

**Kingston Planning Board
Public Hearing
May 21, 2013**

The Chairman called the meeting to order at 6:45 PM. There were no challenges to the legality of the hearing.

Members in attendance:

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

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Ellen Faulconer, Admin. Asst.; Robert Steward, Building Inspector; Rich St. Hilaire, Road Agent; Dennis Quintal, Town Engineer; Don Briggs, Jr., Police Chief; Ellie Alessio, ZBA Chair; Peter Broderick, Health Officer/Selectman and George Korn, Selectman.

**Lori Buswell/Brigitte Imonti
12 and 13 Lions Way
Tax Map R9 Lot 21 and 22
Lot Line Adjustment**

Mr. Wilson handed out the plans and explained where the property was located. Roscoe Blaisdell, introduced himself as the land surveyor representing the applicant; he explained the project which was adding 3/10 of an acre to the property to replace an existing septic system with a better system. He requested a waiver for the granite marker requirements to avoid disturbing an existing rock wall; he will add a pin next to the original marker. Mr. Greenwood had no concerns with this plan, it didn't add a new lot; Mr. St. Hilaire had no issues with this plan.

MM&S to accept the plan for jurisdiction. (Motion by Mr. Coppelman, second by Mr. Landry) **PUNA**

Mr. Heitz asked if there were any concerns with waiving the soils and test pit requirements. Mr. Blaisdell noted that the test pit was done and witnessed by the Town with good results. Mr. Coppelman asked if the lot line adjustment wasn't approved, if the site could still support a septic system. Mr. Blaisdell answered that one did exist but this would allow for a better one with better setbacks. Mr. Coffin noted that the Board had done a waiver for granite markers previously under similar circumstances.

MM&S to waive the granite marker requirements. (Motion by Mr. Coffin, second by Mr. Pope) **PUNA**

Mr. Greenwood explained that HISS is one of the requirements for a subdivision which a lot line adjustment is but it is not typically required for a lot line adjustment as it is not a creation of a new lot.

MM&S to waive the HISS, topography, test pits and wetland flagging. (Motion by Mr. Coffin, second by Mr. Coppelman) **PUNA**

Mr. St. Hilaire asked if there were letters from both property owners signing off on the proposal; Mr. Wilson confirmed that the Property Owners Acknowledgement forms and well as the initial application were signed by both parties and were on file.

MM&S to approve the Lot Line Adjustment. (Motion by Mr. Pope, second by Mr. Coppelman) **PUNA**

James Duval
4 Hunt Road
R55 Lot 21D

James Lavalley appeared before the Board, representing Mr. Duval. Mr. Lavalley explained that they had created an existing conditions plan for the site; Mr. Duval is operating a welding shop on the property. He read the basic notes: hours of operation were listed at Monday through Saturday, 7 AM to 7 PM; total employees on the site: 3, generally only 1 person; customers were 1 to 2 per day; deliveries from a tractor trailer truck would be approximately 1 per month; no signs were proposed; the site is in the Rural Residential zone, not in the Aquifer Protection Zone. He continued that Mr. Duval has no intention of changing what he is currently doing; he is operating a business and needs site plan review.

Inspector and Department comments were read by Mr. Wilson. Health: the septic is designed for a three bedroom house, not for the business; the business is currently hooked up to the septic with no permit for adding this use to the septic system. Conservation: there is no north arrow on the plan, there is no information about the discharge from the business to the septic system, concerns about the well being tested for any chemical use in the shop. Building: the building permit was for a one-story building without plumbing for personal use only; it is now a two-story building with plumbing with a business inside, all done without any permits. The Town Engineer read his comments with a list of items missing from the plan, questions concerning septic and use on the property, stormwater run-off from the paved driveway, if welding or other commercial activity occurs on the outside pavement then there should be stormwater controls in place, if no activity is going to occur outside then there should be a note on the plan.

Mr. Lavalley said that Mr. Duval does most of the work off-site; items are only occasionally fabricated on the site; he said he was not sure about the permitting issues with the septic; they can locate and deal with the other issues on the site. He was not sure of the use of the gravel area adding that there has basically been minimal use outside. He suggested the neighbors comment. He added that unless Mr. Duval can provide further information the Board could continue the review so he could get further information.

