

**Kingston Planning Board**

**December 10, 2019**

**Public Hearing**

**Minutes**

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

**Members present:**

Glenn Coppelman, Chair

Peter Coffin, Vice Chair

Lynne Merrill

Phil Coombs, BOS rep.

Steve Padfield, alternate

Chris Bashaw

Robin Duguay

Peter Bakie

Ellen Faulconer, alternate

Also present: Glenn Greenwood, Town Planner; Dennis Quintal, Town Engineer

Mr. Coppelman introduced the Board, Town Planner and Town Engineer.

**Joseph Falzone**

**53 Marshall Road**

**Tax Map R41 Lot 7**

Mr. Coppelman read the request to continue this hearing; the application for the Lot Line Adjustment had already been continued at a previous hearing.

**MM&S to continue the Falzone subdivision hearing to January 21, 2020 at 6:45 PM conditional upon new plans and materials being received by noon on January 9, 2020 in the Planning Board office. (Motion by Mr. Bashaw, second by Mr. Bakie) PUNA**

**Donald and Phillip Pryor**

**41 North Road**

**Tax Map R32-9A**

Mr. Coppelman announced that the Pryor subdivision that had been continued to the hearing had been withdrawn by the applicant; no further action by the Board is required.

**Bresnahan Moving and Storage, Co.**

**7 Marshall Road**

**Tax Map R41 Lot 7-2**

Mr. Coppelman read the public notice; he reviewed the actions taken by the applicant in reference to cutting trees that was not in compliance with the approved site plan that caused the Board of Selectmen to refer Mr. Bresnahan to the Planning Board; a revised site plan has been submitted for the Board's review. He explained the process that would include Mr. Zilch presenting the proposal followed by department comments, the Board's deliberation and then open the hearing for public comment.

Mr. Zilch introduced himself and Joe Bresnahan to the Board. He explained that there had been an overcut that went beyond the site plan approval and also went into the wetland buffers; he stated that there were about 4 areas that were overcut and went into areas that were not to be disturbed. He explained that Mr. Bresnahan was allowed to work on the site and as the overcut became an issue, there was a cease work from the Board of Selectmen that he tried to work through with the Board of Selectmen; he needs to re-establish buffers and put back what is needed. The applicant wanted to review what he is obligated to replant and what is to remain. Mr. Zilch reviewed the proposal that included adding a "bunch more" trees: 37 hardwoods along the development and roadway, establish a buffer along the southerly edge, add a row of pine along the easterly edge, a dozen white pin in the westerly buffer near the farm in the buffer area. Mr. Zilch said they didn't want to disturb the wetland buffers any more than already disturbed and wanted to plant some high density buffer lines instead. He reviewed the three vernal pool areas that were disturbed suggesting a double row of 50 trees that would cover 400 feet to establish a visual buffer and a limitation of the work on the site. He said that on the east side, about 50 trees for the 400 ft. would provide the limit of disturbance and provides adequate vegetation. He said the buildings did not create high visibility as they were tan and forest green. He re-iterated that this would not add any further disturbance in the areas that had already been cut.

Mr. Quintal read his three comments on the plan dated Oct. 29, 2019 and received on Nov. 21, 2019 that included comments noting the amount of trees: 3 extra trees along the frontage, 4 behind the office building, 50 trees along the Limit of Cut on the south side of the west pond, 12 trees along the west lot line, 50 trees along the Limit of Cut east of the last phase. Mr. Quintal's comments continued by stating that these additional trees do not restore the Area of Overcut and more important is that area within the Vernal Pool Buffer (VPB) as work was allowed within the VPB and shown on the approved plan with the understanding that all other VPB would remain and therefore should be restored. Mr. Quintal's second comment referenced the Town's Landscape Buffer Requirements, Article 108 suggesting that this should be used as a guide for full Overcut Restoration. He reviewed Item #3 adding that the amended site plan should include the additional paving that was done in excess of the site plan approval. Mr. Bresnahan asked Mr. Quintal when he had a discussion with Mr. Sanborn about the stumps; Mr. Quintal answered that it was probably in July.

Mr. Greenwood reviewed his comments that included thoughts on establishing appropriate buffers adding that the proposed plantings are just a starting point allowing the Board to accept the plan for jurisdiction but the current proposal does not approximate the buffer that was

removed; he continued that the protection of the vernal pools is important and suggested a review by the County forester to provide guidance with respect to how well the proposed plantings will protect the vernal pools.

Mr. Coppelman reviewed the Department comments:

-Health: none

-Building: questioned the address of the property in respect to the access points; Mr. Coombs noted that the Police Chief will assign the address; Mr. Coppelman confirmed that the applicant is still working on getting Marshall Road access.

