

**Kingston Planning Board
June 15, 2010
Public Hearing**

Minutes

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
Jay Alberts	Dan Mastroianni
Ernie Landry	Rich St. Hilaire, Alternate
Chuck Hart, BOS rep. (arrived late)	
Also present: Glenn Greenwood, Circuit Rider/Planner	

Board Members Absent: Richard Wilson, Marilyn Bartlett, Alternate

Mr. St. Hilaire will be a voting member this evening, replacing Mr. Wilson. Mr. St. Hilaire told the Board that he has been in contact with Mrs. Bartlett who has been keeping up with the Board's minutes during her medical absence.

Board Business

CRITICAL CORRESPONDENCE:

- Invoice from Civil Construction, \$1010 approved by the Board by consensus.
- Notice distributed to the Board re: Training Seminar, June 24th
(Mr. Hurley noted that Mr. Hart arrived at this time)
All the Board members, except Mr. Hart, indicated that they would be attending the seminar.
- Request from Carriage Towne Bible Church for release of the bond; Mr. Greenwood suggested that an as-built plan reflecting the new changes might be required.

ACTION ITEM: Mr. Greenwood to speak with Mr. Quintal to determine whether a new mylar is required based on the changes on the site; fees should be applied as needed based on that information, then the CTBC Bond can be released. Done by consensus of the Board.

ACTION ITEM: Ms. Faulconer can notify the Financial Officer that the CTBC Bond can be released upon final approval notification by Mr. Greenwood.

- Special Event Permit, Renaissance Faire – the Board agreed that the Special Event Permit, as this event was an occasional use, would be sufficient at this time.
- Request to change CIP presentation date to July 20th; okayed by the Board.

ACTION ITEM: Ms. Faulconer to notify the BOS and BudCom of the change of the CIP presentation date.

- Informational from DES: Stephen White, Kingston Lake permit.
- Stormwater Management – Definitions memo from Ms. Faulconer; the Board agreed with Mr. Hurley to keep specific definitions within each chapter, with generalized definitions that would apply throughout the book in the front of the book.

MM&S to approve the May 4th minutes as amended: on page 7, add in comment from the Health Inspector that says “I do not see a problem with this structure being used as an addition to the existing business” prior to the rest of the Health Inspector’s comments. (Motion by Mr. Alberts, second by Mr. St. Hilaire) **PUNA**

MM&S to approve the May 18th minutes as written. (Motion by Mr. Coppelman, second by Mr. Alberts) **PUNA**

Tasbak, LLC
Rte. 125

Mr. Hurley noted that the Property Tax card describes this property as being in C-III and the Aquifer Protection Zone. Mr. Hart noted that the plan description said that it wasn’t in the Aquifer; Mr. Greenwood said he thought the Aquifer Map showed that it wasn’t in the Aquifer. Mr. Hurley explained that he had asked Ms. Faulconer to provide the Board, for all applications, with the zone information; this was the information on the Town’s property card for this site.

Mr. Hurley stated that he would allow the applicant to present and then he would read department comments. Paul Nichols, the site engineer for the project, introduced himself to the Board. Bob Coluccio from Webb Engineering, the designer for the storage tanks and containment was also present along with Tom Greer of Tasbak, LLC.

Mr. Greenwood reminded the Board that tonight’s presentation was for Design Review and therefore, was a non-binding discussion; it was not a formal application. Mr. Hurley explained that process for any public present.

Mr. Nichols explained that they were looking for direction as there were some issues with the plan: the use and whether it would be permitted. He referred to Mr. Greenwood’s comments regarding the need to go before the ZBA. The other issue Mr. Nichols discussed was the setbacks and buffer; he noted that a 50-foot buffer is maintained on the southerly side and on the northerly side, due to the site’s design, they are limited to a 20 foot buffer which Mr. Greer plans to vegetate. In the back, there is a 20 foot buffer where the wall is located. Mr. Nichols noted that the well radius does encroach upon the adjacent property which he said may also be an issue.

