

1 **KINGSTON PLANNING BOARD**

2 **JANUARY 3, 2023**
3 **PUBLIC HEARING/MEETING**
4 **MINUTES**

5 Mr. Coppelman called the meeting to order at **6:35 PM**; there were no challenges to the
6 legality of the meeting.

7
8 **MEMBERS PRESENT:**

9 Glenn Coppelman, Acting Chair Peter Coffin
10 Chris Bashaw, BOS Representative Robin Duguay
11 Peter Bakie

12
13 **ALSO PRESENT:**

14 Glenn Greenwood, Town Planner
15 Robin Carter, Admin. Assistant

16
17 **ABSENT:**

18 Lynne Merrill, Chair
19 Steve Padfield
20

21 Mr. Coppelman opened by explaining that this is a work business meeting for the Board,
22 but there are a number of zoning articles and citizen petitioned warrant articles to have
23 public hearings on, this is public hearing night also.

24
25 Mr. Coppelman declared a quorum present and introduced the Planning Board ("PB" or
26 "Board").

27
28 Mr. Greenwood, Town Planner arrived during the introductions. Mr. Coppelman
29 mentioned that they are expecting one more Board member, Robin Duguay.
30

31
32 **Public Hearing for Proposed and Citizen Petitioned Warrant Articles:**

33 *<Board note: This hearing began at 6:40 PM.>*
34

35 Mr. Coppelman announced that we have public hearings tonight for zoning amendments
36 that have been proposed by this Board and three (3) citizen petitions that have come in,
37 and the Board will do their duty tonight to hold a public hearing on those.
38

39 Mr. Coppelman explained the process, there are two (2) zoning amendments, one (1)
40 that has multiple parts to it. It is the enforcement section of the ordinance which is being
41 revamped.
42

43 Mr. Coppelman asked Mr. Greenwood to explain the newly proposed **Article A – 1000**.
44

Article A – 1000: AMENDMENTS, CONFLICTS AND PENALTIES, ADMINISTRATION, ENFORCEMENT, and SEVERABILITY.

Mr. Greenwood explained that over the past couple of years when Town Counsel has been asked to assist the Town with enforcement issues to resolve zoning conflicts, Counsel said that our Addendum on enforcement procedures did not provide enough information regarding the proper way in the state law to pursue zoning violations. Mr. Greenwood drafted a first draft at making the amendments to the present ordinance and submitted it to Town Counsel. She had several things she wanted to be added to ensure that when they did the process that they would have the support necessary. There is also a number of areas in the ordinance that will now reference this section. *<Board note: Robin Duguay arrived at 6:37 PM.>* When people read through parts of the ordinance and want to know about penalties or how it is enforced they will refer to this. Town Counsel did advise there were two areas that shouldn't be a part of this ordinance that are really Selectman's ordinances and not reflective of the zoning provision. Mr. Greenwood did revise the first draft based on Town Counsel's input, and that is what is being presented tonight.

Mr. Coppelman asked if there are two (2) issues to review. One is to present the new Article A -1000, and the other is the Board needs to go through the various sections that refer to the new Article A – 1000. Mr. Greenwood, replied correct, there will be amends made to the eleven (11) areas. Mr. Coppelman explained when we review the eleven (11) articles he will read the proposed changes and asked Mr. Greenwood if they had to be voted on individually. Mr. Greenwood said they would go through as one question. This will either pass or fail. Mr. Coppelman asked Mr. Greenwood's recommendation on the reading of the Article A – 1000. Mr. Greenwood felt it wasn't necessary to read, the post has been made available. It is a fairly long article. The changes that Town Counsel asked to be made are really to just make it clear that when they were going through injunctive that we actually spoke to process. The changes were very specific and are outlined in her memo dated December 12, 2022 to the Kingston Planning Board.

Mr. Bashaw brought up that it is important for people know that we specifically wanted the Town's Legal Counsel to have an input on this. They essentially would be the people that would have to enforce the Town's rules. That way we weren't just crafting and replacing something else that was ineffective.

Mr. Coppelman asked if the Board if they had any questions on what was just described and if everyone was comfortable. There were no questions from the Board. Mr. Coppelman opened public comment at 6:47 PM. The audience did not have any questions. Mr. Coppelman said the public hearing is still open so the Board can still address any questions that might come up until the Board takes the vote. He explained the vote from the Board would be to either move this to the Warrant in March or not.

Mr. Coppelman explained he is not going to read the current language, he is going to read the proposed new language.

- For the new proposed language see **Article A – 1000 Amendments, Conflicts and Penalties, Administration, Enforcement, and Severability** (dated 12/14/2022)
- **Article 107 Industrial Zone 107.8 Separability.** The change to this language is - Please refer to Section A – 1000.004 of this ordinance.
- **Article 205 Shoreland Protection Ordinance 205.10.B. Enforcement.** The change to this language is - Please refer to Section A – 1000.003.002 of this ordinance.
- **Article 209 Groundwater Management Zone 209.5 Enforcement.** The change to this language is - Please refer to Section A – 1000.003.002 of this ordinance.
- **Article 302 Outdoor Lighting 302.9 Violations, Legal Actions, and Penalties.** The change to this language is - Please refer to Section A – 1000.002.002 of this ordinance.
- **Article 303 Sign Ordinance 303.3.E. Validity and Severability.** The change to this language is - Please refer to Section A – 1000.004 of this ordinance.
- **Article 402 Campground Ordinance 402.2 Declaration.** The change to this language is - Please refer to Section A – 1000.004 of this ordinance.
- **Article 402 Campground Ordinance 402.3 Violation.** The change to this language is – Please refer to Section A – 1000.002.002 of this ordinance.
- **Article 408 Any Loud, Unusual, or Other Unnecessary Noise Ordinance 408.2 Penalty.** The change to this language is - Please refer to Section A – 1000.002.002 of this ordinance.
- **Article 409 Sewage Sludge and Residential Septage Application Ordinance 409.13 Enforcement Procedures.** The change to this language is - Please refer to Section A – 1000.003.002 of this ordinance.
- **Article 409 Sewage Sludge and Residential Septage 409.14 Penalties and Violations.** The change to this language is - Please refer to Section A – 1000.002.002 of this ordinance.
- **Article 409 Sewage Sludge and Residential Septage Application Ordinance 409.15 Saving Clause.** The change to this language is – Please refer to Section A – 1000.004 of this ordinance.
- **Article 415 Small Wind Energy Systems 415.8 Penalties.** The change to this language is - Please refer to Section A – 1000.002.002 of this ordinance.

