

**Kingston Planning Board  
Public Hearing  
Minutes**

**February 20, 2018**

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

Peter Coffin, V. Chair

Carol Croteau

Mark Heitz, BoS rep. (late arrival)

Ellen Faulconer, alternate/admin.asst.

Chris Bashaw

Peter Bakie

Lynne Merrill (late arrival)

Ernie Landry, alternate

Robert Pellegrino, alternate

Also in Attendance: Glenn Greenwood *<left meeting early>*, Circuit Rider Planner, Dennis Quintal, Town Engineer

Mr. Coppelman announced that Mr. Landry would be a voting member until Ms. Merrill arrived. *<Board note: Mr. Heitz and Ms. Merrill arrived at this time.>*

Mr. Coppelman announced the passing of Joe Thompson and noted his significance and contributions to the community; the Planning Board had a moment of silence in memory of Mr. Thompson.

Mr. Coppelman stated that there was now a full Board present and Mr. Landry would return to alternate Board member status.

**Kelly Ward**  
**1 Meeks Road**  
**Kingston, NH 03848**  
**Tax Map R13-7**

Mr. Coppelman explained the public hearing process. Charlie Zilch of SEC and Associates introduced himself and Kelly Ward to the Board; he reviewed the proposal. He explained that they had introduced the project to the Board several months ago prior to needing to return to the ZBA for a special exception that had been previously approved but had expired. He confirmed that the current plan being reviewed was dated 2/1/2018. He reviewed aspects of the plan for a 6000 sq. ft., two level building. Jim Hanley designed the stormwater flow that goes into the infiltration basin; the berm and oil/water separator was noted as protection for the Aquifer; there is 20% lot coverage; all wetland and property setbacks are met. The ZBA re-issued the Special Exception permit; there are no other State permits required; the septic approval has been received.

Mr. Greenwood's comments were reviewed; he stated that the current plan set addresses issues from the first hearing; he recommends invoking jurisdiction. Mr. Quintal confirmed that he had the soils report confirming the setbacks that had been prepared by Mike Seekamp. Mr. Greenwood continued reviewing his comments that included: waiver request numbering being incorrect; need rationale for landscape waiver request. Mr. Zilch requested meeting with Mr. Greenwood to clear up the designation for the waiver request. Mr. Greenwood continued with his comments: screening on the plan is not adequate and he recommends a site walk for the property; he continued that the use is not just a commercial use but more an industrial use and is the entry to a neighborhood and he suggested taking a good look for the purposes of screening adding that it is a neighborhood road. He questioned whether there were any specific fire requirements. Mr. Greenwood continued that a chain link fence is a poor introduction to a residential neighborhood and was concerned with the impact; lights are a concern especially as an impact to a neighborhood; he suggested that traffic should be discussed; he questioned whether the road agent was asking for an easement along the highway. Mr. Greenwood noted that even though the ZBA had granted a special exception, a Conditional Use Permit (CUP) was required in the APZ (Aquifer Protection Zone). Mr. Coffin confirmed that the ZBA specifically did not hear anything to do with the APZ issues as the Planning Board would need to deal with CUP; the discussion was limited to the commercial use. Mr. Greenwood continued items such as setbacks, parking, display requirements should appear as notes on the plan. Mr. Quintal asked about displays in the setback areas. Mr. Zilch said the notes were references to zoning setbacks; they weren't intruding onto them. Mr. Quintal suggested that he denote the area as "no activity" area or something to that effect. Mr. Quintal added that the plan shows the dumpster detail but no detail of the buffering was shown. The Planning Board should confirm substantial development per note #23. Mr. Quintal noted the need for confirmation of bonding for inspections, follow-up to make sure landscaping grows, etc. Mr. Quintal confirmed the setback determination.

Mr. Zilch addressed Mr. Greenwood's comments. He stated that a waiver had been submitted for landscaping inside the parking areas explaining that it was a small business with small parking so it didn't make sense and they needed room for maneuvering; they didn't want to push the pavement out any further; there was no need for internal landscape islands. Mr. Coppelman stated that the Board had received the waiver request. Mr. Quintal suggested that some additional tree plantings could be done to soften the look along the road and minimize the heat impact of the parking lot. Mr. Zilch said they would be amenable to adding buffer in that area of the section to the right of Meeks Road and can add some landscaping to soften that area. Mr. Coppelman referred Mr. Zilch to the site plan regulations regarding the density of plantings. Mr. Zilch suggested that the natural vegetated buffer could exceed the requirements. Mr. Greenwood stated that it would be helpful to have a site walk and review the buffer area. Mr. Ward agreed that a site walk would be helpful; Mr. Coppelman added that it would give a better perspective.

Mr. Zilch returned to Mr. Greenwood's comments including fire protection, security, lights and fencing; he will discuss the fencing options with Mr. Ward and see about adding to it. Mr. Coppelman read the Fire Department comments that included a Knox Box, Fire Alarm System

and Fire Code requirements. Mr. Greenwood said that note #24 on the plan addressed these concerns.

