

**KINGSTON PLANNING BOARD**

**AUGUST 15, 2023  
PUBLIC HEARING/MEETING  
MINUTES**

Ms. Duguay called the meeting to order at **6:46 PM**; there were no challenges to the legality of the meeting.

**MEMBERS PRESENT:**

Robin Duguay, Acting Chair	Peter Coffin
Chris Bashaw, BOS Representative	Steve Padfield
Peter Bakie	Rob Tersolo

**ABSENT:** Lynne Merrill, Chair

**ALSO PRESENT:**

Glenn Greenwood, Town Planner  
Dennis Quintal, Town Engineer  
Robin Carter, Land Use Admin.

Ms. Duguay introduced the Planning Board ("PB" or "Board").

**PUBLIC HEARING(s) (in these minutes)**

Housing Support, Inc., 186 Main St., R34-21	Pg. 1
Souhegan River View Investments, 255 Rte. 125, R40-12	Pg. 2
Summit Distributing, LLC, 249 Rte. 125, R40-15&16	Pg. 2
James Materkowski, 22 West Shore Pk. Rd., R9-32	Pg. 3
Unitil Energy Systems, 14 & 24 Towle Rd., R12-25&26	Pg. 4

Request for a continuation to September 19, 2023:

**Housing Support Inc.**  
**186 Main Street**  
**Map R34 Lot 21**

**Purpose:**

This is a site plan review application for the total renovation of the existing structure to create four (4) one (1) bedroom housing units, including a small addition at the rear. Also, the extension of the right-side driveway to accommodate one handicapped parking space and three extra parking spaces at the rear.

Ms. Duguay asked Mr. Greenwood if he had further information on the continuation request. Mr. Greenwood explained that Housing Support, Inc. only received approval on their variance request from the Zoning Board of Adjustment (ZBA) on August 10, 2023 and needed more time to determine what might be needed for the PB.

**Motion made by Mr. Bakie to continue the Housing Support, Inc. public hearing to the September 19, 2023 Planning Board public hearing at 6:45 PM at the Kingston Town Hall. If the applicant has new plans, they must be submitted in writing to the Planning Board office by Thursday, September 7, 2023 at noon.**

**Seconded by, Mr. Coffin. A vote was taken, all were in favor, (Mr. Bashaw was not present for the vote), the motion passed. (5-0-0)**

Mr. Bashaw joined the meeting at 6:49 PM

Request for a continuation to September 19, 2023:

**Souhegan River View Investments**

**255 Route 125**

**Map R40 Lot 12**

**Purpose:**

The intent of this project is to construct a 2,000 +/- square foot barn for an ice-skating rink.

Mr. Greenwood said that one of the requirements was that they needed to have a septic design completed and show the test pits on the plan.

**Motion made by Mr. Bakie to continue the Souhegan River View Investments public hearing to the September 19, 2023 Planning Board public hearing at 6:45 PM at the Kingston Town Hall. If the applicant has new plans, they must be submitted in writing to the Planning Board office by Thursday, September 7, 2023 at noon. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (6-0-0)**

A member of the audience asked for a copy of the plans. Ms. Duguay said the new plans are not available yet and that they could be requested at the Planning Board office when they are available.

Ms. Duguay explained that this is the formal notice for the continuation of this hearing to September 19, 2023 and that there will be no additional notice that is required. This applies to all of the hearings that are being continued tonight.

Mr. Coffin mentioned that plans for public hearings are usually posted on the Town website under the Planning Board page under the link "Plans for Upcoming Hearings". If they are not posted, they can be requested from the Planning Board office.

Request for a continuation to September 19, 2023:

**Summit Distributing, LLC**

**Owner-Quick Stop Property, LLC**

**249 N.H. Route 125**

**Map R40 Lots 15 & 16**

**Purpose:**

The applicant is seeking Planning Board approval for a proposed retail motor fuel outlet having a quick service restaurant with drive-through window and gasoline station. The applicant is also requesting a lot line adjustment between lots 15 & 16 on Map R40.

Mr. Coffin explained the application for a special exception in the C-11 zone was denied at the ZBA, but they still can request a continuation with the PB. Mr. Greenwood commented that the reason for their request for extension to the Planning Board is to have time to plan how the applicant wants to respond to the denial they received on August 10, 2023 from the ZBA.

**Motion made by Mr. Bakie to continue the Summit Distributing, LLC public hearing to the September 19, 2023 Planning Board public hearing at 6:45 PM at the Kingston Town Hall. If the applicant has new plans, they must be submitted in writing to the Planning Board office by Thursday, September 7, 2023 at noon. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)**

**James Materkowski**

Owner-James Materkowski Revocable Trust

**22 West Shore Park Road**

**Map R9 Lot 32**

*<Board note: This hearing began at 6:50 PM.>*

Ms. Duguay read the legal notice.

