

## **Kingston Planning Board**

### **January 22, 2019 Public Hearing Minutes**

Mr. Coffin called the hearing to order at 6:45 PM; there were no challenges to the legality of the hearing.

Members present:

Peter Coffin, Acting Chair  
Lynne Merrill  
Steve Padfield, alternate

Peter Bakie  
Chris Bashaw  
Robert Pellegrino, alternate

Members absent: Glenn Coppelman, Phil Coombs, Ellen Faulconer, alternate.

Also present: Glenn Greenwood, Town Planner+3

Mr. Coffin introduced the Board; he announced that Mr. Padfield and Mr. Pellegrino would be voting members for this hearing; the Board would have 6 members for this hearing as the Selectmen's representative had not arrived.

Mr. Coffin announced the first hearing:

**Dan Parks**  
**7 Small Pox Road**  
**Tax Map R19 Lot 32**

Mr. Greenwood stated that Mr. Parks was not currently present; perhaps he thought the meeting started at 7:00 PM. Mr. Coffin announced the second item on the agenda.

**Hawks Ridge of South Kingston**  
**Bent Grass Circle**  
**Kingston, NH 03848**  
**Tax Map R3 Lot 4 Land Unit 4**

Mr. Coffin explained that this was not a public hearing but instead a Board discussion of a Certiorari Order pursuant to an associated RSA; the Planning Board was directed to review their decision of October 18, 2018 within 60 days; he read the public notice. He opened it up for Board discussion adding his assumption that the Board had had the opportunity to read the order from the Superior Court. Mr. Coffin asked if any Board member felt that that the Board was in error in the vote. The Board reviewed the original discussion and the motion that had passed unanimously; Mr. Bashaw stated that upon review of the record, there was no reason to reverse the decision. Mr. Pellegrino stated that he did not think that the Board made a mistake; he suggested that the Board come to a solution as personally, he doesn't like the Town being sued over the Planning Board decisions; he stated that there has got to be some sort of compromise; he said it is not the Planning Board's money; it is the Town's money, the

citizen's money. He continued that when the Board goes to Superior Court and we get sued because of a Planning Board decision, there has got to be another reason to keep "us" from being sued. He said that he has a solution; he knows it can't be discussed this evening; but he does have a solution where everyone makes out. He stated that if the applicant is willing to fix what the Town has asked him to do, that is pretty much it; "we" have asked him to fix the drainage so that is not a nightmare for the residents there. Mr. Pellegrino continued that if the applicant does that then he thinks the Board should re-open this, if the applicant is willing to do what we ask him to do and "we" come to some sort of compromise because it is not in the Town's best interest if we tell the builder "to go pound sand" because if he leaves the project that means the people that are there are going to pay for it. Mr. Pellegrino continued that it means that the Town has to come in and fix the roads, put drainage in; we'll have to do all that; he has not incentive to come back and fix things. Mr. Pellegrino suggested that we give him incentives. Mr. Bashaw said that the applicant can come back with a plan that addresses all the issues that were previously brought up but month after month the applicant rehashed the same issues that were never addressed and never made any progress. Mr. Bashaw continued that there was nothing preventing them from coming back and re-submitting a plan that addresses the issues brought up by the Town Planner and Town Engineer. Mr. Pellegrino agreed with Mr. Bashaw. Mr. Pellegrino asked if the Board wanted the Town to be sued, to go to Superior Court where "we" have to spend money on an attorney that doesn't come out of the Planning Board budget but it comes out of everyone who lives in Town's budget; he said he would like the Planning Board to think of that before a decision is made when we tell the applicant "no". Mr. Pellegrino added that Mr. Bashaw was right and the applicant could have fixed everything as we gave them ample time. He said that he was pretty sure that he spoke out one night explaining that. Mr. Bashaw noted the hours and time dedicated by this Board and staff, rehashing the same topics that hadn't been addressed for over a year is also a cost to the Town. Mr. Pellegrino agreed. Mr. Bashaw said that he would not want an applicant turned away if any progress was being made. Mr. Pellegrino said that the Town set the tone by saying they were denied; he suggested that if they brought in a plan that the Town could look at, but we are being sued. Mr. Bashaw stated that the applicant had the option of submitting a plan that addressed the issues but they chose to file a lawsuit rather than bring back a plan that addresses the issues. Mr. Pellegrino agreed with Mr. Bashaw; he added that two wrongs don't make a right. Mr. Bashaw said it was the applicant's option.

