

**Kingston Planning Board  
Public Hearing  
April 21, 2015**

The Chairman called the meeting to order at 7:00 PM.

Members in Attendance:

Richard Wilson, Chair	Carol Croteau
Glenn Coppelman, V. Chair	Peter Coffin
Stan Shalett	Ernie Landry, Alternate

Members – Absent: Mark Heitz, BOS rep., Adam Pope, Rich St. Hilaire, Alternate

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

Mr. Wilson announced that Mr. Landry would be a voting member this evening.

**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. He stated that he and Mr. Quintal has been to the site and reviewed run-off. Mr. Marini reviewed Mr. Quintal's comments and how he had addressed them: he had reconfigured all the soils based on pre-existing information and modified all the watershed information; he did not use exfiltration in the current report; he provided filter strips around the buffer and wetland area that has been restored; he explained drainage and erosion control details; he showed the outlet configuration; the pond detail was added; the 2, 10, and 100-year storm numbers were reviewed.

Mr. Wilson asked Mr. Quintal if he was now satisfied with the restoration plan. Mr. Quintal answered that it was unfortunate that the review began in the winter adding that he and Carol Croteau did walk the site; he spoke with Mr. Early last week and reviewed the report. He summarized that report by noting that generally the site currently appears stable but hasn't had a full season to grow yet; the restoration might need a little work after the past winter, some of the plants/trees in the wetlands restoration area need to be replaced; as the grass is just starting to grow he recommends utilizing Best Management Practices until full vegetative cover is established further recommending that the recently reclaimed site be closely monitored by the owner especially checking after a significant rainfall event and if any erosion occurs utilize appropriate BMP to rectify and stabilize eroded areas. Mr. Quintal described the excavation that had been done on the site. Mr. Coffin asked about the stability of the rip-rap; Mr. Quintal explained that the intent is to have Stormwater Filtration as an erosion control method to keep the run-off from going

directly onto Rte. 125. Mr. Coffin asked if the recommended controls would go to the next owner of the property as the Board was aware that the property was being sold. Mr. Greenwood stated that the approval goes with the property and the new owner has to follow the plan; the notes will appear on the plan.

Ms. Faulconer reminded the Board that Mr. Early would need to provide a bond to pay for the Board's professional reviews. Mr. Early agreed to provide the bond and will confirm the amount with Ms. Faulconer later in the week.

**MM&S to accept jurisdiction of the plan.** (Motion by Mr. Coppelman, second by Mr. Landry) PUNA

**MM&S to approve the reclamation plan as submitted and discussed at this meeting with the following conditions: 1) Statement added on the plan to reflect Mr. Quintal's recommendations/comments on page 2 of his letter dated 4/21/2015 including restoring the tree plantings that had failed and 2) Provide appropriate bond to cover review to the Town prior to signing the plan. These conditions to be met within 60 days of this approval.** (Motion by Mr. Coppelman, second by Mr. Coffin) PUNA

Mr. Early asked if he could now sell the property; Mr. Wilson answered that he could once the mylar is signed.

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

Jim Lavallo appeared as the applicant's representative. Mr. Wilson asked him who had drawn the plans; Mr. Lavallo said that he had reviewed them but he was not sure which CAD operator in the office drew them up.

Mr. Wilson suggested going directly to Mr. Quintal's comments. Mr. Quintal reviewed the comments he had provided to the Board and Tim Lavallo dated 3/19/2015. He noted that it references the plans he received on March 10<sup>th</sup> and that the addendum plan shows the previous wetland fill on proposed lot 30-1 and a disposal system for this lot and possible proposed grading on proposed lot 30-1 whereby a future owner can cut and fill to reduce the area of steep slope greater than 15%; he estimates that, if the proposed grading and wetland setbacks were to occur, the useable contiguous upland area less the 15% slopes on the proposed lot would be about 46,000 sq. ft.; the proposed grading on lot 30 was not shown and the useable contiguous upland on lot 30 is much less than 60,000 sq. ft. when slopes steeper than 15% are considered.

Mr. Quintal continued that he plotted the CAD drawing file that he was sent onto mylar and overlaid them on plans previously submitted that were dated and stamped September 15, 2015; he observed that most of the wetlands shown on Lot 30 had been moved about

10 feet easterly and as such, the wetland setback line to the 4000 sq. ft. receiving area has moved 10 feet easterly; the area depicted on the plan and labeled as the 4000 sq. ft. receiving area is at least 4,000 sq. ft. however, the area shown includes a portion of the existing dwelling and therefore cannot be considered a receiving area for sanitary waste disposal as intended in the Town's Regulations.