**Purpose:**

*Application for a Conditional Use Permit (CUP) for an Accessory Dwelling Unit (ADU) to be located in the basement of the existing dwelling that will include some minor exterior changes to the structure.*

**Applicant:** James Materkowski of 22 West Shore Pk. introduced himself. He explained that he would like to convert his partially finished basement into an accessory dwelling unit. He plans on applying for all the necessary building permits and building it to code.

**Department comments(s):** There were no department comments.

**Town Engineer comment(s):**

Mr. Quintal noted that he did the septic design for Mr. Materkowski and went through the septic requirements for an ADU. He commented that parking requirements should be considered and that the septic and well do meet the requirements for an ADU.

**Town Planner comment(s):**

Mr. Greenwood reviewed his comments. This is the first public hearing for this application. He noted that that only reason a CUP is required is because a small entry way is being added to the home and that the apartment itself has no new exterior construction, it is all within the confines of the basement. He recommended that the Board invoke jurisdiction for this application. A new septic design has been developed for the site to provide for the new ADU. He said that this proposal meets all the requirements in sections 206.4, A-P.

**Motion made by Mr. Coffin to invoke jurisdiction. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)**

Mr. Greenwood brought up article 206.4.A, Accessory Dwelling Units-ADU Requirements. Mr. Bashaw read this section. *"The proposed use must conform to the dimensional requirements of a single-family lot and meet all existing building requirements."* Mr. Greenwood said that this lot size is not the standard size of what an existing housing lot would be, but it is a legally existing non-conforming lot. It does meet the requirements for residential purposes, but it isn't a 2- or 3-acre lot depending on what zone it is in.

Mr. Greenwood commented that this is an ambiguity in the ordinance and should be clarified because he doesn't believe the intent was to prohibit people that have legally existing lots with homes on them from being able to put an ADU in it.

**Board comment(s):**

Mr. Coffin said in this case the ADU is not expanding beyond the existing footprint and the proposed use being referred to is the ADU, the proposed use does conform because it is in an existing house. Mr. Greenwood said that he agrees it meets the standards, but if anyone was concerned about 206.4.A, then the Board should talk about it. Mr. Coffin noted that the plan shows that it meets the size requirements or an ADU. Mr. Greenwood mentioned that the requirement is that four cars can be parked off street. They have a driveway that allows for this.

Mr. Coffin asked the applicant about the two exits and if they meet the exit requirements for an apartment. Mr. Materkowski explained that is why he is here, if he wasn't creating the two doghouse dormer egresses to the exterior, he wouldn't need to go through the PB process, and it would just be a building permit request for the ADU.

**Public comment(s):**

Ms. Duguay opened public comment at 7:03 PM. There was no public comment. Public comment closed at 7:04 PM.

**Motion made by Mr. Bashaw to grant a Conditional Use Permit based on the applicant meeting the requirements in Article 206.4, A-P. Seconded by, Mr. Coffin. A vote was taken, all were in favor, the motion passed. (6-0-0)**

Ms. Duguay explained to the applicant that there will be an impact fee associated with a new ADU and he'll want to go to the building department for a building permit. The applicant said he is aware of this.

Mr. Coffin explained that there is a 30-day appeal process to the decision and that the applicant may want to wait 30 days to begin construction.

*<Board note: This hearing ended at 7:05 PM.>*

**Unitil Energy Systems**

Owner: 24 Towle Road Realty Trust

**24 Towle Road, Map R12 Lot 26**

Owner: Richard G. Homan

**14 Towle Road**

**Map R12 Lot 25**

*<Board note: This hearing began at 7:06 PM.>*

Ms. Duguay summarized the purpose of the two (2) applications.

**Purpose:**

1) *Site Plan application for a proposed Solar Field with associated access and stormwater management improvements. –*

- *A Conditional Use Permit (CUP) for disturbance for a wetland buffer associated with the proposed Until Solar Facility Project is being requested by the applicant. The proposed project will require approximately 200,095 +/- sq. ft.*

(4.6 +/- acres) of disturbance to the 57-ft. wetland buffers within the Wetlands Conservation District.

- 2) The applicant is requesting a lot line adjustment. A portion of the Tax map R12 Lot 25 (3.7 +/- acres) will be combined with Tax map R12 Lot 26 (32.9 +/- acres) to create a new lot of 36.6 acres, which will enable the solar field to project wetlands.

**Applicant:** Nicholas Golon, P.E. licensed engineer, Civil Department Manager, Principal for TF Moran and Jacob Dusling, P.E. licensed engineer, Sr. Engineer for Unitil Energy Systems presented on behalf of Unitil. James Hasselbeck, Chief Operating Officer for Revision Energy and Solar Power was also present. Mr. Hasselbeck disclosed that he is a resident of Kingston and wife is an elected official-the Chairwoman of the Library Trustees Board.

