

**Kingston Planning Board  
Public Hearing  
Minutes**

**November 21, 2017**

The Chairperson called the meeting to order at 6:45 PM. There were no challenges to the legality of the meeting.

Members in attendance:

Glenn Coppelman, Chair  
Mark Heitz, BoS rep.  
Peter Bakie  
Chris Bashaw

Peter Coffin, V. Chair  
Lynne Merrill  
Robert Pellegrino, alternate  
Ellen Faulconer, alternate/admin. assist.

Members absent: Carol Croteau, Ernie Landry, alternate

Also in Attendance: Glenn Greenwood, Circuit Rider Planner; Dennis Quintal, Town Engineer

Mr. Coppelman announced that Ms. Faulconer would be a voting member replacing Ms. Croteau this evening.

**Jennifer Lynn Rogers-Ward**  
**Applicant: Kelly Ward**  
**1 Meeks Road**  
**Kingston, NH 03848**  
**Tax Map R13-7**

Mr. Coppelman read the notice for this hearing. He reviewed the previous hearing in which the applicant was directed to return to the ZBA as the special exception had expired; he explained that the ZBA had continued the hearing. He reviewed the request from the applicant to continue the hearing to the Board's January 16, 2018 hearing.

**MM&S to continue the hearing to January 16, 2018 at 6:45.** (Motion by Mr. Bashaw, second by Mr. Coffin) **PUNA** (Passed unanimously)

**Robert Pellegrino**  
**LeFevre Drive**  
**Kingston, NH**  
**Tax Map R6-13, R6-14-2, R6-14-6**

Mr. Coppelman confirmed that the Board had not received updated plans per the Board's motion at the last hearing. Ms. Faulconer noted that Mr. Pellegrino owed abutter fees to the Town. Mr.

Pellegrino said he would take care of the fees. By consensus, the Board is comfortable moving forward with the hearing. Tim Lavallo said that they need to discuss the plans with the Board, specifically the ROW (right-of-way) issue. He explained that they have been reviewing that and it looks like it will be a ROW becoming a bridge to nowhere and they would like to possibly consider something else instead of the ROW; he handed out drawings and explained the property location and proposal. He said the ROW would be directed to a swamp and an area that may or may not be buildable; he said that while it might be possible to put a road in, it was not likely. He explained the second sheet of the proposal which he felt met the intent of the rule requiring the ROW adding that it was quickly drafted and proposed a 60 foot easement for a future ROW for a possible driveway and could deal with a possible bridge or roadway in the future. Mr. Lavallo said he reviewed the Board's discussion with Paul Nichols and it doesn't make sense to plat a 60 foot ROW to that property. He questioned what to do with the drainage in the cul-de-sac. He added that he didn't want to do premature and scattered development and doesn't think the access could ever be used. Mr. Coppelman agreed that it was a significant issue; he read a letter dated 11/1/17 from Tucker, Donahue and Ciandella representing Electra Alessio at Tax Map R-6, 7; the letter referenced the Town's requirements, 905.10 (F) and (B); requiring an applicant make provisions for connecting streets/roads; the letter adds that the applicant suggesting an easement does not meet the intent of the regulation; the easement is insufficient and the proposal must reserve sufficient land for the ROW. Mr. Lavallo said that the letter brought up valid points concerning reserving enough land to become a street but feels that an easement that could become a ROW is meeting the requirement. He added that developing the property is shaky at best; they don't believe it will ever become a roadway. He said that the neighbor has to figure it out; the onus is not on them to work it out, the easement serves both purposes; he disagrees with the lawyer. Mr. Pellegrino added that he was told by Paul Nichols "that the terrain between the two lots is over an 18% slope which is illegal for a road to be that steep and it is not 300 feet to go over that wetland, it is over 1000 feet, and he told me that plan usually, the wetlands are a lot worse than that depicted on the plan so it might be even more so to have a bridge, you would have to have a bridge, because the spotted turtle is out there; I know that because I just pulled the AoT permit and there is another endangered species out there so there is no way they are going to let her fill that in and I doubt you are going to be able to put a bridge across 1000 feet for one lot so that would be about a million, two million dollars for a lot, so I don't think it is feasible; it's not viable, so, I just wanted to throw that in there."

Mr. Bakie asked if by giving an easement, it would allow Ms. Alessio to turn the easement into a ROW. Mr. Lavallo said "yes"; they would submit easement language with the suggestion of having it reviewed by the Town Attorney to make sure it could legally be done; that is the intent to permit the conversion of the easement to a ROW when a road could be put in; if not, the easement could be used for a driveway if there is enough buildable area before getting to the wetland. He stated that they feel this meets the intent of the ordinance; but the Town Attorney make want to look at it and allows for multiple uses of the Alessio property which has no platted ROW's now. Mr. Coppelman asked what the objection was to just doing the ROW; is it your expectation that the ROW can't be built so there is no reason to do it. Mr. Lavallo said that was part of it and because they would have to reconfigure everything that was done for frontages, etc.; they would lose 60 feet of frontage and lose a lot for a roadway that would never be built. Mr. Pellegrino said they would lose a lot and Dave Conant would lose 1 lot that was worth

\$125,000 to him; Mr. Pellegrino would lose \$40,000 on the build to build the house for the labor to frame it and do all the finish and the Town would lose \$10,000 a year in property taxes. Mr. Lavalley said that they would have to reconfigure everything; if it was further developable, they were looking at it but they walked out to the property and it was swamp not a walkable wetland.

Mr. Quintal said that the tax map provided by Mr. Lavalley showed not only the Alessio property but also an adjacent lot owned by Mr. Lewis; if the lots were combined could skirt the wetlands so there is a possibility of skirting the wetlands in the future; if the lots were combined than a road possibly could go through so it may not have to cross the major wetland as a constraint. He continued that with an easement, the owners continue to own the property and if a road was going to go through, it would have to be purchased and then lot lines would change; someone could be held hostage by future homeowners for purchasing the easement for a ROW. This would be a big obstacle and he thinks these are the reasons why RSA's and the Towns rules and regulations are developed in a way that it is a ROW and a right for the abutter so there would be no conflict in the future. Mr. Lavalley said that is why they want the Town Attorney to look at the language; obviously the intent to not need a purchase, there would be a right to have the land at any time and the language would need to spell this out; it would need to be clear that the easement could be turned into a ROW without purchase and the ROW would be constructed to allow frontages to be maintained on this lot; they would lose frontage so they would need to maintain the frontage. He said they looked at the property and agree with Mr. Quintal, that yes, there is a way to develop the property as more land could be bought; it is always possible. He added that he didn't think it was probable.

