

**Kingston Planning Board
Public Hearing
February 4, 2014**

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	Stanley Shalett
Adam Pope	Peter Coffin
Mark Heitz, BOS rep.	

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Ellen Faulconer, Administrative Assistant

Absent: Rich St. Hilaire, alternate

Board Business:

Correspondence:

- Lot Line Adjustment signed
- Letter received from Sue Fyfe re: office at CTN Plaza; no further review required from the Planning Board; refer to BOS for required permits.
- Letter from SRSD re: ad hoc committee
- Report from Sanborn Head re: scope of work for lead analysis on property (Trendezza)
- Memo from Ms. Faulconer re: increase of registered mail fees

MM&S to increase the fees for registered mail (abutter's fees) to \$11.50. (Motion by Mr. Coppelman, second by Mr. Coffin) **PUNA**

- Question from Joseph Nichols for Beals/Trendezza regarding changes to the previously approved lot line adjustment; Mr. Greenwood recommended needing an amended plan with notification; the Board agreed with that recommendation.

Capital Improvement Plan Update: 2014-2019

Mr. Greenwood distributed copies of the proposed update to the Capital Improvement Plan. Mr. Coppelman explained the process; the Committee is comprised of members of the Planning Board, Budget Committee and Board of Selectmen; input was solicited from Town Departments and Committees. Mr. Coppelman explained that the CIP is a guiding document that goes hand in hand with the Master Plan and Impact Fees; it does not set aside any funding. He reviewed the table on page noting that there was a change in the estimate for the Highway garage from

\$550,000 to \$650,000 based on the current warrant article but is not recommending changing the current document pending action at Town Meeting.

There was discussion of the current warrant article and the funding mechanisms involved in the proposal.

MM&S to adopt the CIP as presented. (Motion by Mr. Coffin, second by Mr. Coppelman)
PUNA

Fitzgerald Boyd Law, PC
Montana Realty Trust
17 Jericho Drive
Tax Map R5-8-30

Mr. Wilson explained the issues Mr. Greenwood had discussed with the applicant and his representatives by phone this afternoon. Mr. Greenwood apologized for not sending the applicant's submission, in answer to Mr. Cuomo's review; but at this point, Mr. Cuomo had not seen the answers from the applicant's soil scientist to review for the Board; he explained that it was his fault and apologized again for his mistake. Mr. Wilson asked the applicant if, under the circumstances, they would agree to a continuance for two weeks until the next time the Board met. The applicant's attorney, Jackie Fitzgerald-Boyd, said they wanted to move forward this evening and questioned what Mr. Cuomo needed to review. Mr. Lavalley said they sent the soils informations and didn't think Mr. Cuomo needed to review anything. Mr. Wilson explained that the only review from Mr. Cuomo that the Board currently had on the application would recommend the Board's denial; the last comments from Mr. Cuomo state that the application does not meet the Town's current ordinances. Mr. Lavalley stated that Mr. Cuomo is interpreting the rules incorrectly. He explained that they did test pits and auger holes to determine the filled soils and that is what is shown on the plans addendum; he added that he thought some of Mr. Cuomo's comments were silly. Mr. Coffin noted that the plans originally submitted did not show the previous fill area which had to be excluded from the setbacks and other requirements. Mr. Lavalley stated that he thought that they would be meeting Mr. Cuomo on the site. Mr. Lavalley suggested that Mr. Coffin read the requirements; Mr. Coffin read the ordinance; Mr. Lavalley stated his views and opinion regarding the interpretation of the ordinance. Mr. Lavalley did not that the previously filled wetland area and calculations are included in the revised plan. Mr. Pope noted that the Board has a letter that the filled area could not be included in determining the viability of a subdivision of the existing lot. Mr. Lavalley said he was unaware of any letter of agreement that they would not use the filled area as calculations of the soils. Mr. Coffin said that the Board had reviewed this with them extensively in previous meetings. Mr. Pope stated that the Board had previously supplied the applicant with copies of letters regarding this issue; if the applicant was not willing to continue for two weeks as the Board requested to get information of their revised proposal, he is making a motion to deny.