Mr. Zilch agreed a site walk would be a benefit to see the grading; he requested the Board take jurisdiction of the plan. Mr. Coffin said that the Board needed to take jurisdiction and then do the CUP review for the APZ first so the applicant can get back to the ZBA again if needed. Mr. Coppelman confirmed that the request for the CUP permit had been received by the Board. Mr. Coffin stated that the requirements for the CUP permit was on p. 201-8.

Mr. Coppelman read other Department comments: Conservation Commission's comments dated 2/20: no further comment, stress monitoring during construction by the Town Engineer and monitoring to confirm compliance; Health – septic approval noted; Building – no comment.

**MM&S to accept jurisdiction on the plan with revision dated 2/1/2018.** (Motion by Mr. Coffin, second by Mr. Bashaw) **PUNA**

Mr. Coppelman explained “jurisdiction” adding that Mr. Coffin suggested dealing with the CUP permit; Mr. Greenwood agreed. Mr. Coppelman referred the Board to the APZ, section 201.4, Item G; he read that all 5 conditions must be met; the applicant's CUP request, dated 2/1/18, included a narrative as to how the plan meets the required conditions. Prior to voting on the CUP request, Mr. Coppelman asked if there were any abutter comments.

David Joy, 9 Meeks Road, provided the Board with a university study of the welding industry. He suggested that the welding process could produce toxic gases that might require air mediation systems. He noted concerns about the materials being used and how they were handled and the possibility of contaminating the groundwater; he cited the ECSI site as an example of concerns of impact to the groundwater. Mr. Coffin asked about any gases produced and how they were addressed. Mr. Ward explained the filtering system; trash is just put in the dumpster, there is nothing hazardous; he continued that there is not a lot of volume of smoke and they wear specific equipment and they change the filters every couple of months; there is very minimal ozone as a bi-product of the welding process. Mr. Coffin confirmed that there is nothing in storage or on-site with the capacity for toxic run-off. Mr. Ward stated that he does not store any steel outside; he has a dumpster for scrap metal. Mr. Pellegrino suggested that if there was anyway that anything could get into the groundwater, that he had taken every precaution. Mr. Ward stated that there was no way to get into the ground; they don't do outside “flux” welding and there is a limited amount of smoke. Ms. Croteau asked if there were any other kinds of chemicals used in cleaning or on site. Mr. Ward answered that there was no painting, no sandblasting and no chemicals used. Mr. Ward confirmed that there were no cleaners or chemicals with acetone, degreasers or solvents; he noted that he uses a lubricant called “green cut” that is not toxic and not regulated.

The Board reviewed the requirements of the Conditional Use Permit:

- **MM&S to affirm that the standard of item #A related to the protection of groundwater are met per the applicant's information in the CUP request along with the answers of the meeting.** (Motion by Mr. Bashaw, second by Mr. Bakie) **Motion passed 6-0-1** with Ms. Croteau abstaining.

The Board reviewed condition “B”; Mr. Zilch said the maximum daily usage is 300 gallons per day; the commercial process does not use water.

- **MM&S that the proposal regarding groundwater usage, per CUP item #B, has been met.** (Motion by Mr. Coffin, second by Ms. Merrill) **Motion passed 6-0-1** with Ms. Croteau abstaining.

The Board reviewed requirement #C pertinent to discharge of wastewater and on-site storage of toxic or hazardous waste. Mr. Zilch stated that there was just a sewer system for typical domestic waste and there were no contaminants to the groundwater; he confirmed that there was complete management of stormwater on the site. Mr. Quintal confirmed this statement.

- **MM&S that the applicant has met the standard for subsection #C.** (Motion by Mr. Bashaw, second by Mr. Coffin) **Motion passed 6-0-1** with Ms. Croteau abstaining.

The Board reviewed item #D regarding compliance with all other sections of the article. Mr. Coffin assumed the DES approval of the septic design confirmed nitrate loading. Mr. Bashaw noted additional separation requirements that had been incorporated into the design; Mr. Coffin referenced the section on well abandonment confirming that they can comply with the ordinance requirements. Mr. Quintal added that Mr. Zilch did address the septic and run-off issues and it should meet the requirements to protect the Aquifer. Mr. Pellegrino asked about decommissioning wells; Mr. Zilch confirmed the ability to follow the procedure. The percentage of lot coverage was confirmed at 20%.

- **MM&S to accept that the applicant meets the requirement for #D per their letter and testimony.** (Motion by Mr. Bashaw, second by Mr. Coffin) **Motion passed 6-0-1** with Ms. Croteau abstaining.

The Board reviewed the final item requiring a hydro study for a system designed for more than 2400 gallons per day (gpd) in zone A or 2000 gpd in zone B. Mr. Zilch explained that the proposed design is 300 gpd. Mr. Heitz said that the proposal falls outside the parameters.

