

KINGSTON PLANNING BOARD

DECEMBER 6, 2022 PUBLIC HEARING MINUTES

Ms. Merrill called the meeting to order at **6:38 PM**; there were no challenges to the legality of the meeting.

MEMBERS PRESENT:

Lynne Merrill, Chair
Chris Bashaw, BOS Representative
Glenn Coppelman, Vice Chair

Peter Bakie
Peter Coffin
Robin Duguay <arrived at 6:45 PM>

ALSO PRESENT:

Glenn Greenwood, Town Planner
Robin Carter, Admin. Assistant

ABSENT:

Steve Padfield

Ms. Merrill opened the hearing explaining that the purpose of tonight's hearing is to go over proposed amendments to the Zoning Ordinances. The Ordinances will be voted on at the Town election in March. They will be reviewed tonight and will be voting whether or not to move to Warrant. The first one for tonight is the Aquifer Protection Zone Ordinance. Ms. Merrill explained the format of the hearing to the public audience and said that the Board discusses the proposed amendment amount them, asks for input from any Town Departments, Town Planner and the Town Engineer. Once this is complete, then the Board opens up for public comment. She mentioned there were a lot of people present tonight in the audience and want to make certain that everyone that wants to speak will get heard. Ms. Merrill explained that one of the Rules and Regulations is that the Board concludes meetings by 10:00 PM. To get through everything on the agenda, the Board is going to limit public comment to three minutes per person. Each person who would like to speak, should go to the microphone and give your name and address so it is noted for public record. Then you can give your public comment and then the Board will thank you for your commenting. Then the next person will give their comments. When everyone has commented then we will close public comments. Then again, the Board will discuss the proposed amendment and decide how this is going to move forward. Ms. Merrill asked the public audience if there were any questions. There were no questions raised.

Public Hearing for Proposed Warrant Articles:

The first Ordinance discussed was several things to do with the Aquifer Protection Ordinance.

Before proceeding with the discussion on the Aquifer Protection Ordinance, Ms. Merrill introduced the Planning Board ("PB" or "Board").

Article 201: Aquifer Protection Ordinance – proposed the following amendments:

<Board note: This hearing began at 6:42 PM.>

Article	Description	Current Language To be Removed	Proposed new language
201	Aquifer Protection Zone 201.4.E.4. Gas Stations	except for gas stations where allowed	Keep the words, “Subsurface storage of petroleum and other refined petroleum products.”
201	Aquifer Protection Zone 201.2.K. Regulated substance	n/a	Regulated Substance: Any substance, material or waste the use, generation, handling, storage, treatment or disposal of which is regulated by any local or state government authority, including any of the same designated by any authority as hazardous, genetic, cloning, fetal, or embryonic.
201	Aquifer Protection Zone 201.8.F. General Requirements Spill Prevention	n/a	Facilities that store and use regulated substances shall submit, with their application to the Planning Board, an adequate spill prevention, control and countermeasure (SPCC) plan approved by the Kingston Fire Department.
201	Aquifer Protection Zone 201.4.E.14. Prohibited uses	In Zone B such facilities require a special exception from the Zoning Board of Adjustment that imposes additional protections for groundwater.	Keep the words, “Gas stations.”

Ms. Merrill mentioned that these four proposed amendments would be discussed as a whole and summarized the proposed amendments:

- Defining Regulated Substances, saying that if a regulated substance is going in the Aquifer Protection Zone it must have a spill plan and will be eliminating gas stations pretty much from the Town of Kingston.
- Ms. Merrill explained just so the public is aware, that the gas station that is proposed for the northern end of Town, across from street from the Carriage Town Plaza will not be affected by any of this, because it came before the Town prior to these ordinances being presented; and this is currently in litigation. So, depending on how the Judge rules, if it is accepted it will proceed to be heard before the Planning Board.
- Mr. Coppelman mentioned that if this goes to Warrant and voted in, gas stations would be considered prohibited, but it wouldn't prohibit an applicant to try to still seek a variance for a potential use.
- Ms. Merrill asked the Board if they had anymore comments before going to public comment. Mr. Bashaw asked if it was his understanding that years ago the Town sought the guidance and advice of an expert to come up with plans so that gas stations could be done safely within the community. Ms. Merrill replied it is her understanding that the Town did consult a Hydrologist who is an expert in water to indeed come up with a plan