Mr. Greenwood discussed his concerns: first was his interpretation that the use does not fall within the list of permitted uses or the list of prohibited uses; he does not feel this falls within the parameters of “wholesale operation”; the C-III ordinance states if the use does not appear in the list of permitted uses, nor prohibited then the applicant would need to go to the ZBA for a special exception; he said the Planning Board would need to determine this. Mr. Alberts felt that if automotive filling stations would be allowed, he felt that this would be better, without traffic and compared it to a car wash, mini-mart and 6 bay filling station; akin to an automotive filling station with less traffic. He said that by going before the ZBA with its higher standards that it might have difficulty being passed as a special exception. Mr. Hurley explained to Mr. Alberts that if it went to the ZBA then it would go because it fell under neither section, allowed or disallowed. Mr. Alberts also stated the importance of promoting business and determining which was less intrusive, an automotive filling station or petroleum station.

Mr. Coluccio stated that gasoline is a problem with ground-water pollution far more than oil as it floats; it would be safer than an automotive filling station; no flammable liquids would be stored here; these are Class II combustible liquids with trained personnel operating the hoses.

Mr. Greenwood’s other issues were those items missing from this plan that would be required for any site plan submission. Mr. Greenwood also added that this property does not appear to be in the Aquifer according to the Aquifer map. Mr. Hurley says that, unfortunately, the Town property card says that it is in the Aquifer and asked for the Planning Board member’s input. Mr. Hurley says that the Town map shows that the very front of the lot is in the Aquifer. Mr. Greenwood said that the USGS map does show that the Aquifer hugs Granite Road; he thought it looked like it was on a knoll. Mr. Nichols stated that they had done test pits that did not appear to be of aquifer nature; there is a lot of ledge in the back of the lot. Mr. Hurley said that, if any of the lot was actually in the Aquifer, it was a limited and insignificant amount. He stated that the Board needed to make a determination. Mr. St. Hilaire believed that in the past, the Board has allowed development as long as it occurred away from the Aquifer portion of the lot; Mr. Greenwood confirmed that; he said that the Board had, in the past, required additional hydrogeologic review to determine the actual Aquifer line and allowed activity away from that line. Mr. Greenwood noted that the front setback line would disallow development on this section of the property anyway, even if this section was within the Aquifer. Mr. Hurley said that the Board consensus was that the area of the building was not in the Aquifer.

Mr. Hurley read Kingston Conservation Commission’s (KCC) comments which requested that BMP’s be used to eliminate any contaminants.

Mr. Hurley said the Board needed to determine if the applicant would need to go to the ZBA for a Special Exception. Mr. Hurley summed up Mr. Alberts’ discussion. Mr. Mastroianni confirmed that the idea would be to store the fuel and then distribute it which he equated as similar to a filling station. Mr. Coppelman agreed that it would probably be less of an impact but he believed that it was enough of a gray area; the Board pays a

Planner for his advice and his first comment this evening was that it required a Special Exception so his opinion would be to follow that advice. Mr. Landry agreed with Mr. Coppelman. Mr. Hart stated that if a gas station could go on the site than there was no reason for this not to go there. Mr. St. Hilaire said when C-III was developed, they thought that they had put in everything and that he didn't think that anyone thought about a home heating oil distribution yard. He stated that he was asking the Circuit Rider where the Board would go with this as home heating oil distribution was not specifically spelled out. Mr. Greenwood stated that was the crux of his argument; the C-III zone was structured to have a list with the understanding that it might not include everything that might eventually be proposed in the zone; if something was proposed that was not specifically permitted or prohibited, the ZBA would be the arbiter of the use. He also said that it was not unreasonable for the Board to look at the list to see if there was a use that was the same in activity. He added that there was a similarity, in a limited way, to a re-fueling station; he continued that where it differs is bulk levels of material that are not at all the same and the vehicles that are accessing the sight are not at all the same. He stated that, from his perspective, that leads him to see this as a different type of operation from automotive gas station. He said that abutters would also look at the two types of operations differently; some would be happier with the petroleum underground as with a gas station and others who would feel less comfortable having bulk materials of this nature stored above ground. He believes that the containment facilities will be adequate but re-iterated that the use is considerably different from any of the uses allowed in the list of permitted uses which is why he made the recommendation that he did.

Mr. Alberts thought it interesting that above-ground storage tanks were allowed in the Industrial Zone and Rural Residential Zone and currently in the Historic District Zone. Mr. Greenwood stated that he would certainly expect that they be in the Industrial Zone.

