

**Kingston Planning Board
Public Hearing
April 20, 2010**

The Chairman called the meeting to order at 7:00 PM. There were no challenges to the validity of the meeting.

Members present:

Norm Hurley, Chairman
Glenn Coppelman
Chuck Hart, BOS representative
Marilyn Bartlett, Alternate

Ernie Landry
Jay Alberts
Dan Mastroianni

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

Board members missing: Rich Wilson; Rich St. Hilaire (Alternate)

The Chairman announced that Ms. Bartlett would be a voting member for this evening's hearing.

Board Business

Correspondence:

- Planning Board Bond Balance
- Legal Decision: Galloway (also sent by email); finding for the Town of Kingston
- Letter from Mr. Middlemiss (as acting Building Inspector) re: 7 Small Pox Road
- Letter from Mr. Fournier confirming completed application
- 17th Annual Spring Planning and Zoning Conference reminder
- Letter received from Cleveland, Water and Bass (Philip Hastings) requesting escrow account release for Konover Development Corporation

There was discussion as to whether Konover has actually rescinded the development; a letter had been received that Hannaford had backed out of the project but the approval was for Konover Development, not the Hannaford Corporation; the letter had stated that the tenant was not going forward, not the development corporation. Mr. Greenwood confirmed that the letter received by the Board did say that Konover intended to move forward, if possible, with a different tenant; he added that they were asking for the balance now and will re-establish when appropriate.

ACTION ITEM: Mr. Greenwood to review the Conditions of Approval (Konover) regarding any conditions pertinent to an escrow account or pending/future legal costs. Mr. Greenwood will also run this request past Attorney Loughlin.

- Answer Received from Attorney Loughlin re: Saunders/Kingston dated April 12, 2010
- Driveway permit, 25 Great Pond Road; Mr. Coppelman informed Mr. Greenwood that, at the previous meeting, the Board reduced the required 20 foot setback to 10 feet, leaving the property owner to configure the driveway to meet the 10 foot lot line requirement.

ACTION ITEM: The Board confirmed that they had authorized Mr. St. Hilaire to notify the property owner of this requirement/ work out the configuration. Mr. Greenwood will also contact the property owner (Mr. Kennedy).

- Coastal Program Notification dated April 12th.
- CIP meeting on Thursday, April 22nd.
- Mr. Hurley confirmed that the meeting had been posted correctly.
- Carriage Towne Bible Church was discussed; Mr. Quintal stated that he had been contacted by Kevin Hatch, the project engineer; they reviewed the Bond Reduction calculations which had been given to the BOS by Mr. St. Hilaire. He added that the required elevations of the culvert and swale were reviewed; Mr. Hatch was going to modify his sketch and get back to him. Due to the wetness of the property, he did not know what their schedule would be to do the corrective work. Mr. Hart told the Board that they were in to see the BOS at their Monday night meeting; a reduction in the Bond was approved. They discussed with the Board their desire to occupy the building but they can't due to the paving requirement which they can't do because the site is so wet. They are looking for a temporary permit which needs to be requested to the Building Inspector.
- State of the Estuaries document was passed around.
- Planning Board Handbook for Local Officials

ACTION ITEM: Get some copies of the Planning Board Handbook for Local Officials for each Board member. (Two Board members already have copies)

Mr. Coppelman motioned to accept the March 16, 2010 minutes, seconded by Mr. Alberts.

ACTION ITEM: Change the March 16, 2010 minutes: remove Vice Chair after Mr. Coppelman's name; change Mr. Hart to Mr. Alberts in the sections to nominate Mr. Hurley and Mr. Wilson; add that Mr. Coppelman and Mr. Hurley abstained in the motion for Chairman.

MM&S to accept the March 16, 2010 minutes as amended. (Motion by Mr. Coppelman, second by Mr. Alberts) **PUNA**

MM&S to accept the March 23, 2010 minutes as written. (Motion by Mr. Coppelman, second by Mr. Landry) Motion passed 3-0-4 (Mr. Hurley, Ms. Bartlett, Mr. Alberts, Mr. Hart abstained)

Mr. Alberts discussed something from a previous meeting for Mr. Hurley's benefit regarding appeals. Mr. Alberts referred the Board to a letter written by Attorney Loughlin; specific to the term "tolling". Mr. Greenwood said that the reference for "tolling" was once the Board had finished its approval process, come up with a decision and there was some type of appeal to that decision. He added that the discussion Mr. Albert's was referring to revolved around the Planning Board receiving an application that it couldn't act on due to a zoning violation, having to deny and then send to the ZBA. This caused the applicant to re-apply. He added that

“tolling” took effect after the Board already gave the decision. Mr. Greenwood said that the two situations were not analogous to each other. Mr. Alberts added that he wondered if it was the same after jurisdiction was invoked.