so that gas stations could be placed in the aquifer protection zone and that they could be done safely, and that is what the Town has been using until this point in time. Mr. Bashaw mentioned that one of his concerns with grouping the four articles together is, he still wants to hear input from the public and hearing their opinions on the issues, but by grouping these all together, initially based on the rules that he has read and the measures that the Town has in place to allow these when they are done correctly kind of conflicts with him. He is all for defining Regulated Substances and ensuring that spill prevention is included with any kind of planning. But doing a blanket prohibition of gas stations when the Town has consulted with an expert to come up with ways to do it safely, especially with using the example of that one gas station that is going to essentially be grandfathered if it passes litigation. He looks at other properties that are for sale in the neighboring towns that he has heard of gas stations going in that are actually closer to the Little River and thinks Kingston has taken steps to make rules be a better steward of the Town and one going in our community is going to face a bit more scrutiny. He said he is always hearing that the gas prices in Kingston are always higher than the neighboring town. So, he is conflicting about handling these all as one. Ms. Merrill said just because we are taking public comment together, doesn't mean we will be voting on them together. The Board will be voting on each of them separately.

Ms. Merrill asked if there were any other comments from the Board. There was none. Ms. Merrill asked if there was comment from the public.

<Public comment opened at 6:30 PM>

Public comment:

Dana Akers of 16 Country Pond Road wanted a point of clarification and brought up that there is a section on 125 on the south end of Kingston that is outside the Aquifer Protection Zone and asked if gas stations would still be allowed there. Ms. Merrill replied, yes, they would, however the majority of the Town is in the aquifer protection and the rest of it is pretty much residential, except for that one small section in the southern end of Town.

Phil Coombs, 6 Little River Road spoke on this subject. Mr. Coombs said he finds it interesting that the topic of safety came up because in the post COVID era there's a very good debate that is taking place on what constitutes safety. One of the biggest things that determines that, is the community. Who decides what is safe for the community and that is one of the prime directives of the Board. To have the community decide what we want to enforce as far as the future of our town, the plan for our town moving forward. He said he does feel the Hydrologist made an error in making that recommendation. On the DES web site, it shows that every underground tank associated with a gas station in the Town of Kingston has leaked. Bayberry Variety, Crinkles Country Store, Walter S. Clark, just go down the list. People point to technology, that its better now, people point to the sump provisions that have been put in, the two active gas stations in town have been cited for leaking tanks in the past 20 years. That is the Shell Station in 2004 that was remediated and Mr. Mikes in 2013. This was raised because numerous area residents complained about an odd smell and flavor in their water. Gas stations do have an impact on our water. The town has sacrificed a lot and have given up some lucrative commercial opportunities because of the restrictions we have in place. But as a community, we have decided that it is

safer to keep our water protected. It doesn't make sense to allow us to put 1000 of gallons of a toxic chemical underground in an area that we are protecting because of the groundwater. The water in this town, between Fremont and Kingston, is the largest freshwater resource in the state. All these places on the seacoast that are growing out of control they are going to need a place for water in the future. He sees our future not in an old legacy landfill, but us selling that water, us protecting that water, for sale, for recreation use it benefits our future in this town. It also keeps our residents safe. It keeps these chemicals out of our drinking water.

Muriel Ingalls of 100 Main Street said she's been in Kingston for over 50 years and is located on the lake and is part of the Kingston Lake Association. She stated, "water is our most important resource, do not mess with it." Ms. Ingalls thanked the Board for having the hearing.