- **MM&S that the proposal meets the criteria for Item “E” as it is below the threshold requiring a hydro study.** (Motion by Mr. Bakie, second by Mr. Bashaw) **Motion passed 6-0-1** with Ms. Croteau abstaining.

**MM&S to grant the CUP.** (Motion by Mr. Coffin, second by Mr. Bashaw) **Motion passed 6-0-1** with Ms. Croteau abstaining.

Mr. Coffin stated that the Board had previously determined that the hydrogeological review was not required; no one on the Board needed this re-addressed. The Board reviewed dates for the site walk and continuation of the hearing.

**MM&S to schedule the site walk on Sunday, March 11, 2018 at 9:00 AM.** (Motion by Mr. Bashaw, second by Mr. Coffin) **PUNA**

*<Board note: Mr. Greenwood left the meeting at this time.>*

David Joy asked about the building being sited so the bay doors faced the abutter. Mr. Bashaw noted that they didn’t seem to be facing the abutter. Mr. Ward confirmed that the plan had been altered to address that concern. Mr. Joy said he was pleased and this was a positive change that had been addressed. Mr. Joy continued that Meeks Road was designated as a “no thru” trucking road and he was concerned with deliveries and pick-up vehicles, asking if this could be discussed and addressed. Mr. Coppelman explained that the Board can set a condition of approval

conditioning certain traffic patterns especially where it already has the designation of “no thru trucking”. Ms. Merrill noted that page 3 has a stop sign and a left-turn only sign shown. Mr. Joy stated that he was happy it was addressed and was another positive thing. Ms. Croteau asked if the “no thru trucking” was posted; Mr. Joy answered they were posted at both ends of Meeks Road. Mr. Bashaw stated that he assumed there is a limited number of vendors who can be told the delivery traffic pattern. Mr. Joy noted that the current facility is in the Industrial Zone and that the facility is a messy circumstance and he would hate to have those conditions in the residential area so hope it is discussed by the Board. Mr. Pellegrino asked about enforcement of the traffic pattern; Mr. Coppelman explained the police would enforce; Mr. Pellegrino noted that if done incorrectly, they would get tickets. Mr. Coffin reviewed scenarios concerning the delivery/traffic pattern adding that the Planning Board can require signage on the applicant’s property as a condition. Ms. Merrill asked about elevations of the building being presented to the Board. Mr. Zilch referred the Board to page 7. Ms. Merrill, regarding concerns of the look of the site and building, asked to be shown the idea of the type of building and materials to get an idea of what it will look like. Mr. Coppelman suggested more of a visual presentation.

**MM&S to continue to Tuesday, April 3<sup>rd</sup> at 6:45.** (Motion by Mr. Coffin, second by Mr. Bashaw) **PUNA**

**Robert Pellegrino**

**LeFevre Drive**

**Kingston**

**Tax Map R6-13, R6-14-2, R6-14-6**

Tim Lavalley and Robert Pellegrino appeared before the Board; Mr. Coppelman explained that the Board was meeting to continue where it left off with the discussion of the issues with the Right-of-Way (ROW) and the easement for the cul-de-sac. Mr. Lavalley stated that he hadn’t heard anything definitive about the cul-de-sac or ROW; he did have a drawing but he said he didn’t hear anything definitive from the Town Attorney and the ROW is going nowhere. Mr. Pellegrino said that he wanted to address the 15% slope waiver; he got it in the past; he asked Mr. Greenwood if other Town’s had this requirement adding that he spent 6 hours looking up slope requirements for area Town’s and did not find any. He continued that he would like to address the waiver prior to the ROW issue. Mr. Lavalley said that the waiver request was submitted for lots 6,7,8 and 9; he read the waiver request; he stated that he agreed with Mr. Nichols that the intent of the 60,000 sq. ft. of contiguous upland is to ensure that each lot is buildable; he continued that the ordinance states that in cases of 15% or more, the Board could require more; he thinks that this would refer to lots that were all over 15%; some of the slope will be taken care of with the development. Mr. Coffin asked to hear from Mr. Quintal regarding environmental conditions and if granting the waiver was a problem or cause environmental degradation. There was discussion about the requirements of the regulation and speculation regarding the original intent of the regulation including whether it was to establish a density; some physical features may be more challenging to build on. He referred to a comment asked by Mr. Heitz as to how much is needed to build on a site and there is room to build. Mr. Quintal stated that the Board can discuss the reasons of the original Board and this requirement and their goal including whether it was to establish a density in areas or in certain areas where the physical

