

**Kingston Planning Board
Public Hearing
August 6, 2013**

Mr. Wilson called the public hearing to order at 6:50 PM. There were no challenges to the legality of the hearing.

Members in attendance:

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

Absent: Richard St. Hilaire, Alternate

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer; Ellen Faulconer, Administrative Assistant

Impact Fee Assessment

Mr. Wilson opened the continuation of the hearing and invited Mr. Mayberry to address the Board. Mr. Mayberry reviewed the proposed alternate Impact Fees for the Fire Department; reviewing the 80/20 split versus the 70/30 split; this assumes everyone getting adequate protection and winds up raising the residential portion a bit. He explained that the 10% discount proposed for the schools is based on the anticipation of decreased enrollment. Mr. Mayberry noted that adding in the Police Department fees might be premature as there is nothing currently in the CIP about an addition to the existing building.

Mr. Heitz asked about adding information regarding the exclusion of the schools impact fee for 55+ housing. Mr. Mayberry explained that the ordinance allows for that waiver; Mr. Heitz expressed concern that without the clarification an applicant might argue that elderly housing is exempt from any of the fees. Mr. Mayberry will add a notation referencing the ordinance and the elderly exemption from the schools portion of the fees.

Questions were raised regarding the 10% reduction for the schools. Mr. Mayberry stated that the Board is trying to avoid appearing disproportionate; he explained that the assessment is based on the Town's enrollment/consumption.

Mr. Mayberry explained how the Fire Department calls were determined in regards to the residential/non-residential proportions noting that non-residential calls include accidents not associated with a specific property. He noted that both the 80/20 and 70/30 proposals are legitimate; coverage and protection is the intent. Types of commercial uses and differences between them were discussed; Mr. Mayberry explained that the data was unavailable to determine a tiered commercial system.

Mr. Wilson recommended adopting the 10% guideline for the schools; buildings and apparatus for fire; leave police in the table; he clarified that he was referring to the revised table. Projects in the CIP, refund procedures, timelines regarding refunds, where refunds are returned, complications involved with refunds were reviewed. Mr. Heitz asked if it was the developer/owner's responsibility to ask for the refund. Mr. Mayberry explained that it was an affirmative action for the Town to do; the statute puts the obligation on the Town. Mr. Greenwood reviewed Brentwood's experience with returning fees. Due to the complications involved, Mr. Wilson suggested leaving the Police out of the fees at this point.

MM&S to accept the revised proposal (table) as presented using the 10% column for the Schools, commercial 80/20 split, apparatus and buildings for the Fire Department, remove the Police section, add in line about the School exemption for Senior Housing. (Motion by Mr. Pope, second by Mr. Coppelman) PUNA

Mr. Mayberry will revise the table based on tonight's decision and get the updated table reflecting the changes to the Town.

**John Ingalls
Solar Hills
78 Hunt Road
R6 Lot 14**

Mr. Wilson talked about the receipt of the letter from Mike Cuomo that stated his agreement with the Town Engineer that Lot Four did not meet the requirements and needs to be reconfigured or the Board needs to waive the requirements.

Mr. Pellegrino read from previous minutes; he noted the regulation says 60,000 square ft. of upland. Mr. Lavalley reviewed inclusions on Lot Four; he stated that the building envelope is less than the 15% slope. Mr. Heitz asked the size of the building envelope; Mr. Lavalley answered that he hadn't calculated that. Minimum requirements, slopes, building areas were reviewed.

Mr. Lavalley acknowledged that this is a new submission but the lot isn't different from the previous submission; he recognized that it is up to the Board to determine if they require more land but he didn't think it was necessary. Mr. Pellegrino stated that some of the 15% slopes will be taken care of with current dredging and filling. Mr. Heitz reviewed the ordinance. Mr. Pellegrino read a letter from Mike Cuomo dated April, 2012; he read from the minutes of April 17, 2012. There was discussion explaining the difference between the required 60,000 sq. ft. and the building envelope. Mr. Heitz asked if this was the same plan the Board had previously reviewed without any changes; Mr. Quintal said setbacks has been altered because of the corrected wetlands and setbacks; he noted that the upland square footage had been issue with him since the beginning. He stated that the issue in the regulation was a determination of suitable for building. The appropriate amount of square footage for a building envelope was discussed. Mr. Quintal agreed that this lot had an appropriate building envelope; he said the question was an interpretation of the regulation regarding being suitable for building. Sizes of lots, history and interpretation of the regulation was discussed, slopes required for certain types of buildings/garages/septic designs were noted. Mr. Pope stated that he did not think this issue

should hold up the approval. Mr. Quintal stated that the clarification regarding the criteria in the regulation hadn't been answered by Mike Cuomo prior to the current letter. Mr. Pellegrino noted that there is not a big area that needs to be adjusted on the lot.