Mr. Coffin said that Mr. Bashaw addressed the second point made suggesting submitting a new plan that should go to Hawks Ridge through their representatives here; he added that they had the opportunity to do this. Mr. Coffin continued that the status of the plan at this point was a denial; the question is whether to reverse that decision; it is not just to re-open it; it is to determine if the Board made a mistake in the denial. Mr. Coffin said that the question is whether the Board should use as their primary decision-making devise whether or not it would get sued; he said if that was the case, no Board would ever make a decision; he said that being sued does not mean the Board was wrong. Mr. Pellegrino stated that he did not believe that the Board was wrong in any means; he stated that the Board was not wrong and had every right to do what we did because "he" didn't abide by what "we" told him; he added that his point was whether "we" wanted to go through the whole process and be sued. Mr. Pellegrino stated that the Board was not going to admit they were wrong as they were not wrong; he wondered how the Board got through this issue so they didn't get sued; he didn't like the Town being sued. Mr. Coffin said it was the decision of the applicant to sue, not the Board's decision; he stated that the Board couldn't base the decisions not on facts or plans or engineering evaluations but instead on whether we could be sued. He stated that the facts of the matter are that the Town has already been sued so there are already legal fees involved. Mr. Pellegrino said he understood that but questioned why make it more. Mr. Coffin said that he believed that the Board did the correct thing so

he was not concerned about the outcome of a lawsuit. Mr. Pellegrino stated that he wasn't worried about that either; he said he knows that the Board is in the right and he knows that the minutes will reflect that but his point was to wonder how far does the Planning Board want to go when there is a solution; maybe if the applicant knows the solution, they will drop the lawsuit and the Town won't get sued and have to pay thousands and thousands of dollars.

Ms. Merrill stated that tonight, the Board has only one task at hand which is to vote as to whether or not the Board is going to reverse their decision or not. Mr. Coffin said it is not up to the Board to decide if the applicant will drop a lawsuit. He re-iterated Ms. Merrill's interpretation of tonight's task. Mr. Coffin reviewed Mr. Bashaw's previous comment about there being no reason to reverse the decision; there was no error. He asked if there was further Board comment.

**MM&S to re-affirm the Planning Board's decision of October 18, 2018 to deny the application.**  
(Motion by Ms. Merrill, second by Mr. Bashaw) **PUNA** (Passed Unanimously)

Mr. Coffin announced that Mr. Parks was in the audience.

**Dan Parks**  
**7 Small Pox Road**  
**Tax Map R19 Lot 32**

Mr. Coffin noted that this hearing started at 7:00; he read the public notice for this portion of the hearing; he added that there had been "homework" for Mr. Parks from the last hearing. Mr. Greenwood gave an update; he and Mr. Parks had met a couple of times since the last hearing; an engineering firm prepared a plan for the proposal; he noted that a copy of the plan was distributed to the Board members adding that large copies of the plan would be distributed to Department Heads who had not seen the plan yet. Mr. Greenwood stated that the Board could not have too much review this evening due to no Department comments. He continued that progress had been made as a wetland scientist reviewed the information with comments pertinent to the plan; the Natural Resources Conservation Service does not provide pond project assistance; Eversource received a copy of the plan and has sent back emails with comments which the Board also has; Eversource has submitted it to their engineering group as they are still interested in aspects of the project; he expects to get further input from Eversource; the cubic yard estimation for the project is 140,000 cubic yards. Mr. Greenwood said that Conservation has some issues and he expects other Departments may have some comments. Mr. Coffin confirmed with Mr. Greenwood that the plan was not ready to accept for jurisdiction; comments from Department Heads would be reviewed at a later date. Mr. Coffin asked about checking with DES as suggested at the last meeting. Mr. Parks said he called them and they wouldn't have anything to say about it. Mr. Coffin asked about whether there was input from the Natural Heritage Bureau (NHB).

