

**Kingston Planning Board
Public Hearing
January 28, 2014**

The Chairman called the meeting to order at 6:50 PM. There were no challenges to the legality of the hearing.

Members in attendance:

Richard Wilson, Chairman	Ernie Landry
Peter Coffin	Stanley Shalett (Arrived with meeting in progress)
Adam Pope	Ellen Faulconer, Alternate
Mark Heitz, BOS rep.	

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer, Don Briggs, Jr., Police Chief

Absent: Glenn Coppelman, Rich St. Hilaire

**Trendezza, LLC
22 Marshall Road
R33 Lot 27**

Christian Smith introduced himself, applicant John LaRiviere and hydrogeologist Nikki Roy to the Board. He informed the Board that the hydrogeologic study had been done with his understanding that it had been sent to the Board's consultant, Danna Truslow; a site walk had been scheduled. Mr. Smith added that the Water Conservation Plan and water permits were being worked on; he was working with Mr. Quintal on his list of items; he had received the memo and sketch from Ms. Kenter, abutter to the project regarding possible lead contamination on the site; he stated that he thought that the proposed scope within the memo was excessive. Mr. LaRiviere said that the only possible place of contamination is the slope at the back area and he doesn't think any evidence shows significant use. He explained that the back portion is intended to be a fill area; he stated that water contamination is not an issue as it needs to be certified from the State for a small community water system.

Mr. Coffin asked if the soil in that area had been disturbed; Mr. LaRiviere answered not to his knowledge. Mr. Coffin stated that he would think that the applicant would want to take the opportunity to test for lead; he continued that there is very acid rain in New England that could dissolve lead and while it would normally lie inert, the acid rain could work it into the water supply; he suggested that there should be some level of testing in the area. Mr. LaRiviere said that there was not enough to rise to a level of concern, there was no issue through visual inspection. Mr. Coffin suggested that the bullets would be in the embankment and there should be confirmation one way or another before proceeding. Mr. LaRiviere said that there wasn't a gravel pit in the State that hadn't had shooting in it and he could add a note on the plan that the lead area would not be above normal levels. He added that it was only a concern now due to an adversarial abutter. Mr. Wilson reviewed the well testing procedure; Mr. LaRiviere explained that the wells would need to meet State guidelines and on-going standards; he said that he

wouldn't ignore any lead problem and it shouldn't be a condition of approval. Mr. Wilson stated that the wells and testing in the safeguard. <Board note: Mr. Shalett arrived at this time.>

Mr. LaRiviere added that the soil at the current location was not being moved and it was not being used as fill elsewhere on the property. Mr. Wilson instructed Ms. Faulconer to send Ms. Kenter's report to Danna Truslow for review prior to her site walk with Ms. Roy.

Mr. Greenwood's comments were reviewed; he stated that he had the same comments from the previous meeting. Mr. Quintal noted that he had met with Rich St. Hilaire to review the project with the Town's Road Agent who was still not happy with the width of the road and distances, road shoulders, etc.; he has had some discussions with Christian Smith on his list of items; review of cross-sections and grading; questions regarding bonding and how that will work with a private road; he suggests that the Board require as-built plans especially due to drainage issues on the site.

Mr. Wilson noted that the Fire Department's comments reference minor discrepancies with the cistern and he suggested they contact the Fire Chief to review them. Mr. Quintal returned to the drainage issues to make sure that the plans are detailed enough; the information should be on the plans not just the drainage analysis. Ms. Faulconer asked Mr. Quintal if the slope issues had been addressed; he stated that they current configuration does not meet the requirements for Town Standards and they would need a waiver; he explained that the slope away from the edge of pavement should be a 4% grade, currently it is 6 to 8% slope. Mr. Smith said that he thought they had caught all of them and will change the grade. Mr. Quintal added that he is still looking for grades for the buildings; the building elevations submission is still pending.