Mr. Wilson noted that he had been in the neighborhood at 4:30 AM and he witnessed a truck going into the property and turning on the lights in the building. Mr. Coppelman stated that he did not believe the Board was ready to accept jurisdiction of the plan since there were items missing. Mr. Coffin asked if the abutters list should be on the plan. Mr. Greenwood said it was not a requirement but it is usually done. Mr. Lavalley stated that this could be added. Mr. Coppelman asked how this had come to the Board; the history was reviewed. Mr. Lavalley said that Mr. Duval had been operating since 2000. Mr. Wilson stated that the building permit specifically said that this was to be for personal use; Mr. Lavalley's comment on the length of the activity was not pertinent if the use was illegal.

Abutters comments:

Gary Guphill, 70 Rte. 125: He went on the property for the first time today; everyone was working inside; it looked more like storage for steel; he had never had a problem with noise, truck traffic or materials; had no problems at all.

Mr. Wilson stated his agreement with Mr. Coppelman to not accept the plan for jurisdiction. Mr. Lavalley stated that they had no problem with non-acceptance at this point. Mr. Heitz asked if the Board could continue the discussion without jurisdiction to address some of the concerns being raised. Mr. Coppelman explained that this did not mean that the hearing couldn't be continued but it didn't start "the clock" for the Board's timeframe. Mr. Heitz referenced the Health Officer's comments regarding the original septic plan being designed for the three bedroom house adding that the applicant may need to update the plan and at the minimum have an updated design in case of failure. Mr. Wilson said that they will want to see all the load rates. Ms. Faulconer stated that the issue may also have to do with the 3 additional employees on the septic capacity. Mr. Pope said that the "use" is part of the discussion noting that the lot abuts the C-III zone. Mr. Coppelman stated that it was currently a residential use. Mr. Wilson suggested that the building permit needed to be upgraded, it said single story and was two-story; there were no electric or plumbing permits pulled; there should be a basic drawing of the structure.

Mr. Coffin read the requirements for uses in the Rural Residential zone; he believed that the welding business required ZBA approval as it is not listed in the permitted uses; he doesn't see it as specific to the uses. Mr. Greenwood suggested that it fits the broader scope of service repair; it seemed to fit in as a general repair. Mr. Coffin did not think that it fit in with those uses as the key element in the examples given were repair of small objects. Mr. Coppelman asked the nature of the size of the items he would work on. Mr. Duval said that they were items such as railing, sheet metal, some stairways; he said only 20% is welding, most of it is fabrication adding that he can operate inside the building, he does not need to operate outside of the building. Mr. Coffin asked if it was manufacturing. Mr. Duval answered "yes". Mr. Coppelman explained that the site plan goes with the land; someone else could do it at a larger scale and still fit in with the site plan approval adding that this is something to consider. Mr. Greenwood stated the his father was a welder and the majority of the items he did were small with the larger items being off-site but he added the note regarding the zone and use as it was justifiable for the Board to discuss.

Abutters comments, continued: Tina Flagg understood that the approval goes with the owner not the property. Mr. Coppelman explained that it was the opposite. Ann MacKean-Hartery, 6 Hunt

Road, explained that the current business is at her backyard and exists without a problem but if it goes commercial, it is a problem to her. She stated that she has no problem with how he has been operating but questions what might happen when he moves it and the site is commercial. She added that the hours on Saturday from 7 AM to 7 PM is a problem for her. Mr. Heitz explained that having 3 employees bumps him out of the possibility of an in-home business. Questions were raised as to why the Town was saying there were three employees. Mr. Heitz stated that the submitted plan states there are three employees, not the Town; he was just reading from the plan. Previous zoning of the site was reviewed. Mr. Duval said that he just wants to continue the business as they have; they had originally had the barn for personal use. Mr. Wilson reviewed the approval process that had occurred at the time as he had been involved as building inspector for part of the process; he re-iterated that the permit specifically said it was a storage structure for personal use only. Mr. Duval stated that at the time it was for personal use. Mr. Heitz noted that, at the time, there was no indication that it would be used for anything but personal use. Mr. Wilson said the permit says the building will be one story with four windows. Mr. Duval said there has always been a second floor.

Mr. Coppelman stated that he had reviewed the Residential Home Occupation Ordinance which has items that excluded this application such as tractor trailer deliveries, etc. Mr. Shalette stated that the applicant said that he works on sheet metal, he asked if this would include cars and vehicles. Mr. Heitz asked if that would include an excavator. Mr. Coffin stated that auto repair and service is not permitted/excluded from this zone. He continued that “fabrication” is not a “service” or a “repair” however it is neither included or excluded in the uses so it should go to the ZBA. Mr. Shalett asked if this is interpreted as a gray area. Mr. Coffin said that it does not include fabrication or manufacture. Mr. Coppelman said the permitted use in the zone is primarily for service and repair. Mr. Duval explained his process. Mr. Coffin said the process is fabrication; he is not saying it is onerous but it is not permitted. He added that vehicle repair is prohibited.