Mr. Golon explained that they have met with the Planning Board a couple of times, and the Select Board regarding access considerations and concerns, what wetland/wetland buffer impacts they may have, and had the opportunity to meet with the Conservation Commission, state and federal agencies that govern their permits.

He described the two proposals – 1) Lot Line Adjustment plan was put on the overhead for viewing. This is a proposed lot line adjustment where they would be acquiring approximately 3.5 acres of the adjacent 11.1-acre site. In doing this, it significantly decreases their impact to the wetlands of the overall facility. This information is outlined in their functional assessment. Twenty-four Towle Rd. is the parent lot and has approximately 33 acres. Fourteen Towle Rd. is the abutting property. He pointed out three areas of wetlands impact. They walked the property with the Conservation Commission and were able to see the higher quality wetlands that are not being impacted by this project in comparison to the lower functioning wetlands.

Mr. Golon mentioned that there is a Conditional Use Permit (CUP) that is part of this that outlines the buffer impacts. In addition to meeting with the Conservation Commission they have connected with the Friends of Kingston Open Spaces and come to a resolution that an 8-acre conservation parcel that they would want to put into the Southeast Land Trust (SELT).

Mr. Golon described the project site. It is approximately 37 acres; it would be cleared to allow for the most efficient use of the panels. The panels will be within the confines of a secure fence line which is approximately 27 acres, there will be regrading in this area. Ninety-eight percent (98%) of the land will be returned to its natural condition. The only components that are impervious are a few of the concrete pads that support the necessary electrical equipment, the utility poles, and the gravel access road that provides access to the panels.

In regard to the placement of the panels, they look the Alteration of Terrain (AOT) as to how they need to be defined. In areas where there are slopes that exceed 8%, they do require you to consider them as impervious. Under the panels there is grass. They can expand on the elements underneath them, which are a screw pile driven into the ground.

Mr. Golon mentioned that they provided a project narrative (dated July 12, 2023) that touches on all the elements that would be important to a project like this; the existing surroundings, the zone that the property is located in, the direct abutters, the existing and proposed infrastructure. This is directly adjacent to an existing transmission station for Eversource and two transmission lines (travels north to south and the other east to west). There is a distribution substation to the south owned by Eversource and another one for Kingston. This is very much with keeping with the surroundings when talking about an appropriate location for this type of utility infrastructure.

241  
242 He addressed screening and site lines elements. Because of the location of this property  
243 additional screening would not be necessary. On the lot line adjustment plan with the abutting  
244 landowner, there are some screening plants that the abutter was satisfied with. Eversource  
245 worked this out with a purchase and sales agreement with the landowner.

246  
247 Mr. Golon went on to discuss the site improvements. There are appropriate concrete pads to  
248 house the electrical equipment. There are improvements to Towle Rd. A portion of Towle Rd. is  
249 an existing paved class V road. They have met with Phil Coombs, Kingston's Department of Public  
250 Works Director, the Board of Selectmen, and the Planning Board to make sure their 20-foot-wide  
251 gravel driveway is appropriate overall. They recently had an area on Towle Rd. and Mill Rd.  
252 surveyed for roadway access.

253  
254 Mr. Golon provided an overview of the drainage and stormwater management system. Unitil did  
255 provide a detailed stormwater management report and drainage, dredge and fill information.

256  
257 Mr. Golon talked to traffic and parking. He said this is not an issue. Once the project is up and  
258 running, there will be someone coming out once a month to check on the property. Mr. Dusling  
259 explained that the property will be monitored remotely 24/7 by Unitil and Revision Energy. Mr.  
260 Golon said they want this at optimal peak performance, and this will identify any issues they may  
261 be having with the system so they can be corrected promptly.

262  
263 Mr. Golon said they are not proposing any lighting. He said that there will be a Unitil identification  
264 sign similar to their substation, will include fire protection and e911 information (i.e., the property  
265 address) to ensure that they have appropriate access.

266  
267 Regarding acoustics, he noted that the Town has an ordinance that specifically defines what is  
268 allowed and not allowed, Article 407 and 408. Sound pressure level limits identified in the rural  
269 residential district are 60 dpa 7-9 and 50 dba 9-7. Mr. Golon said one of the benefits of this facility  
270 is it makes very little noise; it is equivalent to background. He said when the sun is down, they are  
271 not operating, so they are not running at night.

272  
273 A portion of the facility is in the aquifer protection district. Mr. Golon said that a benefit of this type  
274 of facility in comparison to a commercial development is the amount of impervious. It is less than  
275 2% and are allowed to have up to 25% in this district.