MM&S to deny the application. (Motion by Mr. Pope, second by Mr. Coffin)

Discussion on the motion: Ms. Fitzgerald-Boyd stated that they had been before the Board several times and they have waited for Mr. Cuomo's report in the past and they are still here in

February and the proposal needs to move forward. Mr. Lavalley stated that the plan had been created more than a month ago and the Board has had the plan for at least 6 weeks. Ms. Faulconer interrupted that the plan was stamped when it was received which was January 9, 2014.

Mr. Heitz asked Mr. Lavalley if he could confirm that if the lot had not been illegally filled, the applicant could not meet the current criteria; Mr. Lavalley said he couldn't say that. Mr. Coffin noted that the Board had been clear that he had to go by the past soil conditions, prior to the wetland area being illegally filled. Mr. Lavalley did agree that there had been an illegal fill on this lot. Mark Heitz confirmed with Mr. Lavalley that the area was still illegally filled. Mr. Lavalley agreed that the lot does not have enough soils as the wetland go through the property; as proposed it just makes the two lots.

Mr. Coppelman said that this same proposal and situation had been brought to previous Planning Boards and turned down. The minutes from May, 1993 were read. Mr. Heitz added that changes in regulations that may have lessened might allow a subdivision if able to meet current regulations but the applicant's representatives agree that this is not possible without including the illegal fill. Mr. Lavalley stated that Mr. Heitz is correct but they still consider this area buildable. Mr. Coppelman stated his agreement with denying the application based on this. Mr. Coffin reminded the applicant that the Town agreed at the time of the illegal activity, to leave the illegal fill on the site as the damage to the wetlands would have been worse if it had been removed.

Ms. Faulconer stated that at the time the Board originally stated it was referring the plan to Mr. Cuomo, Mr. Lavalley said that he was happy to have Mr. Cuomo review it as he was sure Mr. Cuomo would agree with the proposal. She continued that the Board has received a review from Mr. Cuomo that did not agree and now that the applicant has provided an answer to Mr. Cuomo and his concerns, the applicant does not wish to wait two weeks for the Board to get that review and wants a decision from the Board this evening. She asked Mr. Lavalley if that was a correct interpretation of events. Mr. Lavalley agreed. Mr. Wilson again referenced a letter dated July 26, 1991 from Russ Army, Chairman of the Kingston Conservation Commission regarding setbacks being from the original wetland border not the filled area lines.

At this point, Mr. Lavalley noted that the applicant would be willing to delay asking for a decision for two weeks. There was discussion regarding this request as a motion was already on the floor and this was discussion on that motion. Mr. Shalett suggested the Board should give the applicant the two weeks and send the report to Mr. Cuomo for his review; Mr. Heitz agreed; Mr. Wilson said that Mr. Cuomo should review to finally have the information and resolve the issue.

Ms. Faulconer wanted the record to reflect that the delays for this application were not entirely due to the Board's actions; one delay was due to an expected snowstorm and one month delay was approved from a request from the applicant due to illness. Ms. Fitzgerald-Boyd agreed.

Mr. Pope withdrew his motion.

MM&S to continue this application to February 18, 2014 at 7:50. (Motion by Mr. Pope, second by Mr. Coffin) **Motion passed 6-1** with Mr. Coppelman opposed.

ACTION ITEM: Mr. Lavalley asked for copies of the letters that had to do with past decisions on this property's previously denied subdivision proposals and illegal filling of the wetlands.

**PSNH
Subdivision/Lot Line Adjustment
14 and 18 Mill Road
Tax Map R11, Lot 11 and 12-1**

Nick Golan of TF Moran, on behalf of PSNH, addressed the Board regarding the proposed Lot Line Adjustment. He was notified this afternoon by Mr. Greenwood that this lot is in the Aquifer Protection District; one lot would wind up being less than three acres so they are going to be pursuing a variance for less than a 3 acre minimum lot size. There was discussion on how they applicant could keep the application open without the Board denying the applicant which would require they resubmit. Mr. Pope noted that the Board had not accepted jurisdiction so they could continue without a decision while the applicant went to the ZBA. There was concern regarding not seeming to assume a specific decision from the ZBA by leaving the application open; Mr. Golan noted that if they did not get the variance they could amend the plan showing an easement; although their preference was to purchase the property.