MM&S to send the applicant to the ZBA; to apply for a use variance in the Rural Residential zone. (Motion by Mr. Pope, second by Mr. Coffin) **Motion carries 6-1** (Mr. Heitz opposed).

Mr. St. Hilaire commented on the driveway being on to close to the driveway, adding that it is an existing condition. He wondered if this needed to be addressed through the Planning Board of whether it was a ZBA issue. By consensus, Mr. Wilson stated that this was a Planning Board issue. Mr. Duval stated that the driveway hasn't been changed. Mr. Coppelman asked if the driveway was in the same location as when he purchased the property. Mr. Duval confirmed that it was. Mr. Lavalley asked for a 90-day continuance so Mr. Duval could get the plans amended and meet with the ZBA. Mr. Heitz asked if there were any other Board concerns to bring to Mr. Duval's attention. Ms. Faulconer suggested the Mr. Duval review his hours of operation stating that he may be able to appease the concerns of his abutters if it was feasible for his business to operate within different hours on Saturdays. Mr. Wilson suggested adding a note concerning limitation of size of material; Mr. Coppelman suggested supplying a list of types of items might be a good idea. Mr. Coffin suggested that the items would need to fit inside the door to be able to work inside the building, only. Mr. Heitz added that the Board seems to have concerns with auto repairs and repairs of heavy equipment. Mr. Duval stated that he did a favor once for heavy

equipment which was done outside of the building and there was a fire. Mr. Wilson suggested adding limitation in the notes; adding what you are not going to do. Mr. Coppelman said he should provide a list of non-hazardous materials that are used. Mr. Quintal said there should be a note that no hazardous materials will be used on the site. Mr. Duval said that there is no sand-blasting; no power-washing; only new materials are being used for fabrication; he only uses mineral oil. Mr. Pope suggested adding those items on the list of things not being done on the site. Mr. Landry asked if there was adequate buffering on the property; there may be a question as to the amount of buffering and whether it is adequate. Mr. Duval stated that he had recently planted new trees; Mr. Wilson stated that this needed to be shown on the plan. Mr. Coppelman added that Mr. Duval needed to update the building permit and septic before returning to the Board.

MM&S to continue to August 20th at 6:45. (Motion by Mr. Pope, Second by Mr. Coffin)
PUNA

John Ingalls
Solar Hills
78 Hunt Road
Tax Map R6 Lot 14

Mr. Pellegrino brought revised plans to the Board. Mr. Wilson explained that the Board had recently found out that the abutter list was incorrect; it appeared that the abutter list provided to the Board was an old one and an abutter was not notified. Mr. Greenwood stated that notifying abutters is a basic point and needs to be done correctly; the applicant can get on the next public hearing agenda; he added that the office had checked to see if it was a recent transfer but it had occurred in 2011. Mr. Wilson asked if we can continue to next month and just notify the one abutter. Mr. Greenwood answered that the Board has done that in the past. Mr. Heitz suggested that the applicant may want to re-notify all abutters in case of challenge. Mr. Pellegrino consulted with his attorney and agreed to notify all abutters again.

MM&S to continue to June 18th at 6:45. (Motion by Mr. Pope, second by Mr. Heitz) **PUNA**

Gary Hammond
Seasons by the Lake
22 Main Street
Tax Map U5 Lot 61

Scott Gleason, an attorney from Haverhill, MA, introduced himself as representing Mr. Hammond, explaining that they were here to address the Cease and Desist as requested by this Board. Mr. Wilson stated the he and Mr. Coppelman had attended a meeting with the Board of Selectmen and it was suggested Mr. Hammond come to the Planning Board to see about the compliance of the site. Mr. Wilson noted that the concrete slab that had been installed had been removed and new turf was put down instead. Mr. Gleason provided the Board with pictures showing the sod where the concrete had been poured. Mr. Heitz reviewed the previous actions: the BOS received an enforcement action for a Cease and Desist from the Board; this was accompanied by a letter from the applicant; a letter from the Planning Board stating that no

further review was required as long as the owner complied with the existing site plan and that any changes needed to come back to the Board with an amended site plan for site plan review. The BOS extended the owner the courtesy of coming to their meeting to talk about the issues and changes from the original plan. The applicant was looking for a way to open and address issues after operating; the BOS said they wouldn't overturn the Planning Board's request for the Cease and Desist unless the majority of the Planning Board requested rescinding the C & D.

