

**Kingston Planning Board  
Public Hearing  
January 19, 2010**

Mr. Hurley called the meeting to order at 7:00 with all members present including two alternates. The meeting was posted in two places; no one challenged the validity of the meeting.

Board members present this evening:

Norm Hurley, Chairman  
Richard Wilson, Vice Chairman  
Glenn Coppelman

Jay Alberts  
Ernie Landry  
Scott Ouellette

Also present: Glenn Greenwood, Circuit Rider Planner;

Board Members absent: Mark Heitz, BOS representative, Rich St. Hilaire, alternate, Marilyn Bartlett, alternate

Mr. Hurley reviewed the agenda; he noted that Family Pools had asked for a continuance which will be discussed by the Board at the posted hearing time.

**Critical Correspondence:**

- Letter from Family Pools requesting a continuance
- Letter received from Cleveland Waters and Bass re: Konover; in response to RPC's letter re: draft MOA

(Board note: Mr. Ouellette joined the meeting in progress)

- Letter from REDC regarding updating strategies and projects for the region.
- Request for Motorcycle Inspection/Repair Station for 56 Marshall Road received from the NH Dealer Desk; Mr. Greenwood explained that there were no records in either the Planning Board files or the BOS files for any commercial activity being approved at that location; he suggests that the Board either ask them to come to speak to the Board or send letter stating the need for site plan review. Mr. Hurley was aware of the owner; he commented that he thought that he had a location in Plaistow for this use; other Board members agreed.

**ACTION ITEM: Ask Mr. Goodwin to come in to the next meeting, or the next available date, to come to speak to the Board about the Dealer Desk request.**

- Purchase order for Stormwater Manual
- Purchase order for IES Handbook
- Request re: review of Conservation Easement/Austin Realty Trust

**ACTION ITEM: Ms. Faulconer to send the Conservation Easement to Attorney Loughlin for his review.**

- Legal correspondence file passed around for the Board's review.
- Non-critical correspondence file reviewed: new geothermal licensing requirement; minutes from Conservation Commission; workshops for Auto Body shops/new regulations.

**ACTION ITEM: Ms. Faulconer to scan Conservation Commission's minutes and send out to the Board members.**

## **PUBLIC HEARING: ORDINANCES**

### **Outdoor Lighting Ordinance**

Mr. Hurley asked to address the Outdoor Lighting Ordinance first as Bart Noyes from the Energy Committee was there to speak to that ordinance; the Board agreed.

The latest version was handed out the Board; Mr. Greenwood reminded the Board that no further substantive changes could be made to any ordinance going forward to this year's Town warrant; only editorial changes could be made.

Mr. Noyes stated that the Energy Committee was aware that any substantive changes could not be made addressing any comments that they may have for this evening. He stated that the Energy Committee agrees with, and endorses, the statement of need and purpose. He referred to section 302.4, control of glare, section D and asked that the Board consider identifying compact fluorescent lamps (CFL's and light-emitting diodes lamps) as energy efficient lamps that can be used to illuminate a public area. He added that the note in the ordinance regarding the commercial availability would thereby be expanded to include a statement on LED lamps; he also believes that the note is incorrect and that both LED lamps and CFL lamps are commercially available for the particular use. He continued by referring to section 302.7, section B and stated that the Energy Committee would like to go on record as asking the Board of Selectmen to direct the appropriate Town Committees to develop an incentive plan to identify existing out-of-compliance lighting installations and to work with the owners to bring them into compliance; the Committee further asks that the Selectmen lead by example by directing Department Heads to identify and remediate existing out-of-compliance lighting installations in their areas of responsibility. Mr. Noyes stated that the Energy Committee believes that the proposed changes to the Outdoor Lighting Ordinance strike a proper balance between the rights of property owners to illuminate their property and the rights of neighbors to be free of unwanted light intrusion; the proposals identify the Town's evening character as an important area of community interest and clearly make energy conservation and efficiency important elements of local public policy in the area of Outdoor Lighting. He continued that these changes are good examples

of effectively identifying and avoiding sensory trespass and suggest the Board consider other areas such as Noise and Odor.