276  
277 There will be an AOT permit associated with this project because it is more than 1,000 sq. ft. of  
278 impact. There is the standard dredge and fill permit that will be required. Both of these permits  
279 have been submitted. They have received acknowledgement that they are complete and pending  
280 technical review by the State. They have submitted a USEPA construction journal for stormwater  
281 related discharges and are waiting for confirmation for the US Army Corps of engineers regarding  
282 a general permit that allows the State of NH to issue the wetlands permit.

#### 283 **Department comment(s):**

284 Ms. Duguay read any department comments provide to the PB:

285 Phil Coombs, DPW commented that he sees no major issues other than scant detail for the  
286 intersection. Mr. Golon responded that the plan has been updated and has been submitted to  
287 engineering and will be provided to Mr. Coombs for review. Mr. Golon mentioned that this is a pull  
288 off area that the Town has been using, so the ability to convert this to an access through to Towle  
289 Rd. was pretty straightforward. There is a cross section that meets all the Town's requirements.  
290

Ms. Duguay noted that any other department comments the Board received were provided at prior meetings.

**Town Engineer comment(s):** Dennis Quintal, Town Engineer provided some comments and will follow up with written comments to provide to the Board and applicant. Mr. Quintal complimented Mr. Golon/Unitil on the presentation of the plans.

- Contours and grading on pg. C9. – he commented that the access road shows 5% pitch, which means the first 300' may be impacted and they should relook at this.
- Mentioned a 6' cut and below there was fill. The slopes show a 14% slope. He asked how solar arrays can be put on a steep slope. He pointed to an area of the map that showed cuts and fills and asked why they have to cut so much of that area then in that area the contours would better match the original grade.
- He referred to the sheet of the plan that shows wetland filling. In the alterations of the wetlands information that was provided it mentioned that no significant alternative would be available. To put arrays to fill the wetlands and wetlands buffer noted on the plan may be a concern to the Town and the Conservation Commission.
- Because of the stormwater elevations and grades, the engineer is trying to get all the drainage from an area down into the pond which means that right up against the wetlands there is a 6-to-7-foot fill that is going to affect the wetlands and/or wetlands buffer zone.

Mr. Golon provided responses to Mr. Quintal's comments and will make updates to their plan accordingly. Mr. Golon said that the arrays are functional up to a 20% slope and they have them at 14%. AOT allows up to 15%. He said that in order to make a project of this size work you need a certain amount of acreage and that is why there are panels in the area Mr. Quintal brought up. They looked at what wetlands had the highest and lowest function and that their impacts were only associated with lower functioning areas. Mr. Golon stated they are not directing runoff from that slope to wetlands. The only thing that will drain from that slope to the wetland is rainwater. Everything else is draining to the west so it can go into the stormwater basin. Mr. Golon said that if they were directing stormwater to that slope that would not be an appropriate design. He noted that a contractor will be able to stabilize those areas so they would not be problematic. This can be accomplished in a few different ways. They can use an erosion control fabric on these areas, or if more of an issue can use RipWrap. Their expectation would be that an erosion control fabric would be an appropriate selection for this location. Mr. Golon said that they will address Mr. Quintal's concerns, they acknowledge in general they do not want to fill wetlands. They are an important resource and important to the ecology of the area. Mr. Golon commented that we need to take a look at power generation needs; this isn't oil fired, coal fired; and that this is a very low impact alternative to generate a significant source of energy for the grid.

**Town Planner comment(s):**

Mr. Greenwood reviewed his comments.

Comments regarding the boundary line (lot line) adjustment –

- This is the first public hearing for this proposal.
- Recommend that the Board invoke jurisdiction on this plan.
- The new lot line runs concurrently with the existing Public Service Company of NH utility easement.
- The new lot corners are monumented with iron pipes and these should be changed to concrete or granite monuments.

Comments regarding the site plan for the solar array installation –

- This is the first public hearing for this proposal.
- The Board should consider invoking jurisdiction on the application to begin the 65-day time clock for rendering a decision.
- The Board needs to decide if this proposal requires zoning relief by the ZBA for the use. The property is located in the rural residential district and the uses specified do not include utility projects. Mr. Greenwood explained that “In the past (on three separate occasions) the Town has permitted utility installations in the rural residential zone without requiring ZBA action. The rationale was that the use is needed for public benefit and the sites are not inhabited or encumbered by septic systems. The Board needs to decide this issue before invoking jurisdiction.”