features might be more challenging to build on; he said the Board has the ability to waive the regulation but once the regulation is waived for this proposal, unless this is a unique piece of property, it sets the path for waivers in the future. He continued that granting this type of waiver where there are some lots proposed here that are 35,000 less than 15%, 20,000 less than 15 and 33,000 less than 15 so they are certainly not close to 60,000; other subdivisions that come in would be in the same category for requesting a waiver. Mr. Quintal said that you can build on these lots by moving the dirt around and level it off to build as is proposed. Mr. Pellegrino asked to argue the point that a waiver had already been granted on the previous approval. Mr. Quintal answered that the waiver on the first phase was a little bit different that there was 60,000 but it was separated by a small area that was separated and it was a question of whether it was contiguous or not; a lot of the lots as shown on the plan are 35,000, 53,000, 20,000, 33,000 so it is not a question of whether they are 60,000 or contiguous or not, it is a bit different. He suggested that the previously granted waiver could be reviewed for the Board's benefit. Mr. Bakie asked if the 15% requirement was just on subdivisions or on all building lots. Mr. Greenwood said it is a subdivision regulation. Mr. Bakie asked if building lots are accountable to that. Mr. Quintal explained that building lots are existing lots of record. Mr. Heitz stated that it was similar to an existing lot being undersized and not imposing size restrictions. Mr. Bakie referred to a subdivision on North Road. It was explained that the contiguous building area could be in the back of the lot and the driveway not be part of the criteria. There was discussion regarding existing lots and proposed subdivision lots; the North Road subdivision was approved over 10 years.

Mr. Bashaw said that there have been several conversations about this requirement with no particular input for that particular number in the requirement or the science behind it. He continued that based on the site walk, he does not see any problems once the dirt is moved around. Mr. Lavalley agreed. Ms. Merrill reviewed building footprints that are an average of 1200 to 1600 feet; she explained the ability to have steep upland which works with homes with garages under and walk-out basements. Mr. Lavalley explained that if they started with a flat lot with the required 60,000 sq. ft. and they built a house with a garage under, they would have to create a 15% slope to accommodate it. He said that if the point is to ensure that each lot is buildable, that is accomplished with the proposed plan. Mr. Lavalley said the 60,000 sq. ft. and the 80,000 sq. ft. numbers could be taken from the SCS soils and the county soils recommendations that were used 20 years ago prior to using High Intensity Soils information. Mr. Heitz, in speaking to the steep grades, stated that they can impact the Town when builders construct driveways with steep grades as people then park in the road when they can't get up and down their driveway in the winter; steep grades into the back of the lot is not a problem, it is when it is near a driveway and the house. He suggested that if the Board is considering granting waivers, they put a stipulation that the access to the lot can't exceed a certain grade to avoid creating a problem for the Town. Mr. Lavalley said that he would agree with that stipulation and the driveways have reasonable slopes. Mr. Bashaw said that there could be 60,000 feet of upland and the driveway could be within the steep slope; Mr. Heitz said this can create a problem for the Town. The waiver requests were reviewed. Ms. Merrill suggested that in the future the Board may need to look at driveways and driveway grades rather than lot grades. Ms. Faulconer stated that the Fire Department requirement for driveways that the Board just adopted helps to address some of this. Mr. Lavalley reviewed the 5 waiver requests for the project; request "e" was the

waiver currently being discussed. Mr. Coppelman read the regulation that states that all lots must have 60,000 sq. ft. of dry contiguous upland less than 15% slope and the text from the applicant going along with the request says that the waiver is being requested for lots 6,7,8 and 9; he noted that Mr. Lavalley had already read the letter and reasoning for the waiver request which included the site is made up of rolling terrain with small hills and knobs; the intent of the 15% rule is to ensure that each lot is buildable from a practical standpoint and the lots accomplish this goal; in comparison, the State allows up to a 35% slope in the lot sizing regulations.

While the Board thought about this information, Mr. Coppelman reviewed the minutes from January 16, 2018; he noted that the text indicates there was a lot of discussion about the easement vs. the ROW and the cul-de-sac: Mr. Greenwood has spoken with the Town Attorney and conveyed the information to the applicant. He continued reading excerpts from the minutes. Ms. Faulconer noted that when Mr. Heitz proposed the ROW and cul-de-sac as an easement versus a ROW to the Town, Ms. Alessio stated that she was in favor of that as she got the ROW and the applicant could continue with the development with the future protections via the cul-de-sac with the easement. The minutes noted that Mr. Pellegrino had just been waiting to hear from the attorney and asked for the continuation as he was sure that Mr. Lavalley could have a plan ready. Mr. Coppelman said based on that discussion, he had assumed a new plan with those items included would have been presented this evening. Mr. Lavalley said his drawing showed that the lots could work with the ROW going through. Mr. Lavalley reviewed the drawing; lot 9 would just need to move some things around to meet the setbacks, which is accomplishable. He said the plans weren't completely re-designed as they were waiting for the Board to look at the drawing and then send them down this path. He said there was still a question as to whether the ROW to the Alessio property was even a good idea and they didn't want to redesign everything and have it be for naught. Mr. Lavalley said that Mr. Pellegrino was requesting that the Board act on the waiver request for the 15% to confirm the engineering prior to redoing the plan. There was discussion regarding the cul-de-sac and easement. Mr. Heitz said the plan would address the ROW for the future and the cul-de-sac for now; there was discussion regarding the current proposal having drainage in the center of the cul-de-sac; the cover sheet shows the deed; Mr. Bashaw stated that it would be deeded to that people will know that it will revert if the ROW is developed. Mr. Lavalley noted that there was a lot of drainage in the cul-de-sac; if the cul-de-sac is removed, the drainage will need to be addressed by whoever is removing the cul-de-sac; or it stays in an easement for perpetuity. Mr. Quintal noted that it was going to be challenging to address the drainage in the future if the cul-de-sac is removed and the current Board may not need to worry about that; it will put the burden on the Alessio property to address stormwater on their own property in the future when it should be addressed on the current property. Mr. Lavalley noted that they don't think the ROW to the abutting property is a good idea.

