

**Kingston Planning Board
Public Meeting
August 23, 2011**

The Chairman called the meeting to order at 6:35 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Richard Wilson, Chairman	Adam Pope
Glenn Coppelman, Vice Chair	Ernie Landry

Absent: Jay Alberts, Mark Heitz, BOS rep., Richard St. Hilaire, Alternate, Ellen Faulconer, Alternate.

Also present: Glenn Greenwood, Circuit Rider/Planner (arrived with the meeting in progress).

Board Business

Correspondence:

- The Board approved Mr. Wilson signing the invoices received from Civil Construction for Sad Café.

ACTION ITEM: Ms. Faulconer will continue to confirm that there are funds to pay invoices prior to the Town Finance Officer paying the invoices.

- The Board approved Mr. Wilson signing the invoice received from Civil Construction for John's Truck and Auto.
- The Board will review the application for the TBG grant later in the evening.
- Upcoming meetings were reviewed: there is no meeting scheduled for August 30th as the fifth Tuesday of the month; no meeting on Sept. 6th as the Labor Day break; there is a site walk scheduled for Sept. 10th at 10:00 AM; the next meeting is scheduled for Sept. 20th.

ACTION ITEM: Ms. Faulconer to send a reminder of the Sept. 10th site walk to the Board members as the date gets closer.

<Board note: Mr. Greenwood arrived at this time.>

ORDINANCE REVIEW

Mr. Wilson noted that the Board had previously decided to dedicate the remainder of this meeting to ordinance review. Mr. Wilson suggested that Mr. Landry begin the discussion with the Summary of Master Plan Recommendations; copies were distributed to the Board.

Master Plan Recommendations:

KPB
8/23/11

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Accepted as Amended 9/27/11: Removed the words "from the Town Manager" from 1st Action Item on p. 1

Mr. Landry explained that he and Mr. Greenwood had previously met to narrow down the scope of the review to be pertinent to those under the jurisdiction of the Planning Board. He noted that there are currently 8 recommendations that are from the general parts of the Master Plan that are associated with Natural Resources, Housing, Current and Future Land Use, as examples. He added that there are also 5-6 pages out of the Transportation chapter which has a significant amount of recommendations that the Board should review and decide on any actions and decide on whether the Board wants to spend the time to review it as it is pretty comprehensive in the traffic arena. Mr. Greenwood said that he and Mr. Landry thought it best that all of the Board members read the Transportation Master Plan chapter in order for the discussion to be worthwhile. He continued that this would be the bulk of the recommendations; the rest were boiled down to the list of 8 items. Mr. Landry suggested going through the first 8 recommendations during this meeting and reserve a time for the Transportation section after all of the Board has had a chance to read it. He added that this didn't need to be done for the upcoming Town meeting but thought that it should be something that the Board looked at to think about.

Mr. Wilson agreed that the Board would look at the top eight at this point. Mr. Greenwood referred to the first item as something that the Board has spoken about in the past; he agreed that something should be done regarding requirements for condominium conversion of a residential property; there should be something in the ordinances that deal with it specifically. He suggested that the Board should do that recommendation.

ACTION ITEM: Mr. Greenwood said that he would be responsible for preparing that for the Board and would look at a few examples that he knows exists; it should be fairly simple.

Mr. Coppelman asked if there was a boiler-plate type example available; Mr. Greenwood felt that he could find an example from a community that had been doing it for awhile that the Board would be comfortable with. Mr. Pope confirmed that this action wouldn't be affecting the Master Plan; it would be something being added to the ordinances. Mr. Greenwood explained that the recommendations in the Master Plan are for actions to be taken and this is an example of that. Mr. Greenwood stated that this would require Planning Board action, not Town Meeting action, as it was for site plan and subdivision.

Mr. Wilson moved on to **Item #2** regarding uses along Rte. 125 and commercial purposes. His thoughts are that he will do the list again of every property along Rte. 125 that is not commercial already and will go through it to determine why it isn't or why it shouldn't be or should be. He continued that one thing that Mr. St. Hilaire keeps pointing out is that just because it doesn't have access doesn't mean we can't get access which the Board needs to remember.