Mr. Ouellette thanked Mr. Noyes for his comments; he agreed with them and felt it unfortunate that they could not be added to this Ordinance but hoped that they could be proposed for an amendment for next year's warrant. Mr. Noyes said that the Energy Committee realized how that might be the proper option available at this point.

Mr. Greenwood had reviewed the new language and all the points discussed by the Board were incorporated; Mr. Ouellette had also reviewed the language and agreed.

**MM&S to place the revised Article 302: Outdoor Lighting Ordinance on the warrant for this year's vote.** (Motion by Mr. Coppelman, second by Mr. Wilson) **PUNA**

### **Sign Ordinance**

Mr. Hurley noted that changes were to create "rules for sign removal". The language that would appear on the warrant was reviewed by the Board.

**MM&S to accept the proposed Sign Ordinance and place on the ballot.** (Motion by Mr. Wilson, second by Mr. Alberts) **PUNA**

### **Historic District I/Single Family Residential Changes**

**MM&S to take Single Family Residential District to the ballot as proposed/noted.** (Motion by Mr. Wilson, second by Mr. Coppelman) **PUNA**

### **Commercial Zone I: Multi-Family (Workforce) Housing**

The Board reviewed the revised language for Workforce Housing. Mr. Hurley said that while speaking with the Fire Chief and Fire Inspector, he was informed that anything with a third story bedroom or living space requires that the whole house be sprinkled per New Hampshire Fire Code.

Mr. Noyes asked Mr. Hurley about clarification of the sprinklers requirement. Mr. Hurley said it would depend on the classification of the "sublevel". Mr. Hurley said that anything prior to the adoption of the code would be grandfathered.

Mr. Wilson asked if there was any reason that the Board limited the development to 40 units; with a 10 acre minimum. Mr. Greenwood said it was due to this being the initial proposal for this type of development for the Town.

**MM&S to take Commercial Zone C-I (addition of Workforce Housing) to the Ballot as noted.** (Motion by Mr. Wilson, second by Mr. Coppelman) Mr.

Coppelman clarified that this zone was the one located at the intersection of Rte. 125 and Route 107 going south, Depot Road) **PUNA**

### **Commercial Zone I (Lot Coverage)**

Mr. Greenwood explained the postings for this Ordinance; the language is the same in all three with the exception of the “Conflict” language in proposals A, B and C.

**MM&S to accept the proposed language for Commercial Zone I, noted as Letter “A”, to go forward to the ballot as written.** (Motion by Mr. Wilson, second by Mr. Alberts)

Discussion: Mr. Ouellette stated that the current ordinance “conflict” section is the same as letter “A”; Mr. Greenwood agreed. Mr. Wilson explained his reasoning for making the motion including the applicant having to provide adequate protections to get to the higher lot coverage. Mr. Landry said that the lot coverage in the aquifer would now go from 35% to 50%. Mr. Ouellette said that currently there is a 35% lot coverage and can go to 50% if the applicant can show Stormwater Management Techniques that would allow for recharge on the property. Mr. Landry said the current proposal, in proposal “A” would now automatically allow for 50% coverage in the aquifer and then go to the 80%; he re-iterated his previous concerns that there should be some science behind the Board changing the coverage in the Aquifer. He doesn’t think that changing the amount of coverage allowed in the Aquifer will significantly impact the amount of commercial development that would occur in one year. Mr. Hurley agreed but said that this Board did not know what the science was behind the 35% requirement, either. Mr. Hurley agreed that changing the Aquifer Protection Ordinance requirement would not make a huge difference in one year, either, although he did think that the 80% with low impact might encourage some development. Mr. Ouellette said that it would be premature to support changing the Aquifer to this extent. Mr. Alberts said that the Town would probably not have the science it needed in a year’s timeframe and this was what other Town’s did. Mr. Greenwood said the Board did not have to accept the applicant’s proposal if they didn’t feel that the requirements were met; Mr. Wilson agreed that was his understanding, as did Mr. Alberts. Mr. Alberts said the Board could get the science it needed at the applicant’s expense; Mr. Wilson said that it would be the applicant’s cost to provide the research for the Board. Mr. Landry did not see it happening; he sees the language as saying that if low impact methods were used than the coverage would go to 80%. He said that the pivotal question is whether the low impact development activities bear out the science that allows it; he questioned whether the science would support that the low impact methods should allow coverage of 80%. Mr. Landry explained that there was an important nuance in the language of the ordinance that said that if a developer used low impact development procedures, he can go to 80%; it doesn’t say that if you use low impact procedures that bear out scientifically that it is okay to go to 80% using those procedures, then you can do it. Mr. Alberts expressed that the requirement for needing the Board’s approval would allow the Board the luxury of saying that it needed more science,