Mr. Pellegrino stated that he wanted to go back to deal with the 15% slope issue. Ms. Faulconer asked if there was slope significantly higher than 15%; is it just a 15% slope or is higher, such as 35%; what is it actually. Mr. Quintal said that Mr. Nichols added in information at 20% as well; he cited lot 6 that showed 35, 660 less than 15% but he has 101,000 less than 20%. The 15% requirement continued to be reviewed with multiple discussions. Mr. Heitz suggested that it could be that the original Board did not want the natural lay-out of the land disturbed; they could

have wanted things left in its natural state and not leveled out. Mr. Pellegrino said they won't allow the 15% slope for buildable reasons meaning that for some reason he would not be able to build a house on that slope and that is was wrong. Mr. Coppelman said that this discussion was not going to solve a previous Board's action; he asked that the Board deal with this application that was before them. Mr. Coffin noted that the Board had done a site walk and had seen the land.

Mr. Coppelman asked for abutter comments; there were none. Mr. Conant was asked if he had any comments; he had none. The Board continued the discussion on the waiver request for lots 6,7,8 and 9.

**MM&S to grant the waiver exception, letter #E to 905.6 (A) granting an exception to the 15% of upland contiguous buildable no greater than 15% slope on lots 6,7,8 and 9; the reasons are that he didn't see any issues on the site walk with the natural terrain that existed before modification and based of the fact that we haven't received any science on where this 15% comes from and it falls in with the character of the Town.** (Motion by Mr. Bashaw, second by Ms. Croteau) Further discussion: Mr. Heitz asked where on the plan the footage with the 15% and 20% were shown. Mr. Pellegrino said that information was noted on a previous plan that had been handed out and not on the plan handed out at this meeting. Mr. Heitz asked that the applicant run through the lots and what meets the 15% requirement. The lot measurements were supplied by Mr. Lavalley: Lot 6 has 35,660 sq. ft. of the required 60,000 square feet with less than 15%, 101,250 sq. ft. is less than 20%; Lot 7 has 53,370 at 15% or less and 63,430 at 20% or less; Lot 8 has 20,760 at 15%, 50,470 is less than 20%; Lot 9 has 33,660 less than 15% and 56,970 sq. ft. with less than 20%; he added that most of the steep area on Lot 9 is over toward the wet area and not having any construction. Mr. Pellegrino noted that at the 15%, they are short but with the 20%, they are pretty much, they are right there. Mr. Heitz suggested that if the Board was inclined to grant the waivers to get a commitment that it doesn't have an adverse effect on the driveway to the property so it won't create an issue to the Town. Mr. Pellegrino said that he can meet the Fire Department driveway criteria that was recently adopted. Ms. Faulconer suggested that if the applicant has stated the requirements can be met, there was no reason not to have a note added to the plan. Mr. Bashaw re-stated the motion and added requirements for the driveway. A friendly amendment to the motion was made regarding the requirements for the driveway. The new motion reads:

**MM&S to grant the waiver exception, letter #E to 905.6 (A) granting an exception to the 15% of upland contiguous buildable no greater than 15% slope on lots 6,7,8 and 9; the reasons are that he didn't see any issues on the site walk with the natural terrain that existed before modification and based of the fact that we haven't received any science on where this 15% comes from and it falls in with the character of the Town; the driveway slope can't be greater than the current Fire Department requirements; the actual percentage per the requirements will be added to the plan set as a note.** (Motion by Mr. Bashaw, second by Mr. Coffin) **Motion passed 6-0-1** with Mr. Heitz recused.

**ACTION ITEM:** Ms. Faulconer to get the actual slope percentage requirement for the driveway so the note on the plan will be specific to the present requirement.