Diamond Oaks Golf Club, LLC.
Rte. 125

Mr. Hurley stated that he handed out a brief write-up of the site walk on this property provided by the applicant’s representative, Ms. Merrill. He suggested that the Board review for acceptance into the minutes. He reviewed this with the Board.

MM&S to accept these as minutes, as written, for the site walk meeting. (Motion by Mr. Landry, second by Mr. Alberts) Motion carries 3-0-3.

Mr. Greenwood reviewed the Technical Review meeting for the application. He said that the meeting was about 45 min. to an hour with the Health Inspector, Town Engineer, Police Chief, Fire Chief, and Fire Inspector. Chief Briggs re-iterated his concerns of the residential aspects of the development, encouraging a gated community; many of his safety concerns appeared to be alleviated once the age restriction was clarified. Other issues discussed were lighting of the entryway, new septic plans were needed; the Town Engineer reviewed his concerns including future road connections; the Fire Dept. had concerns about the cul-de-sac design being able to accommodate fire engines; including proper turning radius. There was discussion that the roadway being built below Town standards would eliminate the possibility of the Town ever accepting it as a Town road.

Lynn Merrill apologized that their engineer, Steve Cummings, was not able to be at the meeting. She added that he was working on the plans to get them ready for next month’s meeting. They requested three things: extend the timeframe for the Board to accept jurisdiction another 60 days; ask if Mr. Cummings could continue his conversation with the Town Engineer (Mr. Quintal) to make sure that all the new plans had the detail that the Town Engineer needed; schedule a time to meet with the Board next month to address the issues raised at the last meeting, Technical Review meeting and the site walk. For the benefit of those not at the site walk, Ms. Merrill explained that some of the commercial components have been removed from the plan: the existing building remains and the golf club house. They would hope to return to the Planning Board for any future commercial uses instead of planning for it now knowing the commercial expansion and building is slow at this point; she added that economists are expecting it to lag behind residential growth by at least three years. They are withdrawing the commercial development from the plan at this time.

Mr. Hurley shared that the Kingston Conservation Commission did provide comments for the development; due to the proximity of the Wetlands to the proposed commercial expansion, they recommend that a Wetlands Buffer delineation be performed and subsequent site plan provide more Stormwater Drainage and Development details; it was noted that this was from a previous design review.

Regarding the applicant's request to extend the jurisdictional timeline, Mr. Hurley stated that the 65 days was almost up. Mr. Greenwood stated that he had been dwelling on this topic for a couple of weeks in order to have the cleanest process possible, he does not think that the Board should continue under the original application. He said that it has substantively changed; it had gone from a mixed use development with duplex units to an essentially single family residential development. He explained that the only notice received indicates a duplex development with commercial condominiums which is no longer on the table. He suggested that the Board should either have the applicant withdraw the original application or have the Board deny without prejudice and ask the applicant to re-submit the plan that is actually desired to be reviewed by the Board. He said it would not be reasonable for the Board to accept and extend jurisdiction on a plan not even received yet; the designs for the septic has not been received by the Health Officer, neither Mr. Greenwood nor the Town Engineer have received formal design plans for the new proposal. Mr. Hurley clarified that this would entail re-notifying abutters. Mr. Alberts asked about the costs incurred for re-application. Ms. Merrill asked if the Board would waive the application fee and an extension of the deadline from this Thursday to next Thursday. This would mean that the Board would review the plan on the first Tuesday in May. Mr. Coppelman asked what the application fee is used for; Mr. Greenwood said it was for Ms. Faulconer's time to process the application. Based on the explanation, Ms. Merrill said that the applicant was willing to pay the application fee.

Ms. Merrill stated that the Board should consider the application withdrawn.

MM&S to allow the applicant to submit their application no later than Thursday, April 29th at noon for the Board's plan review on May 4th. (Motion by Mr. Coppelman, second by Mr. Alberts) **PUNA**

Mr. Coppelman confirmed that the Board's review on May 4th would establish whether an application goes forward to public hearing. The date and time is established at that time.

The applicant agreed that the existing bond would continue on for the next proposal and could be utilized for any conversations with their engineer and the Town Engineer. No one on the Board disagreed.