Mr. Coppelman asked if there were any questions from the Board. Mr. Greenwood commented that all the changes made subsequent to each of these individual ordinances are really just bookkeeping so you can go to the right place that applies.

Mr. Coffin asked if there were any other ordinances that fell under this. Mr. Greenwood said there is not.

Mr. Coppelman brought up the Home Occupation Ordinance (Article 207.4) – New Enforcement section saying that was addressed at a prior meeting.

Mr. Coppelman asked if the audience had any questions. There was none. The public comment session was closed at 6:52 PM.

136
137 **Motion made by Mr. Coffin to move Article A – 1000 and all the necessary changes**
138 **referenced in the Article to ballot in March. Seconded by, Ms. Duguay. A vote was**
139 **taken, all were in favor, the motion passed (5-0-0).**

140
141 Mr. Coppelman mentioned that for the record there are five (5) voting members tonight.

142
143 The Board discussed how to present this on the ballot. This will be presented on the ballot
144 as it was done last year. There was a short description and the full language was posted.
145 Mr. Coppelman said unless the Board wants to do it differently, this is the way it will be
146 done.

147
148 **Article 206 Accessory Dwelling Units – Section 206.4.J. ADU Requirements**

149 *<Board note: This began at 6:52 PM.>*
150

151 Mr. Coppelman explained this Article remains, but there is a new proposed line at the end
152 of it. Mr. Coppelman read the new proposed language. **“In determining if the existing**
153 **system is functioning properly an inspection report on the system prepared by a**
154 **licensed NH septic system inspector will be provided to the Planning Board.”** This
155 language will be replacing, “If deemed necessary by the Health Officer, evidence shall be
156 provided in the form of certification by a State of NH licensed septic system designer.”

157
158 Mr. Greenwood commented, it is the inspector who would inspect a septic system, not a
159 designer. Mr. Coffin made a comment that the inspection would take the determination of
160 the condition of an existing septic system away from the Health Officer and the report
161 from the licensed inspector would provide the evidence to the Health Officer.

162
163 Mr. Coppelman asked if there were any questions from the Board. There were none. Mr.
164 Coppelman opened public comments at 6:54 PM, there were none. Public comments
165 closed at 6:54 PM.

166
167 **Motion made by Mr. Coffin to move Section 206.4.J. ADU Requirements changes as**
168 **read to the March warrant. Seconded by, Ms. Duguay. A vote was taken, all were in**
169 **favor, the motion passed (5-0-0).**

170 *<Board note: This ended at 6:54 PM.>*
171

172 Mr. Coppelman explained that the next three (3) proposed zoning changes came to the
173 Board by the Citizen Petitioned process of our RSAs. The Planning Board’s responsibility
174 is to hold a public hearing and at the end of each one, take a vote to either approve or
175 disapprove of the proposal. The approve or disapprove language appears under the
176 wording on the ballot and that is per RSA 675:4 III., “A notation on the ballot stating the
177 planning board’s approval or disapproval shall immediately follow the question’s
178 description.”

179
180 Mr. Coppelman mentioned the author of the three (3) of the Citizen Petitioned articles is
181 sitting here and asked Mr. Bashaw if he planned on sitting at the table for the **Board**

182 **discussion.** Mr. Bashaw replied, he is, the reason for that it is one of the few times even
183 as a Planning Board member you get to use your opinion. This is one of the few times
184 you can conduct your business based off of personal opinion. He mentioned he would
185 also argue that that even if anyone signed a petition they wouldn't be forced to recuse
186 themselves from the discussion as a Planning Board member for a citizen petitioned
187 warrant article. Mr. Coppelman said he sees it slightly different because Mr. Bashaw is
188 the author of the petition as opposed to signing it. He wanted to make sure this was on
189 the record.

190
191 Mr. Bashaw said he authored the articles because he was approached by citizens that
192 wanted to go forward with them and he offered to help them because he agreed with the
193 content of them. Mr. Coppelman mentioned that Mr. Bashaw promoted them and got the
194 signatures for them. Mr. Bashaw replied, yes. Mr. Coppelman said you actively
195 participated. Mr. Bashaw said yes. Mr. Bashaw explained that this is one of the few times
196 where he thinks you can engage in this as a Board member and use your personal
197 opinion. Mr. Coppelman brought up again he wanted to make sure this was out on the
198 table. Mr. Coppelman asked the Board if anyone else had questions on this. Mr. Coffin
199 asked if Mr. Bashaw would also be voting as a Select Board (BOS) member. Mr. Bashaw
200 questioned if the BOS even vote on these, and that he doesn't believe they do. Mr.
201 Coppelman said just the Planning Board does. He explained that the Select Board does
202 have a role and that when the Citizen Petition comes in to the BOS, they are supposed
203 to make sure the wording is correct, signatures are valid before passing them on to the
204 Planning Board. Mr. Coppelman said he assumes since the PB has them that this action
205 did take place. Mr. Bashaw said, yes, these were initially turned in to the Town Clerk who
206 verified the voters for the BOS.