Mr. Smith said that he thought they had addressed the lighting issues that Mr. Greenwood had but was not sure it showed on the profile sheet. Mr. Greenwood said that the lighting on Marshall Road could not bleed onto the street. Chief Briggs noted his disagreement with the lighting plan at the entrance and exit. Mr. Smith confirmed that the two egresses acted as both entrance and exit to the site. Chief Briggs expressed concern that with limited lighting, cars entering the site would need to stop on Marshall Road due to traffic adding the more lighting the better. Mr. Wilson suggested a street light might be appropriate. Chief Briggs said the entrance light would not light up the traffic on the roadway; a street light in addition to the entrance lighting would light up the roadway area where they would make the turns on this dark, highly traveled roadway; he suggested two to three lights in the area. Mr. Wilson stated that they could be dark sky compliant and still function as the Chief suggested. Mr. Greenwood read section 302.5 E from the ordinances regarding intersection illumination. Chief Briggs discussed the access and decal lanes. Mr. Smith stated that the DOT did not require a turn lane; no average speeds on the roadway were tested. Chief Briggs suggested cutting the bank or pitching it downward and cutting trees for additional site distance. Mr. Smith reviewed the shoulder design and the tree and clearing locations. Chief Briggs asked if the applicant would approach the State about cutting additional trees to enhance the site distance near the bottom of the knoll near the entrances. Mr. LaRiviere said he didn't think the trees were the issue. Chief Briggs asked if they would cut them back if okayed by the DOT to give more visibility, increase the site distance and improve safety adding that lighting and site distance is important. Chief Briggs asked if any fencing was proposed to prevent people on the property. Mr. Smith said they were working with the Southeast Land Trust who he thought would like to fence a specific location that does not

prevent turtles from accessing the vernal pools and to separate domestic and wild animals. Chief Briggs commented on trespassing, winter vehicle use on the site; Mr. LaRiviere felt that the development itself would discourage this. Mr. Smith confirmed that the intent is to have this be a private road. Chief Briggs asked about utilities; Mr. Smith reviewed areas for drop poles, everything else is underground.

Mr. Heitz reminded the applicant that there needed to be a note on the plan stating that this was to be a private road “forever” as it was not being built to public road standards.

Mr. Landry asked about the SELT access; he questioned if the fee ownership of that access was part of the previous lot line adjustment; he noted the location of the driveway which directly adjoined the fee ownership access. Property setbacks were reviewed. Mr. Greenwood confirmed that there is a 20 foot setback requirement for a driveway.

ACTION ITEM: Ms. Faulconer to notify Building Inspector that there is an issue with the driveway on the property next to this proposal; the driveway does not have a 20 foot setback to the lot line adjustment’s new property line.

Abutter Andrea Kenter noted that she gave a letter to the Board regarding the potential contamination as the Board requested; she is concerned with groundwater standards at the base of the bowl of the pit; she reviewed remediation requirements. She added that she had lived there for twenty years and had seen clay pigeons and shells on the site; she felt it was advisable to do some investigation which is fairly easy to do. There was discussion on possible investigative techniques. Ms. Kenter asked the Board if it had notified the State of a possible contamination issue. There was continued discussion on testing possibilities, well locations, BMP’s versus open pit activity.

ACTION ITEM: Ms. Faulconer to contact the State to see if they have any concerns with the potential lead contamination; review the issue at the next meeting.

Chief Briggs said that he could confirm the location where the shooting occurred.

Abutter Marghie Bean, 44 Tucker Road, said that the shooting location was right behind the gravel pit and it has been an on-again, off-again shooting range. She agreed with Chief Briggs on the safety concerns on the stretch of road abutting this proposal.

Lynn Merrill, realtor representing the sellers, asked to be informed regarding contact with the State.

ACTION ITEM: Ms. Faulconer to scan Dept. comments for the applicant.

MM&S to continue to February 18, 2014 at 6:45. (Motion by Mr. Coffin, second by Mr. Pope) **PUNA**

HYW Auto Sales: No one was present to review the request for the Inspection license.

Richard LeClaire
Trattoria Alla Bucco's Restaurant
143 Main Street
Tax Map U9 Lot 42

Mr. LeClaire explained that he wanted to expand his current hours to 8 AM to 1 AM Sunday through Saturday and to have live entertainment, inside the building only; he added that he is not open those hours but wants them approved just in case. Mr. Wilson said that the Town has a Noise Ordinance he would need to comply with. Mr. LeClaire said that he could comply even with bands and karaoke.

