

**Kingston Planning Board
Public Hearing
March 17, 2015**

The Chairman called the meeting to order at 6:50 PM.

Members in Attendance:

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| Richard Wilson, Chair | Adam Pope |
| Glenn Coppelman, V. Chair | Peter Coffin |
| Stan Shalett | Carol Croteau |
| Mark Heitz, BOS rep. | |

Members – Absent: Rich St. Hilaire, Alternate

Also in Attendance: Dennis Quintal, Town Engineer; Glenn Greenwood, Planner; Ellen Faulconer, Administrative Assistant/Board Alternate

Mr. Coffin and Ms. Croteau provided copies of their “swearing-in” documents after their election to the Board.

**SPE Real Estate, LLC
34 Route 125
Tax Map R2 Lot 13**

Rob Marini of NativeTech introduced himself and his client, Steve Early of SPE Real Estate, LLC to the Board. Mr. Marini reviewed the plans that had been submitted to the Board and been reviewed by the Town Engineer. He stated that he had not addressed all of Mr. Quintal’s comments as yet. He reviewed the submitted plan explaining the multiple watersheds and the previous drainage study used as a reference to model the drainage as used now; he stated that there is not too much drainage onto Route 125 and no real run-off off-site. Mr. Marini stated that Mr. Early agreed to re-seed the grass area to turf and add a silt fence; there is an area with a little erosion onto Route 125 and he will re-enforce that; the wetland restoration was accepted by DES last fall. Mr. Marini noted that this is better soil type than the previous soil type. He re-iterated that the current situation is not increasing the run-off onto Rte. 125 at a greater rate. He talked about the soils from 10 years ago to current conditions.

Mr. Early said that this is the second season of the area that had been filled in and seeded in 2013 adding that he has not heard any complaints of water going onto the road; he expressed his concerns of the property currently under a purchase and sales agreement.

Mr. Wilson asked Mr. Quintal about his comments. Mr. Quintal stated that he had submitted his comments to the applicant’s engineer and would like to receive the engineer’s response to the comments so he could review them. Mr. Wilson asked that he

review his comments with the Board. Mr. Quintal reviewed his list of twenty-two comments/concerns which included misidentified soil types, incorrect watershed notations, incorrectly notated soil groups and values, incorrect existing conditions, incorrect notations regarding the swale after the sub-catchment on the west watershed, incorrect stormwater treatment per the NHDES Stormwater Manual, incorrect East watershed swale, erosion control details missing, the area for ledge and pavement is incorrect. Mr. Quintal ended his report by stating that he needed revised plans and calculations.

Mr. Marini said that he has photos of the retention areas being worked on; the height of the backhoe is the depth in an area which he pointed out on the submitted plan. Mr. Heitz asked how many times the Board had reviewed the plan adding that he had never heard of test pits being dug for this type of thing. Mr. Quintal said that there had to be clarification of run-off from the site onto Route 125 and abutters properties. Mr. Quintal said that the Town's Road Agent had told him that there had been some run-off onto Rte. 125 a couple of years ago. He said that based on the submitted plans, he has concerns with run-off but the Board can ignore those concerns if they want. Mr. Heitz said that he spoke with Chief Briggs about this plan; Chief Briggs contacted Division 6 to confirm that they have no concerns and have not experienced any problems. He re-iterated that he does not recall test pits being done for previous reclamation; he noted that the plans done for Connie Magnusson were basically done on the back of a napkin.

Mr. Coffin said that the analysis was done prior to starting the project, removing 10 feet might change that and it is necessary to make sure the information is valid for reclamation; he added that it is also necessary to make sure the plantings are appropriate for the wetlands; removal of trees can cause excess surface flow; he questioned the project impacting abutters. Mr. Heitz commented on the grass re-planting. Mr. Coffin explained that trees have a deeper root system while turf has a low root system when it comes to surface water run-off and retention; it is important to try to approximate the infiltration rate that was there prior to the site work.

