

**Kingston Planning Board
Public Hearing
April 17, 2012**

The Chairman called the meeting to order at 6:35 PM. There were no challenges to the legality of the meeting. Mr. Wilson noted that tonight's hearing was not being televised.

Members in attendance:

Richard Wilson, Chairman	Adam Pope
Glenn Coppelman, V. Chair	Peter Coffin
Mark Heitz, BOS rep.	Stanley Shalett
Ernie Landry	

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer.

Absent: Mr. St. Hilaire, Alternate; Ellen Faulconer, Alternate

Board Business

Correspondence:

- Request from HDC was received regarding Planning Board representation to that Board; recommendation received from Attorney Kalman; Mr. Shalett will be stepping down as a full board member on the HDC and would be the Planning Board alternate for Mr. Coppelman.

MM&S to appoint Mr. Coppelman as the Planning Board representative to the Historic District Commission. (Motion by Mr. Pope, second by Mr. Coffin) (Motion carries 5-0-2 with Mr. Coppelman and Mr. Shalett abstaining)

- Mr. Heitz confirmed that he would continue as the Board of Selectmen's representative to the Planning Board and the Capital Improvement Plan committee.
- Bond Balance list received
- Letter received from Mr. Mastroianni for Tupello, LLC requesting the release of the balance of his bond; Mr. Wilson signed the release with the condition that Ms. Faulconer confirm that there are no outstanding charges pending.
- Letter from Mr. Sine requesting the release of his bond; Mr. Wilson signed the release with the condition that Ms. Faulconer confirm that there are no outstanding charges pending.
- Informational memo regarding the registration of a vehicle at Abernathy Timber.
- Question raised from the Inspectors re: Reynolds' Trailer Sales which had closed and there is a new sign advertising an RV parts store opening; the Board stated that it had been an RV parts store before and didn't require any additional review from the Planning Board.
- Memo: A question was raised by the Health Officer regarding Stormwater Management at the Storage Facility on Rte. 125; rip rap was gone and erosion appeared on the site.

Mr. Greenwood stated that if the Stormwater Management facilities were not properly working for stormwater management than an inspector can site them for not being in compliance with the site review; this would be an enforcement issue. Mr. Heitz suggested having the Town Engineer take a look at it; Mr. Greenwood agreed that the Town Engineer would have a better understanding of the management devices. Mr. Wilson asked Mr. Heitz which budget would be paying for this enforcement review. Mr. Heitz said that the Planning Board had a line for it; Mr. Wilson agreed but added that the Board had not set up the Stormwater Management portion of that. The Board agreed to take it out of the Engineering line at this point.

ACTION ITEM: Mr. Quintal will go to the Storage Facility Property on Rte. 125; Ms. Faulconer will review the file regarding Stormwater Management requirements and report the information to Mr. Quintal and the Board.

- Budget information received for the first quarter.
- Local Officials Workshop Information received and reviewed.
- Large Drinking Water Protection Workshop notification.
- Southeast Watershed Alliance meeting notification.
- E-mail from Mr. Coppelman regarding NH Housing announcement for Community Planning Grant programs in case there were any projects that might fit with the program.

John Ingalls
Robert Pellegrino
Solar Hills Estates Subdivision
76 and 78 Hunt Road
Tax Map: R6 Lots 10-4, 14

Tim Lavalley informed the Board that the Army Corps. of Engineers requested an archaeological study of the site which has been done; his report found there was nothing keeping the site from being developed; he provided the Board with a copy of the review. He added that the Army Corps. of Engineers has not given their final decision which is required prior to receipt of the State Wetlands approval which is required for State Subdivision approval. Mr. Lavalley continued that they did receive a letter from the Town Engineer which essentially shows that they had taken care of his concerns; deferring some questions regarding soils to Rockingham County Conservation District; he received a letter from Mike Cuomo at RCCD; he read a portion of the letter that said that the plan met "professional standards"; he added that some other issues were brought up that they have answered; the building set-backs were labeled at 50 feet yet the wetlands setback varies due to the function value of the wetlands. He continued that they would label the wetlands with the function value on the recordable page of the plan with a note explaining those points and the table for finding the required setbacks; other dimensions were added. He said that, other than the pending State approvals, that was it at this point. He continued that the only other thing to bring up was a comment at the end of Mr. Cuomo's letter regarding two areas showing signs of recent wetland filling; he agreed that they are mapped as wetlands, so they are not trying to say that it isn't wet and they will have to get somebody from the Wetlands Bureau to determine if there has been any sort of filling; there is one area that he knows exactly what Mr. Cuomo is talking about where there is a woods road where "he" has

been driving through and they need to get the Wetland's Board out to see what they want done with it; it is mapped as a wet area. He asked if the Board had any questions; he stated that he feels that they have addressed most everything.