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

**PSNH
Peaslee Substation
Mill Road
Tax Map R11, Lot 11**

Mr. Golan noted that they had appeared before the Board in October and November; they had asked for a continuance. He noted that easements and access rights had been given to Mr. Greenwood who gave them to the Board. Laura Games, PSNH siting and permitting specialist, spoke about the transmission facility and supporting the network.

Mr. Golan explained the plan noting the ROW, already cleared vegetation and vegetation that would be removed; this will support the 260 x 320 substation requirement; 6800 sq. ft. of wetlands will be permanently impacted. He explained BMP's for the wetlands; described buffers. There is an 1800 linear foot gravel road; they have filed a wetlands Dredge and Fill permit which is currently pending.

Mr. Golan stated that they are proposing an alternate buffer in the area where 50 ft. is required as there are four areas that do not quite meet the requirements. He pointed out the areas on the site plan; in one area they are adjacent to Unitil and feel that given the uses and connective uses no buffer is really required; in one corner instead of 50 feet they show 28 feet on the plan; in a third area it is adjacent to the wires there is an undulating tree line which will not be any smaller than 28 feet; in relation to the existing ROW which extends into the area with no vegetation, they are requesting a waiver for that buffer. Mr. Golan pointed out the bio-retention area; two areas of

treatment were pointed out. He continued reviewing the plan including a control building in the substation yard; abutting property use and zoning; vegetated areas; property lines; easements; existing ROW; additional distribution substation.

Mr. Quintal's comments were read. Mr. Golan can address Mr. Quintal's comments and will coordinate with him; he confirmed that he can address all of Mr. Quintal's concerns but has two issues that he does not think pertinent specific to road requirements as this will just be a driveway and once constructed will be used once a month for periodic inspections.

Mr. Golan agreed to post a bond for any damages to the Town road during the construction of the site. Mr. Wilson suggested he work with Mr. Quintal on determining this amount.

Abutter Kevin Connors, 20 Mill Road, asked for clarification of the previous application for the Lot Line Adjustment. Mr. Greenwood explained the three-acre requirement in the APZ and the applicant is going to the ZBA for a variance to make a new lot less than three acres. Walt Blinsky, the project manager for the applicant, explained the abutter lot line issues; they want the land in fee instead of by easement; they would rather own the land than have an easement.

Mr. Golan explained that PSNH only uses emergency lighting on the building; the abutter noted that the Unitil building is lit up all the time. Mr. Pope began making a motion to continue but Mr. Coppelman had questions about the waiver requests for the buffer and asked for a better description. There was continued discussion on the locations of the buffer, the amount of the buffer requests; discussion about specifics of the waiver so there was not an indication that the entire buffer was being waived. Mr. Shalett asked the abutter to show the location of his property. Mr. Coppelman suggested that the request for the waiver needs to be better defined.

MM&S to invoke jurisdiction. (Motion by Mr. Heitz, second by Mr. Pope) **PUNA**

MM&S to approve the buffer waiver requests as proposed in the October 21, 2014 letter from TFM. (Motion by Mr. Pope, second by Mr. Coffin) **Motion passed 6-1** with Mr. Shalett opposed.