207
208 Mr. Bashaw explained the reason there are two (2) articles that have similar language is
209 because one of the Select Board members called the Department of Revenue
210 Administration (DRA) about the language, the one that has more signatures on it building
211 article, and he got advice that it could potentially be illegal because it eliminates a permit
212 for this type of item. Mr. Bashaw said he called the DRA thirty (30) minutes later and got
213 a conflicting opinion, they didn't feel that it was an inappropriate or illegal article. Mr.
214 Coppelman asked if this meant both of the building articles would appear on the ballot.
215 Mr. Bashaw said as of right now they are still awaiting a response from the NH Municipal
216 Association (NHMA). Susan Ayers, Select Board Administrator, reached out to them
217 today to see if their legal department could give an offer. The intention would be if the first
218 one that was generated was found to be valid and legal should it pass, that this one would
219 be left and withdraw the other one if possible. If not, there is the potential that they could
220 both end up on the ballot. The second article was written as a back-up article.

221
222 Ms. Duguay brought up that Mr. Bakie signed them, and that authoring them may not
223 necessarily put you in a position to recuse yourself but signing may. Mr. Bashaw said,
224 his opinion is that it would not in either situation.

225
226 Mr. Coppelman reviewed the three (3) **Citizen Petitioned Warrant Articles**
227

228 **First article: Section 300 – Building**
229 **Article 301 – Buildings and Building lots**
230

231 Mr. Coppelman said that according to the Town BOS, Administrator there were 59 total
232 signatures for this petition. The PB was provided with the first page of it, so we do not see
233 all the signatures. They only needed 25 signatures and there are 59.

234
235 Mr. Coppelman explained that this is to see if the Town will vote to add the following
236 language to the town ordinances for Section 300 - Building, Article 301 - Buildings and
237 Building lots.

238
239 Mr. Coppelman read the language.
240

241 "For non-occupied structures such as a sheds or carports, that are 168 sq. feet
242 or less, with a height of less than 12 feet, and are not placed on a permanent
243 foundation, no permit is required. Additionally, it may be placed on the side or
244 rear yards no less than 5 feet from the property line. The structure would still
245 have to meet the required front yard setback for the applicable zoning district.
246 The structure may still be subject to a safety inspection by the code enforcement
247 officer."
248

249 Mr. Coppelman mentioned this is a public hearing and said ask the Board if they had
250 any comments. **Board comments:** Mr. Bashaw said that the intention of this was there
251 were a lot of people who purchased prefabricated sheds and are seeking relief from the
252 20 foot setback requirements that is required for all boundary sides. He said, the issue
253 the Town has had over the years is a lot of other ordinances are either poorly written, or
254 have been unenforceable, or had conflicting definition over the years, there's loopholes.
255 The more restrictive and overbearing on smaller items, you are going to find people
256 exploiting loopholes. An example is they can't have a small shed where they park their
257 lawn mower and stuff where they have to go through the Zoning Board of Adjustment
258 (ZBA), but they can park their 53' tractor trailer right on their property line with no
259 separation, and there is nothing that can be done to prevent that from being done.
260 Initially this came to him by people who lived in some of the more compact areas. Such
261 as the seasonal residences that have become permanent year-round residences over
262 the years. Some of them ran into situations where they have a small yard if they wanted
263 a shed and it would have to be in the middle of their yard. He also had people approach
264 him that have larger properties that want to be able to put a shed on the edge of their
265 property. One of the reasons is if you are going to be forced to put a shed 20' in, and if
266 his neighbor decided to put something on their property line they don't like, it's really on
267 him that he chose to look at it, he could have chosen to have buffers, barriers fences if
268 he didn't want to see it. He explained that what is going to happen is you are going to
269 have someone put a shed 20' in and they are going to use the 20' behind the shed to
270 pile up all the stuff they don't want to look at. It is probably going to be more of a burden
271 and eye sore for the neighbors to see. This proposed article is an opportunity to get
272 relief from the 20' setback. He has researched and there are many communities in the
273 State of NH and some that allow no setbacks for sheds under a certain amount of

square footage. He saw some from 200 sq. ft. or less, or 100 sq. ft. or less, that don't require permits and don't require setbacks. The reason he came up with the 168 sq. ft. number is from speaking with shed companies that make prefabricated sheds, one of the most popular sizes now seems to be a 12'x14'. These would be non-occupied structures and nonpermanent foundations; it isn't for people to pour concrete foundations right on the property line.

Mr. Bashaw explained the difference between this article and the next one that will be looked at is, the next one doesn't reference, no permit being required. Part of the reason for no permit being required is because there is no building code that covers and specifies sheds. This was confirmed with the Town's Code Enforcement Officer. All it can be subject to is general safety inspections.

Mr. Coppelman asked if there were questions from the Board. Mr. Coffin mentioned that the 12'x14' is the size of a single car garage. A garage usually has a foundation, but could have concrete blocks and a gravel floor. Mr. Bashaw said because it is a non-occupied structure, he would think there are a lot less restrictions. Mr. Bashaw said if you are going to pour footings that is part of a permanent foundation. Mr. Coffin said that concrete blocks would not be a permanent foundation, they would be sitting on the ground. So the neighbor could have a garage sitting on their property line. The reason he brings this up is because there are a number of people who put sheds right on the property line, particularly, in the Great Pond area. Mr. Bashaw said he understand this, but he will always advocate for the individual use of property rights for the person paying the tax bill. Mr. Bakie mentioned he signed the petition, and commented that he looks at it like it's a way of possibly making their lot look better. You can put everything inside a shed vs piling everything up and putting a tarp on top of it. Mr. Coffin said that the argument of shed, no shed is its location. Mr. Bakie gave an example if you have a quarter acre lot with a house, a garage, and a driveway on it, you don't have many places you could put shed and that's why you'd have to put it closer to the property line. Mr. Coppelman brought up that this isn't limiting it to small lots and that is the issue he has and it would be Town wide and for the most part we have pretty large lots in Town with plenty of room, and in most cases be able to put what you need and keep the 20' setback. He understands the area that it was written for. It's tight, but he also sees the point where there is relief for this and gives abutters a chance to weigh in. Mr. Bashaw said when he started looking into the larger lots, for people who may want to use all of their lot. For people who have large lots, a lot of them aren't developed because it is more cost effective for a builder to build and use the space for the area near the building envelope and clear the least amount of space as possible. While some people may have a two (2) or three (3) acre lot they may only have a half an acre cleared because it is more cost effective. Ms. Duguay asked if there was a number limit for the temporary structures/sheds. Mr. Coppelman paused the discussion and clarified for the Board and the audience that the PB is holding the public hearing and that they do not have the opportunity to make any changes to the citizen petitions. Mr. Bashaw replied that it never came up in any of the discussion he had. Mr. Coffin said the answer would be, as written, no. Ms. Duguay mentioned that would be a concern, that this would give permission to have multiple temporary structures. Mr. Bashaw said that is what he found, because there are so many other loopholes that somebody could line their