ACTION ITEM: Mr. Wilson stated that he will take charge of this item.

Mr. Landry stated that this issue ties into the Transportation portion as there are sections in the Transportation portion that recommends that the Town establish frontage roads along Rte. 125 in both the commercial and industrial roads to limit curb cuts but to have access to the property

behind it so that one thought relates to other parts of the Master Plan. Mr. Wilson said that when he comes in with the list of the lots, the Board can look them up in reference to the maps to review access. Mr. Coppelman said that when reviewing the maps, the State left access ways to open up some of the lots along the frontage. Mr. Pope commented that this goes along with the list the Board had prepared for this year. Mr. Coppelman added that it needed to be recognized that since these recommendations, a lot of parcels have been zoned commercial and whether it's due to the current economy or the lack of municipal infrastructure of water and sewer or that Kingston isn't attractive to potential developers for other reasons, the Town hasn't seen a lot of development; there is a question as to when the Board stops and thinks that maybe the Town needs to think smarter as to where commercial and industrial areas are created. He said that he would hate to see the Town continue to make more and more parcels into commercial land just because they happen to be on a major route just for the sake of doing it; it often is not that simple and he is not convinced that taking the entire strip of Route 125 and converting it to a commercial strip is the right thing to do, either. Mr. Wilson agreed with that; he said that there are a lot of lots that would never support a commercial venture; there are areas down by Safeway that have a lot of residential lots that abut onto Main Street which is a situation where those lots wouldn't be converted.

Mr. Wilson referred to item number 3, housing information; Mr. Greenwood suggested that this would be appropriate for the TBG application and explained that in every census there is detailed housing information that should be added into the Master Plan; the 2010 information is available that isn't reflected anywhere in the Master Plan. Mr. Wilson stated that this will be considered for possible grant work.

Item #4 was discussed next, sedimentation and erosion control. Mr. Wilson commented that this appeared to be what the "subcommittee" was working on; Mr. Greenwood agreed.

Item #5, Shoreland Protection and Watershed Protection, was next. Mr. Greenwood thinks this is something that should be considered; he suggested the Board consider inviting representatives from Town's that have converted a Shoreland Ordinance into a Watershed Ordinance; he thought it was a reasonable thing to do but was unsure of the implications in making a watershed district that isn't directly tied into the shoreland; it would be imposed on properties that didn't have shoreland directly on them. Mr. Coppelman noted that the properties could be very far away from shoreland. Mr. Greenwood stated that this would need to be investigated as to the implications on property owners.

ACTION ITEM: Mr. Greenwood will begin investigating this; speaking with his associates to find other ordinances from other Towns such as Hampton and other regional Towns; he will speak with the Shoreland's Coordinator at the State; he will return with some information for the Board.

Item #6 refers to the Town establishing a view-shed protection zone. Mr. Greenwood said that this was very innovative in the Planning world; the Board would first have to establish the view-shed that it wanted to protect in Kingston. He explained that a view-shed is a scenic vista; an actual vista in land that the Town would not want destroyed or to have that view blocked. He suggested that this would be considered a "dicey" proposal that hasn't garnered a lot of support

in the State of NH. Mr. Greenwood suggested that this might be information given to the “open-space” group to have Vistas purchased or easement purchased for this type of protection. Mr. Coppelman suggested that it might be appropriate for the Conservation Commission as well; he said that there has been a lot of discussion about this in the northern part of New Hampshire.

ACTION ITEM: Mr. Greenwood suggested the Board have conversations with the Conservation Commission to see their level of interest or to begin with a survey to establish what the important vistas are in Kingston as a first step which might be a project of interest to the Conservation Commission.

Mr. Wilson moved on to Item #7 re: agricultural zoning.

ACTION ITEM: Mr. Greenwood stated that the Board had already tasked him with bringing information about agricultural commissions and agricultural zoning. He will follow through on this; he has recently spoken with his associates who deal with this issue and they will give him information to bring back to the Board.

Mr. Wilson read item #8 regarding local water use rights; he asked if this had to do with the Water District. Mr. Greenwood said that the Water District would fall into this recommendation but it also goes into the fact that at the time, Kingston wanted to make sure that it was involved in any new rules for large groundwater withdrawal so there was proper notification, involvement by the Town. Mr. Wilson stated that the Water District was scheduled to be discussed at a future meeting.