Mr. Wilson confirmed that Mr. Quintal and Mr. Greenwood had both seen the RCCD report; he asked them if they had comments on that report. Mr. Greenwood said that he had spoken with Mr. Lavalle about this and had been told that there had been changes made to the plan; he would recommend having the updated plan given back to Mr. Cuomo at RCCD so he could feel comfortable that his comments had been addressed. Mr. Quintal agreed with Mr. Greenwood's comments. Mr. Wilson continued that one thing that had been left open at the last meeting was that plans were going to be received 10 days before this meeting; Mr. Lavalle said that plans had been received at least 20 days or more but obviously the revisions made due to Mr. Cuomo's letter were only on the plans he had in front of him on his table; not the ones that the Board had received. Mr. Lavalle stated that the last revision date on the plans was 3/24/12; Mr. Wilson distributed them to the Board.

Mr. Wilson asked Mr. Quintal to go over his notes; Mr. Quintal said that he met with Jim and Tim Lavalle for about a half an hour going over the plans; there were a couple of drafting issues on a plan he had received on March 15th that he pointed out which were addressed; he received the plan the Board now had on April 2nd which he reviewed; he still had concerns about the slope issue; he did get a copy of their surveyor's report that explained that the standards allow up to 15% inclusions and since he wasn't capable of doing an evaluation of the percentage of what could be acceptable as inclusions, he deferred to a soil scientist to review that which triggered the more in-depth study and evaluation of the soil mapping. He continued that a Performance Bond is required and the Cost Construction Estimate is required prior to Final Approval by the Planning Board; he provided the Lavalles with a copy of a typical worksheet that has been approved as an example to be used by the applicant to get the estimated cost and work for any bond reduction in the future re-iterating that this must be done prior to the Board's final approval. He wanted to mention that all waivers granted by the Board need to be listed on the plan to be recorded in the Registry of Deeds. He stated that this basically concluded his comments on the engineering work on the plans per his letter of April 11, 2012.

Mr. Lavalle explained that he did receive the worksheets and have the numbers worked up and can submit them as soon as there is an approval and they know what they are submitting them for. Mr. Wilson asked the Board for any comments.

Mr. Coffin referred to Paragraph 8 of the RCCD letter referring to a plan of March 21, 2011; he asked if, within the last year, if anything had been done about the certified wetland scientist. Mr. Lavalle said, yes and referred to Paragraph 9 regarding showing the entire driveway on Lot 2 so that was done. Mr. Coffin read parts of Paragraph 9 but returned to Paragraph 8 requiring a letter from a Certified Wetland Scientist describing whether the impact of the wetlands and the designated buffer is significant and asked if the final location of the driveway had been determined so the Certified Wetland Scientist can sign off on that. Mr. Lavalle said a new report had not been produced since that letter; the plans do show the whole driveway but it has not been addressed specifically with a letter because they hadn't had a chance to see what Mr. Cuomo was saying; they thought the previous letter had addressed that. Mr. Coffin commented that this was

still outstanding then. Mr. Lavalley said that prior to seeing the letter from RCCD; they thought they were all set. Mr. Coffin asked Mr. Lavalley if they were now going to go back to their Wetlands Scientist and get a comment to meet that requirement; Mr. Lavalley said that if that was what Mr. Cuomo needed to happen, they whatever Mr. Cuomo believed was needed to address that issue. He said that his soil scientist looks at the plan regularly and will have to stamp any final plans. Mr. Coffin asked if the plans show the final location of the driveway; Mr. Lavalley answered that it shows on the plan he has but not the plans that the Board is reviewing. Mr. Jim Lavalley said that they would have the certification from their soil scientist along with the new plans, with the driveway location, submitted to Mr. Cuomo for his review. Mr. Pope confirmed that Mr. Cuomo's comments need to be addressed for the applicant to get their Wetlands Permit.

Mr. Greenwood said that he hasn't included comments since the time before the last meeting so there is none today; the only thing from his perspective at this point is his need to see a sign-off letter from Mr. Cuomo. Mr. Lavalley said that they were going to send out plans to him in the interim but they know that RCCD's procedure is that they won't look at anything unless it comes from the Board directly. Mr. Pope stated that it looks like the applicant did what the Board asked them to do two months ago with no real comments from the Town Engineer but they would need to get the Wetlands Permit to continue with the project anyway. Mr. Wilson said that the only two things waiting on at this point are Mr. Cuomo to sign off and asked about the slopes; Mr. Quintal said that Mr. Cuomo addressed that in his letter so the issues being discussed for Mr. Cuomo's review would be the new set of plans that identifies the things discussed in his comment sheet and to make sure that they are in compliance with that; the Performance Bond and the State approvals, including the Wetlands permit. Mr. Wilson asked the applicant if they could provide the Performance Bond worksheet; Mr. Lavalley said absolutely. Mr. Quintal explained that the applicant needs to review the worksheet with both himself and the Road Agent, Mr. St. Hilaire; they both need to approve and give to the Board prior to the Chairman signing the mylar; he added that it doesn't necessarily have to be done prior to any conditional approvals but it must be a condition of approval prior to signing the mylar. Mr. Wilson asked if the Board wanted to wait to hear from Mr. Cuomo or add as a condition of approval. Mr. Greenwood said that normally it would not be a pending conditional- approval thing due to comments that might require possible discretion by the Board; but he thinks at this point that is not the case and the Board is expecting some sort of a final from Mr. Cuomo; if that is the case there could be a conditional approval based on his decision; however, this could become a bit "dicey" because if he needs some type of input from the Board, that doesn't qualify as a conditionally approval item. He continued that he believes the Board is differing to Mr. Cuomo, pretty completely, on this issue. Mr. Wilson asked how long he would think it would take to get a response from Mr. Cuomo; Mr. Greenwood expected it would be about two weeks for a response. Mr. Lavalley said that they felt they could comply with all of Mr. Cuomo's comments and wouldn't need any additional input from the Board and agreed with Mr. Cuomo's comments regarding the Wetlands Function Value and setbacks.