The specifics of the 60,000 square feet, 15% slopes, ability of the Board to require more land due to the slopes was reviewed. Mr. Quintal said that the Board needed to look at the original conditions not just the work to get to the requirements; the Board needs to review the intent of the rule; he re-iterated that the question is the Board's interpretation; he stated that the setbacks have changed, the vernal pools setbacks have changed. Mr. Quintal confirmed that the wetlands setbacks are included in the 60,000 sq. ft. Mr. Greenwood stated that his impression of past decisions is that sideline buffers and setbacks have not been included as buildable but noted that this issue has not seen this degree of discussion in the past. Mr. Heitz explained that previous issues had to do with requiring contiguous land to establish a proper building envelope. The Board determined that the minimum requirement is for 60,000 square feet of dry contiguous land with the interpretation being that it is suitable for building so the applicant does not need a waiver for this requirement. Mr. Wilson noted that no one had an objection to the statement that Lot 4 does not need a waiver.

Mr. Wilson stated that he had a discussion with the Road Agent who hated to see the cul-de-sac installed only to be removed within the near future. Mr. Quintal stated that it was his understanding that the intent of the road is to be continued; there may be a point that the new road may be proposed prior to the cul-de-sac being installed that would show no need to install the cul-de-sac. He noted that he had the bond estimate for the Board to review and approve. Mr. Wilson stated that he wanted to make sure an appropriate bond was in place to finish a cul-de-sac if required. The current and proposed ROW and Fire Easement was discussed. After much discussion, it was determined that the Fire Easement shown on the plan was still on the property's deed and a valid Town ROW. Clearing of the proposed road extension and the proposed 40 ft. wide ROW easement was reviewed.

There were no public comments. The Board discussed the specifics of any possible motions specific to conditions, State permits and conditional approvals.

The conditions of the Bond were discussed; bonding the whole road vs. the finish top coat. Mr. Pellegrino asked to be able to build the road without a bond and post the bond for the cul-de-sac and final top coat only. Mr. Greenwood reviewed the language in the Performance Bond. Mr. Wilson noted that the Performance Bond language may need to be changed to include bonding for reclamation/repair of the site. Mr. Heitz stated that Mr. Pellegrino couldn't get any building permits without the bond for the remaining portions of the road. Mr. Lavalley noted that some towns require an Erosion/Sediment Control bond.

The Board discussed the requirements for vesting. The Board agreed that the vesting of the Substantial Improvement of the project was at the point that the binder is on the road. The proposed right-of-way easement will be cleared either during the extension of the roadway or by Mr. Pellegrino if the road doesn't continue. Possible conditions of approval were discussed; it was determined that all of the pending items were not part of the approval process.

**MM&S to approve the plan as presented. (Motion by Mr. Pope, second by Mr. Heitz)
Motion carries 6-1-0 with Mr. Coppelman abstaining.**

<Board note: Mr. Pope left at this time>

Board Business

Mr. Wilson reviewed the events of Friday regarding an enforcement request for activity at Bucco's restaurant noting that four Board members agreed, by phone, to send the enforcement request (AP, SS, RW, EL) with Mr. Coffin and Mr. Coppelman leaving messages of approval. He stated that within the month the owner of Bucco's had been notified that outside food sales was not allowed on the site and if he wanted to have outside food sales, he would need an amended site plan review. He also noted that the Board had allowed him to have outside sales for one time only last year during Kingston Days but was told that any future outside food sales would require an amended site plan. Mr. Heitz confirmed that the property owner, Mr. Korn, and the business owner, Mr. LeClair had received a Cease and Desist which was ignored..

Mr. Wilson discussed Board protocol reminding Board members that no one member can go to a site to discuss a pending issue; he explained the Cease and Desist process. He explained that when a Board member goes to site as an individual, they are representing the Board whether they say they are or not; Board members have to be careful as others assume you are representing the Board. Mr. Heitz re-iterated that the Notice of Violation was sent, the Cease and Desist was ignored; he asked if the Board would entertain holding a hearing to revoke the site plan. Mr. Shalett noted that the property owner was very defiant about this issue. Mr. Coppelman stated that the business/property owner can't add to his site use without amending the site plan. Mr. Heitz said that Mr. LeClair recently told the Board that they weren't going to have outside food sales and they did.

ACTION ITEM: The Board agreed to invite Mr. LeClair/Mr. Korn to the next meeting noting that they ignored/failed to correct a Notice of Violation and to discuss why the Board shouldn't hold a hearing to revoke the existing site plan. Ms. Faulconer to put this request in writing.

"Fines" capabilities were reviewed; after reading from the Ordinance book, Mr. Greenwood confirmed that violations for regulations, as well as ordinances, can be fined for \$275 per day, per violation.