Business Fees:

Mr. Wilson stated that he was going to skip over this item at this time but he would come back to it.

Livestock:

Mr. Wilson confirmed that the Board members had the BMP’s for horse keeping. He had read them three or four times and he didn’t find anything in it that he didn’t like. He felt that it makes management the conveyor or what establishes whether you can have a horse or not; i.e. are you willing to pick up manure daily, store it properly, proper size corral and place to exercise; placement from well and septic. He thinks if this was taken with some language added to it to adopt it to Kingston’s format that it is probably how it should go forward. Mr. Greenwood said that the Board could just indicate where the recommendations came from rather than listing all the references.

Mr. Coppelman stated that this was just Best Management Practices; it was not a regulation or an ordinance. Mr. Wilson said the Board would need to make it a regulation or an ordinance and make it to fit the zones that the Board wants it to fit. He said that as he is reading it, it is not prohibited it in any zone as long as these guidelines can be met; he tried to think about that if he lived in Presidential Estates for example and somebody decided to put a horse in out there and how that would be. Mr. Wilson said that some houses have buffering and some don’t so it is

almost like every case would be an individual situation or we just limit it to Rural Residential and go from there. He continued that the next thing that this doesn't have is guidelines for non-compliance. Mr. Coppelman said this returns to the enforcement issue; Mr. Wilson asked if the Board needed to write guidelines on what the enforcement would be, such as fines. Mr. Greenwood said that the Board would need to add enforcement if the BMP's were being converted to a Zoning Ordinance; he said that there are vectors involved; there are very large horseflies associated with the use. Mr. Wilson said that he agreed; he had a neighbor that was as far away from his house as Kingston Pizza and they had humongous flies all the time; they didn't smell the horse and you didn't know the horse was there but the day those horses left, within two days, the flies were gone and these people picked up manure and definitely managed it. Mr. Greenwood added that the Department of Agriculture takes it upon themselves to say that they'll mitigate abutter disputes with livestock issues but he's never gone to them or asked them to do a site inspection so he has no idea what their turn-around time is; he can't imagine it's very fast. Mr. Wilson suggested that this would probably be an area cut-back with budget issues. Mr. Coppelman agreed that given the State's budget issues that he can't imagine that the response would be very good. Mr. Greenwood expects that the Dept. of Agriculture will tell him that they don't have the resources to respond to abutter issues. Mr. Wilson asked about who responded to livestock cruelty issues. Mr. Greenwood said that Town's with Health Officers and/or Animal Officers would have them as first responders to those cases but the cases he is referring to are not usually cases of animal cruelty but of poor management practices. Animal cruelty and best management practices were discussed. Questions of enforcement responsibilities were discussed. Mr. Wilson will speak with the Health Officer and Chief Briggs about the Animal Control Officer's responsibilities. Mr. Greenwood added that if the Board were going to propose this as a zoning ordinance that how enforcement is dealt with is a huge part of that ordinance. Mr. Pope added that there are a lot of ranges within the BMP's that need to be picked, for example one to two acres per horse as an example. Mr. Wilson stated that this was explained further in the BMP's with specific criteria. He agreed that the Board might need to go through step by step to finalize it. Mr. Pope continued that it needed to be more specific, it was too general. Mr. Landry had a couple of comments, one of them being that at the last meeting the Board received changes in regulations that took them from 20 pages down to one page, the Excavation Ordinance; this was changed to say that compliance needed to be done in accordance with 155:E and that was the end of it; his thought was whether there was a way to have a short ordinance with those things that needed to be specific and refer to the BMP's of XYZ. Mr. Coppelman suggested that the Board might still need to provide it as an appendix or something. Mr. Landry said that the Board doesn't provide 155:E. Mr. Landry referenced Windham's ordinance which states that use is permitted in residence A, B and C districts; one single family detached dwelling per lot; agriculture as accessory use to a residential use when done in accordance with the BMP's adopted by the Commissioner of Agriculture, Markets and Food, Rockingham County Conservation District and UNH Coop. Extension; all farm animal housing boundary setbacks as outlined in BMP's are to be measured from property lines. Mr. Wilson said that the BMP's referenced this evening are from UNH; the Board agreed that they are the same ones referenced in Windham's regulations. Mr. Wilson said that Windham also references minks, pigs, goats and wondered if the proposal should be more like Windham's. Mr. Landry stated that he liked the notion of not re-iterating all the information available somewhere else and have those people who want to have a horse seek out those specific BMP's and/or State rules and abide by those so the Board doesn't need to update any time the BMP's get updated. Mr. Landry

