

**Kingston Planning Board
Public Hearing
June 26, 2012**

The Chairman called the meeting to order at 6:48 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Richard Wilson, Chairman	Stanley Shalett
Glenn Coppelman, V. Chair	Ellen Faulconer, Alternate
Mark Heitz, BOS rep.	

Absent: Peter Coffin, Ernie Landry, Adam Pope, Richard St. Hilaire, Alternate

Also in attendance: Glenn Greenwood, Circuit Rider/Planner

Mr. Wilson noted that Ms. Faulconer would be a voting member for this meeting.

**Diamond Oaks Golf Club, LLC
Rte. 125
Tax Map R3 Lots 4, 4A, 4B, 4C and 13**

Mr. Wilson invited the applicant to speak to the Board. Kathy Sullivan introduced herself as representing Diamond Oaks Golf Club, LLC; she explained that they were here this evening to get final sign-off on the condominium documents. She explained that changes had been made following discussion with Attorney Loughlin and the Board wanted a final set to review which had been delivered. Attorney Sullivan added that the major substantive change that was made after the original conditional approval was that they had decided to make the Residential Units separate and having their own condo unit owners' association to manage and pay for any common elements that were just residential and then have it be part of the overall larger master condominium whereas originally they had just one condominium association that managed everything; when the Board received this request, it was determined that this was a major change and needed to come back for approval.

Mr. Wilson stated that he had scanned through the documents but was aware that Ms. Faulconer had read through them fairly thoroughly so he asked her to make comments. He stated that he noted that some items were still missing that had been pointed out previously such as missing referenced documents.

Ms. Faulconer explained that her review would include some comments and some questions for clarification; both documents refer to Exhibit A which was not included in the document; she stated that the exact plan being referenced should be noted. Attorney Sullivan answered that the last package should have included the actual written legal description of the property. Ms. Faulconer noted that the Board had that reference for the overall plan but not for the Residential Village plan. Attorney Sullivan stated that it would be the description for Land Unit #4. Ms.

Faulconer said that the Board was being asked to approve a document that referenced an Exhibit and she felt that the document should be complete under those circumstances. Attorney Sullivan said she understood this and suggested that the Board could approve the document on condition that Land Unit 4's description be attached as Exhibit A and that would be their intention. Ms. Faulconer noted that the reference for Exhibit A was in multiple sections of the document.

Ms. Faulconer noted a concern of the multiple references to the Land Units due to inconsistencies between the Lot Consolidation Plan map and the Proposed Limited Common Areas plan that the Board has for its files; the acreage for the two plans that the Board had did not match up; she felt it was important that there were accurate references. Attorney Sullivan stated that the legal description that was attached were based upon the Consolidation Plan that had been provided by their engineer, Steve Cummings. She re-iterated that the Condo. Docs referenced the Lot Consolidation Plan. Ms. Faulconer suggested that the plans that the Board had for the Limited Common Areas and Lot Consolidation Plans should have the same acreage and description. Attorney Sullivan explained the process for determining the limited common area in the residential section. Ms. Faulconer questioned the note about the common ownership of the lots within the project. Attorney Sullivan said that the lots are now all owned by Diamond Oaks and would provide the Board with that information.

Ms. Faulconer continued that another issue that had been raised was the water issue; she did see that there was a sentence added that the sale to the utility company would not include the right to sell or remove water; she still had concerns about this issue. Mr. Heitz explained that the Town had formed a Water District and during the site plan process, they are looking to acquire easements for water to potentially be developed for the future; the Town's Counsel has advised that this is the time to do this especially with applicant looking for additional considerations on their site plans; he said that this site had considerations about Open Space and now there are changes being proposed in the documents. He said he had raised a question about whether the applicant would be opposed to this; he sees that there are restrictions to the water going off site and if this is not the intent then the Town would be interested in securing an easement for those rights. Attorney Sullivan stated that she did not believe that the proposed changes to the condo. docs was such a significant change as to re-open the door on a major issue. She suggested that the Town discuss with the developer later in time; they don't have a suggested easement being presented at this time with no specific terms; they are at a point where there is a re-organization plan that requires them to sell one of the land units in about six weeks which gives them the money to pay the outstanding real estate taxes; a postponement due to negotiations on an easement will set them back and they won't be able to have the closing and won't be able to pay the taxes. Ms. Faulconer asked why it set this back as the conditions of approval haven't been met back; how would this take place where a land unit would be sold prior to the conditions of approval being met. Attorney Sullivan answered that there was a court order that the closing has to take place by August 2nd, so that is being held over their head; as far as the conditions being met, she said that it was her understanding that the conditions for this plan to be recorded which was needed to have them go forward with recording the condominium documents, was that the Consolidation Plan needed to be recorded; that is the hold-up for them recording the condominium declaration. She continued that once the condominium declaration is recorded, they can sell the rights in one of the land units. Ms. Faulconer stated that these can't be recorded until the taxes are paid. Attorney Sullivan explained that they have been asking the Town to