**ACTION ITEM:** Mr. Greenwood said he had not touched base with the agency (NHB) but he would do that.

Mr. Coffin announced that Marghi Bean was present representing the Conservation Commission (ConsCom). She did not have any additional information about the NHB. She read the ConsCom Chairperson's comments regarding this project and its proximity to Atlantic White Cedar and the need to evaluate any impact; the ConsCom further request included that they would like to have input from the site engineer regarding environmental impact on moving such a large amount of material during

excavation; request to review the proposed de-watering plan as part of the review process; introduction of fish and nutrients, suggesting that Fish and Game be asked about these concerns. Mr. Coffin confirmed that the Board would talk about other Department comments once they were able to look at the plan.

Mr. Park said that some of the grade had been changed that show on the new plan, not the plan the Board had before them. Mr. Greenwood said that Mr. Park was unavailable for the February hearing; he requested that the Board hear the applicant for the first Tuesday in March. There was no further Board discussion or questions.

**ACTION ITEM:** Mr. Greenwood will coordinate with Department Heads on getting comments; he will not give them until March 5<sup>th</sup> and he will get any substantial comments back to Mr. Parks.

**MM&S to continue this application's public hearing to March 5, 2018 at 6:45 with any plans received by Feb. 21st. (Motion by Mr. Bashaw, second by Mr. Pellegrino) PUNA**

Mr. Parks submitted the updated plans to the Board.

Mr. Coffin noted this hearing ended at 7:15 PM.

### **Board Business**

### **Fire Department Proposal**

Fire Chief Bill Seaman explained the Building Committee wanted to have the opportunity to review a presentation given to the Board of Selectmen and Budget Committee regarding a warrant article proposed to purchase a parcel of land for the future Fire Station. He introduced Mark Furlong, chair of the committee. Chief Seaman stated that the additional purpose of speaking with the Planning Board was to get their approval to have Chairman Glenn Coppelman speak on behalf of the Board at Deliberative Session, in favor of the proposal. Chief Seaman gave a power point presentation of the proposal. Chief Seaman stated that the intent was to meet all building codes and setbacks; he expected to include the Historic District Commission when it came time to build the building. Mr. Coffin asked about building costs and site concerns. Chief Seaman said that the building article would include any studies for the building; that was not on this warrant; he said that worse case would require the water be treated like many of the homes in the area and the current station. Mr. Greenwood suggested a vote to authorize Chairperson Coppelman to speak in favor of the purchase of the parcel and the boundary line adjustments needed to contrast the building. Mr. Bakie asked for clarification regarding the line adjustment with the neighboring parcel as it was currently non-conforming. Mr. Greenwood said that if that parcel was getting smaller it would be an issue but there is enough land being given to the parcel to take care of the size non-conformity; the frontage is not being taken away and there is a possibility that 10 feet could be found in the proposal to bring the whole lot into conformity but that wouldn't be a requirement if it was not possible. Mr. Greenwood said that currently it appears that it could be done without needing any ZBA (Zoning Board of Adjustment) action. Mr. Seaman said there is a signed letter of intent by both parties regarding the sale of the property and the lot line adjustment; the amount in the warrant article will take care of closing costs and the lot line adjustment. Ms. Merrill said the existing lot is pretty conforming with the rest of the neighborhood regarding the non-conforming size issue.

**MM&S for the Planning Board to authorize Chair Glenn Coppelman to speak in favor of the purchase and lot line adjustment at the Deliberative Session. (Motion by Ms. Merrill, second by Mr. Bakie)**  
**PUNA**

Mr. Coffin noted this portion ended at 7:34.

Mr. Coffin reviewed the remaining agenda: he stated that there was no Critical Correspondence for the Board to review; the Sign Compliance would be added to an agenda so Mr. Coombs would be present for the discussion.

**Review of minutes:**

December 11, 2018 minutes: Ms. Merrill suggested amending p. 5, last paragraph by changing “provided” to “provides”. A motion was made to accept the minutes as amended; the motion was withdrawn and the acceptance tabled to another time due to the lack of members actually present at the Dec. 11<sup>th</sup> meeting in attendance.

**MM&S to accept the January 8, 2019 minutes. (Motion by Ms. Merrill, second by Mr. Bashaw) Motion passed 4-0-2 (with Mr. Pellegrino and Mr. Padfield abstaining)**

Mr. Greenwood reviewed the two applications received for the February hearing; he recommended they be added to the Feb. 19<sup>th</sup> agenda.