MM&S to continue to March 18, 2014 at 7:00. (Motion by Mr. Pope, second by Mr. Coffin) **PUNA**

Board Business, continued

Correspondence:

- Letter from "Saddle Up Saloon", AKA Pondview Restaurant, regarding proposed use on the site; the Board needed to determine if any additional review is required. Mr. Pagliarulo, owner, stated that they were removing the frozen yogurt used from the plan; he stated that he thought that everything else in the letter was allowed already. Mr. Coffin reviewed RSA's with requirements for cigar bars. Mr. Wilson reminded the Board that the Board was not doing a review of the property just determining whether further review was needed. He read comments from the Fire Chief and the Police Chief which noted several issues based on the proposals in the letter. Mr. Coppelman stated

that he believed the applicant would need site plan review with notice of abutters. Mr. Wilson added that the proposal was a dramatic change from the previous use. Robert Waters, owner of the property and restaurant partner, introduced himself to the Board. He noted that he had not reviewed the letter prior to Mr. Pagliarulo submitting it to the Board. Mr. Wilson said that there was not site plan currently on file and they would require one. Mr. Greenwood added that if the Board found it to be the same thing that had previously been done on the site then the Board would have a discussion of the activity instead of requiring a site plan. Mr. Greenwood and Mr. Coppelman both explained that any changes would trigger a site plan. Mr. Waters stated that the intent is to have a restaurant and lounge; he wanted to see how that goes before any additions; he added that the letter was submitted with possible future intent but those things were not on the plate at this time.

Mr. Wilson suggested that the owners write another letter and submit it to the Board so the Board could make a determination about whether additional review was required. Mr. Waters asked if, in fact, they were looking to open the restaurant and lounge with other activities what would happen. Mr. Wilson explained that a site plan submission and review would be required for anything different; he warned against doing anything not previously approved. Mr. Greenwood noted that the only sure thing approved on that site was a restaurant and lounge. Mr. Waters agreed that an amended letter submitted to the Board may be more appropriate. Mr. Greenwood explained that a change of hours would require a site plan; it was suggested that the owners review the property file in the Selectmen's office.

Mr. Waters asked about the process. Mr. Wilson explained that the first step was to send a letter of intent to the Planning Board; the Inspectors would not issue any permits for building, etc., until the Planning Board confirmed whether additional review was or was not required. Mr. Waters noted that the first step for anything for the site was the Planning Board. He stated that he would submit an amended letter regarding their initial intent for the use of the site. He confirmed that any additions or changes to the activity would require a site plan review. He re-iterated his understanding of the process by stating that if the Board was able to approve as a continuing use then they could proceed with that but that any changes would require a site review.

Mr. Wilson suggested that he speak with the Fire Department on some issues; he referred him to the Inspectors for additional permits including needing a final Occupancy Permit.

- Letter from Gordon Bakie forwarded to the Board from the Board of Selectmen regarding changing his property; the Board reviewed past action when they had updated the tax maps and amended several properties including Mr. Bakie's; upon Mr. Bakie's request, they Board put his property back to the original zoning. The Board noted that Mr. Bakie can continue any use on his property that had been there prior to zoning as they were continued a grandfathered, non-conforming use. The Board consensus was that they were not interested in changing per Mr. Bakie's request.

MM&S to send a letter to Mr. Bakie that they are not interested in embracing this type of zoning; the Board could view this as spot zoning. Mr. Bakie can get a petitioned warrant article and submit to the Board for next year's review for the 2015 Town Warrant. (Motion by Mr. Heitz, second by Mr. Coppelman) **PUNA**

- Email updated from Mr. Pellegrino. Mr. Heitz stated that he met with Mr. Pellegrino and suggests a meeting with himself, Mr. Pellegrino, Mr. Greenwood, Mr. Wilson and Mr. Quintal. Ms. Faulconer will confirm that February 24th at 3:00 is convenient for all parties.

MM&S to approve the 1/7/14 minutes as presented. (Motion by Mr. Coppelman, second by Mr. Landry) **Motion passed 5-0-2 with Mr. Pope and Mr. Heitz abstaining.**

ACTION ITEM: Mr. Greenwood will send electronic version of CIP to Ms. Faulconer.

Mr. Landry announced a walk on the land conserved by the Southeast Land Trust on Saturday at 9:00 AM.

MM&S to adjourn at 9:15 PM. (Motion by Mr. Pope, second by Mr. Coffin) **PUNA**