Mr. Wilson asked for public comment. Mr. Coffin stated that there was still the outstanding issue of Paragraph 10 regarding a Dredge and Fill that had not been permitted; there were four options suggested by Mr. Cuomo. Mr. Lavalley noted that they did not a permit for the Wetland fills shown in the picture but added that they also did not know if it was considered a violation; they need to have the Wetlands Board look at it and ask them what they want to do. Mr. Coffin

confirmed that this is not a road that they intend to use as part of the subdivision. Mr. Lavalle said if the Wetlands Board tells them to pull things out, they'll pull it out, if they say leave it, they will leave it; it will be the Wetlands Board's decision. Mr. Wilson asked who was responsible for getting them to the site to look at it. Mr. Lavalle said they would do that. Mr. Greenwood said that these answers would have to be provided to Mr. Cuomo so he'll know what is needed prior to his signing off so he will know that that issue has been taken care of. Mr. Lavalle said that the Wetlands Board and Mr. Cuomo will be in direct contact about this issue.

ACTION ITEM: Mr. Greenwood will oversee this process to make sure all of these items happen. Mr. Greenwood explained that Mr. Cuomo contacts him regularly when working on something for Kingston.

Mr. Wilson asked if any members of the public wanted to speak. Ron Conant, 6 Shendoar Drive, addressed the Board and said that this was the first time that he heard that the Army Corps. of Engineers was involved and asked the reason for that and why weren't they involved since the beginning of the project since their uncoverings could actually have, or could have, stopped the whole proceeding. Mr. Wilson said that he thinks that it can be triggered by any permit that is applied for to the State and often seem to come in late to the process. Mr. Conant suggested that the Board changed their procedures to address this; both Mr. Wilson and Mr. Greenwood explained that the Town has no control over this process, it is under State control. Mr. Lavalle said that the Wetlands Bureau explained to him that the Army Corps. of Engineers stops into Concord once a week and flips through the files and randomly takes one out however in this case it may have been taken out because there is a vernal pool on the project which may have triggered their review and the archaeological study included the Conant piece because he went out and looked and in the report he noted there wasn't anything out there, too. Mr. Greenwood said that he has been doing this for twenty-five years and it is a mystery to him when and how the Army Corps. of Engineers get involved in project and review. Mr. Coppelman said that it may have been that it was just recently that the RCCD report was available which may have triggered something to do with a review from them. Mr. Lavalle said that the Army Corps of Engineers got involved prior to the RCCD report. Mr. Lavalle explained that the Army Corps of Engineers have not signed off on the report yet and had asked for the archaeological study; this was submitted but they haven't gotten and final information from the Army Corps of Engineers at this point although the professional they hired does not seem to think there will be any problems based on his findings. Mr. Greenwood noted that a Phase I study has been completed and submitted to the Division of Historical Resources and would assume that the Board would receive a sign-off letter much like the letter informing the Board that the study was necessary; there is a formal approval process from the NH DHR which the Board would need to see to close the issue.

Mr. Wilson asked for additional public comment. Mr. Dan Bartley, 72 Hunt Road, asked to address the Town Engineer; he asked if it was acceptable for the physical test pit of a lot to be moved on a lot. Mr. Quintal asked if he meant compared to what was shown on the plan. Mr. Bartley explained that a test pit on lot 5 has been moved three times; the first proposed test pit doesn't fall within the proposed 4K area now; the test pit keeps moving as the 4K area moves. Mr. Quintal answered that the work that is done on the plan is supposed to be accurately done and if symbols are moved and not representing the true location of the test pit than that is not