facts or information. Mr. Landry felt that the Board would be hard-pressed to say “no” if an applicant did the things that were listed in the State’s manual. He stated that the pivotal question for him was whether those items allowed for the expansion to 80%. Mr. Hurley said that the language said “up to 80%”, not necessarily 80%. He said the Board wouldn’t agree to 80% if it wasn’t up to the standard to allow that coverage. He would assume that the State of NH did its research for the Stormwater Management Manual. Mr. Greenwood said that the Low Impact Development Standards said that there are numerous ways for handling stormwater, on a site that minimize the ability to shed that stormwater offsite. Mr. Greenwood said the two issues are the ability to recharge on-site and not to contaminate the Aquifer. Mr. Greenwood said the Board has to come to terms with the comfort level of the review process to allow the additional lot coverage.

Mr. Coppelman asked about the Stormwater manual and asked about whether it addressed the issue of potential contaminants that would result from funneling the run-off. Mr. Greenwood said there was a definite groundwater quality element to the Stormwater Manual. He added that pollution control was not the main concern of stormwater management but water quality degradation is a concern so it is an element of it. Mr. Coppelman said that for him, that was the weak link; he said he was familiar enough with the techniques that will manage the water on the property and that it can be handled that way but depending on how it is managed, the effect of increased contaminants going into the groundwater, is the piece that he is less comfortable with. Mr. Alberts stated his position that if you always do what you have always done you are always going to get what you always got and he thinks the Board has an obligation to the taxpayers who voted for Commercial development to support this.

Mr. Noyes, in speaking to the Aquifer recharge, said that it is not necessary for the recharge to the Aquifer to take place on the Aquifer. He thinks that the Board may want to go to the entities that identified the Aquifer and ask specifically how and where the Aquifer is recharged. Mr. Greenwood said that Mr. Noyes’ statement is true of bedrock aquifers but not specifically to stratified drift aquifers that are the kind that our Aquifer Protection Ordinance is geared to; they are much more dependent of the surface and below surface connection than bedrock aquifers are; he continued that the potential of contamination and the existence of the groundwater resource are much more co-terminus with the surface than a bedrock aquifer is.

Mr. Hurley stated that he understood Mr. Landry’s concerns about contamination but thought that, with today’s standard of business and regulations, it is not lot coverage but willful neglect or ignorance that is the problem.

It was clarified that choice “A” is the only language that gives pre-eminence to the Commercial Zone over the Aquifer Protection Zone. Mr. Hurley reminded the Board that the motion on the floor is for choice “A”. Mr. Ouellette says that the current ordinance says that the lot coverage can go from 35% to 50% and the conflict section at the end is needed to say that these C-1 rules overrule the Aquifer

because otherwise the lot coverage could never get to 50% so to leave it the way it is, the Board has to go to option "A" because anything else takes away what exists; the intent in the ordinance was to give a bonus in C-1 and overrule the Aquifer so the conflict section has to remain or change the wording in the proposed lot coverage section, 108.9, to specifically say something about it so the section saying "unless otherwise stated" could work.