Mr. Coppelman asked Mr. Greenwood if he could recall any time that access was done as anything other than a ROW. Mr. Greenwood said he couldn't recall anything but had a niggling memory that there was an undevelopable abutting property that did not require access but he can't actually recollect it. He added that he did not recall ever subbing in an easement instead of a ROW.

Mr. Pellegrino had a question regarding the Town's regulation. He said the Board is basically stealing his land without paying him for anything; there is no compensation; he said that he guessed this was called eminent domain but he believed that he should get paid for it and he was not getting paid for it but the Town is expecting him to observe the regulation for a road that leads to nowhere regardless if the other property can be bought; he said that this was fantasy stuff. Mr. Coppelman explained that this requirement is a result of what is considered good land use planning so that the Town doesn't end up with lots of dead-end roads; he continued that the idea is that a cul-de-sac is not a permanent thing and that eventually roads will be extended and connected; for a maintenance perspective and public safety perspective, roads will become through roads and not dead ends. He said it is not intended to punish the land-owner and the applicant, it is designed as pro-active land use planning.

Mr. Coppelman said that, as pointed out by the Attorney in the letter to the Board, this is a requirement in the regulation and is something the Board could waive upon a request in writing.

Mr. Pellegrino read from the letter: “subdivision regulation indicates that the Town requires that adjoining, that the applicant make provisions for a possible development”; he said that he doesn’t find it to be possible. He said that he imagines that Ms. Alessio has to show some type of viable road that can go through there before the Board can say it is possible. Mr. Pellegrino continued that he disagreed with him a little bit, ‘it’s either possible or it’s not possible and with the spotted turtle out there and the red salamander or whatever the endangered species is there, there is absolutely no way that Kim Tuttle is going to let you put a bridge through there; I can tell you that right now.” Mr. Coppelman said that may or may not be the case but he didn’t think the Board could presume that they knew for certain that something could not happen at some point in the future. Mr. Lavalley said that, to make Mr. Coppelman’s point, the rules could change and we could stop caring about the spotted turtle and red salamander 100 years from now, who knows. They could have asked for the waiver but they wanted feedback from the Board; they feel the proposal meets the intent and would like to hear from the Board. Mr. Bakie said that he would like to hear what the Town Attorney has to say about the proposal and the access way available without a future purchase. Ms. Faulconer asked if the land was given away in the future for access, wouldn’t those lots then become non-conforming. Mr. Lavalley said it depends on how it is written; one of the lots is large so it wouldn’t be an issue and they are going to look at Lot 9 so it wouldn’t become an issue; he said it is a valid point but they are looking at ways to address it so it would be a non-issue. Mr. Heitz said that there wouldn’t be enough frontage so it would be non-conforming. Mr. Lavalley agreed but added that is a roadway went through there could be reversions back from the cul-de-sac for land area which would need to be looked at; they didn’t look at it yet pending discussion with the Board. Mr. Heitz asked Mr. Greenwood about how the 60 foot ROW location is determined; who is to say that the other abutter doesn’t want access to his land and there is the Town Forest which is obviously not being developed. Mr. Greenwood said two factors are taken into consideration: if there is an abutter interested in developing their land, they make that known at the hearing process; the other option and the one most common is that the extension is done where ever it is most convenient to do by way of engineering. The surrounding properties were discussed. Mr. Greenwood said that it is helpful to have the tax maps showing the wetland; he suggested that Ms. Alessio have a wetland scientist review to see if it is as impossible a crossing exercise as Mr. Lavalley suggests. Mr. Lavalley confirmed that he had not walked the whole parcel. Mr. Greenwood said that he understood Mr. Pellegrino’s concerns adding that the reason that this has been granted in the past is often that the cul-de-sac lengths in the development exceed the Town’s 1000 foot limitation and this is a trade-off as there would be the possibility of continuing the road so would eventually not be a cul-de-sac so the 1000 foot barrier isn’t a consideration anymore; so in that aspect, it is a trade-off between the developer and the Town. Mr. Coppelman said that it is a concern that there is a huge wetland. He likes the thought of connections because a cul-de-sac should be temporary but the large wetland could pose a barrier to the requirement so having someone look at the wetland is a good idea and review the crossing aspect of the property.

Mr. Coppelman asked Ms. Alessio, as a director abutter, to express any thoughts to the Board. Ellie Alessio stated that was not trying to create a problem for the sake of creating a problem; she continued that it was not her fault that the ROW wasn’t considered before all of the other lots were put into place. Mr. Alessio added that no one had lost any money yet because they haven’t made the money; she said that she didn’t want to sound confrontational but they applicant should

