petition goes on the ballot, um..

**Mr. Wilson:** It goes on the ballot, just as its written, as far as the legality, as I said in the beginning, that's not our job to decide. If it passes and people want to fight it, or if its turned down or whatever, people are open to any legal action they want to take but that's not our decision as to the wording or the properness of how it was written.

**Mr. Alberts:** Okay, thank you.

**Mr. Wilson:** Scott?

**Mr. Ouellette:** Do you have other stuff on the agenda tonight?

**Mr. Wilson:** Yes.

**Mr. Ouellette:** Is this petition to come back again or are you going to move on to other stuff?

**Mr. Wilson:** This petition will not come back.

**Mr. Ouellette:** Thank you.

*<This completed the section of the minutes being transcribed from the tapes of the meeting.>*

Mr. Alberts returned to the Board; Mr. St. Hilaire will no longer be a voting member this evening.

Split-zoning Changes were discussed. Mr. Wilson reviewed the proposed map changes to eliminate multiple zoning on individual lots. Ms. Morse explained that the National Preservation Alliance had previously stated that it was unusual the way the zone was currently designated and

agreed that the changes as proposed made sense. Mr. Wilson confirmed that all of the natural resource zones remained as they currently were; these were not being changed. He did note that the Board was currently seeking scientific clarification on aspects of the Aquifer Protection Zone to have scientific back-up for requirements in that zone.

### **Zoning Warrant Proposals**

ZBA Warrant Article language was reviewed.

**MM&S to move the ZBA article forward to the Ballot as presented.** (Motion by Mr. Coppelman, second by Mr. Landry) **PUNA**

Rural Residential Warrant Article was reviewed.

**MM&S to move the Rural Residential changes forward to the ballot.** (Motion by Mr. Coppelman, second by Mr. Landry) **PUNA**

Split-zoned lots language had been updated by Mr. Greenwood and reviewed by the Board this evening.

**MM&S to continue the hearing on the split-zoned lots to January 18<sup>th</sup> at 7:45.** (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

The Wind Energy Ordinance changes were reviewed; noise levels were discussed.

**MM&S for the sound level section to read that it “shall comply with the Town’s Noise Standards Ordinance (407.1).** (Motion by Mr. Pope, second by Mr. Coppelman) **PUNA**

**ACTION ITEM: Mr. Greenwood will amend the sound level change per the above motion.**

**MM&S to continue the Wind Energy public hearing to January 18, 2011 at 7:45.** (Motion by Mr. Pope, second by Mr. Hart) **PUNA**

### **Regulation Hearing (Site Plan, Subdivision, Performance Guarantee)**

The proposed changes were reviewed.

**MM&S to approve the regulation changes as presented in the packet.** (Motion by Mr. Coppelman, second by Mr. Hart) **PUNA**

### **Board Business, continued**

Mr. Hart discussed problems with proposals due to no “pre-meetings” prior to submitting applications to the Board. He asked what triggers a review prior to coming to the Planning Board. Mr. Wilson stated that everyone is encouraged to seek the advice of the Town Departments prior to submitting an application. Mr. Greenwood says that there is a preliminary

review process that can be required. Mr. Hart suggested that there should be a mechanism to tell an applicant that it is in their best interest to have a preliminary review. He suggested added the works “highly recommend” to the application packet. Mr. Greenwood stated that the problem is that there is not statutory ability for the Board to require this. Mr. Wilson commented that a preliminary review with the Planning Board costs additional money for the applicant but that they should come in and have a technical review with the Department Heads. Mr. Greenwood explained that this process does work with subdivisions. The application process was reviewed and discussed; design review was discussed.

**ACTION ITEM: Ms. Faulconer and Mr. Greenwood to develop a guidance letter to add to the Site Plan and Subdivision Application re: encouraging a preliminary review.**

**MM&S to approve the Nov. 30<sup>th</sup> minutes as written.** (Motion by Mr. Coppelman, second by Mr. Landry) **Motion carries 5-0-2 with Mr. Mastroianni and Mr. Pope abstaining.**

**MM&S to approve the Dec. 7<sup>th</sup> minutes as written.** (Motion by Mr. Coppelman, second by Mr. Landry) **Motion carries 5-0-2 with Mr. Mastroianni and Mr. Hart abstaining.**

Mr. Wilson reminded the Board that the timeframe to sign-up for the election for political office was sometime between Jan. 18<sup>th</sup> and the 28<sup>th</sup> but he suggested that they check for the exact dates.

Mr. Greenwood returned to the discussion for the Board for ranking the list of potential projects for the Aquifer project. The Board felt that several of the items went hand-in-hand. The Board established the list as follows:

- 1a) Overall Water Quality
- 1b) Gathering baseline data to understand water quality.
  
- 2a) Prohibited Use Flexibility
- 2b) Reducing/Limiting contamination in most vulnerable Aquifer areas.
  
- 3a) Impervious Surface coverage and Stormwater Management
- 3b) Commercial/Industrial Development
  
- 4) Inspection and Enforcement of Protective Measures
  
- 5) Economic Value of the Aquifer

Lesley Hume asked for clarification of the economic value of the aquifer in regards to the potential sale of water. Mr. Wilson explained that the Board has discussed this potential and is trying to establish the science behind the Aquifer Ordinance so as to better determine the value for the public. Mr. Landry asked if the BOS were going to re-introduce the Water District article. Mr. Hart answered that the BOS had not discussed it but assumed not. Mr. Wilson thought that the BOS might be delaying in anticipation of the Aquifer information. Mr. St. Hilaire disagreed with this approach; he said if it was important, it should be on the ballot every year. Mr. Landry agreed and added that too much can happen in a year.

**ACTION ITEM: Mr. Hart will bring the discussion of the Water District article back to the BOS.**

Ms. Hume, as a member of the Library Board of Trustees, asked to be added to an agenda to speak with the Planning Board about the Library project with the possibility of them inviting the HDC to attend the meeting. The Library Trustees discussion was added to the January 25<sup>th</sup> agenda at 8:30.

**MM&S to adjourn at 9:30.** (Motion by Mr. Coppelman, second by Mr. Hart) **PUNA**