Correspondence:

- Nail Salon and Holistic Health Center at 34 Church Street; no further Board review is required.
- Barber shop at 34 Church Street; no further Board review is required. The Board reviewed the Barber Pole request and confirmed that this would not meet the requirements of the Sign Ordinance so cannot be approved by the Planning Board; it would require ZBA relief.

- 6 Rte. 125 – Maroun Auto – dealer plate request signed without further review and forwarded to BOS.
- Camp Lincoln Lot Line Adjustment – request to set the corner bounds in a manner not consistent with the approval. The Board decided that the bound to be set under the shed should be moved to the front corner where there currently isn't a marker; the bound with the tree issue needs to be placed appropriately per the plan, the Board will not waive this requirement.
- SPE (Early) gravel pit – letter received to be placed on an upcoming agenda. Mr. Quintal reviewed the changes and modifications on the site and on the plan; previous plans had been modified by pencil but there were changes on the site at the last visit that didn't match the plan; the detention basin was not adequate or working properly, run-off and erosion problems were noted. Mr. Coppelman said that this was more than just updating an excavation plan to go with a site plan. Mr. Quintal stated that the owner did not think that there was any timeframe to go forward with developing the site in accordance with the site plan; he suggested that the plan should show timeframes for reclamation; there are State requirements for more than five open acres. Mr. Greenwood explained that if this was establishing a fill baseline of activity, then site plan review was required. Mr. Coppelman noted that if applying for an amended site plan, then abutters needed to be noticed per a regular application. The Board agreed that site plan requirements needed to be followed.

ACTION ITEM: Ms. Faulconer to contact Mr. Early about the process required to be on an upcoming agenda.

- Photos were reviewed regarding Little Old Lady Auto; cars parked on unpaved surface; cars parked too close to wetlands; cars parked too close to Rte. 125. Mr. Wilson noted that this site has had previous enforcement issues regarding sign violations.

ACTION ITEM: Ms. Faulconer to invite property owner/business owner to Planning Board meeting to explain to Planning Board why they should not hold a hearing to revoke their site plan approval. This invitation to be put in writing and delivered appropriately.

- State driveway permit for property on Newton Junction road.
- Letter to BOS re: 7 Bassett Road
- Budget was reviewed and approved by the Board; 11% reduction from last year's budget.
- State Child Care guidelines and In-home Occupation Ordinance was compared; the Board agreed to add this to the list of this year's projects, to amend the Town's ordinance to comply with the State's.

ACTION ITEM: Ms. Faulconer to prepare language for the Board to review for the Residential Home Occupation ordinance specific to State Guidelines for Child Care.

PSNH: Mr. Greenwood had spoken to PSNH representative regarding increasing transmission lines with no changes to the substation. He stated that any changes to the substation would require an amended site plan but the Board did not usually require a review for additions or changes to transmission lines, but he wanted to confirm this with the Board. Mr. Coffin

questioned whether there was an increase in any tower heights; Mr. Greenwood did not think this was the case. Mr. Coppelman suggested inviting them in to speak to the Board for a public information discussion. Ms. Faulconer suggested that this should be televised so the public could hear what was going on. Mr. Wilson noted that the Town had previously voted to televise all the meetings. Mr. Heitz stated that the Town needed volunteers to do this and if anyone knew of anyone who wanted to volunteer, they should send them to the Selectmen's office.

ACTION ITEM: Mr. Greenwood will coordinate with Ms. Faulconer to add PSNH to an agenda in September.

Legal Matter:

MM&S to go into non-public session to discuss a legal matter. (Motion by Mr. Coppelman, second by Mr. Landry) Mr. Wilson polled the Board: Mr. Coppelman, yes; Mr. Landry, yes; Mr. Shalett, yes; Mr. Wilson, yes; Mr. Heitz, yes; Mr. Coffin, yes. Motion passed unanimously.
<Board note: Mr. Quintal left the meeting for this discussion.>

MM&S to come out of non-public session. . (Motion by Mr. Coppelman, second by Mr. Landry) Mr. Wilson polled the Board: Mr. Coppelman, yes; Mr. Landry, yes; Mr. Shalett, yes; Mr. Wilson, yes; Mr. Heitz, yes; Mr. Coffin, yes. Motion passed unanimously.
<Board note: Mr. Quintal returned to the meeting.>

Seasons:

Mr. Quintal reviewed the proposed drainage for Seasons Restaurant per the Board's agreement with the owner; he recommends the Board's acceptance of the plan.

MM&S to approve the Town Engineer's recommendations and the plan agreed to with the owner; the owner has until September 30th to complete the plan including Best Management Practices to maintain the dry well; the affidavit to be amended to include this condition. (Motion by Mr. Coppelman, second by Mr. Landry) **PUNA**

MM&S to adjourn at 9:45. (Motion by Mr. Coppelman, second by Mr. Shalett) **PUNA**