continued that the other part of any ordinance that the Board needs to be careful about is definitions because the BMP's talk about fencing and to him, there is a difference between fencing and a corral; he said the Board basically says that structures need to be 20 feet from a property line but a fence can be right on the property line; he said if a corral is installed, it should be 20 feet from the property line unlike a fence. Mr. Wilson thought the BMP's talked about setbacks. Mr. Landry thought there was a previous issue of a corral, as a fence, right up to the property line. Mr. Wilson found that the BMP's talk about well setbacks but nothing on the corral; he agreed that this was a good point that a corral needed to be so far from the property line. Mr. Landry said that there is an ordinance that appears to be really restrictive, 1304.1 – Well Protection and Placement, which says that no animal shall be penned or tied within a 100 foot protective radius of any well; Mr. Wilson said that the BMP says 75 feet. He thinks the regulation should agree with the ordinance.

ACTION ITEM: Mr. Wilson and Mr. Pope will continue with the proposal and review Windham's ordinance; Mr. Wilson will speak with the Health Officer and Animal Control Officer for their input.

Mr. Landry asked about the length of Windham's ordinance; Mr. Wilson answered about 2 ½ pages which was better than the BMP's. Mr. Pope asked about buffering; Mr. Wilson answered that this would be added to their discussion for recommendations to the Board. Mr. Pope asked if there were any opinions; his was that, as he lived in Rural Residential, that buffering should be part of the ordinance; if he has a neighbor with cows and horses, he would almost look at this as a commercial use that should have buffering. Mr. Wilson added that limits of the amount of animals should probably be part of the ordinance so it wasn't a commercial use; 20 sheep, as an example, would be commercial; Mr. Greenwood cited an example where 20 sheep were used educationally or for yarn and there is no commercial use. Mr. Wilson referred to property, in rural residential, that has three acres and goes further back but the back area is mostly wetlands and therefore useless; so in this case, a horse on that three acre lot would actually be in the backyard as only one acre of land is actually usable. Mr. Pope added that the property would probably meet the setbacks to allow a horse but it wouldn't be a good situation. Mr. Wilson cited another example of a property, in another Town, that had three to four horses in the front yard with the corral right up to the neighbor's property; the townspeople/neighbors complained but nothing could be done about it. Mr. Pope referred to another similar property with similar problems. Mr. Pope suggested the Board establish a buffer requirement with the ability to waive these requirements like the Board has now for other buffer requirements. Mr. Coppelman suggested that, as a minimum, the Board requires 20 feet to the lot line as a setback for any structure, usually fences, if they are fencing the lot, would not be considered a structure so it can go on a lot line. He continued that if a fence is a corral then the argument could be made that it falls more within the structure category because it has a specific purpose for penning the animals as such. Mr. Greenwood said that a corral is not a perimeter boundary or the property. Mr. Wilson suggested a 20 foot setback of a non-domestic animal; the Board discussed the terminology of non-domestic with Mr. Wilson commenting the veterinarian considers dogs and cats as domestic; he said the Board can make the determination of non-domestic. Mr. Wilson said that if the Board determines that 50 feet is the appropriate setback then it could always go to 20 feet if needed. Mr. Coppelman said that he felt at least 20 but there should be the discussion to determine if the Board is more comfortable with the wider buffer that, under certain