property with tractor trailers and there is nothing he could do to stop them from doing this. Mr. Coffin brought up that there is a rule on gross weight. Mr. Bashaw said it is only for home occupied business. Mr. Coppelman explained he understands the whole property rights thing, but the setbacks are there for a reason. He could have supported perhaps something less than 20', but five 5' is going a bit too far in the other direction. Mr. Coffin said there is nothing that says they couldn't build a full size garage. Mr. Coffin said people may want their property rights the way they want, but the neighboring property may not want their rights encroached on. Mr. Bashaw explained they could maintain a 20' buffer of vegetation if they wanted.

Mr. Coppelman opened the hearing up for public comments at 7:25 PM. **Public comments:** Susan Prescott of 46 Little River Road, Kingston came to the table. She had a couple of questions on occupied structures. Could a chicken coop be occupied by chickens? Mr. Bashaw replied, occupied relates to human occupied. Ms. Prescott said so a chicken coop, dog house, goat barn anything like that could be involved. She asked if this would apply to gazeebos. Mr. Coppelman said yes. She asked if there was a number limit on gazeebos, dog houses or sheds. Mr. Bashaw and Mr. Bakie said there currently isn't a limit now. Mr. Coffin commented as long as it meets the 20' setback. Mr. Coppelman said correct, and added as long as it meets the height and square foot restrictions. She said these are her concerns. Mr. Bashaw brought up that depending on how they are constructed, he doesn't know if dog houses and chicken coops meet the definition of a current structure that require a permit. Ms. Prescott said that she is on the Historic District Commission (HDC) and when she has spoken to Robert Steward (the former building inspector) about a shed issue months and months ago, that a shed, a Home Depot shed, a premade shed, etc., he told her that because it is defined as a structure would need a building permit. Mr. Bashaw said that a shed is specifically described as a structure and, therefore, needs a building permit. Mr. Bakie mentioned that he thought there is a size requirement to need a permit. Mr. Greenwood and Mr. Coppelman weren't aware of that. Mr. Bashaw mentioned he was asked about it in the past and did look it up wasn't able to find anything that there was one in the past.

Virginia Morse of 188 Main Street came to the table. Ms. Morse asked Mr. Bakie to go over again what he said, she couldn't hear it all. Mr. Bakie said he asked if there was an ordinance in the past in the Town that referenced a small shed. You could go prior to a Home Depot or Lowes and build a small shed, maybe a small green house that was a certain square footage. He said his comment was he was asking if there was one in the past. Ms. Morse said her comment is there is relief for people who did not have the space for a 20 foot setback. There is relief for a piece of property, your shed has to be built on your front lawn then there is a way to get relief and go the ZBA and show your property. She said, for someone who has a difficult piece of property, they have a way to solve their problem, and, therefore, is not in favor of this.

Mr. Coppelman closed public comment at 7:20 PM.

There was no further discussion from the Board.

366 Motion made by Mr. Coffin **to disapprove on the Warrant ballot** the proposed Petitioned
367 Warrant Article to be added to Section 300 Building, Article 301 Buildings and Building
368 lots. **Seconded** by, Mr. Coppelman. **A vote was taken, three (3) in favor, Mr. Bashaw**
369 **and Mr. Bakie opposed, no abstentions, the motion passed (3-2-0).**

370
371 **Second article: Section 300 – Building**
372 **Article 301 – Buildings and Building lots**
373

374 Mr. Coppelman explained that this Petitioned Warrant Article was the same as the
375 previous one, except it does not include, “no permit is required”.

376
377 “For non-occupied structures such as a sheds or similar structures that are 168 sq.
378 feet or less, with a height of no more than 12 feet, and are not placed on a
379 permanent foundation, it may be placed on the side or rear yards no less than 5
380 feet from the property line. The structure would still have to meet the required front
381 yard setback for the applicable zoning district.”
382

383 Mr. Coppelman asked the Board if they had any comment. There was none. He opened
384 for public comment 7:22 PM, there was none. Closed public comment at 7:22 PM.
385

386 Motion made by Mr. Coffin **to disapprove on the Warrant ballot** the second proposed
387 Petitioned Warrant Article to be added to Section 300 Building, Article 301 Buildings and
388 Building lots. **Seconded** by, Ms. Duguay. **A vote was taken, three (3) in favor, Mr.**
389 **Bashaw and Mr. Bakie opposed, no abstentions, the motion passed (3-2-0).**

390
391 **Third article: Section 100 – Zoning Districts**
392 **Article 102 – Historic District, 102.9 - Guidelines**
393

394 *<Board note: This began at 7:24 PM.>*
395

396 Mr. Coppelman said this is regarding a change to the Historic District Commission (HDC)
397 section of the zoning. Twenty-five registered voters are required to get this on to the
398 Hearing, there were 37 signatures.
399

400 Mr. Coppelman read the article:
401

402 "When making a determination on the application, reasons for denial of an
403 application must be clearly documented and shall be factual and verifiable
404 reasons for denial. Reasons for denial shall not be subjective or based on
405 opinion or speculation. If the Historic District Commission or parties at the HDC
406 application level other than the applicant requires expert testimony or
407 documentation to support the denial, they cannot require the applicant be
408 responsible for the generation or costs associated with such support of denial.