Mr. Pellegrino stated before addressing the ROW issue he wanted to read something, as an applicant, adding that if he didn't bring up the issues he would be fired. He said that there were many questions that he has asked that have never been answered. He asked about an invoice from the Town Engineer that he said he did not receive an answer about. He asked about involvement from RCCD (Rockingham County Conservation District) that cost him thousands of dollars; he said his partners wanted an answer. Ms. Faulconer asked, for the record, if these questions had to do with the current proposal. Mr. Pellegrino answered that it was. Mr. Pellegrino continued and questioned how a logging road became a fire access road at his expense and the details and costs regarding that access; he questioned the need for a cul-de-sac versus a hammerhead turnaround and the costs involved. Mr. Coppelman asked if this was the previous phase. Mr. Pellegrino answered that this was for this phase; he had just spoken with the Fire Chief about this. Mr. Coppelman noted that there was no hammerhead proposed for this plan. Mr. Pellegrino clarified that he was referring to the original subdivision. Mr. Pellegrino clarified that these were comments specific to the previous approval. Mr. Pellegrino said that he wanted to bring it up as he never got answers for it and it added expenses; he would prefer the answer be in writing. He noted that the Planning Board was okay with giving a ROW to a swamp; he clarified that this was to do with the current proposal. He continued that the Planning Board was okay with stealing his land without paying a penny for it. He stated that it is not possible to build that road and not lose millions of dollars. He said as a Planning Board member he would like to bring up delays from the Kingston Conservation Committee (KCC) and maintenance of the catch basins in his detention pond. He read emails and referenced meetings and minutes from 11/21/17, 9/21/17, 10/31/17 regarding soil scientists, wetland permits, catch basins and detention ponds. Mr. Pellegrino reminded the Board that he is investing over 6 million dollars in our Town, out of his pocket, he is constructing a half a million dollar road and gifting it to our Town for nothing; his project will generate over \$100,000 in new tax revenue to our Town; infrastructure and tax dollars to our Town which is more than most people have done in a lifetime for our Town. He continued to discuss a permit that he said was delayed through the Conservation Commission. He stated that KCC may have spoken with the EPA about a vernal pool which triggered more delays; the wetland permit is held up because of a vernal pool that the EPA says needs a 100 ft. buffer around it; the vernal pool is less than 50 ft. from the driveway; he continued discussing the EPA requirements for the vernal pool. He said the approval of 2013 allows for the locations being discussed by the EPA. His partners would like to know why the 6 million dollar project is being held up for a tactic being used on them over and over again; catch basins, vernal pools, a vernal pool buffer previously approved in 2013 have been approved. He said the temporary cul-de-sac bulb, if built, is significantly closer to the vernal pool. He continued discussing these issues. He noted that Elben Lewis from the State is coming to the site again to discuss a driveway location and possible relocation of 12 feet. He stated that the Planning Board tried to get him with the slope of his driveway noting that driveways on Williams Path were far steeper. He said that the Planning Board tried to get him on the length of his road even though the PB granted him the waiver due to the houses being sprinkled. He said the Chief read the regulation to him. He then reviewed his comments stating that the Planning Board couldn't get him on the driveway location on lot 2 due to the separation between the wetland; the PB could not get him on the slope of the driveway so instead tried getting him on a vernal pool that was already approved in 2013; the Town steals his land; the Board is granting a

ROW to a swamp; it is not okay to build a road near a vernal pool but it is okay to build through 100,000 feet of swamp. He said you can steal my money, and you have; you can steal my land, and you are, but you can't steal my knowledge. He continued that as far as this waiver, this ROW to Ms. Alessio's, he totally disagreed; he agreed that it was easy to do but he would like the Board to vote on giving a ROW to a swamp; he is asking for a waiver to the regulation and if the Board denies, he will move forward with the plan but would like the Board to discuss this especially for over 100,000 feet with the spotted turtle and the red salamander. Mr. Bakie said that the cost of the possible future extension will not fall to Mr. Pellegrino; he added that no further information had been received from the abutter. Mr. Pellegrino said that the Board spoke with Ms. Alessio about the issue months ago and she had plenty of time to get back to everyone; she has done nothing; he added that this was just another stall tactic and she doesn't have to pay for anything. Mr. Pellegrino discussed paying for the engineering to the plan and the ROW. Mr. Coppelman said that unless the Board granted the waiver request to require the ROW, the plan needs to show a possible future connection to an adjoining piece of land. Mr. Heitz asked the Board to review the requirement. While the Board looked up the requirement, Ms. Faulconer asked to address a comment made by Mr. Pellegrino about information not requested to be reviewed by the KCC on Nov. 21, 2017; she noted that he had a public hearing with the Board that evening and as the applicant, he could have brought up the issue of the culvert anytime during that hearing. She added that he remembered about it at the end of the meeting. She asked if he had received the emails from the State that she was copied on this afternoon for the first time; she said the concerns on the project seemed to be coming from the State and were addressed to the KCC, not the other way around. Mr. Pellegrino expressed concern that he expected an answer from the PB on 11/21<sup>st</sup>; Ms. Faulconer said that at that meeting, it was suggested that he contact the Road Agent to address that issue. He said he did.