Mr. Quintal stated that his conclusion is that the original plan showing "4000 sq. ft. Receiving Area" was incorrect and significantly less than the required 4,000 sq. ft. The CAD drawing file showing the wetland on Lot 30 moving easterly in order to obtain the required area still does not meet the requirement since the dwelling is within that area.

Mr. Wilson confirmed that Mr. Quintal was stating that if the mylar drawing was overlaid over the originally submitted plan, that the wetland had changed. Mr. Quintal stated that he brought the mylar with him so the Board could see where the wetland had been moved. Mr. Coppelman said that the other question was why it had been moved. Mr. Wilson agreed and suggested that the Board get to that in a minute. Attorney Fitzgerald-Boyd asked about Mr. Quintal's letter; Mr. Quintal said that he emailed it to Tim Lavallo on March 19<sup>th</sup> and provided her with a copy of the letter. Mr. Quintal reviewed the CAD drawing with the Board pointing out that all of the other lines on the mylar matched up with the original plan and the wetlands and receiving area lines were different; he noted that the receiving area includes where the house is located. Mr. Lavallo said he did not have any idea what was going on with the moved line and was unaware of receipt of the email. Ms. Faulconer confirmed that when she had received the email for the Planning Board that Tim Lavallo had been copied on the email. Mr. Lavallo said he had no doubt that it was sent but this was the first he had seen it and was unsure that Tim Lavallo had seen it. Mr. Quintal said he thought Tim Lavallo had received it as prior to sending the report he was getting an email from Tim every few days wondering if he had reviewed it yet and once this was sent, Tim had stopped email him. Mr. Lavallo said he could not address this issue.

Jim Lavallo asked to speak to the house being in the 4K area; the dwelling being in the 4,000 sq. ft. area on Lot 30 was the only reason he came tonight, instead of Tim Lavallo, was to address that issue. He stated that normally, when proposing a subdivision and do test pits on each lot, in general for normal house construction, a test pit is done toward the front of where a house is going to be place to avoid backyards; normally there is a 4000 sq. ft. receiving area, maybe 50 x 80 around the test pit and may be an odd configuration due to wetlands; if a designer can use the existing test pit, he usually does. Mr. Lavallo continued that if a homebuilder has a particular location that is different from the test pit than a new test pit has to be done but over 50% of the time, the original test pit is used; a 1,000 sq. ft. bed is over the test pit area and the house is 15 to 20 feet from the septic system so in most cases, the house is within the original 4000 sq. ft. area shown that is suitable for septic. He said it is normal to have a dwelling within the 4000 sq. ft. area on a lot after the lot is constructed and it doesn't make the lot a non-buildable. He granted that on a large percentage of lots there would be another 4000 square foot area available without a house in it but not on all lots if they were tight to begin with. He stated that a dwelling within the 4000 sq. ft. area shouldn't be an issue as it happens during normal

construction in any subdivision. He explained that this issue was the only reason that he came to tonight's meeting and could not address any differences in wetland lines with the CAD file sent to Mr. Quintal.

Mr. Quintal agreed with most of Mr. Lavalley's comments but said that his comments were generally to when proposing a subdivision and showing the Planning Board that each lot could support a test pit and 4,000 sq. ft. area as that is what they review during the subdivision stage. He stated that this was different as the house is already in the 4,000 sq. ft. area and that is the question for the Board as it is not really a 4,000 sq. ft. area since the house is already there and the Board is actually going through the subdivision process now and the house is there now so it seems to be confusing as they are trying to get around the fact that there is not really a 4,000 sq. ft. area on what is proposed for subdivision Lot 30 as the house is existing; this lot is going through the subdivision process and the subdivision process requires each lot to have a 4,000 sq. ft. area.