This shall not prohibit the Historic District Commission from making additional recommendations to an applicant that are in the spirit of the Historic District asking for voluntary compliance or participation."

Board comments: Mr. Bashaw said that the people he spoke with initially wanted to register a petition to start the statutory process to completely dissolve the HDC. Mr. Bashaw explained to them that he didn't think it would be effective way. The people felt that some of the decisions in the language in the articles are subjective references property values, diminishing property values, and if the HDC makes a decision based off of this comment, that its near impossible to verify this and mere speculation. They wanted some language that shored up the protection for people that bear the cost of maintaining the historic district. He did explain to the people that it may not get a lot of traction because there are only so many people who are subjected to the HD, and all the other citizens of Town who get to enjoy it aren't really burdened by the restrictions that are put on it. They decided not to pursue the idea of dissolving the HDC and came up with the language in the proposed citizen petition article that might offer some protection to the citizens in the historic district.

Mr. Coppelman said that he is on the HDC and is the Planning Board rep from the HDC and is going to hold his comments at this time.

Mr. Coffin explained that HDC started as a land use board and protects the laws of governing property values. If a professional provides an opinion, such as a real estate agent, and affects the property value, the board does take that into consideration. This is a long-standing procedure. The ZBA and PB do this, applicants have to attempt to make a case and provide the special opinion, and the boards have to respect this. A lot of what the PB does is opinion that are regulated by state law. We have a rule that an ADU has to look like a residence. This is why it was moved from the building inspector to the ZBA, and now the PB. He said he doesn't believe the article would stand legal challenge.

Mr. Bashaw said it doesn't prevent the HDC from seeking their own legal counsel. It offers protection if they want to get an expert voice, this prohibits them from forcing it. An applicant can decide to hire their own, but the HDC could not force them to. The HDC would be responsible for hiring someone if they wanted further opinion. This is to make sure they can't downshift that cost to an applicant.

Ms. Duguay asked if this has happened before? Has the HDC asked the applicant to pay the cost for this service in the past?

Mr. Bashaw said he does not live in the HDC and that this information is coming from the people that he spoke with that had the frustration.

Mr. Coppelman answered Ms. Duguay's question, and said to the best of his knowledge, no.

Ms. Duguay referenced the first two sentences and asked the question because she wanted to know if this was a pattern or not and wanted to understand the process.

456
457 Mr. Coffin said that for the PB, an applicant may want to hire a professional to have that
458 information available because the applicant is trying to enable to Board to make a
459 decision. The PB charges a fee for the bond to retain professional services.

460
461 Mr. Bashaw said he doesn't believe that the intention was to prevent these types of things.
462 That's why it specifically talked about subjective items.

463
464 Mr. Coffin brought up, is this a solution in search of a problem. If there are specific
465 examples of where people are denied something that would be helpful. The HDC has
466 pretty good guidelines set up. He's wondering if this is a problem we have and the HDC
467 is constantly denying things.

468
469 Mr. Bashaw said he cannot personally speak to these things. The general consensus he
470 got was there is a feeling of overwhelming frustration that the people living in the HD are
471 being beholding to rules and opinion forced upon them. Often times by people that may
472 sit on boards that don't live there themselves and don't have to follow the same rules.
473 Other than completely dissolving the HDC, they wanted to try and come up with some
474 kind of protection for them.

475
476 Mr. Coffin said that people buy into a certain area and know the description of the zoning.
477 One approach may not work, but another might. The HDC is good with working with
478 applicants to help them meet their needs.

479
480 Ms. Duguay asked what the process for an appeal to a determination is. Mr. Coffin said
481 there is one, they can go to the ZBA.

482
483 Mr. Coppelman said that as with any board decision within a town, there's always a relief,
484 and often times there's an option for secondary relief to go a step further.

485
486 Mr. Greenwood provided his comments. As he was reading through the citizen petition,
487 he said he isn't sure what process is taken by the HDC because he doesn't go to the
488 meetings. It's interesting that this particular citizen petition is saying whatever specialist
489 the applicant wants to provided and pay for is fine. And if there is additional expert
490 testimony that is required that the applicant pay for that as well. He believes that this
491 concept is true legally in the State of NH. The PB is the sole land use board that can make
492 an applicant pay for their own study, but a third party study on behalf of the Board. He
493 doesn't see that the HDC is granted that same ability. In the case of the PB it is often that
494 if a wetland scientist presents information the Board is not comfortable with, they can go
495 to a wetland scientist and can actually make an applicant pay for that as well. That ability
496 is reserved to the PB the way he reads state law. There's a lot of instances that enable
497 legislation where the planning function that allow similar things and are under land use
498 boards, but this is not one of them. The third-party additional review is only for planning.
499 He believes that this position is only verifying what state law already says.

Mr. Coffin gave an example of the conditional use permit for a gas station in the aquifer protection zone and what was required of the applicant. Mr. Bashaw said that is a PB regulation. Mr. Coffin said that was ZBA and the conditional use application did not go to the PB. Mr. Greenwood commented that the ordinance allows another land use board that power. He said that required a public vote and that is what the Town's people vote in as an appropriate action. That is not what is being addressed in the citizen petition. The statute says that a third party is allowed for the planning board. Mr. Greenwood and Mr. Coppelman mentioned they didn't see it under the HDC section or any other land use boards. This could be perceived as a double expenditure. He only sees it authorized in state law by the planning board. Mr. Greenwood isn't saying the HDC does do this, but if they do he would suggest getting input from Town Counsel. He said the damage he sees from this language is the first two lines are very accusatory. Saying a decision by a board is subjective when the requirements of the board go directly to the appearance. He feels what is being said in the second part of the article is a reiteration of state law.

Mr. Coffin said the first part of the sentence is fine, but unnecessary.