Mr. Wilson read Department comments: Building – there is an undocumented interior light that should come down; Police – does not recommend changing the closing hours or allowing live entertainment; Fire – the addition of live entertainment may trigger a sprinkler system, the applicant shall be required to meet with a Fire Safety Engineer. The definition of live entertainment was discussed. Chief Briggs stated that he does not want the hours expanded; the Police are there on a constant basis with speeding and noise issues; he explained that this time of year the noise issue is not as problematic as the summer; the problem is added to the fact that it is in a close residential area. Mr. LeClaire stated that he currently advertises as closing at midnight on Friday and Saturday, but people don't leave until between 1:00 and 1:30. Mr. Wilson noted that his approved hours are closing at 11:00. Mr. LeClaire explained that the bands stop at 11:00. Mr. Coffin said closing at 11:00 for a restaurant in a residential area is not unreasonable for the noise to stop.

Ms. Faulconer told the Board that the property abutter came to the Town Hall during the day to apologize for not coming to tonight's meeting as he had to work; he did provide a letter to the Board asking that the Board not grant the applicant's request. Mr. Coffin expressed concern that the applicant stayed open to 1:00 with an approval of 11:00. Chief Briggs asked about the current approval; Mr. Wilson read that the approval is for 11:00 AM to 10:00 PM Sunday through Wednesday and 11:00 AM to 11:00 PM Thursday, Friday and Saturday; no entertainment had been approved. Chief Briggs stated that the applicant is already in violation and questioned why the Board would give him more. He stated if the applicant wanted to make things right on the site, he should comply with the current rules. The approved hours, Mr. LeClaire's hours he was operating under, and the proposed hours were reviewed. Mr. LeClaire confirmed that when people stayed past closing, he did continue to serve them drinks. Chief Briggs noted that Mr. LeClaire is supposed to close the doors at the time he is supposed to and he admits to serving alcohol past that time. Mr. LeClaire said that the restaurant is actually a tavern now. Mr. Wilson noted that in the past any entertainment was a stand-up comedian, not a loud band. Mr. LeClaire re-iterated that it was a tavern; not a place for lunch. Mr. Wilson said that he had made the changes with the changes to the clientele, not the Town. He reminded the applicant that the Board received a letter that had many issues pertinent to the review. Mr. Coffin noted the Noise Ordinance and standards between commercial and residential after 9:00 PM. He requested that the applicant come into compliance with the approval and he comply with the noise ordinance.

MM&S to deny the request for live entertainment and the increased operating hours; the applicant to comply with the existing approval and not change the approved site plan as recommended by the Chief of Police. (Motion by Mr. Coffin, second by Ms. Faulconer)

Discussion on the motion: Mr. Korn asked for a definition of live entertainment. Chief Briggs suggested he review the Safety Code per the Fire Marshall's office. Mr. Coffin said not a stereo or radio, kept below 45 decibels. Chief Briggs noted that with live entertainment he can require uniformed officers on site. Mr. Korn confirmed that any entertainment he had at the site was karaoke, a comic night, single guitarist and/or piano player. There was discussion on compliance with local ordinances and regulations. Mr. Coffin noted that it is the owner's obligation to know the regulations. Mr. Wilson said that it would not be fair to the people in the area. Mr. Heitz noted that the applicant is not in compliance with the approval and had a problem with closing at 11:00 with the customers not leaving until 1:00 as it is an issue with leaving the parking lot, noise in the area, etc. He stated that he could probably live with a closing time of 11:30 or 12:00 on Friday and Saturday if everyone was gone; Mr. Heitz added that the location is in a very residential area and the abutters have expectations of privacy, as well. Mr. Pope agreed with Mr. Heitz, he suggested separating the motion into two issues, one for the hours and one for the live entertainment. Mr. Heitz suggested that he might not have a problem with a comic or karaoke but a rock band past 11:00 might annoy him as an abutter and he was reasonable sure that that type of activity couldn't meet the noise ordinance. Mr. Landry said that his main issue was the sound and the activity would have to be reasonable within those standards. Ms. Faulconer said that she did not feel it was reasonable to expand the hours in the location; the restaurant is in the Historic District, in a very residential area; she continued that the business owner was aware of the restrictions when the operation began and the area residents also knew what the activity was when purchasing their homes; this zone did not support the expanded hours or activities.

