

**Kingston Planning Board
Public Hearing
January 3, 2012**

The Chairman called the hearing to order at 6:30 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Richard Wilson, Chairman	Adam Pope (Arrived with meeting in progress)
Glenn Coppelman, V. Chair	Jay Alberts
Mark Heitz, BOS rep.	Ernie Landry
Rich St. Hilaire, Alternate	

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

Board Business

Correspondence:

- Memo received regarding Impact Fees and encumbrance/signature of contract; how the Board wants to continue.

ACTION ITEM: Mr. Wilson to contact the School Board Chair about participating in the project; if a meeting is necessary, Mr. Greenwood volunteered to attend with the Chairman.

- Letter received from new restaurant taking the place of Mr. Nick's.
- Letter received from "Divine Burger" proposing to move into space available at 34 Church Street

MM&S to send both proposals to the Health and Building Inspectors with no further review required from the Planning Board; send letter about this with notice that if there is any future expansion to notify the Board. (Motion by Mr. Coppelman, second by Mr. Alberts)
PUNA

- Letter received from Scott Delucia, Cars "R" Us asking if the proposed lighting met the Town's standards

(Board note: Mr. Pope arrived at this time.)

ACTION ITEM: Ms. Faulconer to send a letter to Mr. Delucia that more detail is required and that specifications typically show that the fixtures are dark-sky certified or compliant; the Board will require the specification sheet for the particular appliance being proposed.

- Letter was received from the Fire Chief regarding the addition of regulations.

ACTION ITEM: Ms. Faulconer to scan the Fire Chief's proposal and send to the Board to review; the Board will then set up a time to meet with the Fire Chief.

- The 2012 Board calendar was reviewed and accepted to post.
- Letter was received from the Inspectors about a recent review of the Boutin property.

PUBLIC HEARING FOR WARRANT ARTICLES

Mr. Wilson confirmed that Mr. St. Hilaire was a voting member for tonight's hearing.

Groundwater Management Zone

Mr. Wilson noted that the representatives from the EPA were present for this evening's discussion; the Board agreed to take this article out of the order posted (since all articles were posted for 6:45) since there were no other public present at the time.

Mr. Greenwood informed the Board that he had spoken with Attorney Loughlin about the language regarding ZBA action; Attorney Loughlin agreed that the ordinance couldn't limit authority granted to the ZBA by RSA so that line "no variance to the provision..." would need to be removed.

There was no public comment.

MM&S to remove the last line of 209.4. (Motion by Mr. St. Hilaire, second by Mr. Coppelman) **PUNA**

MM&S to replace that removed line with: "Any variances to the provisions of the Groundwater Management District will be forwarded to the US EPA and NH DES"; due to the substantive change to this article, this will be continued to the January 17th hearing. (Motion by Mr. Heitz, second by Mr. St. Hilaire) **PUNA**

Mr. Wilson explained that the Board would hear this article again on the 17th of January at which time there would be a vote to put it on the ballot due to the substantive change approved this evening.

There was public comment regarding a mylar to be reviewed and signed this evening. Mr. Greenwood reviewed the mylar during the Board's review of the petitioned article.

Mr. Wilson stated that the Board would return to the order of the warrant articles as posted.

Citizens' Petition Warrant Article

Copies of the Citizens' petition were distributed to the Board. Mr. Wilson noted that there was no public present regarding this article; he asked Board members for their thoughts. Mr. Alberts thought the language seemed to add similar authority granted to the Selectmen to the Library.

There was discussion that a municipality was able to waive its own regulations and ordinances but that ability currently rested with the Board of Selectmen. Mr. Wilson questioned if a “no” vote on the ordinance would then restrict the Selectmen’s ability to waive the regulations if they chose to; there were several comments that this was asking to add waiver possibility to other bodies, not restrict the Selectmen. Mr. Wilson thought that the proposal was poorly written; Mr. Landry also questioned the proposed language regarding other “municipal governing bodies including the public library” because upon review of RSA 21:48, it says that “municipal governing bodies” are the Board of Selectmen and the School Board. Mr. Coppelman said that the proposal is unnecessary as it is covered anyway as municipalities are exempt from its own regulations and ordinances. Mr. Heitz stated that the Selectmen have not had any discussions about any specific sign proposal for the new library. Mr. Landry questioned whether the Town, even by this article, had the authority to make the Trustees a Municipal Governing Body. Mr. Wilson clarified that the Board had to decide tonight whether to support this article, or not, on the ballot. Ms. Faulconer explained that the warrant article was submitted within the legal timeframe for Citizen’s Petitioned Articles for planning articles which was a different timeframe than those for budget articles; it had the correct amount of signatures of registered voters as confirmed by the Selectmen’s Administrative Assistant and would therefore be placed on the warrant; it was the Planning Board’s responsibility to vote to either “recommend” or “not recommend” any of the Citizens petitions relative to Land Use.