acceptable. Mr. Bartley had a plan marking the three locations showing where it was shown on Plan #1, Plan #2 and Plan #3, as it stands now, and it's moved 35 feet and is not even within the 4K area. Mr. Quintal reviewed the new plan, looking at sheet #5. Mr. Quintal suggested that Mr. Lavalley answer the question. Mr. Lavalley stated that "as to the symbol moving, a lot of times when you have a test pit, you have one shot on it and unfortunately the person looking at it may be on one end of it and they draw it the wrong way, etc. etc.; as you know, we went back out, I would say two or three months ago, and re-did new topography because this was an aerial topography and the locations of the test pits were just kind of GPS locations and we did new topography along the roadway, new topography at the area of the crossing and a couple of the areas of the 4K's and that is what is reflected on these plans. A couple of your earlier comments had kind of pointed out the fact that the aerial topography and some of our locations weren't accurate. As far as the test pit, sometimes a test pit is fifteen, twenty feet long, sometimes it is only five feet long so we have a symbol that shows it as one size; it is not really an accurate depiction of the test pit, this is where it was done, unfortunate, that's the nature of the beast; you've got a ten-foot long test pit, somebody locates one end of it, they can get drawn ten feet the other side of it." Mr. Bartley noted that it was 35 feet from its original location. Mr. Wilson asked if Mr. Middlemiss verified test pits and septic correlation. Mr. Quintal said that the Health Officer would look at whether the test pit was done; the accuracy of the plan is basically done by the surveyors who actually do the work; he continued that it is true that he did question the slopes and what not and in speaking to them, they did say that the topography was flown and not done by hand on the site and it was required by Town regulations for the topography to be done on the ground and not flown so it would minimize the error; it is his understanding that they did go out and do the physical work of re-measuring the slopes and grades and that may be why the test pit was located incorrectly to begin with. He added that he assumes that the final plans that the Board has before them today is accurate; he has no way of checking them unless somebody was to go out and re-do the site measurements; a certain amount of trust has to be given to the surveyors. Mr. Wilson confirmed that Mr. Quintal is saying that the test pits weren't accurate as shown on the first plan but drawn in as accurate on the latest set of plans and that's why there were moved. Mr. Lavalley said that in the case of subdivision, the Town's Health Officer doesn't view the test pits, it's RCCD. Mr. Quintal said that whoever it is reviews the work being done, they don't review the location of it. Mr. Lavalley said approximately 12 test pits were done as some of them wound up not working for 4k's or being too close to lot lines; so there are extra test pits. Mr. Bartley said that if you took the three plans' mylars and matched up the match lines, all the other test pits on all the other lots all match except for that one so it's not an issue of the topography, it is physically being moved to follow the movement of the 4K area; all the other test pits line up. Mr. Wilson asked if this would be something that Mr. Cuomo would review; Mr. Greenwood said that Mr. Cuomo would not really concern himself with this unless the location of the test pit infringed upon a wetland setback.

Mr. Bartley, reluctantly, asked if the Board could re-iterate the explanation of the intent of the 8 lot requirement of the regulation. Mr. Wilson said the intent was that 8 new lots would be serviced by a new road but this was discussed at the last meeting and the Board had sent this to legal counsel and the regulation did not have the proper wording to enforce it so the Board was going to be accepting a road servicing 6 new lots and 2 existing lots. Mr. Bartley asked what was the reason for the requirement of the 8 lots; Mr. Wilson said this had been previously discussed. Mr. Bartley said that it was to provide for funds for municipal services. Mr. Wilson

said that the Board had not reviewed to find any hard evidence to support that. He said there were issues with road length affecting municipal services including costs and inconvenience; there had been property in Town that might have put in a two, three hundred or four hundred foot road with only a couple of houses on it and that was what was trying to be stopped. Mr. Bartley suggested said that now he could now put in a large subdivision road and only put in a couple of houses and challenge the regulation; Mr. Wilson said anything could be challenged but this road was servicing 8 lots and the legal clarification was that as written did not have to service 8 new lots; the 8 lots are there just as 6 new lots and two existing lots. Mr. Bartley re-iterated that it didn't meet the intent. Mr. Wilson agreed but added that they are meeting the requirement of 8 lots and according to legal counsel, this subdivision meets what are standards says. Mr. Bartlett re-iterated that it did not meet the intent; Mr. Wilson answered that he was not going to get into a legal debate. Mr. Coppelman interrupted the discussion by addressing Mr. Bartley and noting that he had asked the question and gotten an answer; he stated that if there was something he wanted to challenge, he had avenues to do that; he continued that the Board had gotten advice from its counsel that said, based on the way the Ordinance was written, this application makes the requirement. Mr. Wilson, Mr. Coppelman and Mr. Greenwood noted that it meets the requirements as written in the regulation. Mr. Coppelman added that if Mr. Bartley feels that he needs to challenge this in some fashion, he is welcome to do that. Mr. Bartley said that he is challenging it. Mr. Wilson explained that this was not the venue to continue the challenge; the Board makes a decision and if Mr. Bartley does not agree with the decision then he can challenge it in court. Mr. Bartley continued that he is asking a simple question and if this subdivision meets the original intent of the regulation and he hasn't gotten an answer. Mr. Heitz explained that sometimes the intent and the verbiage conflict and the Board has to go by what the verbiage allows and that is what has happened in this case; he added that he thought when this regulation was originally designed, the thought was to require 8 new lots but that is not what the regulation says, it says 8 lots, not 8 new lots to be serviced by that road; so the original intent might have been that but the verbiage did not line up that so the Board has to go by what the verbiage is.