Mr. Greenwood commented that if the Board decides that ZBA relief is not necessary then his recommendation is to invoke jurisdiction as the plan set dated July 6, 2023 is complete for purposes of review. Mr. Greenwood read his comments from his memo dated August 15, 2023:

- 1) “In addition to the Rural Residential zone the property is in the Aquifer Protection District, Zone B and the Wetlands Conservation District. These zoning designations should be added to the plan notes.
- 2) If the Planning Board determines the use as a utility to be allowed, a Conditional Use Permit should still be required as an ‘industrial’ use in the district. This use permit would require the Board to make findings of fact as found in Section 201.4 G., a-e.
- 3) The plan calls for work to be undertaken in wetlands and in wetlands buffers some of which are permanent. Are these wetland fills necessary? The Board would need to issue a Conditional Use permit for such activity. The standards for this permit are found in section 202.8. The Board may wish to engage a wetlands scientist to review the information provided by the applicant in order to properly consider this request. The Conservation Commission also needs to weigh in on the proposed use.
- 4) The applicant has undertaken both a design review by the Board and a site walk.
- 5) In the title block on the first four plan sheets the town of Exeter has been truncated to Ter.
- 6) The plans should give an indication of how frequently employees will be on site and when these visits normally occur.
- 7) The Department of public Works should sign off on the proposed improvements to Towle Road.
- 8) The Town Engineer must sign off on the stormwater management plan submitted by the applicant.
- 9) Is any additional buffering proposed by the applicant other than what exists naturally?
- 10) Will any signage be installed? This should be indicated on the site plan.
- 11) Is any lighting proposed for the site. None shows but if security lighting is proposed its location and type must be part of the plans. All lighting must be dark sky compliant.
- 12) How many arrays are proposed?
- 13) What are the noise levels in decibels created by the movement of the arrays?
- 14) I did not see a designated parking area for employees visiting the site. Did I miss something or is the rare visit not enough to create such an improvement.
- 15) The Board should make a determination regarding what would constitute substantial improvement for the purposes of vesting the project.



16) The Board determined that this proposal did not meet the thresholds as a Project of Regional Impact.”

Evy Nathan, Chair of the Conservation Commission gave comments on behalf of the Conservation Commission.

- Ms. Nathan said that they do not have formal comments yet.
- She said they read the dredge and fill information and the functional analysis.
- They would like to discuss some items with Dennis (Quintal) such as slopes and make sure drainage is alright.
- The applicant has already made efforts to move out of the larger wetland to only where the buffer is being affected.
- She noted that they know there may be a trade off to get the power supplied to the Town. They like the idea that this is a solar project vs a fossil fuel project.
- They are trying to protect the wetlands in Town. The three that are left are very small.
- They walked the site at the site walk.
- They do not like the idea of losing open space, but as far as needs go for the community it appears to be a good tradeoff.

**Public comment(s):**

Public comment opened at 7:46 PM. There was none. Public comment was closed at 7:46 PM.

**Motion made by Mr. Coffin to invoke jurisdiction on the lot line adjustment. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)**

**Board comment(s):**

Mr. Coffin asked the applicant if the easement that was mentioned in a letter from Chris Polson of Eversource to the Board was a factor in the lot line adjustment. Mr. Golon said that whenever they are crossing an Eversource easement they reach out to them to let them know what they are doing. There will be an underground conduit in the Town right of way. It is proposed on the plan so they want to make sure they are aware of this and let them know what type of grading they would be doing through the easement area. They have correspondence with Eversource that they have approved the underground conduit area. There are no solar panels proposed within their easement area. Mr. Golon said that they are waiting for Eversource’s final approval as far as the evaluation of the grades for the proposed driveways. Mr. Coffin clarified his question and asked if the easements that Eversource has are anywhere near the area affected by the boundary line adjustment. Mr. Golon explained that they made a line of demarcations that follows the existing easement line so there would be no impact.

**Motion made by Mr. Bashaw to approve the lot line adjustment plan for 14 and 24 Towle Road as prepared by TFMoran, dated June 7, 2023, for the transfer of 3.525 acres from tax map R12-25 to tax map R12-26 with the condition that the new lot corners be changed to concrete or granite monuments and noted on the plan. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)**

Mr. Bashaw asked Mr. Greenwood to point out the other substations he mentioned earlier that did not previously require ZBA relief. Mr. Greenwood mentioned that for the Mill Rd. substation

there was an expansion so there were two different applications for the site., a small substation to the transmission lines on 107A. Mr. Coffin referred to and read statute RSA 674:30 (I.) for Utility Structures. Mr. Coffin commented to Mr. Greenwood that this RSA relates to the public welfare and good of the public. He said that substations and transmission lines apply to this RSA and is why they didn't need to go to the ZBA. He brought up the language on "structure which is less than 200 sq ft in area", and did this apply to the proposed project? This is where the Board may look for the waiver to come from. Mr. Hasselbeck explained that there are no structures included in the current proposed plan as defined by the current codes in Town. He further went on to explain that this particular project received a ruling from the NH Public Utilities Commission (PUC) that it is in the public interest. Mr. Dusling said that this facility will feed directly into the existing distribution network and supply power to the network, similar to what the Kingston substation does at Mill Rd. The power is coming from the sun instead of the transmission network.