Mr. Lavalley said that Lot 30 has a home, a septic system and a well and is being supported by those items and the subdivision is not really diminishing that lot by developing the other end and the other lot. Ms. Faulconer asked, if the Board does allow the subdivision, are they not actually diminishing the existing lot; as Mr. Lavalley previously said most lots usually have another 4,000 sq. ft. area which is currently the case as long as the lot is not subdivided; if the Board subdivides the lot there is no 4,000 sq. ft. receiving area on the existing lot which does actually diminish the lot. Mr. Quintal agreed with that statement. Mr. Lavalley said to deny due to Lot 30 as an existing lot with well and septic as a viable lot is punitive. Mr. Coffin asked Mr. Lavalley if the 4000 sq. ft. area for Lot 30 was the area used when the lot was originally approved. Mr. Lavalley answered that they did not do the original subdivision of this lot but was unsure but assumed that was how it was originally presented as it couldn't have been anywhere else due to the wetland issue. Mr. Lavalley clarified that the 4000 sq. ft. receiving area was one that they created and did not use from a previous plan. Mr. Coffin noted that it was not from the original subdivision plan. Mr. Lavalley explained that a septic design was done for the house as it exists now for Lot 30 with the house originally planned to be further away than from the current location; the house was put closer to the receiving area than originally proposed. Ms. Faulconer stated that she believed that this house had a building permit and septic system approval but the house was built in a location different than the permit and built within the receiving area and then needed to get an as-built plan approved after the fact. Mr. Lavalley agreed that an as-built plan might have been done due to the location of the house but the house being built within the 4000 sq. ft. area is normal.

Mr. Wilson stated that the Board received a letter dated March 13<sup>th</sup> from an abutter which wasn't read due to the applicant requesting a continuance. The letter was read aloud. Mr. Greenwood noted that the new plan had not been reviewed by Mr. Cuomo. Mr. Wilson felt that the Board should do a site visit and the Board needs to have the answers raised by the new plan prior to taking any further action. He clarified that he was referring to the discrepancy on the wetlands boundaries between the two plans as it was a

major amount of footage. Mr. Coffin agreed with the request for a site visit and providing more information. The applicant's attorney agreed to the site visit. She confirmed that the plan discrepancy the Board was referencing was those in Mr. Quintal's letter. She stated that the email was not received as they have called Tim Lavalle during the meeting and he did not get the letter.

The Board scheduled a site visit for Saturday, April 25<sup>th</sup> at 8:00 AM. The applicant was told that any new plans needed to be received by noon on May 7<sup>th</sup>.

**MM&S to continue to May 19, 2015 at 6:45.** (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 distributed new plans at the start of this hearing. Mr. Brouillette stated that Mr. Lariviere agreed to move the area in question over 5 feet and keep the 26 foot area the same. The authorization of representation for Mr. Lariviere was confirmed.

Mr. Wilson noted that this was the first time anyone had seen the plan and since it was just received, it had not been distributed to Department Heads for comment.

Mr. Wilson asked for abutter comment. Mr. Heath said that he had not seen the plan yet and would like time to review it with his attorney. It was noted that currently there is three feet between the driveway and the ROW. Ms. Faulconer stated that this proposal was not the plan that had been reviewed by the ZBA. Mr. Greenwood believes that there should be a 20 foot separation to the owner's driveway; there was plenty of acreage that 20 feet should not have been an issue. Mr. Wilson said that the house at one time was on almost 30 acres. Mr. Coppelman noted that, with all respect to the ZBA, that the requirements for an equitable waiver were a stretch; it was not something that the developer was forced into; he agreed that the 20 foot setback requirement should be met. Mr. Brouillette said that he was proposing what the Board told him to do at the last meeting. Mr. Wilson replied that his recollection was that one Board member said to keep the width and the proposed setback but other Board members were saying keep the full 20 foot setback. Mr. Greenwood clarified that Mr. Heath was not an abutter but actually one of the property owners.

Mr. Coffin asked if the Board should say what is expected since two lines are being moved which was not agreed to by the ZBA; he agreed that this should be considered a new proposal. Mr. Quintal asked why the driveway itself couldn't be moved. He stated that a building was built and then the property line was put in and there must have been plan to meet the Town's rules and regulations. He re-iterated his question asking about the original plan and why the driveway couldn't be moved. Mr. Brouillette answered that