Board Business, Continued

Mr. Hurley suggested that the Board work on the By-laws since there was a little time before the next posted hearing.

Ms. Bartlett asked to discuss Ms. Christie's property on Church Street; she recalled that Ms. Christie originally asked the Board to require that if any part of her property were in the Historic District then all of it would be in the District; she added that it was specific to any frontage in the Historic District. Ms. Bartlett recalled that Ms. Christie wanted the entire parcel in the Historic District. Mr. Hurley thought that with the new subdivision, the new parcel was not in the Historic District.

Mr. Greenwood informed Mr. Hurley that he had reviewed Family Pools' mylar; it was complete; Mr. Hurley signed the mylar for recording.

By-laws Discussion:

- Mr. Hurley referred to Section A and the proposed changes to leave only the one sentence that the BOS appoint an ex officio member; delete the rest of the original. **Accept as proposed.**
- **Remove the second “three”, change to “two”** re: two elected positions yearly as that is the current practice and complies with the statute.
- There was discussion about clarifying a member filling the remainder of a term. The Board decided to simply refer to the statute rather than repeat it. 673:5, II is the correct statute.
- The statute allows an elected Planning Board to appoint up to five alternate members; the Board will keep it at three as that is the current practice. Mr. Greenwood feels that was established at the time that the Board became elected; he suggested that this could be confirmed prior to changing to five. **CHANGE THE PROPOSED LANGUAGE TO THREE; refer to 673:6 (Section II) not 673:5.**
- **Section B – accept as proposed.** Re: Potential Conflict: Wording is from the RSA's.
- Officers and Duties section: Section II – **accept as proposed.**
- Section III: Quorum: first section – Mr. Landry asked if “Alternates” need to be part of this section, to specify that they are part of the quorum. Mr. Hurley read #1 which takes care of that clarification. Mr. Coppelman wondered if the section of filling vacancies should be #5. Mr. Hurley said that 673:10 is “scheduling of meetings” and then 673:10 III is a majority of the members of a local land use board constitute of quorum necessary to transact; 673:11 goes on to discuss alternate members. **Number Change: 4.0 is “designation of alternate members”, 5.0 is “filling of vacancies” in membership.** Mr. Landry asked about the practice of the Board regarding a regular member sitting in on an application that was originally heard by an alternate member; the question was raised at a previous meeting as to who should be involved in voting on the issue. At that time, the regular member deferred to the alternate member; Mr. Landry wondered if that should be added. Mr. Hurley did not believe that practice could be mandated; he thought that would refer back to the Board member disqualifying themselves at their own discretion.
- A vacancy of an elected position was questioned by Mr. Alberts. It was explained, as an example, that if someone resigned after only serving 6 months of a three-year term, the appointment for that position would only be until the next election; at that time, the position being filled would only be for two years – the remainder of the original three-year term. **“Filling of Vacancies” is accepted as proposed.**

The Board completed the discussion through 5.0 and continued with the Public Hearing.

Brox Industries **6 Dorre Road**

Mr. Hurley stated that this application is for a proposed concrete plant. Mr. Greenwood explained that this was a preliminary meeting, a design review and as such it is a meeting that is

non-binding by both the applicant and the Board. He added that it is for discussion purposes so the applicant can bring the proposal forward to get input from the Board and clarify any questions of the process and get guidance from the Board. Mr. Greenwood has questions about the access way to the development; there are wetlands indicated on the plan but there is no wetlands stamp on the plan which is not needed for a preliminary plan; information is needed from the applicant about State approvals necessary for a construction of a concrete plant; the Town has a more recent flood plain study than the one indicated in the plan notes which should be referenced. Mr. Coppelman referred to his other comments concerning the need to determine the wetland buffer and whether it followed the wetland's ordinance. There is currently the straight 100 foot buffer shown on the plan. Mr. Hurley read a note from the Highway Department: "Applicant to provide a right-of-way from Galloway property to Dorre Road for future possibility of connecting all truck traffic to lighted intersection of Rte. 125, see attached plan." The Police Department's comments: "recommend the applicant investigate the possibility of placing a connector road between Dorre Road and Galloway property". The Health Department needs a septic design.