Mr. Wilson asked for the next issue. Mr. Bartley asked if the applicant was going to have to get a waiver from Regulation 905.4 which is, under Use of Land, will not be allowed in such cases where premature subdivision of land would involve danger, injury of health, safety, property, etc. or necessitate an excessive expenditure of public funds for the supply of these services. Mr. Bartley re-iterated his question regarding the need of the applicant to get a waiver from this regulation. Mr. Wilson said he saw no reason why he would need to. Mr. Coppelman said that technically it meets the design standards of the regulations and ordinances; for it to be considered scattered and premature wouldn't fit. Mr. Heitz commented that it would only be necessary if 8 lots weren't being serviced by the new road; that's when it would require the waiver; if he came in and argued that 7 lots were close to 8, then the Board could look at possibly granting a waiver but he is meeting the verbiage of the ordinance. Mr. Bartley noted that the applicant is not meeting the intent of the ordinance. Mr. Wilson reminded Mr. Bartley that in the discussion from earlier meetings, many on the Board did not agree with this interpretation and that is why it was sent to legal counsel for a decision. Mr. Bartley said that he was not going to keep re-hashing because he had a different interpretation of what counsel said; he said that counsel said the applicant meets the requirement relative to the 8 lots on the road and he understands that but he stated that they do not meet the intent and that they are two separate issues. Mr. Wilson said that the Board feels they do meet the intent.

Mr. Bartley continued that on Lot 10-4, he spoke with Eric Thomas from DES and Lot 4 still shows a 75 foot well radius and if you look at the first plan, it showed a 75 foot well radius and the 4K area, if a 100 ft. well radius is shown, then the 4K falls within the well radius. Mr. Thomas told him that the new 4 acre lot, because that lot has gone from 12 acres to 4 acres should show an existing State approved septic system or an alternate future system. Mr. Wilson said the Board is still a step away from getting approved septic systems, approved wells which are all things done by the Health Officer based on an approved plan. Mr. Bartley said that was his point, it is not on the plan. Mr. Lavelle explained that Mr. Thomas is not the current reviewer, he is the boss of the reviewer, the lot Mr. Bartley is pointing out has a brand new State subdivision approval number; the 75 ft. well radius shown on the plan is the existing well and the subdivision requirements for that lot have been met and the subdivision approval has been written on the plans; it is the lot with the existing house and is not part of the subdivision being discussed today as that lot has been subdivided off and approved by the Board and the State and been sold. Mr. Bartley said that was the end of his comments. Mr. Wilson stated that the Health Officer, Mr. Middlemiss goes through these again once everything is finalized and will review with a fine-tooth comb. Mr. Bartley said he was just bringing up an issue that if there was a 100 foot well radius shown on that lot, it would overlap the test pit in the 4K area on the lot. Mr. Lavelle said that to prove the lot they only need to show that replacement systems are possible.

Mr. Shuffleton from 31 Mayflower Drive, East Hampstead thanked the Board for the education stating that he had enjoyed the meetings. He asked the Board if it was significant that the abutter list had changed since the beginning of the plans. Mr. Greenwood stated that it wasn't really addressed; in instances where the Board is aware of a sale changes are made but from an abutter notification standard, State law requires notification at the time of the application for the existing abutters. Mr. Shuffleton wanted to inform the Board that one of his neighbors shown on the list doesn't live there anymore.

There were no further public comments. Mr. Wilson asked the Board about the next steps wondering if the Board wanted to wait for Mr. Cuomo's report with the assumption that the Board could review on May 1st. Mr. Greenwood added that the Board was also waiting on hearing about a wetlands permit which the Board had no control over, adding that the Board had no control about many of the items pending; the only one that had the possibility of some type of discussion was with Mr. Cuomo; the loops will need to be closed on the Army Corps. of Engineers report and the wetlands issues. He continued that the only question he has about a conditional approval for tonight is if there is a legitimate possibility that there will be something that Mr. Cuomo will want to have the Board discuss. Mr. Wilson stated that his original interpretation of Mr. Greenwood's comments was for the Board to wait to get Mr. Cuomo's comments. Mr. Heitz disagreed as did Mr. Pope. Mr. Greenwood stated his belief that the possibility of Mr. Cuomo's recommendations hinging on the Board's discretion was fairly minimal. Mr. Coppelmann asked what would happen if that was the case and how did that affect a conditional approval of the application. Mr. Greenwood explained that if Mr. Cuomo asked for some type of guidance the Board would have to reconsider the conditional approval; Mr. Pope noted that the Board could re-vote it at that time. Mr. Greenwood agreed. Mr. Heitz stated that as long as the applicant satisfies what Mr. Cuomo is looking for then he would assume Mr. Cuomo would sign off on it; he continued that the only problem he foresees is if there was

something needed that the applicant wanted to have waived or had an issue with; Mr. Greenwood interrupted by saying that the applicant has stated that they were able to comply with all of Mr. Cuomo's requirements. Mr. Heitz continued that as long as Mr. Cuomo was satisfied then they would get the permit; Mr. Greenwood agreed. Mr. Coppelman added that there was a small possibility that when Mr. Cuomo gets back to the Board, there might be additional questions or suggestions requiring some additional discussion by the Board as opposed to just a punch-list of things which was why he asked the previous question and what the process would be at that point and it sounds like Mr. Greenwood is saying that it would be a consideration; he was concerned that it might set this application back even further. Mr. Wilson asked the applicant about if they were fine with a conditional approval knowing there was a possibility of having to re-open this; if not, the bottom line would be continuing to the next meeting. Mr. Lavalley stated that they don't anticipate a problem with Mr. Cuomo's recommendations that they couldn't take care of and be able to satisfy Mr. Cuomo. Mr. Quintal noted that the EPA NOI approval was required prior to construction, not prior to approval.