Vote on the motion to deny: Motion passed 4-3 (Mr. Pope, Mr. Heitz and Mr. Wilson opposed)

Mr. Wilson re-read the hours of operation as noted on the prepared affidavit confirming the previous approval. Mr. Wilson asked the property owner, Rick Korn, if he would be signing the affidavit noting the approval. Mr. Korn replied that he would contact his attorney first for his advice. Mr. LeClaire similarly replied. Mr. Wilson stated that he was signing the affidavit to act as confirmation that this is the current approval of the activity on the site.

Arthur and Tammy Holsipple
14 Coopers Grove Road
Tax Map U2-30

Mr. Greenwood reviewed the procedure for the Planning Board granted a Conditional Use Permit for the proposed addition; he added that he does not see an issue with this as the addition is running parallel to the home and is not getting any closer to the lake and there is no undue increase to Stormwater run-off; this is in the 150 foot setback but outside the State's 50 foot setback. Mr. Quintal noted that the road is incorrectly labeled and would need to be corrected. The septic system location was reviewed; Mr. Anderson, the applicant's representative, explained that the septic was not being replaced, the septic design was to show a future

replacement if necessary. There was continued discussion regarding the septic design as a proposed replacement design per the Health Officer. Mr. Anderson noted that the State Shoreland Protection Bureau had approved the design. Mr. Quintal has no issues if approved by the State and has Health Officer approval; if a new system was being constructed, it could be put outside the Town's setbacks and it would be an issue for the Board. Mr. Anderson re-iterated that they were not putting in a new septic system as the current one was fine and operational. Mr. Greenwood noted that a replacement system is under the Health Officer purview.

MM&S to approve a Conditional Use Permit for the 352 foot addition provided the Board has an approved septic design that meets the Town Ordinances as approved by the Health Officer and NHDES. (Motion by Mr. Heitz, second by Mr. Pope) **PUNA**

Board Business

Mr. Wilson, for informational purposes only, informed the Board that more and more Towns are requiring a Foundation Certification.

Correspondence:

- Voluntary Lot Line Adjustment; approved for the Chairman to sign.
- Letter from SRSD re: use of the old High School Campus; the School Board was asking for a volunteer from the Board to serve on an ad hoc committee; Ms. Faulconer recommended Mr. Coppelman.

ACTION ITEM: Ms. Faulconer will scan and send the letter to all of the Board to determine interest and discuss at the next meeting.

- Letter received from 9 Fieldstone Drive regarding a farm and requirements from her bank. The Board determined that the property is located in the SFR/AG district and her description in the letter is a permitted use in that zone.
- Letter for Town Report available for the Board's review.
- Town and City magazine
- Ash Drive condo. docs. reviewed regarding motorized recreational vehicles not allowed on the Open Space portion of the property; no restrictions on the right of way are in the documents; copies of the document given to Mr. Heitz for the BOS to review.

MM&S to go into non-public session to review information that could adversely affect the reputation of a non-Board member. (Motion by Mr. Heitz, second by Mr. Coffin) Mr. Wilson polled the Board: RW: yes, PC: yes, AP: yes, MH: yes, ELF: yes, SS: yes, EL: yes.

MM&S to come out of non-public session. (Motion by Mr. Heitz, second by Mr. Coffin) Mr. Wilson polled the Board: RW: yes, PC: yes, AP: yes, MH: yes, ELF: yes, SS: yes, EL: yes.

No decisions were made by the Board during non-public session.

Duval/Hunt Road mylar not received yet.

ACTION ITEM: Ms. Faulconer to write a letter to Mr. Duval requiring that the conditions of approval/mylar be completed within 30 days from date of the letter.

Plan Review: The Board placed the TDS Telecom Corporation/Korn property application on the February 18th agenda.

MM&S to adjourn at 10:20. (Motion by Mr. Pope, second by Mr. Coffin) **PUNA**