have the closing in escrow and expected that this could be worked out as it was just a mechanical issue. Ms. Faulconer explained that the Attorney working on the Bankruptcy Issue is not Attorney Loughlin and Attorney Kalman advised that the Board would need to know the specifics about how this proposal was occurring. Attorney Sullivan said she would be happy to discuss this with the Town's counsel adding that they have been trying to speak about this and has brought it up to the Board in the past. Ms. Faulconer explained that the Planning Board had contacted Attorney Loughlin to review the Open Space issues; Attorney Kalman represents the Board of Selectmen for the Bankruptcy and Tax issues; when the plan came in regarding the sale of the property, it was confusing as how this would be done prior to a final approval. Attorney Sullivan offered to review the steps with the Board; Mr. Wilson stated that the issue of merging lots prior to paying taxes was a Selectmen's issue. Mr. Heitz noted that this was one of the considerations he was referencing earlier; he was throwing the easement suggestion out there to see if Attorney Sullivan's client had an objection to it which he didn't think he would based on the language in the document; he thinks the Town has given some consideration on the Open Space issue and they are looking for consideration from the Town now on the merging of the lots. Attorney Sullivan noted that they were not saying that they had a major objection but they needed to know the terms of the easement prior to agreeing; it is very theoretical at this point. She explained that they are asking for the money to be held in escrow and for the Town to agree to merge the lots and record the plan, knowing that the money will then be released to the Town; she added that it is something that happens all the time and doesn't think it is a difficult process and is happy to review the mechanics with Attorney Kalman. She continued that the water easement would have a lot of detail and a lot of information would have to be agreed upon so it is difficult to reach this type of agreement and still reach the August 2nd deadline that they are operating under with the court. Attorney Sullivan said that her client is happy to talk to the Town about it and to take it over by eminent domain; Mr. Heitz said they are trying to avoid that type of action. Attorney Sullivan re-iterated that they were agreeing that they would not be selling water off-site which did put a limit on its worth. Mr. Wilson asked why they were setting up a management company instead of just metering it; this concerns him as this company may decide to sell the water with little municipal input. Attorney Sullivan said that under the condominium documents, they have agreed that they can't take the water off-site; she said that scenario could not happen. Mr. Dufresne said that Hampstead Area Water Company, as an example, could come in and take the system over and maintain it, test it, repair it as needed with meters on the units and charge a fee; he believes the HAWC is a public utility. Mr. Wilson noted that this has been a previous issue where a public utility pumps the water off-site, ignores local rules and has the State allow removing the water. Attorney Sullivan stated that the document does not allow water leaving the site; it couldn't happen. Mr. Heitz asked if, it was determined that the resource was there that far-exceeded the developments' need, since the applicant was agreeing not to sell the water off-site, would that be agreeable. Mr. Dufresne was concerned with future testing to establish the amount of water; Mr. Heitz confirmed that this type of testing would be at the Town's expense. Mr. Dufresne explained the different wells on the site; he stated that the well for the housing, which is 130 feet deep, is only for the housing and the clubhouse not for water to be shipped off-site. Mr. Dufresne was concerned about how the Town would establish whether there was excess water available. Mr. Heitz explained that the Town was not saying that the resource even existed; since they have already agreed that the water is not going off-site, he wasn't giving up anything. He continued that, if in the future, it is deemed that a water resource needs to be developed, the Town would do the testing, etc. at their expense.