Mr. Pellegrino asked to make a couple of comments; he noted that he had not been at the last meeting. He began by stating that “My personal opinion which means absolutely nothing, because we are not here for our personal opinion. We are here to read and go through ordinances and regulations. We are not here to interject our opinions into it. That is not what we are here for.” He gave his personal opinion of the proposed warrant; he suggested allowing surrounding neighbors to decide if roosters would be okay; if one neighbor minded that it would keep someone from keeping the rooster; he stated that he believed in people’s land rights. Mr. Coffin reviewed the article explaining that it was not all zones, but only in Single Family Residential. The Board discussed the possibility of neighbor rights, allowed use, individual property rights, permitted uses. Personal opinions were discussed; previous noise/rooster complaints were discussed.

Mr. Pellegrino asked to review another topic. He stated that he had done some research about the power of the Planning Board and would like to educate the new alternate member and what the power is of the Planning Board. He said that the Selectmen of the Town have no power over the Planning Board; he has called the Attorney General and the State has zero power over a local Planning Board; it was explained to him that we police ourselves. Mr. Pellegrino said we are not here for our personal opinion; we are here to interpret and to make sure we keep the regulations and ordinances and the Town’s best interest in mind. Mr. Pellegrino said that very rarely does the Planning Board give a fair hearing; he said he would give a couple of examples adding that it has nothing to do with his subdivision and he wasn’t going to talk about that or the Board would be here to midnight. Mr. Pellegrino reviewed an applicant who didn’t have a fair process who needed to do a traffic study that wasn’t fair as a Board member mentioned a personal opinion; he said that delayed the applicant for four months or longer that wasn’t fair. He talked about another applicant, that was the opposite of the delayed application, who had little information, a notebook sketch, that got approved within fifteen minutes because it was a Selectmen’s son so it got right through. He said in that case, the Board was too fair because everyone

else goes through a meat grinder; they have to come in with site plans and engineering and spend thousands of dollars. He said that if everyone could be treated like that everyone, it would be a good idea and fair for everyone. He said he had been here for a couple of years; no one on the Planning Board has ever lied to the applicants or each other or the public except for a couple of people who he wouldn't mention. Mr. Coffin stated that improving procedures could be discussed but not personalities. Mr. Pellegrino reviewed the Town's revenue from Comcast and broadcasting of meetings. He stated that the minutes are atrocious; they are censored. He stated that he is aware that they can be brief and do not have to have the description that is in there, he has already read all that. He said a couple of comments were made that council gushes over minutes; the Town Planner protects the Board; the minutes are set up in the Town's favor. He said the minutes are set up to protect the Town; it was not fair. He said that he wanted to bring this up as he was only here for a couple of more months and he wants the Planning Board to know that they have all the power so if there is someone not telling the truth...he had a problem with the Town Engineer and thinks the Planning Board should be getting people who are honest so the applicant can feel they are having a fair hearing. He re-iterated that he had been here for 2 years and very rarely had anyone gotten a fair hearing. Mr. Coffin told Mr. Pellegrino that he had to stop as he was making specific allegations. Mr. Pellegrino said that he hadn't spoken about anyone specifically as he had been educated on that. Mr. Coffin said he was stopping the discussion. Mr. Coffin said, in regards to minutes, the Board had gone over that quite a lot and as a Board decided that we were not going to use "verbatim" minutes. Mr. Pellegrino interrupted to say that they should be equal. Mr. Coffin explained that the time to discuss issues is when the minutes come up for review and if any member feels there has been a substantive omission it gets brought up then. Mr. Pellegrino said he is done fighting about that. Mr. Coffin said that the minutes are posted ahead of time and an applicant can request that something be added to the minutes. Mr. Pellegrino stated that he has come before the Board as an applicant and made full-blown speeches that weren't in the minutes and has happened quite a few times. He said he has brought it up before, has told the Board that he is done fighting with the Board and is just bringing it up that the process is not fair and we need to fix that. Mr. Coffin talked about upcoming Board training.