The Board reviewed the requirement, 905.10 (F); *“all cul-de-sac streets shall have a potential future connection. Except where near future connections may be possible, dead-end or cul-de-sac streets shall not generally exceed 1000 feet in length; shall service a minimum of 8 lots, 7 of which must be new lots and shall be equipped with a turnaround roadway at the closed end with a minimum radius of 150 ft. from the center of the outside edge of the ROW; a ROW to the adjoining property shall be provided from the cul-de-sac to allow for a future connection to other streets; cul-de-sacs shall not be constructed with greater than 3% maximum grade of slope, nor less than a minimum of 1% grade.”* Mr. Coppelman explained that the language says “shall” and is a requirement unless the Board waives it. Mr. Coppelman explained that the possible street doesn't have to be identified; requirement for future connections goes back to the philosophy to minimize the number of dead ends in the Town for the purposes of maintenance, health and safety; the Town always considers cul-de-sacs to be temporary; he noted that a future street doesn't have to exist now; the connection could occur many years in the future. Ms. Faulconer stated that the advice from the attorney was that since there is an abutter insisting on their rights of the ROW to their property, and if we went to court over this, it is better to be upholding a regulation than waiving it. She added that the attorney did also say that the easement proposal for the cul-de-sac would work; she said this seemed to give everyone what they wanted to be able to move forward with the plan and not put the Board at any sort of legal liability by voting to go against their regulations. Mr. Bashaw stated that he didn't necessarily believe that the road is feasible with the restrictions but there is an abutter asking to exercise their rights. Mr.

Heitz said the abutter is exercising a right that the ordinance requires. Mr. Bashaw said there is an opportunity to show that it is feasible to meet the requirement and allow the abutter the potential future access; under the circumstances, he would not be inclined to waive the requirement. Mr. Bakie said that without the waiver, the applicant still gets the same amount of lots.

Mr. Heitz said it bothers him that the applicant says we are taking his land. Mr. Pellegrino said that they are. Mr. Heitz explained that part of creating subdivisions requires town roads to be built with certain specifications and then a developer could say that a 30 foot road is enough and they shouldn't have to build a 60 ft. road. He continued that if you want to put in a subdivision, you have to adhere to the regulations. Mr. Heitz suggested that he doesn't have to put in a subdivision. Mr. Pellegrino said that he agreed. Mr. Heitz said that Mr. Pellegrino keeps saying he is not being compensated but there are regulations he has to adhere to that the Townspeople vote on; he added that he doesn't have to build a subdivision and the Town wouldn't be affected at all; but if he wants to develop, he has to adhere to the regulations. He reminded Mr. Pellegrino that the Town is not forcing him to do anything; he is asking permission from the Town to create a subdivision and the Town is saying, here are the rules you need to adhere to. Mr. Pellegrino said he agreed with Mr. Heitz 120% but the ROW is not viable and goes to a swamp with no possible connection; he wants the Town to tell him "no" to the waiver; the Town is stealing his land, they are taking it without paying him a penny for it, it is a 60 foot by 100 and something foot swath of land, regardless of what you say, it is still a land to take and by eminent domain taking, he believes you have to pay for that and you are taking my land per a regulation, not a State law. Mr. Heitz explained that it is just like the requirement for 60 feet for ROW for a roadway per Town specs. since the Town is forcing him to incur additional costs even though a developer can think they can build the roadway cheaper by not following the requirements, but then you say that the Town is stealing your land; it is part of the criteria for the development. Mr. Pellegrino said he is not saying what Mr. Heitz is saying, he is saying that the Town is stealing his land. He stated that Ms. Alessio hadn't even shown up to the past three meetings. Mr. Heitz said that what he is showing, that just like the roadway, this is part of the criteria to do a development. Mr. Heitz added that it is not taking his land as he doesn't have to do the development. Mr. Coppelman commented that it is a future connection and based on everything now it may seem a far-out possibility but who knows what will be a possibility 50 years from now based on new technologies and future State laws. Mr. Pellegrino asked if the swamp was going to be drained. Mr. Pellegrino expressed an issue with something happening 50 years from now and stealing his land for something that might possibly happen in the future. Mr. Coppelman said that the future means sometime into the future, not 5 years from now. He added that Mr. Pellegrino's argument could be made for zoning overall due to requirements for setbacks and other issues which is to add structure into how the Town is developed ostensibly for the benefit of the greater good. Mr. Pellegrino said he did agree to the proposed plan with the ROW and easement around the cul-de-sac but feels it is a land taking.

Ms. Faulconer asked to make a comment to make sure the Conservation Chair was not maligned; this is a volunteer Board; they have been in contact with the applicant; they have been in contact with DES; the Chair said the PB could discuss in on Nov. 21 as she did contact the office to find out when the next hearing had been before the Board again; that might have been her intention in

her emails to note when the Board could be meeting to discuss the culverts issue. She added, that in all fairness to the KCC, Mr. Pellegrino did have a very lengthy hearing with the Planning Board on Nov. 21<sup>st</sup> and it wasn't until after the hearing was over that Mr. Pellegrino remembered that he forgot to talk about the issue; she stated that he can't blame one person when he, himself, forgot to talk about. She said it is not a fair representation to infer that the KCC chairman has done something intentional to him. Mr. Pellegrino did say that he forgot to ask about it; he said the Board should move on, it's been discussed.