Jim Serrell of 24 Great Pond Park asked for clarification on PFAS's. Mr. Serrell mentioned that he didn't hear the term PFAS among all the things listed. He said it is a big problem in many water sources, for example the river that goes to Newburyport, and has been around for a long time. He mentioned there were problems with the Fire Department because some of the chemicals they used had it. Mr. Coffin mentioned it is not in the list. Mr. Serrell said that because it has been around a long time and is such a critical issue, wondering if it was in the list of items because it is cancer causing. He said it would be worth considering for the list. Mr. Coffin mentioned that in the Ordinance it is not specifically mentioned, but it would be covered under regulated substances. Mr. Coppelman said that the state regulates it, so would be captured in their overall umbrella.

<Public comment closed at 6:57 PM.>

Mr. Greenwood made a comment to have put on the record regarding the recommended 2015 Model Ground Water Protection Ordinance by the DES, it recommends that gas stations not be included in aquifer protection zones.

Mr. Coppelman mentioned he is the one that brought the DES Model Groundwater Protection Ordinance forward after receiving outreach from some residents, it was the foundation for the groundwater reference. The 2015 DES Ordinance for Ground Water Protection and the more recent 2020 report that recommended prohibiting gas stations in the aquifer zone. Ms. Duguay mentioned this information is more recent than the Hydrologist study one. Mr. Merrill replied, correct. Mr. Bashaw said he does appreciate Mr. Coomb's comments that one thing we learned in the past few years that maybe sometimes experts are experts in name only and that we can learn new stuff from it. And that he does appreciate what Mr. Coombs said, however, he may not personally agree with a blanket prohibition on it, but he does believe in the Town's people right to have a say on this.

Mr. Greenwood said he has worked with the Hydrologist, Ms. Truslow, very closely on a ton of projects. He doesn't believe we ever asked her directly about putting gas stations in the aquifer protection zone. He believes she would adamantly say she would not. He said that isn't what we asked her to do. We asked her to take a look at our Aquifer Protection Ordinance and bring to us her suggestions for making it more manageable. This brought discussion on better defining the difference between Zone A and Zone B. Mr. Greenwood stated Ms. Truslow is a highly

qualified Hydrologists and if we had asked her that question, he is sure she would say we shouldn't have them there at all. He does not remember ever asking her that question. That wasn't reason why we engaged her services and does not want the record to say that the Hydrologist helped with this Ordinance. He said she counseled us in the way we asked her to counsel us.

A member of the audience asked if it was too late to ask Ms. Truslow this question. Mr. Greenwood replied it is too late tonight. She does counsel the town frequently when we ask for hydrogeologist studies. We haven't asked her in this process though yet. He said there are several times during the year we could ask for her services though.

Mr. Bashaw commented if the Ordinances are going to be moved separately, and as individual questions for people to vote on not all or nothing, he would support them going to Town vote.

Ms. Merrill asked if there was any further comment from the Board. There was none and asked if there was a motion.

Motion made by Mr. Coffin to move Article 201.2.K. Regulated Substances to the ballot. Seconded by Mr. Coppelman. A vote was taken, all were in favor, the motion passed.

Motion made by Mr. Coffin to move Article 201.4.E.4. to remove the language "except for gas stations where allowed" to the ballot. Seconded by Mr. Coppelman. A vote was taken, all were in favor, the motion passed.

Motion made by Mr. Coffin to move Article 201.4.E.14. to the ballot. Seconded by Mr. Coppelman. A vote was taken, all were in favor, the motion passed.

Motion made by Mr. Coffin to move Article 201.8.F. requiring facilities that store and use regulated substances to submit an adequate spill prevention plan to the ballot. Seconded by Mr. Coppelman. A vote was taken, all were in favor, the motion passed.

The Board thanked the members of the public for coming. The members of the public left the hearing. <7:06 PM>

Article 106 – District for Age-Restricted Housing and Article 208 Age Restricted Housing:

Ms. Merrill said that **Articles 106 and 208** are changes being made to coordinate with State law as far as the number of bedrooms that are allowed as far as density. Mr. Coppelman said the reason for this is we cannot be more permissive for elderly housing than workforce housing. Mr. Bashaw commented that it was the Board's consensus that we don't want to increase the density for the other sections, so we want to go to the more restrictive one.