MM&S to approve with the following conditions: Army Corps of Engineers approval, Dredge and Fill permit, DES subdivision approval, performance bond, contingent on Health Inspector approval. (Motion by Mr. Pope, second by Mr. Heitz)

Board discussion: Mr. Shalett asked if an alteration of terrain permit was required. Mr. Wilson said the current proposal was below the requirements needed for that permit. Mr. Lavalley confirmed that the granted waivers were on the plan, notes 11 and 12; Mr. Pope confirmed that note. Mr. Quintal stated that he had no comments and was pretty satisfied, the only thing with tonight's conversation was with the wetlands and the buffers and the setbacks and whether Mr. Cuomo would feel that there was an issue with the buffers and if that would trigger a waiver request and requirement but if the Board has the ability to open it back up and address that later than that is fine, too.

Mr. Wilson asked for a vote on the motion based on everything he said. **Motion passed unanimously.**

Mr. Greenwood reminded the Board and the applicant there was a 90 day deadline for conditional approvals. Mr. Wilson wanted to know if the Board wanted to set them up to review Mr. Cuomo's letter; Mr. Greenwood stated that the Board would simply be looking for sign-offs within 90 days. Mr. Lavalley said that they would need to leave the Board with a set of plans to go to RCCD as they won't be accepted as given by the applicant. Mr. Coppelman stated, to be clear, that if for some reason the plan had to come back to the Board and the Board was not providing a continuance this would have to be re-opened with re-noticing and notification of abutters; Mr. Wilson added this was his point with his question. Mr. Greenwood said that it would. Mr. Coppelman asked if the applicant was aware of this possibility; Mr. Lavalley said they completely understood this. Mr. Wilson asked that they were clear that they did not want to continue. Mr. Lavalley stated that the Board had already made their decision and they are pleased with that decision. Mr. Wilson commented that this was then the applicant's risk and not the Board's risk. Mr. Lavalley said that his only question, regarding the performance bond, was how Kingston handled it; he questioned if they could build their bond by putting up a Stormwater Management Bond of \$50,000 for example and build to a certain extent and then bond the final.

Mr. Quintal said that Mr. St. Hilaire would need to answer that question as he had not gone through that process with the Board yet. Mr. Lavalley said that he would speak with Mr. St. Hilaire.

Board of Selectmen, Town of Kingston
Lot Line Adjustment
Church Street
Tax Map U10-12 and 13

Mr. Wilson opened the hearing that had been continued since no one had been present representing any of the parties involved except the Town of Kingston. A gentleman stated that two were present representing the Gideon Hall Society. Mr. Wilson asked if they had a letter stating that they had the authority to represent the Gideon Hall Society; the gentleman stated that he spoke with the Attorney who gave him the authority to speak for them; the Attorney's name is Jeff Dowd but he didn't think to bring a letter. Mr. Wilson turned the discussion over to Mr. Heitz, representing the Board of Selectmen. Mr. Heitz reviewed the previous discussions, the proposed land transfers and the article supported at Town Meeting. Mr. Heitz stated that the Town had sent out letters to the involved parties about ten days ago, after a meeting held a few weeks ago, and none of the letters have been returned to the Town from the other parties. He said it is their intention to move forward with what was ratified by the voters. Mr. Coppelman asked Mr. Heitz if that was what was shown on the current plan; Mr. Heitz replied that it was. Mr. Wilson commented that there were no comments from Department Heads; he stated that he would have assumed the Fire Department would have had a comment due to the right-of-way to a fire hydrant. Mr. Wilson asked for public comment.

John Whittier, 50 Rockrimmon Road, representing the Church addressed the Board and stated that they were very much in favor of the proposal. He is unaware of the letter sent by the Town but was aware of some consent forms sent out earlier and was told by the BOS' Administrative Assistant that they were on file. He re-iterated that the Church was in favor of this and appreciated the Planning Board's indulgence in postponing and continuing the discussion.

Ken Weyler, 23 Scotland Road, stated that he has been involved in this for quite awhile and explained that he brought an Article to the Town in 1992 to swap land to the Town of Kingston as a Payment in Lieu of Taxes; in 2002 exemption was granted; he discussed a title search previously done and the three deeds he received for the Gideon Lodge from the registry; they were unaware of the right-of-way which had obviously not been used, based on size of trees and the steepness of the slope. They were surprised by the Seminary claims due to the previously mentioned deeds and he hopes that this can all be worked out. He said that he is in favor of this as they had always believed that this was the location of the right-of-way; he added that the Lodge had paid taxes on the land from 1951 to 1992 which would probably give them some property rights but, regardless, they are hoping to work all that out. They anticipate some agreement with the Sanborn Seminary Trustees and the Selectmen and that this will all work out. Mr. Weyler noted that the deed had not been conveyed from the Sanborn Seminary and there might be a challenge to that claim because of the fact that the Lodge also shows a deed that was given to them by the Registry of Deeds so he is hoping it can all be worked out without going to Court.