MM&S to “Not Recommend” this article. (Motion by Mr. Pope, second by Mr. Coppelman) Further discussion: Mr. Heitz explained that the Library Trustees were, for the most part, autonomous however not when it came to waiving the Town’s ordinances and regulations. Ms. Faulconer stated that had she been able to vote this evening she would have had to abstain as she had already told members of the Library trustees that she was opposed to the article. She added, for the record, that for her, it was not a matter of determining some sort of contest as to which Board should or should not get to do things, but, rather, it was important for the petitioners to understand that one of the reasons that a member of the Board of Selectmen sits on the Planning Board is so they see the overall picture of why the Planning Board has proposed and adopted ordinances and regulations. She continued that due to this, the Selectmen would then have a basis to determine why something should or should not be exempted; this proposal would give exemption authority to a body that is not involved in the year-long discussion of the development of the ordinance which is why she, personally, thought it was not a good idea. Mr. Coppelman asked about the approval process for the library; the decision making process for the building project was discussed; Mr. Wilson reminded the Board that the Library Trustees came to the Planning Board as a courtesy, not for an approval.

Mr. Wilson re-iterated the Motion to Not Recommend the article. **Vote on the Motion to Not Recommend: PUNA**

Mr. Wilson told the public that was at the meeting due to the mylar signing that Mr. Greenwood had reviewed it and it was fine and would be able to be signed this evening, which would be done at the end of the hearing. Ms. Faulconer told Mr. Tim Lavalley the amount needed to record the plan which he gave to the Board. Ms. Faulconer said that she would record the plan the next morning and call the buyer with the recorded plan number. Mr. Wilson commented that he received a lot of phone calls about this plan last week and blame was put on the Planning Board

for the delay in the signing of the mylar; the Board did not receive the mylar until December 22nd for a plan that was approved in the summer. Mr. Lavalley said that he would take the blame for this.

Mr. Wilson recognized Mr. Gordon Bakie; Mr. Greenwood confirmed that one of this evening's proposal returned his lot to the way it was prior to the last election; a copy of the proposal was given to Mr. Bakie. Mr. Bakie suggested that it would be a good idea that landowners were notified of any future proposals by mail as the Town reports were not mailed to people any more.

Mr. Heitz asked why tonight's meeting was not being televised; Ms. Faulconer suggested that it simply didn't get on Mr. Middlemiss's radar that tonight was a public hearing since the Board would not normally have a public hearing on the first Tuesday of the month.

Livestock Ordinance

Copies of the Livestock Ordinance were distributed to the Board members. Mr. Wilson commented that this ordinance might need a little tweaking but it is a lot better than having nothing and having the State tell the Town what to do and cause issues. Mr. Coppelman asked if the two-acre minimum lot size was picked due to two-acre zoning because it is really 80,000 sq. ft. Mr. Pope and Mr. Wilson answered that they followed the guidelines of UNH Best Management which said two-acres if you weren't near a place to exercise horses and Kingston doesn't have a place. Mr. Heitz said that some areas in Town would have trouble meeting the requirements. Mr. Wilson said that the proposal is not necessarily to encourage or to stop horses. Mr. Alberts said that essentially, the proposal is trying to put the horse in the right spot. Mr. Greenwood agreed that this became an effort in being able to establish a proper place that someone could put a horse without coming down "pro or con" horse. Mr. Wilson added that it was based on recommendations from other sources. Mr. Coppelman continued that they were based on Best Management practices which are not related to zones or particular neighborhoods. Mr. Pope said that some things such as buffers were added. Mr. Wilson said that, under the right conditions, a waiver could be granted by the ZBA. Mr. Coppelman explained that the crafting of the ordinance was not based specifically on certain zones in Towns but on Best Management practices for keeping animals. Mr. Heitz noted that the use was not allowed in all zones. Mr. Pope confirmed that it was prohibited in the Single-Family Zone; he added that the Board picked that zone as it didn't think this use fit in it. Mr. Wilson noted that there might be a 10-acre lot in the Single Family Zone that might want a horse and not affect anyone that could get relief from the ZBA. Mr. Pope added that most of the Single Family Residential lots were relatively small.