not say that they have lost a lot of money when it hadn't been made yet, she said they just won't make as much if the ROW is required. Ms. Alessio stated that she knows there is wetland on her property but there is also some nice high dry land; she does not mind following up on Mr. Greenwood's suggestion as she did not want to insist on her right as a landowner to have a ROW if there is no way to develop the land. She added that the other way to look at is that rules do change and there might be access from the Hampstead side to make it viable and access into Kingston would be a plus not a negative. She questioned whether the ROW needs to be in this location or whether there might be a better option. Ms. Alessio also expressed concern that the easement/ROW would be an issue with future fighting with the landowners who would not willingly give up their land, even if in their deed; they may claim they have had it for "x" amount of years and not want to give it up; she continued that it might not be her who is developing it and who would litigate it; would she or her heirs have the right to sue the Town and have the Town figure it out. She said giving a clear ROW takes all the mess out of the equation adding that the land has some value and not all of the 25 acres is under water. Ms. Alessio is willing to spend some money to figure it out but if there might be another option, she wants to keep that right. Mr. Lavalley said they did look at where to place the ROW; the property in question doesn't abut Mr. Pellegrino's and Mr. Ingalls's property in a large area and most of it is wetlands; they chose an area that was dry to place the access. Mr. Coppelman asked Mr. Lavalley about Ms. Alessio's offer to look at the land; Mr. Lavalley said it clears the way and he liked Mr. Bakie's opinion to have the Town's Attorney entertain the idea or an easement that could be segued to a ROW in the future before bothering to craft language just pose the question which might be a simple "no" or "show me the language". He said that they knew this would not be resolved tonight. Mr. Coppelman expected that some of the issues would be that the lots could become non-conforming in the future and how would that be dealt with. Mr. Lavalley said the frontage issue would resolve itself; Mr. Greenwood said that the return of the land associated with the cul-de-sac would help resolve that as well; it would be good to see what the results would be upon the dissolution of the cul-de-sac. Ms. Faulconer asked what would be the results if the ROW was a driveway in the future instead of a road; would that impact the lots. Mr. Greenwood said that it would create frontage and ensuing issues. Mr. Coffin said that while the Board understands the Town's regulations, the State law regarding ROW's and things like that are beyond the Board's capacity and the Town Attorney should be consulted to get answers about that and what Ms. Alessio's rights are in having a ROW provided per State law regarding land-locking; he doesn't know enough about that to vote on that; he would like professional guidance from the attorney. Mr. Coffin continued that the intent is to avoid cul-de-sacs; he questioned whether the intent was to keep the road within Kingston. Mr. Coppelman said the idea was to provide connectivity and not necessarily within the community. Mr. Heitz asked to confirm that the applicant did not have a problem with providing the 60 foot ROW providing there were still lots that conformed. Mr. Lavalley agreed. Mr. Heitz continued that they didn't want to give up a lot; Mr. Lavalley said they would do so grudgingly as previously stated. Mr. Heitz continued if there was frontage and square footage compliance, they didn't care about the 60 ft. ROW; Mr. Lavalley agreed. Mr. Pellegrino said that if Ms. Alessio is having land added, the amount of land taken from him is replaced with land from her to have enough land for the 80,000 sq. ft. requirement so he doesn't lose a lot; he doesn't know if they can ask for a waiver for the frontage. There was discussion about easements and driveways and frontage. Mr. Heitz asked what was the bigger issue; Mr. Lavalley said that frontage is the immediate issue; he

believes the square footage can be moved around. Mr. Heitz questioned if the cul-de-sac went away due to a future connection, would it be configured so that each lot had the 200 feet of frontage. Mr. Lavalley said they could have enough area and frontage. Mr. Heitz asked if they could give the Board a plan with a lay-out showing the 60 ft. ROW and then the road without the cul-de-sac giving the lots the required frontage and square footage. Mr. Lavalley said this wouldn't be terribly hard to do. Mr. Heitz said the Board's biggest concern would be creating undersized lots while Mr. Pellegrino's concern would be losing a lot. Mr. Pellegrino said that they will go through all this engineering and not have an answer from the Town Attorney yet; he didn't want to spend the money before hearing from the attorney. Mr. Heitz clarified that he was asking for a plan with the ROW drawn in with the Board recognizing that if the ROW is utilized and the cul-de-sac goes away, that land would go to those two lots and you would still be able to meet the requirements. Mr. Lavalley said other towns allow them showing the ROW going right to the property line and the cul-de-sac is constructed in an easement so that if the road ever goes through, they don't have to revert the land back. Mr. Greenwood said that this is not what has been done but it is an option. Mr. Quintal said that he didn't do any major calculations but did draw a couple of lines on the plan to connect the three lots that would be affected by changing the cul-de-sac and there is like 620 feet that would go across those three lots so by eliminating the cul-de-sac they would be able to get the frontage. Mr. Quintal said he was not sure about the land area; Mr. Lavalley said that he could provide that information, not as part of the plan set. Ms. Faulconer asked Mr. Lavalley if he could provide the Board with the towns that do this so there language could be reviewed. Mr. Lavalley said that Hampstead has done it and he would get back to the Board with a couple of other towns that do it. Mr. Bashaw questioned the timetable to get to the attorney and allow Ms. Alessio to follow through with a wetland scientist. The upcoming dates were reviewed. Mr. Lavalley suggested continuing to January; he added that they would be extending the Board's timetable for jurisdiction. Mr. Heitz stated that if cul-de-sac easement option works and doesn't negatively impact the development, then everyone is a winner. Mr. Lavalley agreed; they could sketch that out sooner rather than later; if the Board would entertain the cul-de-sac in an easement, it would work. Mr. Pellegrino asked what the Board would be looking at if they did all this work; was one person okay with it or everyone okay with it; he didn't want to go through spending another 5 to 6 thousand on a plan. Mr. Heitz said he wouldn't be voting on it but his opinion was that the Board would rather not grant waivers if there was another alternative that didn't have a negative impact on the applicant or Ms. Alessio; if both parties are kept whole on the plan, he would lean toward it. Mr. Lavalley added that the Town would also need to not be negatively impacted. Mr. Heitz agreed. Mr. Pellegrino asked if the Board could table this and move on.

Mr. Coppelman said there were three actions currently; Mr. Lavalley to provide some wording to the Board's attorney; Mr. Heitz asked if the rest of the Board agreed it was a good idea rather than waste the applicant's time and money. Mr. Bashaw said that it is appropriate to allow Ms. Alessio the opportunity to investigate it a little more but if not developable, he's be inclined to grant the waiver or accept the alternate plans being discussed. Mr. Lavalley likes Mr. Heitz' idea of the cul-de-sac in an easement as everybody wins. Mr. Bashaw asked if the alternate plan would require different waivers; Mr. Lavalley didn't think it would. Mr. Greenwood would need to see the plan prior to offering an opinion. Mr. Lavalley questioned the legal concerns with putting a cul-de-sac radius in an easement and if it was something that would create another issue

as it hadn't been done in Kingston. Mr. Heitz said it just put restrictions on the properties which would be there anyway. Ms. Faulconer asked if the Town Attorney should be asked this question, too. Mr. Lavalley thought that was a great idea. Ms. Merrill asked if anything being discussed needed to change any existing ordinances prior to Town Meeting. Mr. Coppelman said that changes to regulations didn't need Town Meeting vote and anything regarding an ordinance would go the ZBA. Mr. Heitz said that they could meet the 200 ft. frontage and the sq. footage so waivers and variances wouldn't be required. Mr. Lavalley said they need the attorney's input prior to drawing up new plans. Ms. Faulconer asked who would be preparing the language to go to the attorney. Mr. Lavalley said the first question was whether the ROW could be done in an easement dedicated to a future ROW but now it seems that the better question is "can a ROW be drawn out to the property line and the cul-de-sac be constructed in an easement and that easement given to the Town." Mr. Lavalley stated that he thinks this is a better option than what he originally came in with. He added that the attorney can call him and he can send sketches if needed to come up with the opinion. Ms. Faulconer asked if the Board would be including Mr. Coffin's comment regarding meeting State ROW laws. Mr. Coppelman asked Ms. Alessio if she was still pursuing her own investigation of developability. Ms. Alessio stated that it doesn't sound like she has to based on Mr. Heitz's suggestion. Mr. Coppelman said that, not knowing what the attorney would say, she would have to decide investigating the developability of the land in case the attorney did not find the proposal acceptable. Ms. Merrill suggested sharing the answer from the attorney with the applicant and Ms. Alessio; it was decided that it depends on what the attorney says.