Mr. St. Hilaire commented that he did not believe that the Planning Board had the right to interpret the Ordinance that was voted on by the voters; he believed it needed to go to the ZBA even though he thought it would be a lesser disturbance than a gas station. He stated that there was no place in C-III that called out a fuel depot as a permitted use. He thinks ignoring the Circuit Rider's comments gave ammunition to anyone not liking the Board's decision at the site plan review public hearing. He stated his belief to follow due process by sending the applicant to the ZBA. Mr. Hart asked if Landscaper's Depot had oil trucks and confirmed that the trucks only parked there and did not fuel there. Mr. Greenwood said that there was an amended site plan for that site and that they were only parked there; fuel tanks had not been reviewed. Mr. St. Hilaire said that he would change his opinion if the Planning Board had made a conscious decision of storage and dispensing of fuel for Depot Energy, with that approval after the creation of C-III.

Mr. Greer said that the trucks were not filled on site; he said they go to Portsmouth and Revere. Mr. Coppelman confirmed that there was not bulk storage of heating oil at Landscaper's Depot. Mr. St. Hilaire stated that if that was the case, he believes it is cleaner and neater by sending the applicant to the ZBA. He added that he was more than willing to go the ZBA to say he supported this.

Mr. Hurley stated his belief that it needed to go to the ZBA; he agreed that the Special Exception was required. He did not believe that this was a hard process. He added that the applicant would need to go to the ZBA prior to returning to the Planning Board for site plan review. He continued that there would be other issues that the Planning Board would need to discuss if the Special Exception was granted. Mr. Nichols asked whether a denial was needed first. Mr. Greenwood explained that “Special Exception” had original jurisdiction with the ZBA and read the Ordinance requirements.

Mr. Hurley noted that the review of the Board showed that 4 members were in favor of requiring a Special Exception, with three members against. Mr. Hurley stated that if this had been a site plan approval, there would have been a denial which would have sent the applicant to the ZBA as well as the majority believed there was a need for a Special Exception.

Mr. Mastroianni asked about the applicant needing a Special Exception under “Materials Distribution” to determine what they needed a Special Exception for so they didn’t have to return. Mr. Greenwood said that the onus is on the applicant to make sure the ZBA knows what their use is. Mr. Coppelman explained that the concept of “Materials Distribution” was more for warehousing and distribution; bulk fuel storage was not discussed at this time but since it could be interpreted that way, the applicant should probably incorporate that into their request of the ZBA.

Mr. Alberts stated his previous comments were to determine the proper venue for the hearing; since he also sits on the ZBA, he questioned whether now would be the time for him to recuse himself from any further deliberation; he asked Mr. Greenwood’s and Mr. Coppelman’s opinions. Mr. Greenwood said that, when discussing recusal, it is clear that information gained through the pursuit of another position shouldn’t be a concern so he wouldn’t be required to recuse himself. Mr. Coppelman agreed with Mr. Greenwood. Mr. St. Hilaire added that since this was for Design Review, no decisions would be made and there would be no votes on the proposal.

Mr. Hurley read comments from the Town Engineer; he questioned the ability of building an 18 foot retaining wall and maintain existing vegetation on the back side of the lot; a properly designed wall with guardrail on the top will be required; the area behind the wall will need proper re-vegetation or fence for an acceptable buffer; drainage: an acceptable stormwater run-off treatment and drainage plan will be a challenge for the amount of impervious coverage proposed for this small lot; access: assumption that one-way traffic will be proposed; site security: security fencing should be required around activity area on this site; compliance: regional impact, all Town, State, Federal regulations, emergency response, clean-up inspection, maintenance plan will be required. Mr. Coppelman noted Mr. Quintal’s comment of declaration of Regional Impact; Mr. Greenwood said that couldn’t be invoked until there is a formal application. Mr. Coppelman wanted to make sure that the applicant was aware of this possibility of this as it brought the Regional Planning Commission into the process as an abutter. Mr. Greenwood added that it also brought the Town of Plaistow in as an abutter.

Mr. Hurley opened the floor to any abutter's present. Darlene Deptula-Hicks introduced herself to the Board. It was explained that her property abutted the entire back part of the property. Mr. Nichols explained that the proposal showed a 20 foot buffer with a wall roughly 18 feet in height, maybe a little less depending on sloping; the wall was approximately 30 feet back from the lot line. Ms. Deptula-Hicks asked if it was a true wall or a retaining wall built into the side of a hill; Mr. Nichols stated that it was a retaining wall built into the side of the hill; he added that there would be a safety fence on the top of the wall; the security fence would be a chain-link fence.