moving the driveway would be cost prohibitive; Mr. Lariviere did not know there was a 20 foot setback requirement at the time this was done. Mr. Coppelman stated that it was incumbent upon the developer to know these things. Mr. Wilson said the Planning Board brought up the possible issue with the driveway several times. Mr. Brouillette asked if Mr. Heath had a problem with the plan; Mr. Heath answered that he did. Mr. Coffin said he would like to see the ZBA decision. Mr. Wilson suggested continuing. Mr. Heath said he is looking for a 20 foot setback from the driveway to the property line; he is asking for time to speak to his attorney. Mr. Coffin said that the Board should look at this proposal as a de novo request and any decision should not be based on a former ZBA decision; it should be based on current ordinances and regulations. Mr. Wilson said that if looking at it as new, it does not meet the Town's requirements. Mr. Coffin noted that Mr. Lariviere was the developer for the house initially; it was suggested that Mr. Brouillette come up with another plan to meet the Town's requirements. Mr. Brouillette asked about the ZBA decision allowing the 3 ft. setback. Mr. Greenwood said that one of the applicants is asking for a 20 foot setback. Mr. Brouillette said it was not his decision. Mr. Greenwood said that he was not minimizing Mr. Lariviere's rights but did not want to minimize the Heath's either. Mr. Brouillette said that the Heath's did not address the issue at the time at the ZBA. Mr. Coffin said that he is on the ZBA and the Heath's were not the property owners at the time, Mr. Lariviere was the owner of the property and the only person appealing to the ZBA at the time. Ms. Faulconer noted that none of these issues were created by the Board; Mr. Lariviere admits that he did not know there was a 20 foot setback requirement and Mr. Brouillette admits to setting the lot line incorrectly as he hit "ice" instead of "asphalt" when plotting the lot line. Mr. Wilson stated that 20 feet out of 37 acres is not a lot. Mr. Coppelman said that Mr. Lariviere realized he could use his land for any adjustments required any issues with the ROW caused by the driveway issue. Mr. Brouillette said that he was unaware that the Heath's might have an issue; if they don't agree, it is a definite issue. Mr. Heath said that they were not told about the 3 foot setback issue until after the closing on the property.

Mr. Wilson noted that if new plans were going to be submitted, it would need to be in by noon on May 7<sup>th</sup>.

**MM&S to continue to 7:15 on May 19, 2015.** (Motion by Mr. Coppelman, second by Mr. Landry) **PUNA**

### **Board Business**

Mr. Wilson announced that due to the upcoming election, the April 28<sup>th</sup> meeting is cancelled.

### **Correspondence:**

- CIP representatives' names from the BudCom were received.
- Bond Balances reviewed
- PSNH Bond received; has been referred to Town Counsel
- RPC Commissioners recommendation letter from BOS received
- Letter from BOS re: trespass received and distributed to Board members

- OEP seminar
- Information from BOS re: 107 N. Boston Road
- Letter from abutter re: Trendezza property and possible noise violations; abutter was referred to Police for enforcement; the Board confirmed that a construction site abutting residential use can not operate on weekends and after hours in ordinance.
- Letter from plumbing company for occupancy at Travis McConnell site – the site is not in compliance (sign ordinance); the Board can not approve a new tenant until site is in compliance.
- Correspondence reviewed re: Mr. Mike's, pictures had been taken and forwarded to the Board; the Board agreed to send enforcement issue to the BOS.
- Excavation Activity at Brenda Blake property, Galloway trucking; Mr. Greenwood met with Andy Galloway, Brenda Blake and Mike Tedesco regarding the excavation activity on the site and the need for an excavation permit from the Planning Board; Mr. Galloway represented that all excavation is done; Mr. Greenwood said that needing an excavation permit after the fact might be after the fact but it does require a reclamation plan; the area has been modified and there is no evidence that it has been revegetated. Mr. Greenwood will contact the parties involved (letter) that an excavation permit is superfluous at this point but a reclamation plan is required. Ms. Faulconer will send information to the BOS re: any possible gravel tax.
- Two recent ZBA decisions received and reviewed.
- Upcoming Project Review List was distributed
- Sign Issue brought to the Board by Mr. Coppelman who will also bring it to the HDC – sign-wrapped cars for exterminator business parked in front near roadside, not in parking area, at the old Clark's Garage – plan showed where vehicles would be parked and they are in violation of their site plan and the sign ordinance. Mr. Coffin agreed that the cars weren't being stored as noted during the review. The file will be reviewed at the next meeting for possible enforcement request.
- Proposed changes for Article 303.1B were distributed
- Proposed regulation changes for lot line description were distributed.

**MM&S to approve the minutes of March 17, 2015 as written.** (Motion by Mr. Coffin, second by Mr. Coppelman) **Motion carried 5-0-1** with Mr. Wilson abstaining.

Mr. Wilson signed the Cogswell mylar.

**MM&S to adjourn at 8:50.** (Motion by Mr. Coppelman, second by Mr. Coffin) **PUNA**