-Conservation: Mr. Coppelman noted that Evy Nathan and Marghi Bean of the Conservation Commission were present. He read the Conservation Commission's (ConsCom) comments, dated 12/10/19 that noted that the Commission was extremely disappointed in the amount of overcut especially near the vernal pools; there was supposed to be a 100 foot buffer that had been thoroughly discussed with the applicant's engineer and the Conservation Commission during the review process/meeting in 2018; there was no need to feel mature trees and the tree canopy. The ConsCom suggested hiring a certified environmental consultant to make recommendations on plantings and the work to repair the areas around the vernal pools.

Public Comment: Cynthia Fellows, 15 Marshall Road, stated that now she can see everything on the development from her house; she would like trees planted to block her view of the buildings.

There was no additional public comment.

Mr. Coffin asked Mr. Coombs to give a recap as to the discussions with the Board of Selectmen (BOS) up to this point. Mr. Coombs said the permits for the site initially stopped due to non-compliance with the plan; on the second visit to the site, due to the major change to the site plan, the BOS referred the applicant back to the Planning Board as this was not within the authority of the BOS to accept an amended plan. He agreed with the protection of the vernal pool but thinks there should be a site walk to determine if additional re-plantings, beyond that presented, would do anything. The applicant's arborist was concerned with re-disturbing areas; he re-iterated that the issue with the vernal pool is valid and should be addressed by a professional.

**MM&S to accept the plan submitted, dated 10/29/19, for jurisdiction to start the 65 day clock.** (Motion by Mr. Coffin, second by Mr. Bakie) **PUNA**

Mr. Coffin said the Board had received two recommendations for professional review for the county forester and a certified environmental consultant; the Board needs some recommendations for addressing how best to recreate the buffers around the vernal pools; 4 vernal pools have been severely affected. Mr. Coppelman noted that the Board knew who the county forester was; Mr. Coffin suggested they could refer someone who was an environmental consultant. Ms. Nathan, Chair of the ConsCom, said that the correct professional would need

to be a certified wetland scientist or certified environmental consultant as a “forester” was not necessarily capable of addressing issues regarding the vernal pools. Mr. Bakie said that while this was an unfortunate situation, a 50 foot tree can’t be rebuilt; he said that Mr. Bresnahan marked the property lines but it was the logger that took the trees down and Mr. Bresnahan is willing to do anything to make it better; he re-iterated that it was the logger that caused the issues facing Mr. Bresnahan. Mr. Coffin stated that it would be Mr. Bresnahan that would have avenues against the logger. Mr. Bakie agreed. Mr. Coffin continued that Mr. Bresnahan’s redress is to the logger, there was no reason for the Town’s environment to suffer. Mr. Bashaw asked what the current state of the development was due to the non-compliance through the BOS. Mr. Coombs said that the site plan is not in compliance with the approved plan but obviously no trees could be planted until Spring but the Board is allowing Phase I and Phase II to move ahead at this point but there will be nothing moving forward for Phase III until this is resolved. Mr. Bashaw stated that he wanted the applicant to be able to utilize the site while moving forward with the restoration. Mr. Zilch pointed out the phasing on the plan. Mr. Coombs explained that there will be no construction of Phase III; the ground is currently frozen anyway; but Phase III is the Town’s leverage. Ms. Merrill said that she recognized that the applicant and engineer area moving forward in good faith but thinks there is one major question that she doesn’t have the answer to and that is how to restore the vernal pools; she likes the idea of a site visit. Mr. Zilch stated that the vernal pools are within the wetland pocket; they disturbed the buffer not the vernal pools directly. Mr. Zilch said that he thinks a site walk would be beneficial. Ms. Faulconer stated that getting a professional to help the Board in its decision seemed to be a logical step. Mr. Quintal suggested that, in regard to the ConsCom’s comments, there can be a change to the environment; he suggested not only having trees planted on the north side but there may need to have some on the south side. He agreed that a site walk would be a good idea and that the County Forester and a Rockingham County Conservation District (RCCD) soil scientist would be appropriate. Mr. Zilch noted that he used Tim Ferwerda. Mr. Coppelman noted that he was semi-retired and there was a little different skill set needed for restoration. Mr. Quintal added that RCCD and their agents are typically hired. Ms. Faulconer reminded the Board that RCCD had been hired by the Board for similar issues in the past.

Evy Nathan said that it is good that the vernal pool is still there but it is a fragile environment which is why it is afforded as much protection as it has and it was also afforded a 100 foot buffer. She said that an environmental scientist would be a great choice as that person would know what plantings would be beneficial as well as knowing where to walk to not disturb the area would also be addressed by this type of professional. Ms. Nathan briefly explained extinction level events of species and ecosystems and causes of ecosystem shifts; she said that to stop these events, the Town must be strict and the importance of going by the rules. She continued to the Commission gets frustrated as they meet with developers and tell them what needs to be left alone and protected and they cut and disturb the areas anyway. Ms. Nathan re-iterated that these are sensitive and important areas for the Town and need a professional, a scientist, to look at and make sure they are re-established.