Mr. Heitz asked if abutters were present at the meeting; there were none. Mr. Coppelman stated that the lack of abutters' presence was not the issue; the project does not get to impact abutters' property. He explained that this site was a different environment than typically reviewed so the reclamation is different than what Mr. Heitz has previously seen. It was confirmed that abutters were notified. Mr. Wilson asked Mr. Marini how much that was asked for by Mr. Quintal was easily done. Mr. Marini said that he can not seem to find any test pit information or data. Mr. Early said that no test pits were ever done; he is unaware of the Town having any problems adding that there is over 20 feet of stone along the edge where the run-off area is. Mr. Heitz re-iterated that DOT has no concerns. Mr. Coffin referred to Mr. Quintal's previous comments explaining that the Board has a professional engineer review plans per the Town's requirements and stated that the Board needs to accept his professional advice.

Mr. Quintal explained that usually, when asked to do this type of review and report, he usually can do a site walk with the review being done from the plan; the submittal now is

a hindrance to the review as he didn't have the ability to witness any of the stones being placed. He continued that if there are pictures or other evidence that would be helpful, he would be glad to review them prior to the next hearing to see if it helps with any of the site concerns.

The Board discussed continuing to have Mr. Quintal look at the site again with an updated plan submitted. Mr. Marini asked if the Board could grant a conditional approval with a follow-up inspection to insure that all the conditions are met. Mr. Wilson stated that 22 comments are an awful lot for a conditional approval; he would suggest working on the comments and have Mr. Quintal do a site walk to eliminate the concerns. Mr. Coppelman said that he did not believe the plan was at the point for a conditional approval and questioned whether the plan was even ready to evoke jurisdiction. Mr. Coffin noted that some of the conditions would require a visual inspection and it is tough to say the property is restored without being able to see it. Mr. Early stated that he could not afford to lose the sale.

Mr. Greenwood explained that the Board's goal is to verify that the reclamation of the site is accomplished so there is no public hazard and the plan is not yet at that point adding that there is no benefit to accept a plan with 22 point of contention. He explained that Mr. Quintal had worked with the applicant's engineer to get the initial submission improved and while this is better, there is a lot of information that is lacking. Mr. Heitz asked to confirm that abutters were notified; Mr. Wilson noted that no abutters were present. Mr. Quintal suggested that someone from the Town should see if the reclamation of the site is acceptable as the Town is an abutter. He added that typically there is a written sign-off from abutters when their property is being used by someone else. Mr. Greenwood explained that this issue has come up because previous site walk's had shown that there actually was "bleed-over" of this site's activity onto the abutters' property; if an abutter's property is negatively impacted, the applicant either needs to get written permission or remove the incursion. Mr. Heitz stated that he could not remember doing that in the past; he stated that if abutters are notified, they need to attend the hearing; he wanted to clarify that new policy was not being created. Mr. Greenwood said that was not happening at this point. Mr. Early stated that he had cleaned up the other side of the property near the Town's portion a year ago.

Ms. Faulconer asked Mr. Quintal when he provided the list of concerns to the applicant's engineer. Mr. Quintal answered that he provided Mr. Marini with the comments on February 18th; Mr. Marini confirmed that he did not ask to meet with Mr. Quintal upon receipt of Mr. Quintal's report.

MM&S to continue to April 21, 2015 at 6:45. (Motion by Mr. Coppelman, second by Mr. Coffin) **Motion carries 6-0-1** with Mr. Heitz abstaining.

Fitzgerald-Boyd Law
Jason Rego
27 Jericho Drive
Tax Map R8 Lot 30

Mr. Wilson announced that the applicant had asked to continue tonight's hearing to the Board's April hearing. Mr. Wilson told the abutter that the Board was in receipt of their letter but due to the continuance request, it will be held and read at the next hearing.

MM&S to continue to April 21, 2015 at 7:00. (Motion by Mr. Coppelman, second by Mr. Coffin) **PUNA**

Thomas Brouillette
Trendezza, LLC
Donald and Shibaun Heath
30 Marshall Road
Tax Map: Parcel A (R33-28) and R41-1

Mr. Brouillette introduced himself and pointed out that Mr. and Mrs. Heath were in the audience. Mr. Brouillette explained that they were seeking a Lot Line Adjustment and would be reducing the size of the right-of-way property being turned over to the Southeast Land Trust. He continued that the driveway was constructed along the ROW property line and the ZBA had granted an equitable waiver to allow it to be three feet off the driveway. Mr. Brouillette explained that he made an error and instead of going through the snow and actually hitting pavement, he hit ice; he thought he had hit the edge of pavement so the plan was incorrect; the driveway is not where it was shown on the plan to the ZBA so the driveway is not three feet away from the property line, it is actually on the line. He is suggesting moving the ROW property line over so it is three feet away from the edge of the driveway.