Mr. Coppelman noted receipt of a letter from RCCD (Rockingham County Conservation District). Mr. Pellegrino asked why he didn't get Mr. Quintal's bills or RCCD's stuff; he got the last Planning Board minutes at 6:45 on Tuesday night, the night of the meeting; he said that he doesn't feel that he is getting all of the information. Ms. Faulconer said that the bills aren't sent to the applicant; the Town pays them. Mr. Pellegrino asked how he acquired what he was paying the Town Engineer. Ms. Faulconer answered that if he wants copies of the bills, he can request them and we can get them him but they are not normally sent unless requested. Mr. Pellegrino said in the first phase he did get. Ms. Faulconer explained that it because he requested them. Ms. Faulconer said the same would apply to any bills from RCCD. She added that no one gets copies of minutes at 6:45 on the night of a meeting; they are sent out ahead of time. Mr. Coppelman said they might be sent a second time as a reminder and as a helpful thing but they would have been sent out prior. Mr. Pellegrino said that was fine, he wasn't going to argue it. Ms. Faulconer said that he can be shown the emails. He said no.

Mr. Coppelman read the letter, dated Oct. 26<sup>th</sup>, from RCCD; it was noted that the soils on the 2013 plan shows the wetland larger than it actually is; there is a non-wetland gap as shown on the 2017 wetland delineation; the exact width cannot be determined as there is a driveway built through part of it; the existing driveway to the house under construction was constructed partially in the wetland; approximately 8 ft. by 17 ft. of the wetland was filled by the recent driveway construction; a rough sketch was attached; the proposed driveway location on lot 12 does not conflict with the wetlands. Mr. Greenwood said that the letter is saying that there is an after the fact wetland violation. Mr. Lavalley explained that there is a dry section where the driveway can be and they went about 7 feet too south; Mr. Pellegrino said that he has moved portions of it.

Mr. Pellegrino said he had a conversation with Tim Ferwerda and Mike Cuomo; he wanted to put the driveway where they want him to put it but he didn't because he thinks it is a wetland but he will remove and fill in up to the other section and reclaim the wetlands; so the bottom line is that he will move the driveway over.

Mr. Quintal's 11/20 comments were reviewed; they noted current comments and previous comments that had not been addressed; 12 total.

Mr. Greenwood's comments were reviewed; he had not received new plans so had no comments pertinent to the plan. He asked if NHDES had been notified of the filling of the wetland. Mr. Pellegrino said that Mr. Cuomo said that he wouldn't get the State involved as long as it is being corrected.

Mr. Lavalley said that they would like to have the hearing continued; Mr. Coppelman confirmed that the applicant is extending jurisdiction to an additional 90 days from today.

Mr. Pellegrino asked to speak about the Fire Road from the previously approved plans; he read the minutes dated April 19, 2011 and May 17, 2011. Ms. Faulconer said the minutes she had provided to the Board were later minutes dated August 6, 2013. Mr. Pellegrino asked to have the Board listen to him to get "this through".

Mr. Pellegrino began by saying that he "sent a letter to Richard Wilson back in 2014, the Chairman at the time and at the end of that, it says that the night we got approvals, Ellen went out of her way to stall us again using the ROW to the Town Forest for future logging, it says future logging, she wanted to make another change to the plan which would have delayed us again. The Town already has access through Dan Barkley's property on top of the right of way I gave the Town, it was an easement but I misspoke in this letter and I will leave it at that. So, it was for logging and now I told Mr. Heitz that I had no problem making that a fire road but I feel like I was lied to because it is at my expense that I have to clear it out so I will clear it out, so I will clear it out, I will clear it out, no problem, I'm going to clear, um, you should have no problem, I'm going to clear all the trees on lots 6, 7 and 8, that should give you enough room to get through there, so, I won't clear-cut everything, I'll leave some trees there but I'm going to cut most of the trees and this way you'll have access to it because I don't feel that I should even be giving you this easement right now because I feel like I've been lied to so many times through the process coming up through the years, um. I talked to the Chief about this, too, because we had an issue. I was wondering if I could ask one other question, who called about the slope of the driveway on lot 2 'cause it was an issue, he said there was a slope issue on my driveway being too steep 'cause I had called him and when I called him he was there to talk about the length of the road because we had that issue at our last meeting. And at our last meeting it was an issue as far as, because the houses are sprinkled, that, we got a waiver for the first phase for the road being over 1000 feet because, the road, because it's sprinkled. Now when I called the Chief of Police, uh, the Chief of Fire Department, Bill Seaman, he said that he had no idea that, what I was talking about, he was called specifically for the slope of my driveway. Now, I had told him before he had come over, I said well if you think my slope of my driveway is too steep, then you should go to 4 Williams Path Drive and then when you get done with 4