Mr. Coppelman asked if there were any other questions from the Board. There was none. Opened for public comment at 7:43 PM.

Public comments: Susan Prescott shared her comments. Ms. Prescott said that she does agree that the first two lines are accusatory. She referred to the guidelines under Article 102.9.

"In considering appropriateness of an application, the Commission shall consider, among other things: A. The effect that the exterior facade of the building will have when viewed in relation to the surrounding buildings in the district." She said this is subjective. They look at the proposal and look at what affect will that have in the neighborhood.

(Title I: Ordinances Section 100 - Zoning Districts Article 102-Historic District Historic District 102-6 B.) *She went on to read:* The change, if any, in the amount of noise, congestion and traffic that the proposed building or use will create in the district. C. Whether the proposal is of a design, or of materials, or for a purpose or use inconsistent with and detrimental or injurious to buildings and purposes or uses upon adjoining lands and whether such proposal is such that it will detract from the character and quiet dignity of the Kingston Historic District."

She said this is subjective too.

Ms. Prescott said they have had one (1) denial in five (5) years. That application could go to the ZBA if they were unhappy with their decision. Usually, they try and consult with people with before an application is put in. If they are looking for guidance, they may give examples of other things that have been done. For example, *here are other fences that are in the historic district, and this is what we would be comparing your fence to.* They are an open board. If people have a problem, they should come in a talk with them if they are feeling breeched. She said the second part of it is true. In her history and time on the

board they have not required an expert testimony from the applicant, and they certainly wouldn't because it's not legal. Ms. Prescott is the Chair of the Historic District Commission. She said if anyone has questions, come to a meeting, or watch in on YouTube since they are televised as well.

Mr. Bashaw explained that none of these are his personal experience with the HDC. These are from citizens that wanted to bring this forward. Mr. Coppelman said the amount of good the well-maintained historic district brings to our Town, the community, offers a lot of positive things.

Virginia Morse came to the table and introduced herself. She is the Vice Chair of the HDC. They have reached out to real estate agents and have worked through the Selectman's office to make people aware that when they buy a property in the HD1 and HD2 that they are in the historic district. When someone finally purchases the house and the information comes in to the Select Board, the HDC sends out a welcome letter that tells them they are located HD1 or HD2 and refers them to the ordinances online if they want to look up more information. She said as Susan said, they have had only one (1) denial in the last five (5) years, and she should have counted up how many approvals because they have had many approvals. The regulations state that they have to make a decision within 72 hours (she believes) and notify the applicant in writing on whether they were approved or denied. If there's a denial, they need to send the letter by certified mail and must give the specific reason(s) for the denial. This is written in the ordinances and regulations. So the first couple of lines, they really do have to do that. As far as property values, they have written up a lot of certificates, and it has never been the reason for a denial by not doing what we said, would lower property values. In regard to experts, they do have a line item in the budget for the HDC to have experts help them. As far as she knows, we have never asked an applicant to do this. Even in a big case like the Hannaford case, there were experts, but they were on our bill. They provided their own. Often people bring their own samples. Sometimes they bring the roofing expert, or the siding expert, and give them that kind of information. As far as judgement or opinion, or not. It is subjective often, but the members have a lot of training, we go to conferences, town training, online training, NH Preservation Alliance, National Register of Historic Places, NH Division of Historical Resources, and have 15 books in the library that are available to applicants. We also give them copies of things. We give ideas on what might fit and not fit as well. There's a lot that goes in to making the decisions that are made. She believes there's a lot of compromising that goes in negotiation and understand that it is an expensive proposition to keep houses up to a standard for a good quality house, especially the requirements in the HD. They have modified some of their decisions for things like man-made siding that has become so realistic looking. She's surprised because that they have only had one (1) turned down in the last five (5) years, she is wondering why people seem upset because no one had come to them. If they are upset, they should come in anytime, you don't need to have a formal application. This way they can talk about what they want to do before investing in a plan or purchasing materials. An example is they may want to put a nice safe side porch on, however, it is visible from the road so the HDC is going to say look at your front porch and see how it will look with the side porch and steps so it blends in. They work with people to help them accomplish what they want and still fit in with the

character of the district and maintain the quality of their homes. She has hundreds of articles that talk about the value to the homeowner and to the town of keeping the economic value of the home and the quality of the home impacting the economic value of the businesses in the whole town and that individual property for its resale value. So there are lots of reasons to keep our historic district and she really wishes people that are fearful should come in and speak to the HDC members. We are always looking for members to join the board and you don't have to live in the historic district to join.

Scott Ouellette of 189 Main Street, Kingston came to the table. Mr. Ouellette stated he does live in the HD. He'd like to echo some things that were already said. He agrees with Mr. Greenwood that the first two sentences are accusatory, almost attacking. He thinks the HD is an asset to the Town. He said it would be good to encourage the HD, expand the district, encourage historic preservation, thanking people on the board. He wanted to point out that the applications he saw have not been mean or nasty or denied, it's been more of a cooperative thing. The board works with the applicant to come up with solutions on how it fits with the Town. Just in the last couple of years he's seen them working with the Josiah Bartlett house, the most historic house in Town to add the barn. They worked on how it could blend in. They worked on Rick's commercially on how the front outdoor seating and stair changes and on how they could blend in. They worked with the new construction on the corner of Scotland Rd. and Main St. on the exterior design to help it blend in. He said the process is working. Mr. Ouellette brought up that Mr. Greenwood thought the first two sentences were accusatory, he was actually more concerned with the bottom sentences that talk about the reason for denial. That they need to be listed in detail and they can't be subjective, it can't be based on opinion or speculation. In order to deny something for a reason that might be considered opinion and speculation you would have to go higher next time which means the Town's HDC budget for experts would have to grow to hire an expert(s). This is counterproductive for the Town. This is like a stick for someone who gets denied to beat the Town down. The board letters may say, M/M applicant, prove your application meets our ordinances, but this is reversed and now the board has to prove the denial. Therefore, he is more worried about the bottom section and those unintended consequences. There are two (2) things, what problem are we trying to solve and the unattended consequences at the end. If you were on the HDC you might read some of the rules and wonder what to do, those are subjective and now they might require an expert before it is denied and get them in trouble for not denying the property.