Mr. Wilson stated that the percentage of lot coverage was an issue; and adding the concrete was a big issue. He continued that the parking lot has been paved since he has been in Town, over 28 years; the previous septic had not worked properly and had to be pumped weekly. Mr. Heitz said that the pavement in front is still there. Mr. Coffin noted that the plan shows pavement on the side and rear that has been removed. Mr. Gleason distributed more photos showing the removal of the pavement and the gravel now replacing it. Mr. Wilson stated that a fence has been installed limiting access and egress on the site. Mr. Gleason submitted a photo showing the new fence. Mr. Coffin stated that the plan originally shows 2 accesses; with the fencing added it is better and makes sense. Mr. Wilson said that the area the previously showed the picnic tables had always had parking on it. Mr. Coffin said there is a current entrance that is not shown on the plan. Mr. Wilson stated that it has been there for 20 years. Mr. Coffin said it looks like there may have been access. Mr. Wilson said there is a border shown and then it stops which shows the entrance that has been there forever. Mr. Hammond said that 18-wheelers couldn't access the property, safety-wise; not they can come in off the street and now it is safer; the trucks can come off the road for deliveries; picking up the dumpster is now safer. Mr. Hammond explained that he worked with the Chief of Police about parking and the fencing controls the traffic; he noted that the picnic tables have been moved and the trees cut to add parking. Mr. St. Hilaire stated that there is no new driveway; there is less lot coverage now; the patio out back was removed. Mr. Hammond said that previously a side driveway was paved, this was now removed so there is less lot coverage. Mr. Pope stated that the owner has addressed most of the issues, asking if the Board had anything else to discuss with him. Mr. Coppelman said that the Board should decide on whether expedited review is appropriate and read the requirements (p. 904-2, A through F). Mr. Pope stated that the only points of discussion are D and E. Mr. Pope said that everything that it different is already shown on the plan. Mr. Wilson said that the major difference is to try to add some sort of catch basin for run-off. Mr. Coppelman said that this issue came up at the Selectmen's meeting and didn't know if Mr. Hammond and his attorney had talked about that since then. Mr. Hammond said that the issues are within the 300 feet of the Shoreland Protection and proximity to septic system. Mr. Coppelman asked Mr. St. Hilaire where the nearest catch basin was. Mr. St. Hilaire stated that the Town Engineer was more qualified to address this issue however he said that there is a lot of water that runs down the side of Main Street and it has existed for over 20 years; the State forced the previous owner to put in two curb cuts and limit egress when it was a State road; there had been issues with the 100-year floods; he stated that the driveway at the Recreation Building will be paved which should help with the run-off in the area; all the water ends up in the river down below; he needed permits and State permission to pave the adjacent Town property. He estimates a cost of \$60,000 to \$70,000 to fix the catch basin and the detention pond added that \$70,000 is a conservative number.

Mr. Quintal stated that there are other types of Best Management Practices to control run-off; rain gardens, storm berms for examples. Mr. Hammond can have his engineer look at that; it is

less expensive. The requirements come from the Federal Government to treat run-off; the Town has Stormwater Management regulations in place to try to get something to control your site and improve the water downstream. Mr. Hammond said he is having someone look at it; if he can put in an infiltration trench, he will. Mr. Quintal suggested Mr. Hammond have his engineer call him; he commented on the septic design and asked if he had required permits from State DES and Shoreline permit adding that if he was making less impervious surface, the State might not require more. Mr. Wilson asked if it was reasonable to allow a certain timeframe to work out issues with their engineer, Mr. Quintal stated that it was reasonable and appropriate; he was sure that the engineer in conjunction with himself and Mr. St. Hilaire could come up with something. Mr. Coppelman stated that he was pleased to see this effort and these changes in a short time period to bring the site back to what it was and in some cases, better; he continued that it would be food to work out a way to improve the handling of the Stormwater and to work with their own engineer for a solution. Mr. Wilson asked if there were other issues other than Stormwater.