Williams Path you can go to 6 Williams Path and when you get done with 6 Williams Path you can go to 8 Williams Path, you can go to 10 Williams Path and when you get done with 10 Williams Path you can go to 12 Williams Path cause if you look at their driveways, they are cliffs. My driveway is an 11% slope. When you are driving on Williams Path and you are looking, you are looking into the second floor windows of these peoples' houses because their houses are down such a slope. So we have an issue with the 60%, uh, the 15% slope; we have an issue with 60,000 sq. ft. of contiguous upland. I've gone through, I went by North Rd., there is a house on North Rd. that was just built; the guy, there is no way that meets contiguous upland; the guys house is built on the edge of the road and behind his deck is a sheer cliff, sheer drop-off so there is no way he meets that 15% standard so, but he gets a permit. So, I feel like I'm being singled out." Mr. Heitz asked if it was a subdivision. Mr. Pellegrino answered that any lot is a subdivision; any new subdivision. I will go to... Mr. Heitz stated that it was a lot of record. Mr. Pellegrino said "no", we could go to Exeter Road, the project, the four lots that we just did, same thing, not one of those lots meets that 60,000 sq. ft. contiguous upland; I'm looking at the houses that are built and I'm looking at the tops of the trees in their backyard. So, I just wanted to bring that to your attention. As far as the fire access, the Chief had no idea what I was talking about. He thought he was being called up there for the slope of my driveway so I had discussed him, surely you must have made comments back when we had that because when we got approved I asked the Board, I'm pretty sure I asked the Board, that we could change that fire road because it was going, at the time, through my parents yard. So, I figured why can't we just do that but the Board didn't want that so they kept it in my parents, because it is a deeded right of way to the Town and they kept it there. Now, I have no issue giving you a right of way, I mean, changing that and getting it out of there but I don't like being lied to and then, at my expense, I have to clear out all those trees to make it possible for the fire trucks to get down. I'm going to pay for the engineering to put a radius on this thing now so the fire truck can get down, there is no such thing ever that we were putting fire trucks down there. Now, I will do that, but don't come and lie to me and tell me that I'm supposed to take care of that, cutting all the trees and clearing all that land, and I will and I also wanted to bring up another point, cause he brought up the length of the road and he said Bobby, he read me the regulation and he said because your houses are sprinkled, it is not even an issue so that wasn't even an issue. He also brought up the fact that he read me the regulation about length of the road, hammerhead turnaround, now, I said, well, we couldn't do a hammerhead turnaround, he said why. I said because I was told by the Board we had to put a 150 ft. radius cul-de-sac in, he said well it says right here you can put a hammerhead turnaround. I said, well, according to them, the fire apparatus can't turn around; he said, I don't care, as long as I can turnaround, Bobby, you could have had a hammerhead turnaround. So, here I am, putting in a 150,000 dollar cul-de-sac on top of that, clearing out the trees for that, it is over 3 acres I am going to deforest the forest for three acres for the cul-de-sac, so, you know, I don't hear that clear cutting on our property isn't supposed to be, it's okay to do that for the cul-de-sac but not on lots 6, 7 and 8. Now, I don't want to do that, but I feel, you know, it's one thing I'm being singled out on, is this 15% slope and I will get to that another night because there are other people here and I want to be considerate to them but I just, I wanted that to come out because I talked to the Chief and where he doesn't have any idea about it, I find that to be a problem. I find that to be a problem. So, as far as that goes, the 15% slope, also, you know, I've had a lot of run-ins as far as this goes with Dennis, we, uh, and I appreciate Dennis does a lot of work for this town and I know that, however, this 15% slope has been brought up,

we lost, we lost conditional approvals in 2013 of April, okay, cause Mike Cuomo didn't get us comments back and all the comments were, and we lost them because nobody notified us and we were supposed to be notified personally and I won't get into that but we weren't, we lost conditional approvals. After we got, we lost them, we had to re-apply, put another 5 grand in, notify everybody for no reason but all that Mike Cuomo wanted was the wetlands to be numbered one, two, three, four, etc.; all he wanted was, let me read it, bear with me here please. Oh, yeah, the wetlands numbered, the, ah, Jesus, you caught me off-guard here, bear with me here please. <Mr. Lavalley said the word required to be changed.> Mr. Pellegrino said "oh, yeah, required, that change too, but there was another thing on there. The word required, we changed the regulations right after that. Hopefully it will come back to me what Mr. Cuomo wanted. Oh, the word proposed was changed to required on lot #2, okay, so, I get a bill after all this <change tape>..." for 60,000 sq. ft. of buildable area, now, I get a bill after that, and, and, no offense, but, you know, all the reviews taking 14, 12 hours, 16 hours to review a plan that he's gotten, many, many times, on his last review, it was my 8<sup>th</sup> review of the same plan, basically that we got approved and I got charged 13 hours at \$880, he called Mike Cuomo, Mike Cuomo rescinded, I have the letter from the July 13 letter stating that you were right, he asked the same question about the 15% slope, again, Mike still said that he agrees that the plan that we gave them met professional standards so that was a non-issue but in the meantime I had to pay \$880 for him to review a plan he spent 13 hours on it and the only that was changed on it was the word proposed to review, to required and a couple of stamps from Tim Ferwerda. I expressed to the Board, in this letter, at the end of it, stating that I requested another engineer to review my plan site, my plans and there is an RSA, I believe, that I do have the right to ask for another engineer. So, I think with our back, with our past, I would appreciate that because Dennis couldn't read a HISS map, he admitted it at one of the Town meetings, we got it in the minutes and I don't feel that I should have to pay an engineer if he doesn't know how to read a plan and he has to defer to another engineer to, to, to read a plan for him, now I have to pay two engineers to do the same thing and that's not right as an applicant. Now, I know I am, I am an applicant here tonight, I am not an alternate member so I just wanted to make sure that everybody knows that and I'm being respectful but I think that is an issue I would like to have addressed and when we had this meeting, Mark, you know we had this meeting, February 24, 2014, I called a meeting after we got, um, after we got approvals and I didn't want to seem ungrateful but things just kept on going on as far as that goes, you know, we had inspections, I'm not going to get into all of it but for right now, I'd like to leave..."