Mr. Wilson stated that he would not feel comfortable with option "A" if the paragraph following "F" was not in the ordinance; he added that that section required the applicant to prove it in order to get the additional lot coverage.

**Mr. Hurley returned to the motion:**

**MM&S to accept the proposed language for Commercial Zone I, noted as Letter "A", to go forward to the ballot as written.** (Motion by Mr. Wilson, second by Mr. Alberts) **Motion tied 3-3; motion fails.**

The Board took a break from the Ordinance discussion due to the Family Pools scheduled public hearing.

### **Family Pools**

Mr. Hurley stated for the public hearing that there was a written request from the applicant to be postponed to the next available hearing date due to possible changes to the Deed by the State DOT due to the relocation of Newton Junction Road. They are hoping for the changes to be received by the end of the week and then they can make changes to the site plan and give the prints to the Planning Board for review.

**MM&S to continue the Family Pools public hearing to February 16, 2010 at 8:30.** (Motion by Mr. Coppelman, second by Mr. Ouellette) **PUNA**

Mr. Hurley told any public that this was their formal notification; they would not receive another notice by mail. Mr. Wilson suggested that the public contact the Planning Board office a few days in advance to see if there was another request for a continuance.

### **Ordinance Public Hearing, continued**

#### **Commercial Zone I (Lot Coverage),continued**

Mr. Hurley reminded the Board that options B and C were still available.

**MM&S to accept option "C" to go forward to the warrant.** (Motion by Mr. Wilson, second by Mr. Alberts) Mr. Wilson said that he chose "C" over "B" was in case the Board writes anything in the future that may override the Aquifer then there won't be

two areas that need to be changed. Mr. Greenwood said that standard zoning law says that when there are two conflicting provisions, the more stringent of the two provisions applies; there was Board confusion and discussion on the actions of the Board in the prior vote; there was discussion about the vote regarding the conflict language separate from the vote to put the change in the lot coverage forward. Mr. Ouellette explained that option "A" only included the changes to the lot coverage; the conflict language was the same as that which currently existed so that the lot coverage language would not go forward. Mr. Hurley agreed with Mr. Ouellette's assessment. **There was no vote on the previous motion; withdrawal assumed.**

### **Commercial II Zone**

The Board discussed the language for Commercial Zone II as it would be the same issue as that discussed in Commercial Zone I.

**MM&S to approve C-II, option A, to go to the warrant.** (Motion by Mr. Wilson, second by Mr. Alberts) Mr. Hurley said this was essentially the same language as currently exists, with the amended lot coverage language included. **Motion failed, 3-3.**

There were no other motions.

### **Commercial Zone C-III**

Mr. Greenwood explained that the conflict section of C-III was different than the previous two zones. He referred to section 110.16.

**MM&S to accept the proposed C-III wording as written for the ballot.** (Motion by Mr. Wilson, second by Mr. Alberts) Mr. Landry asked for clarification that the way that this was written, with section 110.16, so that in a non-aquifer setting, there was the possibility of going to 80%. Mr. Greenwood said that the other issue in C-III was the addition of clarifying the lot size of 2 acres that was missing from before. Mr. Ouellette said that it wasn't obvious to him before that this section now only applies to the non-aquifer land and this difference appears a lot closer with better restrictions with the proposed low impact development; he said the concerns with the previous language was how it impacted Aquifer lots. Mr. Landry agreed. Mr. Ouellette explained that the new 110.7 has no language about whether the proposal is in the Aquifer or not; Mr. Greenwood agreed. He added that the "conflict" section says that it must comply with all ordinances unless explicitly stated otherwise; the previous explicit statement was removed from the new language. Mr. Ouellette confirmed that by passing this ordinance, the Board is saying that for every lot that is in the Aquifer, there is 35% lot coverage but outside the Aquifer, there is 50% lot coverage with the possibility of 80% coverage with low impact development. Mr. Greenwood agreed. Mr. Ouellette said this is a big difference from the previous discussion as it was the coverage of the Aquifer lots that was the concern. Mr. Ouellette said that by doing this, the experiment to see if the additional lot coverage encouraged

development was not impacting the land on the Aquifer. Mr. Wilson said that if someone showed him the proof that it was viable, he would allow it in the Aquifer. Mr. Ouellette said that the way the new one was written, it would not be allowed. There was Board discussion about the language in the old ordinance versus the proposed ordinance. Mr. Hurley clarified that with the new language, there would be a maximum of 35% coverage in the Aquifer and 80% outside of the Aquifer. Mr. Coppelman wondered how many lots in C-III were not in the Aquifer.