Mr. Coppelman said that, in respected to the expedited review, there were some differences but also some improvements. Mr. Greenwood noted that the Board was looking at a twenty-five year old plan. Mr. Coppelman stated that there had been a lot of activity in the last week making it better adding that the only thing missing was Stormwater Management. Mr. St. Hilaire stated that the owner had brought the lot back to how it was before he bought it; he noted that the upper parking lot was bigger; he and Chief Briggs had spoken with the owner about it to make parking better; he continued that the owner had committed some sins regarding the buffering, but the removal of 100 foot trees doesn't really impact the buffers; they don't provide any real buffering. Mr. St. Hilaire stated his belief that this owner is more than willing to work with adding rain gardens for water run-off. Mr. Coppelman stated that, all things considered, this was close enough for the requirements of expedited site plan review; if the steps during the week had not been taken, then it wouldn't have qualified.

MM&S to qualify for expedited site plan review. (Motion by Mr. Coppelman, second by Mr. Pope) **Motion carries 6-0-1** with Mr. Heitz abstaining. Ms. Faulconer stated that 12 copies of the amended plan had been received and distributed.

MM&S to accept the plan for jurisdiction. (Motion by Mr. Pope, second by Mr. Coppelman)
PUNA

Mr. Coppelman stated that there should be some intermediate steps for managing the run-off with a timeframe set for it to be finished. Mr. Wilson said the Board should give 90 to 120 days to give him time to meet with the engineer and get the work done. Mr. Pope said the Board is asking him to do something in response to an existing condition; if he had been operating under the approved site plan, he wouldn't be here. Mr. Coppelman said that is why he is in favor of letting him open and then addressing the issue. Mr. Pope re-stated that the conditions were already existing on the site. Mr. Gleason said that Mr. Hammond would be happy to be back in July with his engineer to discuss the proposal; it is something he wants to do. Mr. Wilson suggested August to give them sufficient time. Mr. Coppelman suggested continuing to August and in the meantime, lift the request to the BOS to allow the business to operate. Mr. St. Hilaire stated that the Board should not give a conditional approval so the owner could get a Business Occupancy Permit. Mr. Broderick spoke about the fact that he trusted the applicant and he was

sure that he would do as he said. Mr. Wilson explained that this is not a trust issue adding that this was not an issue before the Board. Hours of operation were added to the plan: Monday through Sunday, 7 AM to 10 PM, year-round. When asked about snow storage, Mr. Hammond said that he would remove the snow from the site.

MM&S to approve the plan as presented with the addition of the hours of operation being added to the plan. (Motion by Mr. Pope, second by Mr. Wilson) **Motion carries 6-0-1** with Mr. Heitz abstaining.

Board Business

Correspondence:

- Reviewed Ovitt, LLC and revocation

ACTION ITEM: Add revocation hearing to next public hearing.

- Invoice from Civil Construction – approved and signed
- Letter from Galloway Trucking

ACTION ITEM: Send letter of reply, confirming compliance

- RPC dinner – Board members should tell Ms. Faulconer if attending; Mr. Wilson's schedule in conflicting with him being a commissioner; anyone interested should let him know; go to dinner as test run.

ACTION ITEM: Confirm reservations/Prepare PO for Board members

- Compliance question re: outdoor food sales at Bucco's; discussion regarding site plan approval, expansion of use, seasonal sales, hawkers and vendors permits/licensing and requirements. Board will review at next meeting.

ACTION ITEM: Ms. Faulconer to get copies of Hawkers and Peddlers license; permitting requirements – Town and State.

- Compliance question: backlit sign at Bucco's; HDC should contact BOS
- NE Atlantic Properties: signs for NE Atlantic and Andy's Auto were discussed.

ACTION ITEM: send enforcement request to BOS re: portable sign and sign on truck at Northeast Atlantic Properties

- Letter to Lavallo Assoc. re: phone call and 6 Chase Street, needing amended mylar; copy to property owner.

ACTION ITEM: Ms. Faulconer to check requirements of septic systems in Aquifer; 6 feet v. 4 feet.

Plan Review:

Dave Smith/ former Bakie Farm: add to agenda

MM&S to grant waiver request for bond reduction from \$5000 to \$250. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

Dworman/ New Boston Road: received approval from ZBA; add to agenda.

MM&S to grant waiver request for bond reduction from \$5000 to \$2000. (Motion by Mr. Landry, second by Mr. Coffin) **PUNA**

MM&S to adjourn at 9:25. (Motion by Mr. Pope, second by Mr. Wilson) **PUNA**