Mr. Heitz interrupted. He said, "okay, I think we've got your point of view, I think we've gotten it in the past, too. I don't think you've been lied to, just to address a number of things that you've talked about. I don't think the Town has lied to you on anything, <Mr. Pellegrino: Okay> I know you don't agree with the 15% slope rule, you don't like that rule, we recognize that." <Mr. Pellegrino: It's not a question of liking it.> Mr. Heitz continued "I listened to you, right. <Mr. Pellegrino: Right, I apologize.> Mr. Heitz: "You don't agree with it, and I recognize you don't agree with it because a lot of your lots can't meet it, okay, but it's still a rule. Now rules change sometimes and there are mechanisms to do that but we live with the rules that we have now. You can certainly ask for a waiver for it and you can make your argument and the Board will make a determination. I think in the past, correct me if I'm wrong, that you were given some latitude on that. <Mr. Pellegrino: Absolutely.> Okay, so if I was you,

I would leave that alone. I don't think it is beneficial for you to come to the Board and make accusations that we are lying to you. We're not lying to you. My recollection of the road for the fire apparatus now, that was new to me about the radius because I agree with you, as far as a fire truck, we're not going to put a \$500,000 fire truck down that road; we'll send a forestry truck down there if there is a problem but my opinion is we don't need a radius to get a big pumper in there because the Chief is not going to send down a dirt access way, a \$500,000 truck. We do want access for the forestry unit just like the old access, it can get through there. Yeah, it would have to go across a lawn, but no big deal, but I don't think you were lied to about that; I think it was drawn on the plan that we said that we wanted access to the Town forest. <Mr. Pellegrino: For logging.> Mr. Heitz: For whatever it is. <Mr. Pellegrino: Okay, but it's a difference between fire apparatus, Mark and logging. If it's logging, the Town is responsible for clearing the trees, if fire apparatus, I have to clear it so there's a huge discrepancy here. Because you are talking thousands and thousands of dollars again, at my expense that I have to pay, not the Town.>Mr. Heitz: The access that we had prior to that was that cleared. <Mr. Pellegrino: It was an easement.>Mr. Heitz: Was it cleared. <Mr. Pellegrino: No, it wasn't cleared yet.> Mr. Heitz: It wasn't, a lot of it was a lawn, wasn't it and there was a dirt road that goes out there. <RP: no> Unknown voice: It was cleared at one point. Mr. Heitz: It was cleared at one point, maybe it hasn't been maintained, but it was clear at one point. Mr. Pellegrino: oh, you mean, the fire road through your yard. Mr. Heitz: yes. Mr. Pellegrino: No, I'm talking about the easement that we gave them off the plan, not through your yard. Mr. Heitz: I understand that, but what I'm saying to you is that gained access to the out back and this was a replacement for that. RP: It wasn't a replacement, it was just another access. The Board, Dave Ingalls does not work for the Fire Department, Dave Ingalls asked for an easement so that they could possibly, in the future, log the Town Forest. Dan Barkley came in, we had a big blow-out because he (garbled) the right of way, he told me he wasn't going to let you guys through there, I said no problem, I'll let you guys through; I gave you an easement for logging, not for fire apparatus. Okay, it's in the minutes. Mr. Heitz: I don't know what you are talking about about the driveway and the driveway was too steep or the Chief going down over the driveway. RP: The Chief told me that he came to my lot and what he was notified on...Mr. Heitz: what lot are you even talking about? RP: Lot #2, the new house. Okay, because they figured, you know, the problem with the site walk was, you know, I feel, the new members come out and they see how a project is going to enhance and how it is going to benefit the Town, I feel the old members come out and they see how they can shut it down and obstruct. So, and that is the truth, I mean I come out and the first thing we want to go look at was the wetland violation and to see, now, now, all of a sudden because we couldn't get that and I explained that on site and now all of a sudden the issue of my slope of the driveway is coming up so it seems like, this is what I went through the first five years, if you don't get me here, you are going to get me somewhere else. Mr. Heitz: Well, it's unfortunate that you feel that way, Bob, and to be honest with you, if I was in your position and I had received waivers from the Boards on different things, I wouldn't feel that way. If you were held to every single thing and no waivers were granted, maybe I would feel that way, Okay, but the Town isn't asking you to do anything that isn't in our regulations. RP: Correct. Mr. Heitz: They have adjusted some of those regulations and granted waivers, so if I was you, I wouldn't consider it that way. RP: I agree, totally, the only reason why I brought that up because at our last meeting Dennis brought up we only had 2.4 lots. Mr. Heitz: The other thing I want to mention is, you come across like you do everything by the book, and then we get a

report here that a wetlands was partially filled, okay, so don't come in here preaching that you do everything by the letter of the law.. RP: I do. Mr. Heitz: well, you didn't in that case. RP: That was an accident. That doesn't mean that things, I can tell you right now that the driveway where it was placed was the best place to put it because there was a hump there, it didn't cross any wetlands. Mr. Heitz: all I heard was, you filled a wetland which you weren't supposed to do. RP: Right. That's what you're hearing, correct. Mr. Heitz: So don't preach, you come in here sounding like you're doing everything right and it's the Board that is doing everything wrong. I don't think that it the case. RP: I didn't say that. Mr. Heitz: We discussed Dennis a few years ago, Dennis is the Town Engineer, Dennis is the one that is going to oversee this project. I thought that got put to bed a long time ago, if I was you...RP: I did, too. Mr. Heitz: If I was you, okay, I would just move forward, okay; Dennis is a very capable engineer on reviewing the plans, you are making reference to some map, I'd be careful about speaking about him publicly, making accusations that you can't necessarily back-up but this Board, this has been visited one time and I don't think the Board is interested in visiting it again. He's the Town Engineer; he's the one who is going to be reviewing the plans. RP: I just want to be treated fairly. Mr. Heitz: Bob, I think you've been treated fairly up to this point. And again, I'll go back to you have received waivers in the past to some of our regulations, okay, if you were being unfairly treated, you would be asked to do more things than were in our regulations, not be granted waivers for them. I think we've got a full agenda tonight and I suggest that we move on.

Mr. Coppelman thanked Mr. Pellegrino and Mr. Heitz for their comments. He thinks that Mr. Heitz put it clearly enough so he won't pile on and add anything.

**MM&S to accept the applicant's offer to extend the review period by 90 days.** (Motion by Mr. Coffin, second by Mr. Bashaw) **Motion carries 6-0** with Mr. Heitz recusing himself from the vote.

There was no public comment.

Prior to the next hearing, language would be reviewed by Town Attorney and Ms. Alessio might work on her own items to present at the next meeting.

**MM&S to continue to January 16, 2018 – second on the agenda.** (Motion by Ms. Merrill, second by Mr. Coffin) **Motion carries 5-0-1** with Mr. Coppelman abstaining; Mr. Heitz recused from the vote.

Mr. Coppelman announced that this was the public's notice; he explained that specific times were no longer given, it was second on the agenda; the meeting started at 6:45.