Mr. Coppelman reviewed the discussion regarding 3 proposals:

1. Site walk
2. Possibility of a county forester evaluating the buffer areas
3. An environmental consultant to have a plan on dealing with the areas around the vernal pools.

Mr. Coombs suggested forwarding the plan to RCCD for them to review. There was discussion about the site walk and the need to have the professionals present; Mr. Coppelman said that no one on the Board has the expertise. The Board agreed the best proposal would be to have both professional available for the site walk. Mr. Greenwood said that the consultants do occasional weekend work. There was discussion about the site walk, available dates, associated costs.

Mr. Bresnahan noted that he is not big business and not in the business to clear cut; he noted he was sure this would go to litigation. He clarified that he will have to litigate with the logger.

Mr. Coombs suggested utilizing the county forester and wetland scientist as long as it is not a major cost. Mr. Greenwood will reach out to RCCD and the forester tomorrow. Several dates were reviewed; the Board settled on either Dec. 22 or Jan. 5<sup>th</sup>, 2020 based on availability of the consultants. Mr. Coppelman added that it would be important to have the findings in writing. There was discussion about needing to continue to a time and date certain while not having the site walk date confirmed. The Board decided to schedule the site walk and schedule a hearing following that date with the limited discussion of setting a new date for the site walk if needed.

**MM&S to schedule a site walk for the Bresnahan property for Dec. 22 and January 5, 2020 at 8:00 AM.**

(Motion by Mr. Bashaw, second by Mr. Coombs) **PUNA**

**MM&S to continue this hearing for limited review regarding the site walk discussion/date as needed on January 7, 2020.** (motion by Mr. Bashaw, second by Ms. Merrill) **PUNA**

**MM&S to continue this full public hearing to January 21, 2020 at 6:45 PM on the condition that any new plans be received in the Planning Board office by noon on January 9, 2020.**

(Motion by Mr. Bashaw, second by Mr. Coombs) **PUNA**

Mr. Coppelman explained that a site walk is a public meeting.

*<Board note: hearing ended at 8:10 PM; the Board took a brief recess at this time and returned at 8:18 PM>*

## **Board Business**

### **Critical Correspondence:**

- Invoice from Town Engineer: Library Lane, Frasier – signed by the Chair.

- Sleep Institute – Board had a site walk, any further action required? Mr. Greenwood said that the Board made motions at the site walk; the owner needed to provide abutters permission; Mr. Coombs said that the Town will be taking down some of the pines due to safety issues; the Board has not received the letter of concurrence from the abutter yet.
- Teatad, LLC requesting escrow release. Pending charges need to be confirmed prior to the release.
- Letter from DES re: deficiencies at Saddle Up.

**MM&S to approve the minutes of 11/19/19 as written.** (Motion by Ms. Merrill, second by Mr. Coffin) **PUNA**

**Lot Line Discussion:** Mr. Coppelman said that this was a review of a previous proposal submitted by the Town Engineer. Mr. Quintal reviewed the proposal that included suggestions for regulations clarifying side, front and rear lot lines, parallel lines, lot angles. Mr. Quintal suggested that Mr. Greenwood review for his comments. Mr. Bashaw stated that he was not sure he understood the proposal and that was with the Town Engineer explaining it. Mr. Quintal said that perhaps it wasn't necessary; this came up due to a previous subdivision with questions about frontage. Mr. Coffin said there had been another scenario concerning a corner lot but both of those roads were Town roads and contiguous. The Board reviewed possible configurations. Ms. Merrill stated that she likes the "through lot" configuration.

**ACTION ITEM:** Mr. Greenwood to take a look and make a recommendation to the Board.

**ACTION ITEM:** Ms. Faulconer to review any previous Town/Board action regarding driveways on a small part of a ROW versus 200 ft. on a ROW/Class V road.