His recommendation would be to disapprove this and use this opportunity for education to achieve the goals for the master plan and encourage to start building a relationship. Maintain the look and feel that ends up being a big asset to the Town.

Public comment ended at 8:02 PM.

Board discussion: Mr. Bakie commented that when he first read the article, that his opinion from what he read, that there were people in Town that just wanted a board. We are elected by the people to be on the boards and they expect us to do our job. From his experience he seen many times where approvals have gone forward and we as the Board

639 have requested the applicant to state certain colors of things on the approval. Which
640 doesn't really have anything to do with the board. When he read this is all he saw from
641 Town's people that things were being checked. If there's people who don't think they are
642 being treated fairly and want things a little better explained for the reason for denial,
643 maybe they just needed it better broken down on why they weren't accepted.

644
645 Mr. Coffin said that you did see the legislation affirming and being very specific on how to
646 deny this.

647
648 Mr. Bakie said now that he has seen the HDC talk. He has not been to one of their
649 meetings and heard that they have had one (1) denial in the last five (5) years, and their
650 willingness to learn and work with the people in Town. It's different than what he has read
651 on the article. With this said, he probably wouldn't support this.

652
653 Mr. Bashaw said that based off the stories that he heard, he has never had personal
654 interaction with the HDC and getting some more information from them has been helpful.
655 Now, he has concerns about the citizen petition article as the person who submitted in on
656 behalf of other people.

657
658 Mr. Coppelman said he has the PB rep to the HDC for several years now. That board
659 works with the applicant to an incredible degree and as was pointed out, very often even
660 though the HDC doesn't have to take into account the fact that not everybody has
661 unending resources. Doing our best to keep with the rules and regulations in the district,
662 but not make it as onerous as it could be to the applicant. Trying to keep the historic
663 district character and to keep the integrity of it because it is a huge asset to the Town.

664
665 Mr. Bashaw said he is glad he got to hear the other side. He doesn't live in the HDC so
666 he doesn't get to heavily involved. It is nice to hear that from the HDC. He thinks some of
667 the outcries of injustice may have come from second hand stories or assumptions that
668 may not be based on the situation, but they felt it would have occurred if they went ahead
669 no matter what. Mr. Bashaw said since he is the one who submitted the citizen petition
670 article he will make a motion <paused to change the tape>.

671
672 Mr. Ouellette asked from the audience if the application could be withdrawn. Mr. Bashaw
673 said he doesn't believe it can be.

674
675 Motion made by Mr. Bashaw **to disapprove on the Warrant ballot** the proposed
676 Petitioned Warrant Article to be added to Section 100 – Zoning Districts Article 102.9
677 Historic District Guidelines. **Seconded** by, Mr. Bakie. **A vote was taken, all were in**
678 **favor, the motion passed (5-0-0).**

679
680 Ms. Morse asked from the audience if they will see on the vote tally on the ballot. Mr.
681 Coppelman said that the Board will be discussing that tonight and she is welcome to stay
682 around. Ms. Morse said she is sure the Board will do fine with it and left for the evening.

<Board note: This zoning hearing ended at 8:10 PM.>

Board discussion:

Article 108: Commercial Zone C-1

Mr. Greenwood said that Donna Carter, member of the public tonight, asked him to clarify his interpretation of the workforce housing/multi-family housing and what is allowed. His initial reaction was that he believed that you could have either multi-family or a multi-family development that had a workforce housing component within that district. However, the wording isn't very clear the way it presently reads. It shows that such multi-family developments are workforce housing developments. Mr. Coppelman said it isn't workforce housing/multi-family housing. Mr. Greenwood said that is not to his recollection of what the Board did in 2010, when this was created. Initially, he thought they could just make the change and clarify it and make the editorial and put in a comma between multi-family and workforce housing. Then he looked at the public record from 2009 for the change that happened in 2010, those indicate differently than he remembers the action. The only way you can do multi-family is in the component of workforce housing. This is counterintuitive to him and his memory. He said the only evidence he could see in the actual ordinance was in section 108.7.C. Requirements for Multi-Family Dwellings and Development. Mr. Greenwood read this section 108.7.C.6. "Workforce Housing. Not more than 50% of the dwelling units in a multi-family structure *shall be workforce housing*". He interpreted the 2010 minutes and in reading this section that there is a requirement for workforce housing element in any multi-family development done through this ordinance. Mr. Greenwood asked if any of the members of the Board then may have been there when this ordinance was prepared. His memory is you could do either, or. Mr. Greenwood said we need to understand what is trying to be accomplished with this.

Mr. Coppelman asked if this was only in C-1. Mr. Greenwood said yes. Mr. Coppelman asked if this was the only zone we talk about workforce housing. Mr. Greenwood said yes.

Mr. Bakie said it's confusing when you read section 6, the way it's written. It almost seems like they are trying to justify or identify workforce housing, but says "not more than 50% of the dwelling units in a multi-family structure shall be workforce housing". It seems it wants to say not less than 50%. Mr. Greenwood said it's not saying it can be more than, so you could actually have a development with just one workforce housing. If this is saying that all multi-family developments in Town have to incorporate workforce housing.

Ms. Duguay referred to the RSA that defined multi-family housing for the purposes of workforce housing.

Mr. Greenwood said we have to determine what this means. Mr. Bashaw commented this is a difficult one because the said that Mr. Greenwood correctly went back to the meeting minutes. Because this was voted on as ordinance and proposed as such it really depends on what the intention was put through and not our individual opinion on it now. Mr.