Mr. Wilson read the Road Agent's comments which noted that the driveway for this property should have a width of at least 12 feet; with a twenty foot setback to each property line the total width of the property should be a minimum of 52 feet wide. Mr. Wilson read the Building Inspector's comments which including asking why this ROW access would be allowed in opposition to the Town's ordinances; there is no hardship as the applicant shows the property to the East having 37 acres and over 700 feet of frontage; he suggested moving the property line to the East to allow for the proper opening onto the highway.

Mr. Wilson confirmed that the applicant for Trendezza, LLC was asked about these lines having possible setback issues and reviewed minutes where Mr. Lariviere confirmed that if necessary he could move the property lines to accommodate the necessary footage for the ROW access. Mr. Wilson asked Mr. Brouillette why they would create a hardship for the Southeast Land Trust (SELT) when it was possible to move the other property line to accommodate the issues; it was confirmed that the plan, as presented, would shrink the ROW access to a width of 20 and ½ feet instead of 25 feet.

Mr. Coppelman said that he would be hard-pressed to approve this change and it is an unreasonable request for the Town to change its requirements due to an error that the engineer made. He stated that this process had been a fiasco from the start and the

requirement is 20 feet to the lot line. Mr. Brouillette stated that all the parties are in agreement including SELT. Mr. Wilson noted that the land transfer of the ROW access had not happened yet and if not approved, the original ROW for SELT remains. Mr. Coffin re-iterated that if this proposal was not approved by the Board, SELT still has the existing ROW and access to their property. Mr. Pope explained to Mr. Brouillette that if this was approved the ROW property is now less than 25 feet which is already significantly less than the amount the Road Agent is requesting; he stated that he would probably be okay with the 25 feet as previously approved but nothing less than that. Mr. Wilson re-iterated that a driveway needs to meet regulations.

Mr. Greenwood stated that this process had been frustrating. He noted that the property owners had thought that the house was constructed to respect the setbacks; Mr. Lariviere was aware of this. He continued that the equitable waiver was granted because it was perceived as an existing situation that had occurred. Mr. Greenwood said that there is a requirement for a 20 foot separation and he imagines that the property owner would rather keep a 20 foot separation from an access road with truck traffic than have that type of activity only three feet from their property line. Mr. Brouillette stated that Mr. Lariviere wanted to move the line near the Heath's property and did not want to move the other line towards his land. Mr. Greenwood said that it appears that only Mr. Lariviere wants to do have this done this way. He suggested with all the property available, it appeared that Mr. Lariviere could absorb the 20 foot setback on his property instead of the other abutter absorbing it; it appeared that the 20 foot setbacks could be done to comply with the regulations. Mr. Greenwood asked the abutter, Mr. Heath, if he was in agreement with the proposal.

Mr. Heath stated that he had only been in agreement as he was told that it was the only option for his driveway to be on his own property. He explained that when purchasing the property, he was told that the property line was on the other side of the pole; it had been misrepresented to him. He would prefer the appropriate setbacks. Mr. Wilson noted that the driveway setback issues/concerns had come up several times and been dismissed by the applicant as not an issue.

Mr. Greenwood added that should the plan be accepted, there was not a calculation showing the new lot sizes and they would need to be added to the plan. Mr. Quintal added that a scale should be on the plan; the width of the ROW access should be well-defined; there should be a note of the ZBA's equitable waiver.

Mr. Pope asked the applicant whether they wanted a motion on the application as presented or wanted a continuance. Mr. Brouillette said that he would talk to Mr. Lariviere about maintaining a 25 foot ROW access and asked for a continuance. Mrs. Heath asked where this left their property line. Mr. Greenwood said that it appears that the engineer would not be planning on maintaining a 20 foot setback to their property, just the three feet.