The Town is trying to secure water rights at specific areas of Town but not at the detriment of the property owner; only an easement determined to be in excess of the development's needs. Mr. Dufresne said that there was time, after acceptance of the condo. docs, due to the conditions of approval of the plan, to discuss this possible easement. Mr. Dufresne stated that the condo. docs. express very clearly that there is not intent to take or pump water off-site. Ms. Faulconer stated that she understood the developer's intent but was concerned that the condominium documents might not protect the Town as much as it seemed; once the declarant sold the water company, she was not sure whether the condominium documents' restrictions would prohibit a public utility from selling water; Attorney Sullivan said that the sale of the water to a utility restricts the sale from including water sales off-site; Ms. Faulconer said that, based on past experience, she questioned this restriction which is why the Town is interested in the easement. Mr. Dufresne proposed the Town hold-up the signing of the site plan regarding the building of the houses in the residential unit until there is an acceptable agreement on the water easement. Mr. Heitz said that it was not his intention to hold up the condo. docs but that they were looking for some concessions from the Town; he felt that since Mr. Dufresne's intent was to not sell water than he probably wouldn't be opposed to giving the Town the right to any excess water rights. Mr. Dufresne agreed with that adding that the right paperwork would need to be in place in order for him to say yes. Possible specifics were discussed.

Attorney Sullivan explained that Exhibit D would not be included until the development phase of the residential units was done.

Ms. Faulconer stated that the Amendment of Declaration sentence concerns her; she referred Attorney Sullivan to page 14; this states that the documents can be amended by agreement by at least 75% of the common interests owned by all owners; there are certain aspects of the agreement that would be detrimental to the Town's interests if they could be changed. Attorney Sullivan suggested adding that the restrictions regarding the water provisions could not be changed. Ms. Faulconer thought it needed to be added to a couple of sections; she was aware of the restriction prohibiting changes to Open Space per Attorney Sullivan's review with Attorney Loughlin. Ms. Faulconer noted that there were other sections in the document, such as age restriction, that needed to be clarified that they could not be changed. Attorney Sullivan asked for a list of items for this restriction. She stated that this had been reviewed for a long time; Mr. Wilson clarified that she had been reviewing the document with Attorney Loughlin for a long time but not with the Board; Ms. Faulconer noted that the current document had been received May 21st and this is the public hearing after receipt of the document and the proper time for the Board's public review with the applicant. Mr. Wilson added that Attorney Loughlin advises the Board, he doesn't control the Board. Attorney Sullivan apologized for sounding frustrated. Ms. Faulconer suggested that the sentence clarifying that road repair and solid waste removal was not provided by the Town of Kingston would be a section that should not be able to be changed by vote of the Association.

There was clarification regarding Open Space and use by the residents (p.9 and p.4); Attorney Sullivan noted that the Open Space easement could not be used for anything other than recreational activities but it did not mean that the Limited Common Area cannot be used for a commercial golf business; the Unit owners enforce the Open Space easement; the Open Space is for the benefit of the residential unit owners. Attorney Sullivan explained that the Limited

Common area is assigned solely to the Golf course but it is still subject to the Open Space easement that is enforced by the Homeowners' Association and the Residential Units. Ms. Faulconer would like Attorney Loughlin's input on these sections as it applies to the other Open Space issues. Attorney Sullivan noted that the Limited Common Area is the entire Golf course; this is shown on the Consolidation Plan as LCA 3. Mr. Wilson suggested that the applicant might want to add that it excludes greens and tees, for their benefit. Attorney Sullivan explained that the Golf Course unit, in the Open Space section, does state that the unit may be used for golf which would include components of a golf course; section "u" was read. Mr. Heitz explained that Mr. Wilson was suggesting them being protected. Attorney Sullivan says that there is the ability of the Condo. Board to put on restrictions of the use of the Common Area; for example adding that no one can drive a golf cart over the green.

Ms. Faulconer asked for a clarification on item "h" on page 11; the right to alter the land units; she asked if further Planning Board approval was needed to alter the land unit sizes. Attorney Sullivan explained that this statement was needed to provide flexibility during the development of each unit; this would not impact any existing site plan conditions.

Ms. Faulconer asked Attorney Sullivan to point out the "description of the Golf Course, limited common area" as noted in Exhibit A; Attorney Sullivan stated that this was missing in the packet, but they did have it and would provide it to the Board. Ms. Faulconer stated her main concerns with the document: missing exhibits/documents/land description; restrictions on the water; ability to amend the document in areas that are pertinent to the municipality. Attorney Sullivan noted that the areas talked about were +55, maintenance of the roads, garbage pick-up, water, description of the golf course' limited area.