Ms. Duguay commented that what she is hearing based on what was just read in the response, that if the Board is following precedent that this would fit in terms of the same precedent that was set with the other three utility related proposals. Mr. Greenwood said that although the zoning is not rural residential now on 107A, when the substation went in it was rural residential and that the commercial zone designation that is there now is new as compared to when the substation initially went in.

Ms. Duguay asked if for the three prior projects was there any post concern with the process that was followed for approval without ZBA. Mr. Greenwood noted that there was an abutter that came forward but there was no formal appeal of administrative decision to the ZBA. Mr. Golon explained that having the opportunity to be involved with the past projects, there was a concern abutter in regard to the work being performed which was resolved and determined that the project was done in keeping with the ordinance.

Mr. Bashaw said based off of what the applicant has presented, the granting of the moving forward of the project with the PUC and previous action that the Town has taken in similar circumstances that this meets the spirit and intent of the RSA 674:30. He commented that the Board doesn't need to refer them forward to the ZBA for approval.

Mr. Coffin said the closest residential abutter came to the site walk. It doesn't seem that it will have a visual impact on the abutting properties. The public benefit clause in the RSA can work.

Mr. Greenwood stated that there will be an impact to the abutters during the construction phase. There will be more traffic down Towle Rd. during this time and after it will be a lot less as there is for all projects.

**Motion made by Mr. Bashaw that the Planning Board does not require the applicant to go to the Zoning Board of Adjustment (ZBA) for the reasons described pursuant to RSA 674:30 outlined by Mr. Coffin. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (6-0-0)**

**Motion made by Mr. Bashaw to invoke jurisdiction on the site plan application. Seconded by, Mr. Coffin. A vote was taken, all were in favor, the motion passed. (6-0-0)**

Ms. Duguay referred to Mr. Greenwood's comment #2 "..... A Conditional Use Permit should still be required as an "industrial" use in the district." Ms. Duguay noted this is in the rural

residential district. Mr. Greenwood responded the CUP would be for aquifer protection district – Conditional Uses: Section 201.4.G., a-e.

Mr. Golon said that they addressed this in their letter to the Board dated July 12, 2023 (pg. 2) and that this project is conforming to the aquifer protection district and that no conditional use permit be required. He explained that they looked at what is required in the aquifer protection district under permitted uses, prohibited uses and what requires a CUP. The ordinance makes mention of “industrial development”. This is defined under P II B.15. As “The dedication of real property to the manufacture of goods or services.” He explained that they are not manufacturing anything on this property, it is not industrial in character. When looking at “commercial” they have no goods for sale. Mr. Golon said the Board should consider looking at this project similar to the prior votes this evening and past utility projects that were approved and that a small portion of the Peaslee substation project does fall in the aquifer protection ordinance district. He said that when evaluating this that the continuity would be an appropriate standard relative to the project specific to the definition of the ordinance read. They do acknowledge that a CUP for the wetland buffer impacts is required, and they have provided documentation on this in a letter dated July 12, 2023. Mr. Golon recognized that the Town regulates the wetland buffer according to the Town’s ordinance (Article 202). The Town does not regulate wetland impacts that is regulated by the State of NH. This is done with the wetlands permit and they will review it with the Conservation Commission to see what can be done to make improvements. They have created an 8-acre conservation area, and this is appropriate mitigation for these impacts. He stated he always likes to look at what the regs say, and the Town has definitions for industrial and commercial. They are a public utility or appurtenance, and it doesn’t fit into these categories. What they would like to see is this be consistent with the prior undertakings.

Mr. Greenwood said that he doesn’t see this project as being a potential harm to the groundwater. He commented that it is true that the conditional use language is commercial and industrial as long as they are permitted in the underlying district. The Board just determined that this use is permitted in the underlying district and if you take a conservative read of the ordinance then the Board wouldn’t be issuing a conditional use permit on the aquifer. Mr. Greenwood mentioned that they appear to have met the 5 criteria under a conditional use permit.

Mr. Coffin mentioned that the Town doesn’t have a solar power generation ordinance. They do have a wind power generation ordinance. If they had a solar one there would be no question on how to address this. Mr. Coffin referred to the conditional use section of the aquifer protection ordinance - 201.3.G. “The following uses, if allowed in the underlying zoning district, are permitted only after a Conditional Use Permit is granted by the Kingston Planning Board.” He commented that the fact that the Board determined that it is permitted in the underlying district (rural residential), then industrial/commercial use is not otherwise prohibited. Mr. Coffin mentioned that how is the Town able to issue permits to people who have put up smaller arrays. The Town doesn’t make them go to the ZBA even though it is not listed as a permitted use of an ordinance, they are just allowed by right. Mr. Coffin brought up to the applicant that they say it is not a commercial use because they are not selling it. However, we all pay electric bills, so they are selling the power they are producing. Mr. Dusling explained that it is a little different in this case. This is approved as part of a public interest project. The power produced is not directly sold to anyone. The power produced is directly offsetting Until’s losses. It is not being sold to back to a customer, and that no one can contact them to purchase power from this facility like you could for a third-party energy supplier. He said that the way this benefits customers, is it directly reduces Unutil’s losses and reduces the amount of energy they are bringing in off the transmission grid. For every 1 KW hour this produces is 1 KW hour less that our customers have to pay for. As part of the RSA, this facility can’t be built to sell the energy to anyone, it has to be used to offset those things. Mr. Coffin asked