Mr. Pellegrino wanted to bring up one other thing about Mark Heitz coming in speaking about his subdivision without any notification; he said that the BOS (Board of Selectmen) have had four meetings about his subdivision without notifying my parents, who are the owners, and he has full power of attorney so not notifying him is not notifying them. Mr. Coffin said he would have to stop as he is discussing another Board. Mr. Pellegrino continued that "you can't have non-public meetings without notifying the people who own the property" and that has happened many times. Mr. Pellegrino continued talking about Mr. Heitz; Mr. Coffin said he couldn't talk about another Board. Mr. Pellegrino said that Mr. Heitz told the Planning Board that he was building without permits and he should be able to defend himself. Mr. Greenwood said that Mr. Heitz did not say that; he and Mr. Coffin said that he had a foundation permit and not building permit. Mr. Greenwood asked to speak once Mr. Pellegrino was finished. Mr. Pellegrino said he has a well permit and a septic permit; he said he had a yellow building permit and clarified he had a foundation permit for a home to build for his parents. He referred to the cul-de-sac from the first phase of his subdivision; he said he will be building the temporary cul-de-sac and tearing the house down; he said he will be 25-35 feet from the vernal pool that he is supposed to be 100 feet from and he needs approvals from Conservation and the Planning Board, even though it is already approved and he would like an approval before he tears the house down. Ms. Merrill called a point of order saying that any further discussion of the subdivision should be at a publicly noticed hearing. Mr. Pellegrino said that Mark didn't notify anyone. Mr. Coffin stated that Mr. Pellegrino was addressing specific items. Mr. Pellegrino agreed saying that he did go off-line a bit but wanted to finish

the point that he does have permits and now the Planning Board thinks he didn't have permits due to Mr. Heitz. Mr. Pellegrino stated that he understands that the Planning Board has allowed him (Mr. Heitz) to take his road bond money so he (Mr. Heitz) could go and do his little hissy fit and go out and check monumentation which is in his road bond; he continued that according to 301.2 (B), as long as the road is bonded, he can pull a building permit but he is told that he can't pull a building permit is because the cul-de-sac is in his garage and is there because the Planning Board gave a 60 ft. right-of-way to a swamp leading to nowhere and moving the lot shifted the house 60 feet forward. Mr. Coffin stopped Mr. Pellegrino as he was arguing specific things about the development; he said he had an approved plan and it is at the stage of working with building inspection items; any amendment would require a re-submission. Mr. Coffin continued that if he couldn't build to the plan he would have to work that out with the building inspectors or have another hearing. Mr. Coffin said that every time he is stopped as he is either talking about specific issues that are hearing related or talking about personnel issues; he (Mr. Pellegrino) then continues with just one more thing and goes back to talk about issues he has been told not to discuss. Ms. Merrill stated that if he is going to discuss things along these lines, he can't be sitting as a Planning Board member.

Ms. Merrill said that training is extremely valuable and once done, have a time during the work session to review procedures.

Mr. Greenwood stated that he wanted to go on the record as completely disagreeing with Mr. Pellegrino's comments that the Board is incapable of doing a process that is biased or all set against the applicants. He said that the Planning Board saw a half dozen applications that went through a completely appropriate timeframe with the discussions that one would expect to have with a negotiated process. Mr. Bashaw said that there have been conflicts at time with someone having a personal opinion but there has always been discussions about those things and believes when voting, the Board is voting on what is legally allowed by zoning but there are times when crafting and building new ordinances that personal opinions are appropriate. Mr. Coffin said that unless you have read the Master Plan you might not know the Town's position on access on Rte. 125 which is addressed and is a Town issue. Mr. Pellegrino noted an email regarding a law suit on using personal opinion; Mr. Bashaw clarified that it didn't say you couldn't use personal opinion at all but rather it couldn't be used to disprove scientific fact. There was discussion about personal opinion. Mr. Pellegrino returned to the previous discussion of a personal opinion causing an applicant to be delayed for months. Mr. Coffin ended the discussion as it was going around in circles. Mr. Pellegrino added that he was upset last month watching someone discuss his subdivision and asking the Planning Board to use his bond money to check monumentation, to take a 70-something building inspector out there and then bill him for thousands of dollars; he has a problem with that. Ms. Merrill said it was noted.

**MM&S to adjourn at 8:05.** (Motion by Ms. Merrill, second by Mr. Bakie) **PUNA**