**Hawk Ridge of South Kingston**  
**Bent Grass Circle**  
**Kingston**  
**Tax Map R3 Lot 4, Land Unit 4**

Steve Cummings and Charles Cleary introduced themselves to the Board as representatives for the applicant. Mr. Cummings explained that the application is for a revision to the original plan with one unit being moved; the unit was originally on Mulligan and now on Bent Grass Circle; the units were shifted 4 to 5 feet to allow this addition. The Board reviewed the original plan. Mr. Coppelman said the Board would only be reviewing the plan approved by the Planning Board as the comparison to the amended plan. It is the signed, approved plan that has gotten Planning Board approval; there were other changes that have occurred that weren't approved. Mr. Greenwood explained that in his conversation with the applicant, they felt that they didn't have to come to the Town for any changes, he disagreed; his notes suggested that the Board might need to speak with the Town attorney; he encouraged the applicant to apply to the Board to get this process started; this issue originally came to the Board from the Inspectors who had noticed discrepancies to the approved plan; this applicant is for an amended site plan. Mark Heitz noted there were other plans that were registered at the registry and they were registered without Planning Board input or signature, just registered on their own. Mr. Cleary explained that the condo. site plan was approved and per the statute they need to file an amendment and a plan but it doesn't require Planning Board approval per the statute. Mr. Heitz said that those plans should be identical to the approved plans. Mr. Cleary agreed that this is a modification. Mr. Coppelman said that they made the changes and are not asking for forgiveness. He said there was a disconnect and no intention to avoid Planning Board approval. On the plan, the hash marks are already built, 18 and 19 was shared and behind a unit; it has already been changed and is different from what was approved. Mr. Cummings confirmed that there were adjustments. Mr. Coppelman said that when a plan is approved with locations, driveway locations, drainage, any changes require site plan approval. Mr. Cummings said that they were under the impression that they could do it. Mr. Coppelman suggested that they explain what is being proposed to do or they have done. It was explained that they had to get unit 20 moved, it was not as viable as moving it across the street; some of the other units have shifted; they do an as-built condo plan when the units are sold to show the shift. Mr. Cleary said that this was a fairly tight project so each shifted a little. Mr. Cummings stated that the houses move slightly in the proposal. Ms. Faulconer asked if Stormwater Management issues had been looked at. Mr. Cummings said there was no need so they didn't do it. Mr. Bakie asked if it was a private road. Mr. Greenwood said it was. Mr. Coppelman asked if they met all the items on the checklist; Mr. Greenwood said no. Mr. Coppelman suggested hearing from Mr. Quintal and Mr. Greenwood.

Mr. Quintal said the new site plans show some buildings close to limited common lines; there are possible conflicts with Stormwater management, they need to provide revised utility plans and Stormwater management plan; impervious surfaces have changed and they need to verify compliance with approved structures; questions regarding easements, limited common areas and access ways.

Mr. Greenwood explained that the proposed housing units changed locations and in his discussions with the owner and engineer, they were adamant that they didn't have to come to the Board; the fact that they agree that they need approval is a change and a step forward. He continued that moving the units may impact the Stormwater management plan; the Board needs to confirm that they meet the Town's requirements; additional information is required for the plans. Mr. Coppelman said that if the Board has a formal application, then they need to accept a

plan for jurisdiction but not if it is not complete enough. Mr. Cummings said they are still working and doing construction on the property; he said that on #20, just the foundation is in; they are not working on that building. Mr. Cummings added that they are working on #4. Mr. Heitz asked is that is one of the changes. Mr. Cummings said that it moved slightly. Mr. Heitz suggested that it moved around the corner. Mr. Cummings said that he is just here representing the client and is not in charge of the job. Neither Mr. Cummings nor Mr. Cleary could answer the question. Mr. Cleary said that in a project like this, they need to be careful about moving units. He acknowledged they were wrong but each unit has to be built within the convertible land area. Mr. Pellegrino said that Lot 4 moved almost 60 feet within the original envelope. Mr. Cummings said that is why they are here.

Mr. Coppelman read Department comments: Fire Department – none; Health Department: improper type of sewer cover, leach field vent needs to be installed, pump chamber vents need to be installed. The letter dated 10/4/17 from the Building Inspector to Mr. Villella was read into the record. Mr. Heitz said that the proposed septic area have two separate fields in the area and asked if they are next to each other and accommodate the 34 units. Mr. Cummings said that moving the building has no effect on the septic loading. Mr. Heitz questioned if it was the same field; Mr. Cummings replied no, it was a different field. Ms. Merrill questioned the future construction of the Community Center and if there wouldn't now be a septic for it. Mr. Cummings said it is an innovative system. Mr. Cummings said it wouldn't restrict it as it was oversized. Mr. Pellegrino asked if the septic would handle the volume with the addition of the Community Center. Mr. Coppelman said the Board wouldn't know that as we hadn't seen the evidence of that. Mr. Cummings said it was approved before and they were not asking to change the field; this doesn't change anything from the original; they are willing to locate the units as shown on the plan and provide that information. Mr. Greenwood explained that the reason the plan was accepted was to get them before the Board as they were originally disagreeing that they had to come before the Board. He said it is disingenuous to think that the Board shouldn't have the information regarding changes that could impact the septic; it is not unreasonable for the Board to have the information. Mr. Coppelman added that it is not only not unreasonable, it is required. Mr. Coffin said that there needs to be a new septic plan approved by the State; the Board needs to see an amended Stormwater plan as the Board needs to comply with the MS4. Mr. Quintal said that the plan is labeled as "as-built" and it should be labeled "amended" or "partial as-built". Mr. Coppelman said the Board would need an amended plan that was able to be recorded.

#### **Abutters/Public Comment:**

Mr. Coppelman read a letter from Maureen and Leo McHugh, 9 Bent Grass Circle for the record; their deed says that #20 would not be placed where it was originally shown on the plan; doing so would be a breach of their contract. They included a plan that showed #20 removed.

Don Aubert, unit 19-4 Mulligan Way, was told that when he purchased, #20 would not be built and if the Board enacted the original plan it will be a significant impact to them as it cuts out the driveway and it would be built in front of their house which is unacceptable. Mr. Heitz explained that that is not being proposed by the Board or the applicant. It was clarified that the foundation for #20 was not in yet, it was just the footing. Mr. Heitz noted that #19 was

originally behind #20; the developer moved #20 out and pulled #18 forward. Mr. Aubert said that he doesn't want #20 back.