Mr. Coffin asked if Mr. Pellegrino has contacted Ms. Alessio. Mr. Pellegrino stated that since Ms. Alessio was going out of her way to get the ROW, she would contact him if she had an issue; he stated that he has heard nothing. Mr. Heitz re-iterated that the ordinance requires that he provide the ROW. Ms. Faulconer added that when the compromise suggested by Mr. Heitz was brought up in December, Ms. Alessio agreed to that proposal. She continued that if Ms. Alessio read the Jan.16, 2018 minutes and the discussion with Mr. Pellegrino, she would get the impression that it was a great compromise so why would she need to come in. Mr. Coppelman agreed that she was essentially getting what she had requested. Ms. Faulconer added that why would she need to come in and belabor the whole situation and keep talking about; she made her point and her point was addressed. Mr. Bakie said that it was his understanding after the last meeting that both parties got what they asked for.

Mr. Coppelman questioned whether moving forward was predicated on the waiver request being submitted in writing. Mr. Pellegrino said he will hand in the waiver the next time there is a meeting; he expects the Board will tell him no in a formal setting which is what he is looking for and then move on to try to keep everybody happy. He wants the Board to say "no, we want a ROW to a swamp." Mr. Heitz suggested that the Board could opt to say that they want the ROW as required; it might have none of the cul-de-sac business, it might just be a motion for the required ROW. Ms. Faulconer asked if the applicant was submitting a new plan before the next hearing or just the waiver request. Mr. Coppelman said that there would need to be a date to submit the new plans; approximately 10 days prior to the hearing. Mr. Pellegrino asked what new plans the applicant was providing. Mr. Coppelman said that if the applicant wanted the Board to act on a set of subdivision plans, it has to be a full plan set that included the ROW and easement, the Board would need that by a specific date. Mr. Lavalley asked for a date later than the March 20<sup>th</sup> hearing so Paul Nichols could do the plan. Mr. Coppelman said they could ask for an extension if that wasn't enough time.

Mr. Pellegrino asked about the need for subdividing a lot at Lot 2 which is a double lot that hasn't been subdivided yet. Mr. Pellegrino confirmed that this would be a new lot line adjustment; it is an oversized lot. Mr. Coppelman said that it would need formal notice and submittal. Ms. Faulconer said the March deadline had passed; if they contacted the office on Thursday, she would give them the deadline date for the April hearing. Mr. Coppelman told Mr. Lavalley and Mr. Pellegrino to contact Ms. Faulconer to confirm the exact deadline date for this new application. Mr. Lavalley confirmed that the new plan to continue tonight's hearing would show the cul-de-sac easement and the ROW. Mr. Pellegrino granted another 90 day extension from this date.

**MM&S to continue to April 3, 2018 at 6:45; this application being second on that hearing's agenda; the updated plans to be submitted by March 22, 2018.** (Motion by Mr. Bashaw, second by Ms. Merrill) **Motion passed 6-0-1** with Mr. Heitz recused.

Dave Conant asked about the procedure for keeping tapes of the meetings. Mr. Coppelman explained that they were kept for approximately a month until the minutes were approved and then they were destroyed unless there was a request in writing for someone to make a copy of the tape.

### **Board Business**

#### **Correspondence:**

- Couture Eclectic – letter dated 2/12/18 re: home décor store at the former General Store at 167 Main Street; they will sell items and have a place to refurbish which will just use chalk paint, no lacquer finishes; Ms. Merrill said that it was “retail to retail” and should need no further Board action. Store hours were discussed; the store hours won’t go beyond 9 AM to 7 PM, seven days a week. Mr. Coppelman noted that parking is sometimes a challenge; they confirmed that there were no changes to the exterior; Ms. Faulconer said that the file showed that a gift shop had previously been approved.

**MM&S that no further action is needed by the Planning Board per the description in the letter dated 2/12/18 with the hours of operation being 7 AM to 9 PM.** (Motion by Mr. Bakie, second by Ms. Merrill) **PUNA**

Mr. Heitz reminded the applicant that they would still need an Occupancy Permit through the Building Inspector.

- Letter received from Paul Albarano dated 2/12/18; the Board reviewed the proposal and determined that it was not an allowed use in C2 and would need ZBA action.
- RCCD – test pits for 4 Marshall Road; Ms. Merrill asked if the applicant could go to the ZBA if not a permitted use; the difference between special exceptions and variances was reviewed.
- Invoices from Town Engineer were signed for Bresnahan and Hawk’s Ridge
- Draft permit for Torromeo from DES
- Phone message from Mr. Costos was reviewed; letter in reply was read by the Board; by Board consensus – sign letter and send to Mr. Costos.

**MM&S to accept the 1/16/18 minutes as submitted.** (Motion by Mr. Coffin, second by Mr. Coppelman) **Motion carried 4-0-3** with Mr. Heitz, Mr. Bashaw and Ms. Croteau abstaining.

**MM&S to adjourn at 10:20.** (Motion by Mr. Coffin, second by Mr. Bashaw) **PUNA**