MM&S to put the Livestock proposal forward to the ballot and Town meeting vote.
(Motion by Mr. Alberts, second by Mr. Coppelman) **PUNA**

Aquifer Protection Ordinance

The Ordinance language and "special exception" language was distributed. Mr. Greenwood explained the hand-outs; all the amendments agreed to by the Board during its lengthy deliberations were noted in "bold"; strike-throughs were shown for those sections that were deleted. He explained that a verbal description of the zones shown on the map was not included

yet which would mean that the Board will need to review this on the Jan. 17th hearing. Copies of the previous spreadsheets were also distributed. Mr. Greenwood explained that most of the proposal was very straightforward; it was simply changing the ordinance to reflect the new standards; as an example under Maximum Lot Coverage, the Board will now see descriptive language that says in Zone A it is 15% and in Zone B it is 25% but in either case it is 35% if adequate stormwater management that allows for infiltration on the site. He said that the only thing the Board needed to take note of in the prohibited uses section is those items that need additional protection as that is what the “special exception” criteria refers to and gives guidance to the ZBA for the additional criteria.

“Special exceptions” language was discussed by the Board and the difference between a special exception and a variance or waiver. Mr. Greenwood explained that the Board currently has special exception criteria in the Commercial zones that explain the criteria by which the ZBA grants a special exception; he added that it was a different animal than a variance; a variance is still available to the applicant. Mr. Wilson said that the special exception is forcing the applicant to prove that it isn’t going to cause problems. Mr. Pope said that the difference between a special exception and variance is that the applicant doesn’t have to meet “hardship” criteria. Mr. Coppelman explained that this makes the applicant prove that they aren’t going to do harm to the environment. The ability of the ZBA to ask for additional studies, which they already have the ability to do, was reviewed; Mr. Greenwood explained that the applicant pays for any additional studies.

Mr. Alberts asked if, hypothetically, nothing existed on the site where “Mr. Mike’s” was currently, and “Mr. Mike’s” wanted to go in, would they be allowed to go in with this ordinance. Mr. Pope answered “no, it would be in Zone B”. Ms. Faulconer said that the Aquifer ordinance wouldn’t keep it out, that site was in the Single Family Residential zone and wouldn’t be allowed because of that ordinance. Mr. Wilson agreed and added that if a pizza restaurant wanted to come in, it couldn’t in a SFR zone.

Mr. Heitz asked when the ordinance was in effect. Mr. Wilson explained that it was already in effect; since the date it was posted which was December 14th. Issues regarding substantive changes were discussed; the Board agreed that anything that needed to be changed had to be done this evening; the only thing pending was the description of the zone based on the map already reviewed by the Board; Mr. Greenwood noted that there really wasn’t a lot of “wiggle” room in that regard. He added that fortunately, if worse comes to worse, the Board can simply refer to the map; a map is required in the Zoning Ordinance and the Board already has the map which was reviewed by the Board multiple times; currently there is a District Boundary description in the Ordinance and he would rather there be a textural one in the proposed ordinance; even with the textural description, it would still be tied to the map. The Board discussed the motion to move the ordinance forward and continue; Mr. Pope suggesting: “to accept as written including the special exception and review the boundary language on the 17th”.

Mr. Heitz asked a question about #4, subsurface storage of petroleum products which is currently prohibited and the Board is going to continue prohibiting it and wondered if this was in conflict with a gas station. Mr. Pope said that this did appear to require a gas station to store the petroleum above ground and agreed that was not the Board’s intent. Ms. Faulconer suggested

adding language to #4 that said “except for the instance of gas stations where allowed”. The Board agreed to this amendment.

Mr. Alberts commented that a lot of work went into this proposal and he still has some trouble with it; he agrees with protecting the Aquifer but he is struggling with it. The existing prohibitive uses and the proposals were reviewed.

Mr. Alberts brought up the prohibition of petroleum bulk plant or terminal. Mr. Heitz said that, personally, he had a little issue with that because someone had come in with that proposal in the past. Ms. Faulconer and Mr. Alberts noted that the particular property Mr. Heitz was referring to was not in the zone; only a small portion in the front was in the zone. Mr. Greenwood added that, apparently, where the individual wants to do the business, it is not prohibited. Mr. Alberts noted that the application, while approved by the ZBA, had been withdrawn. The map bounds and property lines were discussed. Mr. Alberts directed the property owner to contact Mr. Greenwood adding that it appeared that approximately 20 feet in the front of the lot was in the zone. Mr. Greenwood explained that it was not one of the zones that, because part was in the zone, the entire parcel was in the zone. Mr. Coppelman said that the applicant would merely be traversing a piece of property that wasn't zoned for that use to get to a piece that is. Mr. Heitz said that there is something on the table and he would like to know how it is affected. Mr. Wilson stated that there isn't anything on the table, it was withdrawn; if it was on the table, he might feel the same way, but it isn't. Mr. Heitz asked if this ordinance would have stopped the proposal. Mr. Greenwood said no, not by his understanding of the proposal as the activity is not in the zone; he added that the Board has reviewed other businesses the same way. Ms. Faulconer reminded the Board that the Mark Lepage project had the same conditions. Mr. Pope agreed. Mr. Greenwood explained that the expanding the Aquifer zone to include areas that weren't supported as aquifer areas by the USGS loses the scientific support of the district. Ms. Faulconer noted that, in the past, property owners with a small piece of the property shown in the Aquifer, have come in with their own hydrogeological report proving that they are not in the Aquifer at all. Mr. Greenwood agreed that this was done on Mr. Young's property.