circumstances could be reduced, than that would be determined at that time. Mr. Wilson was leaning toward the 50 feet with the possibility of the reduction. Mr. Pope added that the Board has required a 50 foot vegetative buffer in other areas. Mr. Coppelman agreed that this is the requirement for dissimilar uses; Mr. Pope stated his belief that this was a dissimilar use, agricultural versus residential. Mr. Coppelman believes that the buffer issue will come in to play in some of the nicer neighborhood areas; a lot of the single family neighborhoods; he thinks when in the agricultural zone and some of the more open areas in the rural residential areas, it won't be as much of an issue. Mr. Landry asked if the Board had discussed the zones that they wanted to allow this use. Mr. Wilson suggested that the Board pinpoint those locations at the next discussion, he added that he thinks that Single Family Residential is out; Rural Residential would be one zone, Historical would probably be one; the Board would need to decide or decide to make it a case by case issue with an application process. Mr. Greenwood said that there are some lots that would be fine in single family but not many in the last twenty years. Mr. Wilson said that a developer may come in and make a horse neighborhood; Mr. Greenwood added that it could include every lot being 8 acres or greater or something and then there wouldn't want to be a prohibition in single family being absolute; a conditional use permit that says a single family lot that is eight acres or greater could be considered for horses or something to that effect. Mr. Greenwood asked when the Board would return to this discussion; the Board will look at the future agendas as Mr. Wilson thought that Ms. Faulconer had already set aside upcoming meetings for this purpose.

Business Fees

Mr. Wilson reviewed Seabrook's fees; \$100 initial incidence fee, \$25 yearly renewal; restaurants have additional fees which wouldn't apply to Kingston; this is called a business licensing fee. Mr. Coppelman clarified that this is a fee separate from a Certificate of Occupancy. Mr. Wilson stated that this fee helps to offset additional inspections mandated by the State or Federal regulations. There was discussion regarding existing businesses; Mr. Wilson and Mr. Greenwood stated that all businesses would need to pay the initial \$100 fee; Mr. Greenwood did suggest that it might be prudent to run this by counsel to see if there is some sort of implicit grandfathering that the Board should be concerned about. The Board discussed possible implications of implementing new business license fees; changes in locations, etc. Mr. Wilson asked how the Board would deal with home occupations; Mr. Greenwood said that a true home occupation is not visible; Mr. Coppelman said they are self-certifying; if they comply with the ordinance they don't have to come to the Board or tell anyone. Mr. Wilson questioned if it mattered if there was a sign up; Mr. Greenwood said that as long as it met the size requirement, the Board didn't care. Mr. Greenwood didn't think they met the requirement for a fee; Mr. Wilson was fine with that but he wanted the Board's input. Mr. Coppelman said that these locations are not being taxed as a commercial use. Mr. Wilson provided examples that the Board discussed. Mr. Greenwood said that, by virtue of what the Ordinance says, the Board doesn't really know that the use exists. Mr. Landry asked about the notion of a graduated fee, dependent on the burden that the business puts on the Town; Mr. Wilson said that categorizing was a possibility and gave examples. Mr. Pope asked what was being inspected. Mr. Greenwood said monitoring wells, for example. Mr. Pope said that the idea was to gather the funds and pay for someone to do the monitoring rather than have the property owner pay for the inspection directly and send to the Town; Mr. Wilson explained that this was the avenue that Mr. Heitz seems to

favor although he said that the State seems to be saying that it is up to the Town to do the inspections. Mr. Pope agreed that an independent inspection is certainly better. Mr. Greenwood said that both the Building Inspector and Health Inspector spend a lot of time reviewing the approved site plans and when they have to review complaints it would be nice to have the money available to have them go to the site and do the review; for example, Mr. Steward spoke with Mr. Greenwood about the property at the corner of Hunt Road and Route 125 is nowhere near compliant with their site plan which will require him going to the site and issuing some sort of notification and there are no funds actually allocated for that. Mr. Pope asked if the Board would be using these funds for all of the enforcement; Mr. Wilson said he was unsure. Mr. Greenwood replied that if business-related he thinks it should be used. Mr. Coppelman commented that \$100 per year and \$25 renewal wouldn't cover those expenses. Mr. Greenwood implied that the yearly compilation would cover the expense; he got calls all the time asking what the business registration fees were for Kingston, when he answered zero, he said you could hear the surprise on the other end of the phone; he said that people expect that there is a fee. Mr. Wilson noted that he paid \$250 per year in Portsmouth; he received a review from the Fire Department.