George Hall, the manager of the real estate for Brox Industries, introduced himself to the Board. He described the location of the site. He explained that the proposal is to construct a new, ready mix, concrete facility with anywhere from three to ten trucks depending on the economy; access is shown to Route 125 through the Galloway property in accordance with the right-of-way agreement with Mr. Galloway. The information on the plan came from a previous proposal; the information would be updated as they moved forward. He discussed that, due to the proposed changes on Route 125, access through Dorre Road would be restricted, precluding left turns in and left turns out. Mr. Hall stated that the agreement with Mr. Galloway does not allow them granting access to anyone else through the right-of-way; that would be up to Mr. Galloway. Mr. Hall believes the only State permits required would be the Alteration of Terrain permit if 100,000 square feet were involved which he thought was a probability. He didn't think there was a change in traffic as there had previously been a concrete plant on the Galloway property which was no longer there. He concluded by saying that the purpose of this hearing was to find out any concerns the Board may have; he believed the Town desired truck traffic to be diverted off of Dorre Road. He re-iterated that the changes to Rte. 125 would make access through Dorre Road difficult and a lighted intersection at Route 125 and Galloway's driveway is a much more desirable access than through Dorre Road.

Mr. Hurley said that, although Brox Industries did not have control over giving access through the right-of-way, the Board may still require them to lay-out the road on the plan. Mr. Hall said that they did not have a problem with that; it could be shown on the plan.

Brenda Galloway addressed the Board. She said that she noted that the site was located in the Aquifer Protection Zone and wondered if this development was allowed in this area. Mr. Greenwood answered that it did specifically allow construction of concrete plants. She also wanted to re-iterate that the right-of-way on the road was for Brox only and was not re-routing all the traffic. Mr. Coppelman clarified for Ms. Galloway that a concrete plant was a permitted use in the Industrial Zone; in the Aquifer Protection Zone, it is not a prohibited use but it is not listed as a permitted use. Mr. Greenwood stated that it would require a conditional use permit as

“g” says Industrial and Commercial uses not otherwise prohibited would require conditional use approval from the Planning Board.

Mr. Hall asked if anyone was interested in them using Dorre Road. Mr. Coppelman asked where the proposed access came out; Mr. Hall answered that it was at Galloway’s driveway. Mr. Hall said that they had no problem with showing a connector road but it was his understanding that the Town would have to take it by eminent domain to allow access from Dorre Road to the light. The consensus was to show the possible future road connection. Mr. Greenwood’s concern had been regarding any possible constraints on how the right-of-way could be used.

Mr. Hurley suggested the applicant review the updated ordinances when coming forward with the proposal. Mr. Alberts had questions about the future development of Rte. 125 and the impact on this development.

Board Business, continued

By-laws discussion, continued:

- “Duties of the Board” – 5.0 – Master plan, fine; Capital Improvement plan, fine; regular meetings and notices, fine; Mr. Greenwood said that the statute only requires 24 hour notice for public meetings, public hearing is ten days. Change language in public notice to: **“shall be posted with a minimum of 24 hours notice”**. (Leave out the rest of the language about “whenever possible”.)
- Order of Business: language okay.
- Notice receipt of a complete application: Glenn thought this section (#11) was fine. Board okayed.
- Formal consideration requirements: 676:4 reviewed. **Change the language to simply say that “twelve copies” instead of “sufficient copies” and remove the individual departments; skip everything after distribution to departments. Mr. Hurley suggested keeping the language** re: one copy of septic for Health officer. Mr. Quintal suggested that a septic design not necessarily be required prior to approval. He suggested that the requirement be “an appropriate area for septic system location”. Mr. Greenwood said that this was a plan requirement anyway and re-iterated removing all language after “departments”. Mr. Quintal suggested that prior to the “twelve copies” is language requiring all state approvals as appropriate, he suggested changing that; Mr. Greenwood said that it is good to have the list of permits required but wait until Planning Board review/approval before they get them to avoid the need for changes due to P.B. input. **Change “state approval” language that the requirement is “including a list of anticipated State approvals as appropriate”**.
- Mr. Coppelman asked if “B” should reflect Town Engineer and Circuit Rider Planner; Mr. Greenwood said it is specific to the Town Engineer. Mr. Quintal questioned the language stating “Completeness” as he doesn’t determine that. Mr. Coppelman suggested that it say **“The Town Engineer will review the plan and will then determine the engineering fee payment”** (remove the words “for completeness”). Consensus for this change.
- Action required on application: **Change “90 days” to “65 days”** to accurately reflect the statute.