if they would be recovering capital costs. Mr. Dusling said that through electric rates they will recover the capital costs through the facility. The amount of energy it produces to offset losses to capital costs over the life of the facility.

**The applicant did not request that the Board consider a Conditional Use Permit (CUP) for the aquifer protection district because they did not believe it was required for this proposal. However, the Board requested that the conditions for a CUP for the aquifer protection district be met by the applicant.**

**Mr. Golon read Article 201 Aquifer Protection Ordinance, section 4., G. – “The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following conditions are met:”**

Mr. Golon went through the five (5) CUP criteria for a Conditional Use Permit for the aquifer protection district. The Board discussed findings of fact and voted on the following conditions:

- a) the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.

Mr. Golon provided remarks:

- They are not creating pollutant load.
- They are meeting the requirements for stormwater management.
- They are meeting the requirements for Alteration of Terrain (AOT).
- The amount of impervious being proposed for this project impales as compared to any other uses that could be proposed on this lot.

**Motion by, Mr. Coffin that the proposed use will not detrimentally affect the quality of the groundwater as the applicant stated. As discussed on the site walk (June 17, 2023), the potential pollutants from previous versions of the plan are no longer present and there appears to be no groundwater impact or pollution that would affect the aquifer.**

**Seconded by, Mr. Bashaw**

**A vote was taken, all in favor, the motion passed. (6-0-0)**

- b) the proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.

Mr. Golon provided remarks:

- Appropriate stormwater management facilities have been provided on site for the purpose of maintaining the storage capacity of the aquifer.

**Motion by, Mr. Coffin that item “b” will not cause long-term reduction of volume in water in the aquifer because all water that is infiltrated onsite will continue to be infiltrated onsite.**

**Seconded by, Mr. Bashaw**

**A vote was taken, all in favor, the motion passed. (6-0-0)**

- c) the proposed use will discharge no wastewater on site other than that typically discharged by domestic wastewater disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined.

Mr. Golon provided remarks:

- There are no septic systems or otherwise that are proposed for this project so there is no wastewater.
- There are no onsite storage or disposal of toxic or hazardous waste as otherwise defined.

**Motion by, Mr. Coffin that the proposal meets condition “c” because there are no septic systems or hazardous waste onsite.**

**Seconded by, Mr. Bashaw**

**A vote was taken, all in favor, the motion passed. (6-0-0)**

d) the proposed use complies with all other applicable sections of this Article.

Mr. Golon provided remarks:

- As mentioned in their cover letter and otherwise stated, this proposal does comply with the aquifer protection ordinance which was established by the Town in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within a known aquifer identified by the US Geological Survey.

**Motion by, Mr. Coffin that this proposal meets the conditions of item “d” because it has been reviewed by the Town Planner and it complies with other sections of this article.**

**Seconded by, Mr. Bashaw**

**A vote was taken, all in favor, the motion passed. (6-0-0)**

e) a hydrogeologic study shall be submitted for uses whose septic system is designed for more than 2,400 g.p.d. In Zone A, a study shall be submitted for any septic system designed for more than 2,000 g.p.d.

Mr. Golon provided remarks:

- No septic system is proposed; therefore, item “e” is no applicable.

**Motion by, Mr. Coffin that item “e” is confirmed because there is no septic system onsite. No hydrogeologic study is required.**

**Seconded by, Mr. Bashaw**

**A vote was taken, all in favor, the motion passed. (6-0-0)**

**Motion made by Mr. Bashaw to grant the Conditional Use Permit based on the affirmation of the five (5) criteria as voted on unanimously by the Board. Seconded by, Mr. Coffin. A vote was taken, all were in favor, the motion passed. (6-0-0)**

#### **Conditional Use Permit Request for disturbance to a wetland buffer –**

Mr. Coffin brought up that the Board does not have the comments in writing from the Conservation Commission yet and is it premature to make a decision on the wetland buffer CUP request. Mr. Greenwood recommended that the Board make the determination on whether or not they need to have the information that has been supplied by the applicant reviewed by the wetland scientist of Rockingham County Conservation District (RCCD); and that it is possible for the Board to have this done, but it is not required. He commented that if the Board is comfortable with the ongoing discussion the applicant is having with the Conservation Commission and the Board doesn't want to have the third-party review that's fine, but he asked that the Board say this for the record.