Ms. Merrill opened for public comment. No public was present. Ms. Merrill closed public comment. <7:09 PM>

Mr. Coppelman read the new proposed language for 106.3. on Density. He mentioned that the proposal is going from up to six (6) dwelling units per acre to up to four (4) bedrooms per acre as shown below.

Mr. Greenwood brought up that this is the oldest age-restricted ordinance that we have and from his perspective, although the undeveloped land still in that district is predominately UNMNGD, believes it can't be further developed. However, if we have that density allowance and we don't do something about it, it will look like we are providing a greater density to age-restricted than workforce housing.

Article	Description	Current Language To be Removed	Proposed new language
106	District For Age-Restricted Housing 106.3.B. Density	Up to six (6) dwelling units per acre of gross tract area excluding all wetlands as defined by the Soil Conservation Service Soil Survey Maps of the Town of Kingston may be constructed. This paragraph supersedes the density requirement found in the Town of Kingston Aquifer Protection District ordinance.	Up to four (4) bedrooms per acre of gross tract area excluding wetlands as defined by the Town's wetlands ordinance may be constructed. This paragraph supersedes the density requirement found in the Town of Kingston Aquifer Protection District Ordinance.

Motion made by Mr. Coppelman to move the District for Age-Restricted Housing, Article 201.4.E.14. on Density to remove and replace the posted language to the ballot. Seconded by Mr. Coffin. A vote was taken, all were in favor, the motion passed.

Ms. Merrill read the current and newly proposed language below for **Article 208.4.B.1.a. for Age-Restricted Housing.**

Ms. Merrill opened for public comment. No public was present. Ms. Merrill closed public comment. <7:11 PM>

Article	Description	Current Language To be Removed	Proposed new language
208	Age-Restricted Housing 208.4.B.1.a. General Standards: Maximum Density	Maximum density: three (3) Units per acre of gross tract area excluding all wetlands as defined by this ordinance.	Maximum Density: four (4) bedrooms per unit of gross tract area excluding all wetlands as defined by the Town's wetlands ordinance.

Motion made by Mr. Coppelman to move the Age-Restricted Housing, Article 208.4.B.1.a. language to Warrant as amended. Seconded by Mr. Coffin. A vote was taken, all were in favor, the motion passed.

Article 206 Accessory Dwelling Units:

Ms. Merrill asked if a change could be made to the **ADU Article 206.4.J**. She stated that the word “designer” should be changed to read “inspector”. Designers do not typically do inspections. This change would be considered substantive and would need to be moved to a future hearing to vote on it.

The Board agreed. The article will be amended and will need to be renoticed and posted for a new public hearing.

Article	Description	Current Language To be Removed	Proposed new language
206	Accessory Dwelling Units 206.4.J. ADU Requirements THIS ARTICLE WILL BE MOVED TO January 3, 2023 Public Hearing.	The applicant for a conditional use permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced. If deemed necessary by the Health Officer, evidence shall be provided in the form of certification by a State of NH licensed septic system designer.	The applicant for a conditional use permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. This approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced. In determining if the existing system is functioning properly an inspection report on the system prepared by a licensed NH septic system designer (replace with) inspector will be provided to the Planning Board.

Motion made by Mr. Bashaw to move Article 206.4.J. on Accessory Dwelling Unit Requirements as amended to the January 3, 2023 Public Hearing. Seconded by Mr. Coffin. A vote was taken, all were in favor, the motion passed.

<A member of the public came in and was there for the Aquifer Protection Ordinance discussion, but it had ended, therefore decided not to stay.>

Article 207 Residential Home Occupation Ordinance:

Ms. Merrill read the new proposed language for **Article 207.4 Enforcement for Residential Home Occupation Ordinance**.

Mr. Greenwood explained that this change brings in line with the overall Enforcement Article. However, we haven't heard back from Counsel yet. The current state penalty is \$250-\$500 per day. This is an entirely new proposed section.