- Ms. Bartlett asked if there was anything in the procedures that could require that the Planning Board get minutes of the Historic District meetings so the Board will know what is going on. Mr. Coppelman suggested that it be a standing item on the agenda for an HDC report for the Board. Mr. Coppelman suggesting adding that item on the agenda for reports for any active subcommittees such as CIP, etc.
- “Order of Business”: Add to this section: **2A. Report of Committees and other Town Agents** (Add standing agenda item for reports from Committees)

The Board continued with the scheduled Public Hearing.

MetroPCS
122 Route 125
36 Depot Road
3 Granite Road

Ray Fournier, representing MetroPCS, introduced himself to the Board. Mr. Greenwood explained that the proposal is for co-location on towers; there are three separate hearings that need to be opened with jurisdiction invoked. Mr. Hurley noted that the only Department comments are from Highway and Health; he was aware that Police and Fire were interested in asking about utilizing the tower. Mr. Hurley read a letter in the file dated Dec. 16, 2005 for American Tower in Kingston to confirm that the Town is interested in utilizing the space reserved for municipal communications which was a condition of approval for the permit. Mr. Fournier explained that they are just renters; the issue would be with American Tower.

Mr. Fournier explained the proposal, 10 x 16 feet concrete pad with 2 -3 cabinets approx. 2 feet wide and about 6 feet tall with antennas added on the tower. Construction, from start to finish, is usually less than 30 days. Depending on traffic, the number of cabinets may eventually be 5. Mr. Coppelman confirmed that this would be in addition to existing ground equipment that is already there for other carriers. They are not expanding the existing compound or tower. The compound is the fenced area below the tower.

Ms. Bartlett asked what would be involved for the Town to connect on to the tower. Mr. Fournier stated that the conversation would need to take place with the tower owner. Mr. Hart stated that the letter implies that there was a condition to allow municipal use. Mr. Greenwood agreed saying that it would be for the one on Depot Road at Northland Forest Products. Mr. Hart said that the Town wants to utilize the Tower and while unfair to the applicant, this site is now before the Board. Mr. Greenwood said that if there is an agreement with American Tower the Town should pursue that and if necessary, revoke the site plan approval. Mr. Greenwood did not recall an agreement with the Tower owners on the Russell Thomas property.

ACTION ITEM: Mr. Greenwood will research the municipal use of the towers; approvals for all three towers.

The attorney for MetroPCS stated that they could not negotiate for the municipal use of the tower but they could certainly talk with the owners and let them know there is a potential issue that ATC might need to clear up.

MM&S to invoke jurisdiction on 122 Route 125 MetroPCS application. (Motion by Mr. Coppelman, second by Mr. Landry) Motion passed 6-1.

The Board decided to continue pending the answer regarding the municipal emergency communication request. Mr. Hart said the Town wanted to research the approvals of the towers which could be done prior to the May 4th meeting. The final resolution with the towers may not be complete before May 4th. The compliance with the original approvals is being checked by the Town. Mr. Mastroianni said that the Board wouldn't move forward with an approval on any site that was not in compliance and the issues were resolved.

Mr. Greenwood vehemently expressed the need to postpone the LGC/NHMA joint Town meeting originally scheduled for May 4th.

MM&S to continue this hearing to May 4th at 7:15. (Motion by Mr. Coppelman, second by Ms. Bartlett) **PUNA**

Mr. Hurley officially opened the public hearing portion of the Northland Forest Products plan.

MM&S to accept jurisdiction of the MetroPCS application at the Northland Forest Products site. (Motion by Mr. Coppelman, second by Mr. Hart) **Passed 6-1**

Mr. Hurley opened the hearing for public comment. Kevin Green of 42 Depot Road asked about the number of antennas going on this tower. The applicant confirmed that there would be a total of 6 added to the existing tower.

MM&S to continue this hearing to May 4th at 7:15. (Motion by Mr. Coppelman, second by Mr. Hart) **PUNA**

Mr. Hurley officially opened the public hearing portion of the 2 Granite Road cell tower site.

MM&S to accept jurisdiction of the MetroPCS application at the 2 Granite Road site. (Motion by Mr. Coppelman, second by Mr. Hart) **Passed 6-1**

There was no public comment for this application.

MM&S to continue this hearing to May 4th at 7:15. (Motion by Mr. Coppelman, second by Mr. Hart) **PUNA**

Board Business, Continued

Mr. Hurley asked Mr. Greenwood when the LGC/NHMA meeting would be re-scheduled.

ACTION ITEM: Mr. Greenwood to set up the LGC/NHMA meeting and inform the Board of the date.

MM&S to adjourn at 9:50 PM. (Motion by Mr. Coppelman, second by Mr. Hart) **PUNA**