Mr. St. Hilaire asked about the second Town-bound noted by Mr. Nichols, it shows as 1356 feet; he asked if it was in the stone wall behind the old Cox farm, now belonging to Ms. Deptula-Hicks. He noted that based on that, her property was about 1,000 feet from the stone wall behind her original barn to the back of this property.

Mr. Coppelman asked Mr. Nichols to explain why the required 50-foot setback between commercial and residential was not being used on the back side of the property. Mr. Nichols said that the State requires that the well be 75 feet from the containment area and in order to do that, the well must be placed on the back of the lot. Mr. Coppelman said that he didn't believe that the Planning Board had the authority to waive that setback requirement. Mr. Nichols thought the abutting property had a Conservation Easement. The Board determined that the land being discussed was located in Kingston. Mr. Greenwood believed that property was zoned Rural Residential; Mr. Nichols stated that the last time he reviewed it, that property was Residential, but that was awhile ago. The Board spent some time reviewing the tax maps. Mr. Greenwood said that lot 10 was in the Commercial-III zone; the setback is to a residential zone, not a residential property. There was discussion about the language in C-III regarding the setbacks and buffering. Mr. St. Hilaire reminded the Board that tonight's only obligation was to let the applicant know there was a question that would need to be answered during the site plan review process.

A question from the applicant was raised as to whether approval from Plaistow would be required since it was on the Town line. Mr. Greenwood did not believe that it did. He said that declaring the proposal as being of Regional Impact would give Plaistow an ability to comment as an abutter including any issues with setbacks.

Jim McCusker, an abutter living in Plaistow, wanted to know how far away the proposed tanks would be to the two wells on his property. Mr. Nichols pointed out a well that was approximately 150 feet from the container area. Mr. Hurley asked how large the proposed tanks would be including the containment area for those tanks; Mr. Coluccio answered that the large tank will be for 100,000 gallons built to American Petroleum Institute Standards and four 20,000 gallon tanks built to Underwriter Laboratory Standards which will be inside a steel-reinforced concrete containment dyke; the volume of which will be the size of the largest tank plus either 10% of the largest tank or the contents of a 25-year storm, whichever is greater. He explained how this would be determined for presentation for site plan review. Mr. Coppelman recalled that at a previous Design Review the applicant said that Federal requirements don't require 100% containment of all the tanks be maintained; the applicant confirmed this; Mr. Coluccio stated that all of the containers leaking at once

would be extremely rare; Mr. Coppelman commented that the issue with the well in the Gulf of Mexico was also considered to be extremely rare; he wanted it on record that he would be more favorable of a plan that offered 100% containment. He added that, with regard to the buffer, on page 904-5 of the Zoning Book, in site plan review regulations under “D”, appropriate buffers are discussed; he read that the required buffer zones shall not be less than 50-feet when separating a non-residential lot from a residential lot.

Mr. St. Hilaire, speaking as the Road Agent and not as a member of the Board, said that he would be looking for some off-site improvements on the road with a bond on it; it is an older road and won’t hold up to 18-wheelers in and out of there with spring thaw, etc. Mr. Alberts asked if there were any long-range plans for the road; Mr. St. Hilaire answered “no”; he continued that this road basically has no traffic on it. Mr. Nichols noted that NHDOT has plans for the road. Mr. St. Hilaire suggested that any plans for upgrading the road marry the NHDOT plans for Rte. 125. Mr. St. Hilaire suggested discussing this at a later time with himself, the applicant and Town Engineer.

Mr. Nichols asked if there were any concerns about the buffer on the north side of the property. Mr. Coppelman suggested that it was a mixed use parcel and would be less sensitive to that buffering compared to the one on the back side of the property. Mr. St. Hilaire agreed. Mr. Mastroianni asked about the height of the tallest tank; Mr. Coluccio explained the tank heights. He stated that the tanks themselves are 24 feet high; only 20 feet of the tank will be showing above the ground. Vehicle traffic and sound levels on Rte. 125 were discussed.

Mr. Hurley recapped for the applicant that they need to go to the ZBA and reiterated the Design Review process.