**Shoreland Ordinance Review:** Mr. Coppelman explained that the plan had been to compare the Town's ordinance with the State's requirements. Mr. Greenwood sent around his memo comparing and contrasting the Town and the State's requirements. He stated that there aren't that many differences; one major difference is the State only protects the shorelands of the Great Ponds or 4<sup>th</sup> order rivers or larger; that would mean, in Kingston, only protecting the Power Wow but neither Little Rivers or perennial streams would be protected. He reviewed the two other areas that concerned lot coverage of lots partially in the District and the requirements for septic placement setbacks in Kingston. Ms. Merrill's concern was any confusion created for the homeowner in trying to abide by the State and unknowingly not complying with the Town. She agreed with keeping the additional protections of the 4<sup>th</sup> order lakes and rivers and perennial streams, particularly near drinking water. Ms. Faulconer questioned if the Town's requirements were stricter, why wouldn't those just be used by default. Ms. Merrill said the concern was whether a homeowner knew about it. Mr. Coffin said that would be the homeowner's responsibility for everything adding that the State permits refer to complying with local ordinances. Mr. Coffin did not want to eliminate water bodies' protection adding that Kingston is unique with its water bodies and watersheds; it has a large

regional impact. Mr. Coffin raised concerns that he said were troubling due to the State's allowance of septic systems within the setback lines causing eutrophication issues and algae blooms; he would like feedback from the Pond Associations. He questioned whether the larger setbacks had caused a burden from properties fronting rivers and lakes. There was discussion regarding soil types, older systems upgrading to better conditions, replacement systems with secondary water treatments that could wind up being a requirement; fertilizers issues; preventing run-offs. There were comments as to whether certain size sheds do or do not need a building permit; permit requirements; homeowner knowledge and information. Ms. Faulconer suggested that any review should have Pond committees and Conservation Commission involvement. There was discussion regarding task force, not limiting involvement, setting up a work session.

**MM&S to put on the back burner for the indefinite future.** (Motion by Ms Merrill) Board discussion: The Board reviewed timing for any work session, not bringing random groups due to needing science behind any decision not emotion, hiring a professional for recommendations to the Board; grant opportunities to bring in a professional to set non-arbitrary numbers; baseline understandings for homeowners to realize that the Town may be stricter; ease of understanding. Mr. Bashaw suggested that the interim answer might be an informational piece to reference on-line or in a pamphlet about the differences between Town and State. Ms. Faulconer suggested there could be a link on the Planning Board page. Ms. Duguay agreed this would be a good idea. Ms. Merrill stated that normally when buying a piece of property, the realtors had out the rules. Ms. Faulconer suggested distributing the information to realtors as a hand-out. The Board continued its discussion including the possibility of putting the differences in a table as a resource on the PB site and give a copy to the Building Inspector as a hand-out; Mr. Greenwood re-iterated that there is not a lot of difference between the Town and the State; Ms. Duguay said that the numbers might not have been arbitrary when initially adopted; Mr. Coppelman reminded the Board that property owners can always seek relief in a variance. Mr. Coffin cautioned that changes in setbacks could depend on variations on the rocks and minerals and require core samples and flow rates instead of just working within a set number. There was continued discussion on the best way to determine setbacks, lake protections, general public understanding, comparison with the Wetland standards that were adopted based on a specialist's recommendations. Mr. Quintal explained that the State allows a Town to be more restrictive because the areas could be more sensitive; there could be a scientific reason for more protection. Mr. Greenwood suggested that it is not only just science regarding State recommendations; there can also be political considerations based on the powers that be; the best thing is to use a specialist and figure out what is best to do at the local level. Mr. Coppelman suggested that Mr. Greenwood use the table he compiled to set-up a table as the first step and then consider what might be around for grant money. Mr. Greenwood agreed; Ms. Merrill agreed; Mr. Bakie and Mr. Coffin said they were okay with this approach. The rest of the Board concurred.

**ACTION ITEM:** Mr. Greenwood will work on the two items noted at the end of the discussion.

Mr. Coppelman handed out “New Rules for Wetlands” that take effect on Dec. 15<sup>th</sup>.

**Capital Improvement Plan (CIP) Adoption:** the proposed CIP was reviewed by Mr. Coppelman.

**MM&S to adopt the 2020-2025 CIP as presented.** (Motion by Ms. Merrill, second by Mr. Coffin) **PUNA**

**ACTION:** Mr. Greenwood will confirm that the CIP was sent to BudCom reps.

**Budget Review:** Ms. Faulconer noted that the replacement computer in next year’s budget was able to be purchased this year.

**MM&S to reduce the proposed budget by \$1050.** (Motion by Ms. Merrill, second by Mr. Bakie) **PUNA**

**Hawks’ Ridge/Diamond Oaks(HR/DO) update:** Mr. Coombs stated that the Planning Board won the lawsuit brought by HR/DO and he spoke with Town Counsel and will be bringing the discussion back to the BOS. Prior to this, he wanted confirmation from the Board that they still want enforcement of the approved and existing site plan. By unanimous consensus, the Board said “yes”. Mr. Coombs stated that he will discuss with the BOS at their next meeting.

**MM&S to adjourn at 9:40 PM.** (Motion by Mr. Coombs, second by Mr. Bakie) **PUNA**