Mr. Wilson asked if Mr. Greenwood had any advice on this. Mr. Greenwood said that if there is any doubt at all the Planning Board needs to have the doubt clarified before we go forward and end up recording something that might be clouded; the Board needs to have everyone in agreement; he added that the Board has said this repeatedly. Mr. Heitz explained that the Town's position is that they are waiting for the Seminary trustees to convey the lot to them and it is their intent to convey the other lot per Town approval to the Church and the Gideon Lodge.

Mr. Whittier says the problem exists over the Title searches that Sumner Kalman, an engineer before him in 1963 and there is quite a lot of information about that land that goes up the road quite far and there is a series of sales and adjustment to that land coming down Church Street until you get to the Children's Center and it is that Title search that declares this deed from Charlotte Wood, either granting the Gideon Lodge a piece of land and she did not own it as indicated by the Title search. Mr. Whittier said the decisions are being based on the assumed validity of this extensive Title search which indicates that the property was not properly conveyed to the Gideon Hall Society. He added that he has no problem with them using this land or having an easement for possible future septic replacement but he is not in a position to guarantee that. He offered to provide the Title research. Mr. Wilson stated that this would not be an action the Planning Board would be involved in; it would be up to the Gideon Hall Society to challenge this; the Board would be waiting on the Seminary Trustees transfer because nothing could be done on land the Town doesn't own.

Mr. Coppelman said that he doesn't think the Planning Board can act on a proposal that doesn't have everything all in place and that would include all the parties agreeing and we are still missing a conveyance from the Seminary in order to make this happen. Mr. Wilson said the Board doesn't have a letter and doesn't have a deed. Mr. Coppelman continued that the Board could deny without prejudice or continue to a time and date certain when things might be ready to go. Mr. Heitz said he was hoping that everything would have been addressed by now but he would think it would be reasonable to push it out 60 days.

Mr. Weyler talked about a previous financial agreement with another Lodge that had purchased the Lodge and now the Lodge was buying it back; this has added to the problems. He referenced a previous survey of Town property done by Carlos Quintal done in the early 1990's; due to a discrepancy with other work done for the landfill; the other work done for the Town property was never provided to the Town nor was Mr. Weyler allowed to purchase it for the Lodge. Mr. Weyler continued that at the time, Carlos Quintal did not reference anyone else owning the property and believed that the Town owned a right-of-way on the North side never mentioning anything about the South side. Mr. Weyler stated that he has not had the opportunity to review the file referenced by Mr. Whittier. He is hoping that some agreement can be reached with the Town, the Lodge, the Sanborn Seminary; get a quick claim deed which is brought to the Planning Board and everybody is happy with it, with everyone sitting down and agreeing with it and returning to the Planning Board; he is hoping to get things in motion to have it taken care of within 30 days.

Mr. Wilson suggested a thirty-day continuance knowing that if not complete, it can be continued another 30 days. Mr. Heitz explained that the church approached the Town to see if they were able to give up the right-of-way and the Town said they weren't interested in giving up access to

the water; the Town would be willing to give up the land as long as they had access via the alternate right-of-way as long as the Town didn't incur any costs; the church approached Sanborn Seminary and the discussion was that the Gideon Lodge, where they use that portion for parking, would be given to them and the Church would take the back part and the Seminary would give the other piece to the Town; he continued that he thought that everyone was on-board and that 's why the article went in; he asked Mr. Whittier to speak to this. Mr. Whittier said that Mr. Weyler is saying that they have deeds to this property. Mr. Weyler stated that they are not properly represented at these meetings; they are getting ready to buy this land back from the Haverhill Lodge group. Mr. Whittier said that their representatives, Charles Miller and Jeffrey Dowd were present in January at the BOS office. Mr. Wilson said that, regardless, the issue before the Board is that the ducks are not in a row for this Board to make a decision. Mr. Whittier said that the issue of regarding the fire access to the lake, the Fire Chief has an arrangement with the Children's Center regarding access to the hydrant; Mr. Heitz said this was true. The Board considered options regarding continuing the application.

MM&S to continue to June 19, 2012 at 7:00. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

Board Business, Continued

Mr. Wilson reminded the Board members that the next meeting was the start of the 6:45 meeting start time.

MM&S to accept the minutes of March 6, 2012. (Motion by Mr. Coppelman, second by Mr. Pope) Motion carries 5-0-2 with Mr. Coffin and Mr. Shalett abstaining.