Armand and Charlotte Boutin

Rte. 125

Mr. Hurley read a note that the Boutin’s had left a message that they were unable to raise the funds for the Engineering Fee and were therefore not going forward with their application. Mr. Coppelman noted that those fees had been significantly reduced to \$1000 from \$5000. Mr. Nichols asked if the Board could reconsider the engineering deposit. Mr. Hurley read the comments received by the Town Engineer for the review of this site which included issues with the buffer (904.5.A); parking (904.5.D) – no objections; location of parking (904.9.B) on pavement with proper run-off and 201.6.D (Stormwater run-off and recharge); solid waste (904.5.G) – location of containers and disposal and there should be a note that the plan will comply with current sign and illumination regulations. Mr. Hurley’s said that his point was that there were other things than already shown on an existing plan that still need to be addressed. He added that the Town Engineer works on reviewing a plan as well as the Circuit Rider; he explained that the Board thought that the \$1000 was not exceptionally high for a commercial site. Mr. Nichols re-iterated his comment that this was basically an existing conditions plan. Mr. St. Hilaire stated that some money has already been spent by the Town Engineer; perhaps an amount could be established and

then re-address the issue. Mr. Greenwood suggested that if this was the way the Board would be moving, then the hearing needed to be opened and then continued.

Mr. Hurley officially opened the hearing for the Boutin site plan review.

MM&S to accept jurisdiction of the plan. (Motion by Mr. St. Hilaire, second by Mr. Alberts) **PUNA**

There were no public comments.

MM&S to continue the Boutin plan to the July 20th public hearing at 8:00 PM and in the meantime, have Mr. Greenwood contact the Town Engineer to review the Bond requirement; the Board to make a recommendation concerning possible Boutin Engineering Bond reduction at the June 22nd public meeting. (Motion by Mr. St. Hilaire, second by Mr. Alberts) **PUNA**

Thomas and Catherine Fraser
8 Ridgewood Drive
R30 Lot 68J
Lot Line Adjustment

Mr. Hurley noted that, according to the Town's Property Cards, the property was located in the SFR and Aquifer Protection Zones. Mr. Greenwood said that he did not believe that it was in the APZ; the map was reviewed and it was determined that it was not in the APZ. There was discussion as to the impact of incorrect information on the Town's Property cards.

ACTION ITEM: Mr. Hart and Ms. Faulconer to bring this misinformation (Property Cards for Tasbak and Fraser) to the attention of the Assessing Department.

Mr. Hurley read that the KCC had no comments.

After Board discussion about driveway requirements, Mr. Fraser submitted a written request for a waiver for the driveway which was read by Mr. Hurley. The waiver explained that the driveway had been in this location for more than 30 years. Mr. St. Hilaire said that the driveway has also been on the other person's property for this same length of time, this proposal will put it on the property that it should be on but would just not have the 20-foot setback. It was explained that the driveway will be right on the property line now with the lot line adjustment.

MM&S to accept jurisdiction of the plan. (Motion by Mr. St. Hilaire, second by Mr. Coppelman) **PUNA**

Mr. Fraser explained that this simply puts the driveway that he currently uses, actually onto his property instead of on the abutter's property; another driveway will be abandoned.

Mr. Coppelman stated that the driveway that is being abandoned should be noted on the plan and mylar so there are not three approved driveways showing on the one lot. Mr. Coppelman noted that normally he would be more stringent on maintaining a setback but in this case it is making the situation better.

Nancy Darnstead, the abutter to the property, stated her agreement for the proposal. She wanted to make sure that the northeast tip of the triangle was within the legal distance for her septic system. Board consensus was that it was okay. Mr. Hurley asked Ms. Darnstead to confirm that she was not opposed to the Board issuing a waiver for the 20-foot setback. She stated that she was in agreement.

Bart Noyes, an abutter at 9 Elkins Road, was assured that these changes did not change any points on his boundary. He stated that he had no objections to the proposal.

MM&S to grant the waiver from the 20-foot setback requirement on the driveway to be as shown on the plan. (Motion by Mr. Coppelman, second by Mr. St. Hilaire) **PUNA**

Mr. Nichols stated that he revised the mylar during the Board's discussion. He added that the monumentation had already been done; he needs to forward the monument certification document to the Town.

MM&S to approve the lot line adjustment with the driveway waiver, with the correction noting the abandonment of one of the three driveways. (Motion by Mr. Coppelman, second by Mr. St. Hilaire) **PUNA** (Mr. Hurley signed the Mylar)

ACTION ITEM: Ms. Faulconer to review the recording fees with Mr. Fraser.

Board Business, continued

Mr. Mastroianni asked for a one-day extension for his application deadline to Friday, June 18th; the extension was granted.

MM&S to adjourn at 8:57. (Motion by Mr. St. Hilaire, second by everyone) **PUNA**