Mr. Bashaw spoke and said a third-party wetland scientist didn't seem like it would be needed because when Ms. Nathan, Chair of the Conservation Commission provided their comments they seemed overall satisfied. However, he would like the Conservation Commission to have the opportunity to submit their comments in writing before the Board votes on the CUP for the disturbance to the wetland buffer.

Ms. Duguay brought up Mr. Quintal's comments, that there may be more to the design and the wetlands impact. Mr. Quintal agreed. Mr. Coffin noted more engineering needs to be done on the grading, height of the berms, the proximity to wetlands.

Mr. Golon did say that they had the opportunity to meet with the Conservation Commission, as required. They had an opportunity to discuss their specific questions and comments and to his knowledge all of their comments and concerns have been addressed. He explained that their goal for tonight was to achieve a CUP for the disturbance to the wetland buffer as required in Town of Kingston Title 1: Ordinances, Section 200, Article 202.8.B (RSA 674:21). He said that they followed the Town's regulatory steps, and the wetlands permit approval process will identify any other concern there may be. He noted that he would expect that any approval the Board made on this would be subject to State approvals (AOT and wetlands permit) and subject to Mr. Quintal's final review and approval.

Ms. Duguay mentioned the two options the Board has before them. 1) move forward with conditional use approval with conditions or 2) the other continue the hearing to allow for time for Mr. Quintal and the Conservation Commission to provide their formal comments in writing.

Mr. Quintal spoke and said he has not finished reviewing the plans and the drainage analysis completely. He noted the Board could consider proceeding to approve conditional use with conditions, however, the impacts to the buffer zone can be adjusted, contours and grading can be submitted in writing to the Board for review prior to the next meeting.

Mr. Hasselbeck brought up to the Board that there was a change in NH Energy policy last week with the passage of HB 281. This bill is to allow the increase of solar arrays from 1 MW to 5 MW's just like this proposal. He read a quote from Governor Sununu (08/08/2023 press release), "*New Hampshire can't solve the national energy crisis alone, but by expanding opportunities for municipalities to promote clean energy development, streamline government, and make it easier for new projects to come online, the Granite State is doing our part to build a more sustainable grid with lower costs for ratepayers.*" Mr. Hasselbeck said that this project addresses every one of these things. There will always be impacts to energy generation and solar has the lowest possible impact. He commented that winter is coming and even the littlest delays can severely impact the overall project schedule. He said let's do this right, well and as fast as reasonably possible.

**Motion made by Mr. Coffin to continue this hearing to September 19, 2023 at 6:45 PM with any required information/plans, comments from the Conservation Commission and Town Engineer due by September 7, 2023 and that they will be first on the agenda. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)**

Mr. Golon summarized for their informational purpose what would be needed for the next meeting. They are being asked to return to speak to Mr. Quintal's forthcoming comments, more specifically how they pertain to the conditional use permit request for wetland buffer impacts and other comments from Mr. Quintal. Mr. Quintal will send the comments to the Planning Board office and copy Mr. Golon, so they have them to review as soon as possible.

<Board note: This hearing ended at 8:40 PM.>

#### **BOARD BUSINESS**

#### **Approval of the July 18, 2023 Minutes:**

**Motion made by Mr. Coffin to accept the 07/18/2023 minutes as written. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)**

**Board discussion on zoning ordinances:**

Mr. Coffin brought up the topic of the Special Exception Permit that now falls under the ZBA to consider moving it back to the PB as a Conditional Use Permit and that the Board take a look at the wording on some of the conditions. [A.I. 1-08.15.2023] Mr. Greenwood will review this information and present proposed language at the October 3, 2023 PB meeting.

The Board discussed the subject of permitted uses and prohibited uses language in the ordinances. Mr. Coffin explained that the Town has permissive zoning and anything that is not listed as a permitted use is by definition not permitted. There are some ordinances that mentioned special exception and that if something is neither permitted nor prohibited and applicant can go through the special exception process. There are others that list permitted or prohibited uses, and these require a variance, which is even a higher standard than a special exception. Mr. Bashaw brought up the question, should there be a special exception category in all the ordinances to address things that may not be listed in either category that may be applicable to a particular zone.

Mr. Bashaw suggested that the Planning Board office put together a timeline for the Board that outlines the deadline requirements to submit changes to Town ordinances for 2024 Warrant Articles for the ballot.

**ADJOURNMENT**

**Motion made by Mr. Bakie to adjourn at 8:49 PM. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (6-0-0)**

**\*\*Next Public Hearing/Meeting is scheduled for Tuesday, September 19, 2023. Subject to change.\*\***