**Withdrawal of motion was assumed; there was no motion to move the ordinance to the ballot.**

Mr. Alberts asked if the Board could clarify what new information came to light since the last time that these ordinances were discussed. The Board discussed some of the changes that were agreed to at the last meeting. Mr. Greenwood stated that during the discussion and votes at the January 5<sup>th</sup> hearing, Board members had stated that they were uncomfortable with some of the changes and were probably not going to vote for the proposals to go forward due to some of the issues discussed this evening. So, he did not think that the opinions had changed as much as this evening's make-up of the Board. Mr. Wilson stated that the bottom line was who shows up to vote.

### **Industrial Zone**

Mr. Hurley reminded the Board that this proposal expanded commercial uses in the Industrial Zone.

**MM&S for the Industrial Zone modifications to be placed on the ballot.** (Motion by Mr. Coppelman, second by Mr. Wilson) **PUNA**

### **Board Business, continued**

**MM&S to accept the minutes of December 15, 2009 as written.** (Motion by Mr. Wilson, second by Mr. Coppelman) **5-0-1** (Motion passed with Mr. Alberts abstaining)

Mr. Greenwood passed out an outline from Mr. Quintal for the Board to consider prior to his speaking with the Board; possibly to add this discussion to the February 16<sup>th</sup> public hearing after Family pools.

**ACTION ITEM: Check with agenda for February 16<sup>th</sup> for possibility of adding Board discussion with Mr. Quintal.**

Mr. Hurley notified the Board that the previous discussion about encumbered funds for Mr. Quintal was taken care of; the full amount had already been sent to Mr. Quintal leaving a small balance of approximately \$600 to cover the proposal.



Mr. Wilson asked about a business moving to a residential area and asked if they had to come to the Planning Board; the example cited was a sign company that moved out of the Plaza, a sign was in front of a residential property. Mr. Wilson wondered if that use should have come to the Planning Board. Mr. Greenwood said it should have; that had been Mr. Wilson's opinion. Mr. Ouellette said that a site plan goes with the site and if the site changed than a new review needed to occur. There was the discussion that it might not need Board approval if it could meet the Home-Based Business.

Mr. Landry said that the BOS put in a warrant article about establishing a water district and said that the Board had previously discussed this as a potential positive thing for business and commercial in Town; he wondered if there was a way for the Board to discuss to see if the Planning Board wanted to support it. Mr. Hurley and Mr. Coppelman said that a letter to the editor of support could be done if the Board authorized the Chairman to write one on behalf of the Board. Mr. Wilson said that if the Board did that than every member's name should be on the letter. Mr. Alberts asked if all the Board members were informed about the article. Mr. Landry said that there had been discussion at the budget meeting; the language to adopt is confusing and needs public explanation. Mr. Wilson suggested getting a copy of the warrant article to be able to discuss at the next meeting. There was discussion about resource protection, possible commercial aspects, problems with the language in the past.

Ms. Merrill suggested that the Board might want to bring a draft of the letter to the February 16<sup>th</sup> meeting in case there were any changes to be made so the letter could be signed and given to the paper to meet publication deadlines prior to the election. Mr. Hurley said that he would task the drafting of the letter to Mr. Landry.

**ACTION ITEM: Mr. Landry "volunteered" to draft a letter for the Board to review regarding supporting the water district warrant article including the protection and commercial aspects of the proposal.**

**MM&S to adjourn at 9:00.** (Motion by Mr. Wilson, second by Mr. Alberts) **PUNA**