Greenwood responded, exactly, but the intent is important because the entire reason of doing this ordinance was because state law came into effect that every town had to provide for workforce housing. We went this route to zone an area of Town to allow for workforce housing. The question is, is all the multi-family development that is allowed in this area have to be workforce housing.

Mr. Bashaw asked, according to the meeting minutes, who were the people on the Board at that time. Mr. Coppelman referred to the minutes of January 5, 2010. Norm Hurley, Chair; Richard Wilson, Vice Chair; Glenn Coppelman; Mark Heitz, BOS Rep.; Jay Alberts; Ernie Landry; Scott Ouellette; and Rich St. Hilaire (alternate). Mr. Bashaw asked if it was appropriate to send them copies to see if they are willing to see how they recalled it. He said the meeting minutes are the actual record that have been approved.

Mr. Coppelman invited the audience to speak on this <8:10 PM>. Donna Carter of 119 Amesbury Rd., Kensington came to the table. She said that there was a new vote this March that changed some of density on this property and a couple of other things. In June, herself, the other real estate agent, Ruth Alberts, the renter and his daughters came to the BOS meeting, mainly because they needed to know the plan for the right of way for the class vi road that is there, to see if they could drive in there. She said the BOS said that they could. Ms. Carter asked for clarification on what could be built there, *she said to the board, multi-family workforce housing and commercial, that these were the only two (2) things*. Mr. Wilson said that they could do any kind of multi-family housing, it doesn't have to be workforce. Ms. Carter said she looked back at the BOS minutes to get this situated, because she had buyers for the property, and there wasn't anything about them having this conversation. Ms. Carter said they only went there to clarify the road, not to talk about the zoning. Mr. Wilson said that changed, the density changed, you could have four (4) bedrooms per acre, before it was four (4) units per acre, this kind of stuff changed. She was really surprised when it couldn't be changed by just putting a comma in the language because that is what they were told they could do. Now they have another buyer and need to clarify this.

Mr. Coppelman summarized Ms. Carter's understanding, that it could be multi-family or workforce housing multi-family, or any combination thereof. Mr. Coppelman said your understanding is it could be just multi-family without a workforce component. Ms. Carter said yes and it could even be a commercial, residential mix, because there isn't anything in the ordinance stating otherwise. Mr. Coppelman said except for the section that was read already saying, "no more than 50% of the dwelling units in a multi-family structure shall be workforce". He said so if you take this literally, it could be none. Mr. Bashaw said the way the definition reads, it could be zero. Mr. Coppelman said it could be more than half of the units. Mr. Greenwood said he was looking at it as at least one of the units had to be workforce housing, but it says that it can't more than 50%. Mr. Greenwood said with that interpretation we don't need to think about this anymore. Mr. Bashaw said that may not have been the intention, but that is what the definition says.

Mr. Coffin mentioned that maybe we address this next year. Mr. Coppelman said that the way it is written, it is not trying to encourage workforce housing and we as a Board and a

Town would want to be looking at this. For now, it is the way it is written. Mr. Greenwood said that what we had to do is make a provision for workforce housing.

The Board made a decision on this. Mr. Coppelman restated the decision. **“That in Commercial Zone C-1 you can do multi-family housing, and that no more than 50% of it can be workforce housing.”**

Vote Tally

Mr. Coppelman wanted to make sure the Board was on the same page on this. He said there was recent meeting he was not at, he read the minutes and he wasn't sure if it was done by vote or consensus. Mr. Coffin said it was by vote. He said it does say in the minutes, pending BOS approval and the BOS has not approved it. The BOS discussed it, however, there has been no vote. Mr. Coppelman's understanding is the Planning Board was not authorized to do that per RSA. So, he reached out to NHMA to see if they had an opinion, and they have provided one. Copies were provided to the Board. Ms. Duguay mentioned this is not the first time this has come up and we have received different answers. Mr. Bashaw commented this is the first time we have received anything officially in writing. Mr. Coffin explained that there is legislation on this, and there is the budget law, and only gives that authority. There was a vote as a Town in 2017, to allow the voting selectmen and the budget committee to register vote tallies on the ballot. That legislation only gives that power to the Town, the legislative body to vote because the governing body supports them and the budget committee does that. It doesn't include anybody else. The only other place that the ballot procedure notes it, is in the planning section. Mr. Coppelman reached out the NHMA because the Town is a member and we have access to their legal department. We are able to ask for advice and get opinions. Mr. Coppelman referred to the email handout from the NHMA legal department dated December 29, 2022. Mr. Bashaw said he will bring this information to the BOS, and based off of the advice of the NHMA received, can vote it down and should cover the Board on the vote that was taken here.

Mr. Coppelman wanted the Board to have their own opinion on this on record. He is not trying to take away the authority of the BOS, but would like the PB to reflect in the minutes and the Board members present, what they would like to happen.

Mr. Coffin says it could put all of the PB articles at risk. Mr. Coppelman said that according to their reading of the statutes, the PB does not have the authority to do this.

Motion made by Mr. Bashaw to rescind the request that the vote tallies be included on the ballots per guidance from the NHMA legal department. Seconded, by Mr. Bakie. A vote was taken, all were in favor, the motion passed.

Correspondence:

- ☐ The Board approved the invoice from GKG Planning, LLC dated January 3, 2023.

823 **Approval of the December 6, 2022 Minutes:**

824
825 **Motion** made by Mr. Coffin **to accept the 12/06/2022 minutes as written. Seconded**
826 **by, Ms. Duguay. A vote was taken, all were in favor, the motion passed.**

827
828 **ADJOURNMENT**

829
830 **Motion** made by Ms. Duguay to adjourn the meeting. Meeting was **adjourned at 8:35**
831 **PM.**

832
833 ****Next Public Hearing is scheduled for Tuesday, January 17, 2023. Subject to**
834 **change.****
835

Minutes accepted as amended on February 7, 2023:

- Pg. 14, line 603 - change the word “attaching” to “attacking”
- Pg. 18, line 790 – change the word “His” to “Mr. Coppelman’s”.