Mr. Landry referred to the third paragraph on page three regarding the aquifer protection zone and the requirements. Mr. Quintal stated the property was not in the Aquifer Protection Zone; it was stated that it was in C-III. Mr. Quintal said that the Board made the property be three-acres and he didn't debate it with the Board at the time although the regulations in C-III don't even say an area. Mr. Landry said that the minutes then clearly reflect what the discussion was and what the outcome was. Mr. Pope said that the Board did say that it wasn't in the Aquifer and that it needed to be three-acres; whether that is accurate or not, that is what happened. Mr. Heitz said that he said that since it was a residential use than it had to be three acres; Mr. Wilson agreed that he said that but Mr. Quintal responded that it was in a Commercial Zone; it was not the use, it was the zone it was in. Mr. Wilson said that it was a moot point since it has already been amended. Mr. Heitz said that if it was in the Aquifer Zone than Commercial could go down to two-acres, right but if it was residential than it had to stay at three. Mr. Pope agreed, if it was in the Aquifer Zone. Mr. Heitz's comment in the minutes regarding the allowance of residential lots in the Aquifer should say does "not" allow within that zone.

Mr. Heitz suggested amending the minutes on Page three, paragraph 3, Mr. Heitz stated that the updated Aquifer Protection Ordinance does "not" allow lots with less than three acres for residential use.

Mr. Quintal noted that the Commercial Zone does not state a size; Mr. Landry stated that the Town currently has a two-acre minimum regardless of the zone. Mr. Heitz stated that in subdivisions the minimum lot, throughout Town, is two-acres, actually 80,000 feet and if it is in the APO, it is three acres; so the minimum is 80,000, even if the zone may not call it out specifically. Mr. Coppelman agreed that a reasonable person would assume that but if all the other zones specifically state lot sizes than this one should, too, for clarity.

MM&S to accept the minutes of March 20, 2012 as amended by Mr. Heitz. (Motion by Mr. Heitz, second by Mr. Landry). Motion carries 6-0-1 with Mr. Shalett abstaining.

Correspondence, continued

- Wicked CAS: Mr. Greenwood stated that both he and Ms. Faulconer reviewed the Wicked CAS property file and they are approved for Car/Automotive Audio Systems and the only other thing they have been approved for is limited vehicle sales of up to 10 to 12 cars per year. He continued that what they are doing internally with the diagnostic item seems to be different for what they have ever been approved for on the record. His recommendation was to bring them in and talk to them about what the new use is. Mr. Coppelman suggested that it might need an amended site plan review. Mr. Heitz asked if Mr. Greenwood thought that they were simply approved for the installation of audio systems. Mr. Greenwood said that, other than the limited vehicle sales that came last year, that is the only thing they were ever asked for. Mr. Wilson said that they may have also sold a few parts; they are approved for alarm systems, car starters, audio systems. Mr. Heitz was shown the list on the approval. Mr. Coppelman said that it was not necessarily that they couldn't get an approval for other uses; Mr. Heitz thought they had always sold performance upgrades. Mr. Coppelman noted that the C.A.S stood for Car Audio Systems. Mr. Coffin asked if this had been given to the BOS for enforcement of the Noise Ordinance per a noise complaint. Mr. Heitz said there were questions regarding the expansion of use; Mr. Coffin agreed but thought that the Board wasn't involved in the Noise Ordinance enforcement and asked if anyone followed up on that. Mr. Greenwood explained that the Board did not follow-up on that yet in order to review the file first on what was approved. Mr. Heitz stated that the Noise Ordinance needed to be reviewed and how it pertained to the Commercial District. Mr. Coffin said that the Board looked at the Noise Ordinance and it is up to the property line and what can be heard at the property line. There was discussion as to what was pertinent to the Commercial Zone; Mr. Coffin said it came into effect as what was heard at the property line and adjacent residential property where the Noise Ordinance would come into effect. Mr. Wilson said that would go to the Selectmen as it was not within the Planning Board scope. He asked if the Planning Board wanted to have them come in to review a possible expansion of the business. Mr. Pope replied yes. Mr. Wilson noted a "nod" from Mr. Coppelman, Mr. Landry; he stated that the Board would bring them in. Mr. Coffin added that the Board had decided to renew the dealer license regardless of this issue. The Board will ask Wicked CAS to come in on May 1st at 7:00; done by Board consensus.
- Diamond Oaks Golf Course documents: Revised Condo. Docs and Large Groundwater Withdrawal permit notification. Mr. Greenwood said that Attorney Loughlin and

Attorney Sullivan have discussed language revisions for further protection of the Open Space for residential use.

- Updated amended language for posting for public hearing – lay-out of streets; Mr. Greenwood explained that this is an attempt to take away the ambiguity associated with the section of the subdivision regulations regarding 8 lots; he explained the changes shown on the paperwork.

MM&S to post the public hearing for the subdivision regulation amendment for May 15, 2012. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

- Amendments to the Ordinance Book were distributed to the Board members.
- Prioritization of projects; the Board will postpone this discussion to the next meeting.
- Tupello mylar; Mr. Greenwood reviewed and all the changes the Board asked for were made; Mr. Wilson will sign the mylar.

MM&S to adjourn at 8:48. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**