MM&S to continue to April 21 at 7:30. (Motion by Mr. Pope, second by Mr. Coffin)
PUNA

Mike Kalil
102 Route 125
Tax Map R8 Lot 48

James Hagobian introduced himself and explained that they were planning on operating a business like the existing business which was auto sales and auto inspection and would be adding auto repair. The Building Inspector's comments were read which questioned the notes on the plan versus the uses being applied for in the application. Mr. Pope stated that the Board wanted to see the notes amended and to amend the parking to include the repair vehicle spots. Mr. Greenwood explained that an affidavit for any approved changes would need to be recorded amending the previously approved plan.

Mr. Pope reviewed the notes and the required changes:

- Note Number 1 needs to state that the proposed use will be for a Single Family Residential home, interior vehicle storage, auto sales and auto repair.
- Note Number 2: Hours of operation remain the same as the existing notes on the recorded plan. AMEND Light note to read: "Any exterior lights need to comply with existing ordinances."
- No changes to Notes 3 and 4.

Mr. Pope noted that the applicant has marked off a couple of extra parking spaces on the plan. There was discussion about the number of approved parking spaces on the plan. The plan will correspond with the following number of spaces; an existing recorded plan will show the amended spaces and be provided by the applicant to the Board for its files:

- 2 – Resident Parking spaces (in the back of the garage)
- 5 – Repair Parking spaces
- 4 – Customer Parking spaces
- 16 – Vehicle Display spaces
- 2 – Employee Parking spaces

Total Number of Spaces: 29

- No changes to notes 6 and 7
- Note number 8 will clarify that "no vehicles which are part of the commercial operation will be washed on-site".
- Notes that have been crossed out by the applicant for this submission will be removed and the notes will be renumbered accordingly.

Mr. Greenwood will prepare the affidavit for the applicant and Chairman's signature for recording; the applicant needs to provide the plan to the Board. The existing sign pole was reviewed; Ms. Faulconer referred to the applicant to the Selectmen's office for a sign permit; the Sign and Outdoor Lighting Ordinance was reviewed.

MM&S to approve the plan conditionally upon the signing of the affidavit and the submittal and approval of the amended plan as discussed. The Board grants Mr. Greenwood the authority to review the plan for compliance with the conditions and grants Mr. Wilson the authority to sign the plan without any further Planning

Board review. The conditions to be met within 60 days. (Motion by Mr. Coffin, second by Mr. Coppelman) **PUNA**

Board Business

Correspondence:

- Mr. Greenwood explained that the Board had received a plan from Mr. Bartlett that would need a denial from the PB as it did not meet wetland setbacks; a letter of denial was needed by the ZBA before it could be scheduled; the deadline was tomorrow; the Board authorized the letter.
- Letter from Unital re: beginning project

ACTION ITEM: Mr. Greenwood to check on any bonding requirements for the project and get back to the Board.

- Election results
- King's Landing review provided by Mr. Quintal
- Engineering/Bond agreement signed by Mr. Wilson
- Farmer's Market request for survey from the Library was reviewed; Mr. Wilson asked that the Library keep the Planning Board informed of any plans; Mr. Pope agreed adding that there might be concerns regarding traffic flow, etc. that may wind up being pertinent to the Board. Ms. Croteau asked Mr. Heitz if there was a possibility of a Farmer's Market being on the plains if it was too large for the library location; Mr. Heitz said there used to be one but apparently was not financially viable.
- Letter received from Cogswell asking to extend the deadline due to weather conditions, etc.

MM&S to extend the Cogswell approval deadline 90 days from this date. (Motion by Mr. Pope, second by Mr. Coffin) **PUNA**

- Letter received from Mr. Landry offering to continue as an alternate for the Board.

MM&S to appoint Ernie Landry as an alternate for the Planning Board, for a three-year term. (Motion by Mr. Coffin, second by Mr. Coppelman) **PUNA**