Karen Lane, Mulligan Way said that the new plan does not address access to maintain the leeching system; Mr. Dufresne had sent a letter to the Attorney General claiming that large construction vehicles will cause foundations to crack; she questioned whether this would now impact the foundations if having to repair the leaching systems. Ms. Lane said that 4 or 5 plans had been submitted to the county with the last plan showing #4 and #20 flipped once they got the cease and desist from the Town. She said it was 1,2,3,4 and then 20 which can be confirmed with the State; #4 and #20 have now switched positions. Mr. Heitz asked if the switching of the numbers was to circumvent the cease and desist; he asked if they had ceased building the structure that they got the cease and desist for. Mr. Cummings answered that he had no idea; he thought there was confusion with the building department; he did what he was told; he's just the engineer, not the builder. Mr. Heitz asked why they would change #4 and #20 when it was just being moved across the street. Mr. Cummings said to match the permit. Mr. Pellegrino asked if #20 was in the area; Mr. Cummings answered that he didn't know. Mr. Bashaw asked if all the convertible land was labeled and represented as convertible land. Ms. Lane noted that all of the houses were required to have gutters and the owners had to put them in themselves; the plan shows gutters draining into a specific area to meet the drainage requirements; questioning whether this was done according to plan. Mr. Coppelman said that if it was based on the approved plan, it should have been built that way and would have to be reviewed again.

Renee Spidle – 8 Mulligan Way, Lot 21 – she wanted to make sure that there is a reasonable approach to solve the situation; suggesting easements to provide access to the leach fields with no building, tanks or lines to prevent equipment getting in there; she thinks this is a reasonable plan and wants to work with the builder; there are issues with drainage; she thinks this is a better plan than putting the house back where it was.

Jim Scarpone – 11 Mulligan Way – he is not opposed for or against changing the plan; he doesn't know what rules are being broken but he is sure something is and there is a pattern of disregarding the plans; he doesn't think it is correct as there is always water and he doesn't know where it is supposed to go. He said that there are individual residents in a single condo. unit and it seems like everyone shouldn't have to come in due to disregarding the Planning Board rules there to protect them.

Nancy Valenti – 10 Bent Grass Circle – she said they put 9 where 8 was supposed to be; the deck is now 15 feet from the foundation going in; she is now within 15 ft. of the first unit and they are squished together. She said that last April, she had 4 inches of water in the basement; they have added a berm to divert the water. Mr. Heitz asked about the gutters. Ms. Valenti said that gutters are supposed to go to a catchment, originally they were dumping on the lawn and then it continued further into the lawn; there is a catch basin but she is not sure the water gets to it. Mr. Coppelman asked about minimum distances. Mr. Merrill said on the original plan there is limited area around each unit specific to that unit. Mr. Cummings said there is 25 ft. to the foundation as the deck isn't a structure. Members of the Board disagreed that a deck isn't considered a structure. Mr. Coffin said that if the builder didn't build Unit 20 then there would

be no issue with proximity. Mr. Cleary said that under condo rules he can change the common area but maybe not based on the site plan regulations.

Mr. Coppelman closed the public comment period. He asked how we move forward; he suggested needed a site plan in compliance adding that clearly the Board could not accept jurisdiction. He stated that the Board is looking for a complete amended site plan submittal with the recalculation of Stormwater flow; the plan should show any change from what was originally approved; the new plan need to be reviewed and have comments from Departments. An abutter noted that only the association received an abutter notice not each property owner; Mr. Coppelman and Ms. Merrill explained that the notification was in compliance with State law.

**MM&S to continue to December 12, 2017 with a deadline for 11/30/17 to submit new plans; if the plans aren't received by the deadline, Mr. Cummings is responsible for contacting the Homeowner's Association; they will either submit the plan or ask for a continuance.**  
(Motion by Mr. Coffin, second by Mr. Bashaw) **PUNA**

**Public Hearing – Mr. Coppelman opened the public hearing to review the regulation changes as posted.**

**MM&S to continue to December 5, 2017.** (Motion by Ms. Merrill, second by Mr. Coffin)  
**PUNA**

### **Board Business**

#### **Critical Correspondence:**

- Letter received from George Korn re: opening an office for Korn Realty Enterprises at 62 Newton Junction Road replacing offices for the bus company; it would be a one person office open from 7 AM to 5 PM; the Board thought it would be less of an impact than what had been at the location.

**MM&S that no additional review is required; it is less of an impact.** (Motion by Mr. Heitz, second by Mr. Bashaw) **Motion carried 6-0-1** with Ms. Faulconer abstaining. When asked why, she explained that since she worked for the Selectmen, her abstaining would not raise any questions of a conflict.

- Bond Balance list received
- ZBA Special Exception notice re: sign ordinance; it was noted that adjustments to the Sign Ordinance would require a variance. Ms. Faulconer will speak with Ms. Alessio.
- Mr. Coppelman signed a letter to new business at the CT Plaza
- The Board discussed the proposed use by Mr. Costa at Wayne Kinney's site. Ms. Merrill said that Mr. Costa had good intentions but the Board can't waive rules for good intentions.

**MM&S to require a site plan review for Mr. Costa's proposed use at Wayne Kinney's property.** (Motion by Mr. Coffin, second by Mr. Bakie) **Motion carries 6-0-1** with Mr. Heitz abstaining.

- Information re: Morin contracting services re: rebranding/new name.



**MM&S to accept the Oct. 19, 2017 minutes as amended; any references to “Pelletier” should be “Pellegrino”. (Motion by Mr. Coffin, second by Mr. Coppelman) Motion carries 4-0-3 with Mr. Heitz, Mr. Bashaw and Mr. Bakie abstaining)**

Mr. Pellegrino brought up an issue with his property in which the Conservation Commission was asking who would be taking care of the detention pond; he needs to let them know. Ms. Faulconer suggested that this should be discussed during the hearing portion for his property adding that he could contact Rich St. Hilaire for the information he is seeking.

Mr. Greenwood reviewed a discussion with engineer Charlie Zilch in which he has asked the Board to set up a Technical Review Committee (TRC) prior to the public hearing in January. Mr. Greenwood said that the Board doesn't usually do this before the public hearing but he is not opposed to calling Department Heads to get together; Mr. Zilch will pay to notice the hearing and notify abutters. The Board agreed to let this be put together. Mr. Greenwood will contact Mr. Zilch about getting the additional fees and will contact the Department Heads to set up a date.

The Chairman declared the hearing adjourned at 10:45.