Mr. Wilson suggested a statement saying that all conditions of the site plan approval are not adjustable by the Association, rather than list them separately. Ms. Faulconer asked if there was a note on the site plan regarding garbage pick-up and road maintenance. Mr. Wilson said there would be by the time the process was over; he suggested a final paragraph about not changing site plan approved items rather than listing them individually; Ms. Faulconer said she was comfortable with that; Ms. Faulconer was not interested in control of changes to the document that were not specific to the Town. The residential conversion process was discussed. Attorney Sullivan will try to draft something that addresses the site plan issue. Mr. Heitz said that it was important to clarify that items such as road maintenance would not be changed due to a positive vote by the unit owners. Attorney Sullivan suggested language such as "there can be no amendment that imposes some burden on the Town or alters an agreement that we have with the Town as far as the site plan approval". Previous condominium issues were discussed; land development, well radius issues were discussed. Mr. Shalett asked if the Board needed a motion regarding the inability to change conditions of the plan and document. Mr. Wilson said the applicant is saying that will change the language and the Board can review at the next meeting.

ACTION ITEM: Ms. Faulconer will get the list to the applicant ASAP.

Attorney Sullivan will amend the language and get to the Board quickly; she asked if the Board could review and contact her with any comments realizing that they would not be binding; she will contact Attorney Loughlin and Attorney Kalman.

Mr. Wilson suggested that if the Board reviews the document and has any comments, they should send them to Ms. Faulconer in the Planning Board office to avoid any issues with the Right-to-Know law.

MM&S to continue the Diamond Oaks public hearing to July 17th at 6:45. (Motion by Mr. Coppelman, second by Mr. Shalett) **PUNA**

Mr. Coppelman asked to have the record show a public thank-you to Ms. Faulconer for taking the time to go through and make notes for the documents. There was discussion regarding legal input with the Board and direction given to Town counsel for review of documents.

Board Business

Correspondence:

- Voluntary Lot Line Adjustment; signed by Chairman
- Ducks on the Pond asking about letter regarding next phase

ACTION ITEM: Mr. Greenwood will send a letter to Ducks on the Pond stating that they can complete the plan as approved; comply with the plan.

- Master Plan guide for Historical Resource Chapter received.

ACTION ITEM: Ms. Faulconer will contact HDC; see if they are interested in assisting with preparing a recommendation for a Cultural/Historical Resources Chapter for the Master plan; give them the guide.

- Livable/Walkable community “tool” kit
- GeoInsight proposal handed out for the Board’s review.
- The owner of Wicked CAS asked for a letter from the Board regarding what they permitted to do on site at this time; the Board will not provide a letter as they are currently in the process of reviewing with no determination at this time other than previous approvals; they suggested the applicant get the previous approvals and any prior minutes regarding their review.

Upcoming Site Walk: Mr. Heitz reviewed a phone call he had with the property owner for the Wicked CAS site; Mr. Greenwood noted that restrictions placed on the Board was the same as the owner saying that the Board can’t do a site walk. The public process and access to a site were reviewed. Mr. Greenwood explained that site plan review can make a determination that a sound issue exists and limitations can be added.

Committee Updates: Mr. Coppelman reviewed action from the HDC meeting. Mr. Greenwood stated that solicitation letters had gone out; Mr. Coppelman announced that the next meeting is scheduled for August.

Tax Map Updates: Ms. Sanford in the Selectmen's office had a couple of questions regarding tax map clarification.

ACTION ITEM: Ms. Faulconer will have marked up plan for possible tax map changes for the Board's next meeting.

Impact Fees: Mr. Greenwood told the Board that he had spoken with Bruce Mayberry about the Impact Fees project; Mr. Mayberry indicated that he had spoken with representatives from Newton who wanted to update the School's impact fee.

ACTION ITEM: Mr. Greenwood will send a letter to the School Board to confirm whether the District is interested in updating their Impact Fees, based on Newton's apparent interest.

Mr. Wilson suggested the Planning Board could always ask to meet with the School Board to discuss this.

Master Plan: Mr. Greenwood handed out a memo re: Master Plan; propose updates to include Water District, Aquifer Protection Ordinance changes/updates; Transportation section hadn't been updated for over a decade.

MM&S to adjourn at 8:50. (Motion by Mr. Coppelman, second by Mr. Shalett)