- Planning Board Bond update
- Planning Board Budget update
- Electric signs on Rte. 125 were on past 10:00 PM; Ms. Faulconer will review again this Wednesday; if still on, the Board authorized sending a reminder letter to shut them off at 10:00 PM.
- Copy of Regional Master Plan from RPC.
- 911 numbering requirements – Ms. Faulconer will review and return to the Board with any recommendations for subdivision applications.
- 1 Meeks Road – signage enforcement follow-up. Ms. Faulconer reviewed State sign permitting process; she said that the State clarified that they permitted the structure – its size and location, not the signage itself – of off-premise signs. The State said that the stricter requirements, whether State or Town, apply. Mr. Heitz took pictures of the sign for the Board to show that it had not expanded; he explained that the owner put a corrugated plastic cardboard sign over the former Lakeside sign; it used to be a Lakeside sign and now it had a Bladelock Snow Plow sign; he added that the company is not in Kingston but apparently the owner

would like to move the business to this site some day. He was questioning whether the Board was comfortable with the enforcement request based on it not being a grandfathered use as the sign had been there forever. He agreed that the previous sign was for an in-Town business. He questioned whether it was grandfathered and asked Mr. Greenwood if he was comfortable with considering this not grandfathered; he wanted sure footing for any possible legal action.

Mr. Greenwood said that while it would have been nice for there to be a record of the Town contacting the owner to say the sign needed to come down as soon as Lakeside closed; he was still sure that it was not grandfathered. Mr. Heitz suggested that with “grandfathering”, the sign had to adhere to the regulations at the time that the sign was put up and future regulations don’t apply. Mr. Greenwood explained that if talking about a building that would be the case. He said the use for the sign doesn’t exist; the business had not operated for 2 years; there was a cessation of the use; the Town’s ordinances say that the sign needed to come down. Mr. Heitz said there had been issues in the past when a building wasn’t used that was non-conforming in a zone and it was considered “grandfathered” even the use had not continued. Mr. Greenwood explained that if the person in ownership is marketing a use even though not actually currently operating, the use is considered continuing; with a sign, the same “grandfathered” status would not be appropriate as there needs to be an “active” standpoint; Lakeside closed in 2012 and there had been two owners with two different names since they closed. Ms. Faulconer stated that the State confirmed that they received a letter from the property owner in 2012 that the Lakeside restaurant had closed; there was a lapse in the State permit.

Mr. Heitz said that under those circumstances, should they be told to remove the sign. Mr. Greenwood answered yes; it ceased being a sign for Lakeside in 2012 and the Town’s ordinances clearly say no off-site signs are permitted. Mr. Greenwood explained the permitting process and non-conformance adding that the premise of non-conformance is that the non-conforming use will eventually go away; as non-conformance is limited in its ability to change, eventually it won’t exist. Ms. Faulconer noted that the Building Inspector has a copy of a book by Peter Loughlin that explains this premise. Mr. Heitz reviewed the sign and the Board’s enforcement request and said that since it does not meet the requirements it seemed that it needed to be removed; it was confirmed that it would need to be removed regardless of what was on the sign. Mr. Heitz asked that the Board re-do the enforcement request to add size issues and the need to remove the sign.

ACTION ITEM: Ms. Faulconer will re-do the enforcement request and submit to the BOS.

- Mr. Heitz reviewed an issue that had come to the BOS regarding the Lancaster property and 4 shipping containers that had been stacked with a roof, doors, windows and heating added. Mr. Lancaster’s attorneys said that the Planning Board approved storage containers for the site so further review was not required. Mr. Heitz had questioned whether that had been the Planning Board’s intent. The Planning Board confirmed that Mr. Heitz’s assessment was correct – the Planning

Board would consider this a structure and it would require site plan review and approval. Board members cited the use as one being used as a structure not as storage; the removal of the berm was also questioned. Mr. Heitz said the brought that up during the discussion but it was not addressed by the attorneys. Mr. Heitz said the owner was not necessarily opposed to getting a building permit but going for site plan review seems to be a major obstacle for the owner. The Board reiterated its decision that site plan review is required.

MM&S to accept the February 3, 2015 minutes as written. (Motion by Mr. Coppelman, second by Mr. Coffin) **Motion carries 4-0-3** with Mr. Heitz, Mr. Pope and Ms. Croteau abstaining).

MM&S to accept the February 17, 2015 minutes as written. (Motion by Mr. Coppelman, second by Mr. Coffin) **Motion carries 4-0-3** with Mr. Heitz, Mr. Pope and Ms. Croteau abstaining)

MM&S to adjourn at 9:10 PM. (Motion by Mr. Pope, second by Mr. Coppelman)
PUNA