Ms. Merrill opened for public comment. No public was present. Ms. Merrill closed public comment.
<7:18 PM>

Article	Description	Current Language To be Removed	Proposed new language
207	Residential Home Occupation Ordinance 207.4 Enforcement	n/a	This section shall be administered by the Board of Selectmen. Any Person who violates the provisions of this section shall be fined in accordance with RSA 676:17, I-V, as it may be amended. Please refer to section A -1000 for penalties, administration, and enforcement of this ordinance.

Motion made by Mr. Coppelman to move the Residential Home Occupation Ordinance, new section Article 207.4. on Enforcement to Warrant. Seconded by Mr. Coffin. A vote was taken, all were in favor, the motion passed.

New Article A -1000:

The proposal for this Article is to replace the Addendum on Enforcement and Administration. There are 15 different amendments for proposal that will be changed.

Mr. Greenwood said we have not received input on this from Town Counsel. He recommends waiting until we hear back from Counsel. Mr. Bashaw said we have not received an official response on this from Counsel and suggests we move to another hearing. He will follow up with the Select Board Chair on this.

Mr. Greenwood said that because this is not a substantial change it could be continued to the next hearing and doesn't need to be renoticed.

Motion made by Mr. Coppelman to continue this hearing to Tuesday, December 13, 2022 at 6:30 PM at the Kingston Town Hall. Seconded by Ms. Duguay. A vote was taken, all were in favor, the motion passed.

<Board note: This hearing ended at 7:23 PM.>

BOARD BUSINESS

Approval of the November 1, 2022 Minutes:

Motion made by Mr. Coffin to accept the 11/01/2022 minutes as written. Seconded by Ms. Duguay. A vote was taken, all were in favor, the motion passed.

Correspondence:

- a. Email from Charles F. Cleary, Esq. Wadleigh, Starr & Peters, PLLC, dated December 1, 2022, regarding Fieldstone Meadows.
 - Ms. Merrill said she spoke to Richard Wilson, Chair of the Board of Selectman and the Selectman are aware of this. Fieldstone does have the plans ready to go to the state. The second building has not received a building permit yet. The Town intends to withhold the building permit until they comply.
 - Fieldstone made changes to the plan to get the Town's approval, but have not resubmitted them to DES for approval.
 - Mr. Greenwood will follow up with Attorney Cleary and update him on the status of this.
- b. Letter from Mark C. Armaganian, Chief Division of Enforcement of the State of NH Liquor Commission, dated November 22, 2022, regarding a Cigar Bar liquor license for California Burritos, LLC at 92B Route 125.
 - The Board discussed if it would be considered a separate business. Mr. Bashaw mentioned that the address isn't a valid address. Ms. Duguay asked if it would need a site plan?
 - Mr. Bashaw brought up the issue of the liquor license doesn't have anything to do with the Planning Board.
 - The Planning Board has been advised of this and the Board of Selectman will be addressing this.
- c. Drought report from the NHDES, dated November 10, 2022.
 - The Board reviewed the Drought report.

Board Business Cont.:

- **Bresnahan Property:** Ms. Merrill mentioned the due date for the trees to be completed was October 15, 2022. The Board has asked Mr. Greenwood to contact Bresnahan to get an official update on their plans.
- Ms. Merrill mentioned the hearings to appear on **December 13, 2022**. Two ADU's, 1 Lincoln Circle and 11 Mockingbird, and 1 site plan, 1 Little River Road.
- Mr. Coppelman asked if **internal ADU's** are subject to impact fees and they are.

- Mr. Coffin brought up the **RPC on the Age 207 Friendly Community Assessment** that was discussed at the November 1, 2022 PB meeting. Mr. Bashaw will follow up with the BOS on this.

ADJOURNMENT

Mr. Coppelman made a **Motion to adjourn. Seconded** by Ms. Duguay. **A vote was taken, all were in favor and the meeting adjourned at 7:50 PM.**

****Next Public Hearing is scheduled for Tuesday, December 13, 2022. Subject to change.****