ACTION ITEM: Mr. Wilson suggested that the subcommittee determine the amount needed to support the inspections.

Mr. Pope said the Board needed to determine how many businesses were in Town and how much is needed right now. Mr. Greenwood suggested the possibility of talking with the businesses and see what their take is on it. Mr. Wilson guessed that there were about 240 businesses in Town. Mr. Greenwood suggested the possibility of looking for feedback from the businesses. Mr. Wilson would rather the Board contact the businesses themselves instead of using a third party intermediary. The Board discussed the possible contact process. Mr. Coppelman asked if this proposal was something that should be Selectmen generated. The current economic situation was discussed; the reality of whether this was a State or Federal requirement was discussed.

ACTION ITEM: Mr. Wilson will contact Mr. St. Hilaire to review State and Federal requirements and guidelines as Mr. Greenwood was unaware of this discussion in other communities.

Mr. Coppelman said that it is a justified discussion if the Town is truly under the gun to have these inspections and should not be up to the taxpayers to pay for them. Mr. Wilson would like to look into the possibility of charging the costs to those owners who have violated their approvals; Mr. Greenwood said that there is currently no structure for that. Mr. Wilson stated that he understood Mr. Heitz's point that the property owner should pay for the inspection directly. Mr. Pope suggested that the Board determine how much money it takes to do the inspections; Mr. Greenwood adding that the responsibilities need to be determined; Mr. Pope continued that the total costs should be able to be established. Mr. Wilson re-iterated that he will speak with Mr. St. Hilaire about the State requirements. The Board discussed the need for the involvement and support of the Board of Selectmen in light of any State requirements.

Mr. Wilson reviewed the proposed agendas; October 4th is currently set-up for nothing other than Ordinance reviews. Mr. Wilson suggested that everyone be prepared to spend some time on the issues discussed this evening adding that October 25th is also set-up for nothing other than

Ordinance reviews. Mr. Wilson agrees with Ernie that it would be great to get these done earlier in the year rather than later and closer to the holidays. Mr. Landry asked when the drafts would be available for Board members to review.

ACTION ITEM: Mr. Wilson suggested that the draft proposals be ready prior to October 4th and sent to Ms. Faulconer to distribute electronically to the Board.

Mr. Wilson noted that the Impact Fee proposal was distributed to the Board for discussion at an upcoming agenda.

MM&S to approve the minutes of July 26th as written. (Motion by Mr. Coppelman, second by Mr. Wilson) **Motion carries 2-0-2 with Mr. Landry and Mr. Pope abstaining.**

Mr. Wilson noted that the new overlay maps had been received.

The Board reviewed the grant possibilities. Mr. Coppelman stated that a possibility discussed was the housing update which Mr. Greenwood estimated would be a total cost of \$1200. He proposed a possibility of a two-part grant that included developing some promotional and educational material for the Aquifer Protection District if the Board goes forward with that. Mr. Wilson reminded the Board that the application is due on Friday by 5:00. Mr. Greenwood told the Board that, unfortunately, the year that the funding was decreased is turning out to have the most applications; he expects 7. Mr. Coppelman said that there is no guarantee that Kingston will get the grant due to the number of times we have already received them; that would apply to Kingston, Brentwood, Newton and Fremont. The application was completed during the meeting. Mr. Greenwood agreed that a two-part project would maximize the funding potential and explained that even if the Board didn't go forward with the Aquifer, additional voter outreach is a good idea; the Board determined the project would be for zoning education outreach material for 2012 Town Meeting. The second part of the project would be a revised demographic update to the Master Plan's Housing section; total request would be for \$2500; \$1250 per item; the budget will be reviewed to confirm there is \$2500 in the grant line. Mr. Greenwood received the completed application to deliver to RPC.

ACTION ITEM: Mr. Greenwood will send a copy of the TBG application to Ms. Faulconer.

The Board looked at the overlay, natural resources maps prepared by RPC with last year's grant; parcels and zones were reviewed in light of this meeting's discussions.

The Chairman announced that the meeting was considered adjourned at 8:00 PM.