Mr. Heitz asked about car wash facilities which were prohibited now; the spread sheet shows it differently due to separation of two terms (laundry and car wash) from one line to two lines; the corrected lines show it as prohibited.

ACTION ITEM: Mr. Greenwood will send electronic copies of the mylar map set (parcels and aquifer) to Ms. Faulconer to forward to Mr. Alberts.

There was no further discussion.

MM&S to accept the Aquifer Ordinance as amended (add to item #4, “except gas stations where allowed”) including the “special exception language” and review the boundary language on the 17th. (Motion by Mr. Pope, second by Mr. Coppelman) PUNA

Possible Additional Section to Aquifer Ordinance

Additional language was handed out concerning a possible conflict noted after the last hearing; this language was posted after discussion with Mr. Wilson and Mr. Greenwood so the Board could decide what to do. Ms. Faulconer explained that it appeared that the adoption of the proposed Aquifer ordinance would create a conflict based on language allowing CI and CII to take precedence over restrictions in the Aquifer Ordinance; the Board just established new requirements, the current language in CI and CII would override them. Mr. Wilson stated that the Board would obviously want the work that the Board just accomplished to be the priority over any decisions. Two proposals were posted for the Board to decide; either as separate articles or added to the article with the Aquifer. In deciding how to go forward, Mr. Greenwood explained that the Board would need to decide whether there was a conflict regardless if the new Aquifer zone passed; currently the language says that CI and CII take precedence over the Aquifer Ordinance. Mr. Landry questioned whether the Board wanted to have the Aquifer Ordinance take precedence regardless of the new one passing.

MM&S to add the proposed changes to the Conflict section of 108.16 and 109.16 to the Aquifer warrant. (Motion by Mr. Pope, second by Mr. St. Hilaire) **Motion passed 6-0-1** with Mr. Coppelman abstaining.

ACTION ITEM: Ms. Faulconer will send copies of Ms. Truslow's supplemental report to Mr. Alberts.

Vehicle Sales

Copies of the proposal were distributed. Mr. Greenwood commented that the Board had reviewed this extensively.

MM&S to move the proposal forward to the voters. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

Sign Ordinance

Copies of the proposal were distributed. The Board reviewed the changes to the proposed ordinance. Mr. Heitz suggested that the Board might want to encourage sign permits not only to increase revenues but to give notice to Town officials that might point out conflicts with ordinances and regulations and discrepancies about a property.

MM&S to move the sign permit ordinance to the ballot as proposed. (Motion by Mr. Coppelman, second by Mr. Landry) **Motion carries 4-1-1** with Mr. Heitz opposed and Mr. St. Hilaire abstaining.

Accessory Apartments

The Board reviewed the proposal; it was explained that this amendment would now clarify that accessory apartments are allowed in the Rural Residential zone.

MM&S to submit as written for the ballot. (Motion by Mr. Alberts, second by Mr. Pope)
PUNA

Tax Map Amendment

MM&S to move this forward to the ballot. (Motion by Mr. Pope, second by Mr. Alberts)
Motion passed 5-0-1 with Mr. Heitz abstaining.

Board Business, continued

MM&S to accept the minutes of December 6th as written. (Motion by Mr. Landry, second by Mr. Alberts) **Motion passed 5-0-1** with Mr. Coppelman abstaining.

Committee Updates:

CIP: Mr. Greenwood explained that now that Mr. Coppelman is back and the zoning work is out of the way, the CIP will become a focus; CIP requests have not gone out yet.

ACTION ITEM: Mr. Coppelman and Mr. Greenwood will talk and set a plan to move ahead with the CIP and report back to the Board by the next meeting.

ACTION ITEM: Mr. Greenwood will send out notices and requests for CIP projects to the Department Heads.

MM&S to adjourn at 8:20. (Motion by Mr. Pope, second by Mr. Alberts) **PUNA**