

**Kingston, New Hampshire
Board of Selectmen
Meeting of May 13, 2013
MINUTES**

The meeting was called to order at 6:30 pm in the Selectmen's Office of the Kingston Town Hall. In attendance were Chairman Mark Heitz and Selectmen Peter Broderick and George Korn.

Discussion of Commercial Notice of Violation Issued

Planning Board members Richard Wilson and Glenn Coppelman were present at the request of the Board to join a discussion about a Notice of Violation sent to Gary Hammond, owner of property at 22 Main Street. Mr. Hammond also was present, with his attorney Scott Gleason.

Chairman Heitz advised that the Selectmen had received a request for enforcement action from the Planning Board relative to activity on Mr. Hammond's property that exceeds the approved site plan. Chairman Heitz read the request aloud, noting that there is particular concern about compliance with the town's Shoreland Protection and Stormwater Management Ordinances. In response to the Planning Board Request the Selectmen had prepared, signed and hand-delivered the Notice of Violation to Mr. Hammond. Chairman Heitz subsequently had spoken with Mr. Hammond and had invited him to the meeting to explain the process to this point and going forward. He noted that Building Inspector Robert Steward also had been invited to attend but was unable to be present due to health concerns.

Attorney Gleason addressed the substantial investment of time and money put forth by his client in trying to get the former Lakeside Restaurant ready for re-opening as Seasons by the Lake Restaurant. He explained that his goal in attending the meeting is to reach an agreement that will allow his client to obtain conditional occupancy approval and begin operation of his restaurant pending a final decision by the Planning Board as to what needs to be done to bring his site into full compliance. Attorney Gleason noted that there is documentation indicating that the former owners had worked out certain arrangements with the town's Health Officer that had allowed continued operation of the restaurant despite inadequacies in the existing septic system. He noted that he hopes the same level of cooperation will be afforded his client, particularly since Mr. Hammond has worked closely with Building Inspector Robert Steward as he has completed the work on the site. He noted that the financial damages to his client if he is subjected to a three to four month period when he isn't able to open his business because of the Planning Board's site plan process will be excessive.

In response to a question from Selectman Broderick, Mr. Hammond advised that he expects to have the state Food Service Inspector on site on May 14, 2013, and anticipates that his license will be issued thereafter.

Chairman Heitz referred to a letter dated March 19, 2013, prepared by the Planning Board and directed to Mr. Hammond. That letter advised Mr. Hammond that he would not need to undergo site plan review so long as he complied fully with the recorded site plan (Plan D-17224 at the Rockingham County Registry of Deeds). If any expansion or amendment to the approved site plan were to be undertaken, an amended site plan was to be filed and duly reviewed by the Planning Board.

Attorney Gleason addressed a concrete patio that was added to the site, noting that his client had intended to re-build an existing deck area but had opted for a concrete patio instead because he'd been advised by the building inspector that the patio would constitute a landscaping improvement rather than a structure and therefore would not be considered a change to the site plan. Mr. Hammond added that the inspector had even visited the site after the forms had been put in place but before the concrete had actually been poured.

Chairman Heitz pointed out that commercial site development falls within the authority of the Planning Board through its site plan review process. Any erroneous information or advice provided to Mr. Hammond by employees or officials of the town can not supersede the written instruction given to him by the Planning Board in their letter of March 19, 2013, since that was his approval to open and operate a restaurant without further review of the Planning Board and was contingent upon his not exceeding the approved site plan. Attorney Gleason referred to Article 205 of the Town's ordinances and stated that the Building Inspector is specifically cited as the administrative authority for the Ordinance. (editorial note: 205.10 relating to Administration specifies the Building Inspector as administrative authority for building permits; the Planning Board for subdivision, site plan review and conditional use approval; and the ZBA for Special Exceptions on existing lots.)

Mr. Hammond pointed out that the approved site plan calls for a gravel drive that the former owners had paved. That action had exceeded the approved site plan and had added to the amount of impervious surface on the site, but no enforcement action had been undertaken by the town. Chairman Heitz noted that fact, but advised that it has no bearing on the current discussion.

Atty. Gleason advised that his client recognizes there is an issue and that he is only asking for a consideration of time to bring the site to whatever compliance the Planning Board determines, allowing him to operate in the interim under a conditional approval.

Chairman Heitz asked Mr. Hammond what his intentions are going forward. Attorney Gleason advised that they are hoping for some relief but realize that they will need to do as they're told by the Planning Board. Mr. Hammond discussed his hope that he will be allowed to mitigate increased run-off due to the concrete patio area by providing gravel drainage/filtering areas and installing a rain gutter on the building. Mr. Wilson and Mr. Coppelman advised that there will need to be engineering computations and plans in order for the Planning Board to properly review such a proposal. There is a stated percentage of lot coverage beyond which they are not able to authorize any additional impervious surface.

Selectman Broderick advised that he has worked with Mr. Hammond over the past several months and considers him to have been cooperative beyond what was required in every instance. He stated that he would like to see the Planning Board back off of their request for a total Cease and Desist until such time as they're able to advise Mr. Hammond of what needs to be done to bring the site into compliance.

MOTION: Selectman Korn moved that enforcement action be stayed on the property located at 22 Main Street pending the Planning Board meeting at which Mr. Hammond's amended site plan will be reviewed, and that a temporary, conditional Certificate of Business Occupancy be issued for a four-month period. There was no second to the motion.

Chairman Heitz expressed concern that the town may be exposed to liability if the restaurant is allowed to operate using features that shouldn't be allowed to remain on the site, such as the patio area. Attorney Gleason advised that his client is willing to provide a certificate naming the town as additional insured on his liability policy to address that concern.

Mr. Coppelman advised that Mr. Hammond should be aware that some aspects of the Ordinance don't fall within the Planning Board's authority to waive, i.e., the amount of impervious surface allowed within the Shoreland Protection area or the removal of existing trees within the setback area. It's entirely possible that Mr. Hammond will provide engineering plans and calculations as well as other evidence and that the Planning Board still will not be swayed to allow all of the work that's already been done to the site.

It was agreed that Mr. Hammond will request to be placed on the agenda for the Planning Board's May 21, 2013 meeting and that the Board of Selectmen will be present at that meeting as well.

Review and Acceptance of Solid Waste Collection and Disposal Contract

Peter Lachapelle of Waste Management was present to review with the Board a proposed solid waste collection and disposal contract. The five year contract will have two optional 2-year extensions and will provide 96-gallon carts to each residence for single-stream recycling, to be collected every other week. Regular household trash will be collected in 39-gallon bags or 50 lb. barrels. A 2.5% cost increase per year is built into the contract. Mr. Lachapelle intends to be present with educational information during Kingston Days weekend and informational flyers will be provided to each residence as well. The new contract will take effect sometime this summer.

Purchase Order for New Cruiser Approved

Chief Briggs was present to request Board approval of a purchase order for a new cruiser. The Board reviewed and signed the purchase order at the state bid price.

Highway Department Updates

Road Agent Richard St. Hilaire advised that flags donated in 2011 by John Pizar are in need of replacement. He had included a budget line of \$500.00 for the purpose and believes he has the commitment of another \$500.00 from Mr. Pizar's grandson. The new flags will be nylon rather than cotton so should last longer. The Board approved.

Mr. St. Hilaire then asked if the Board can accompany him on a tour of the recreation building on May 14, 2013. He intends also to be present for the Recreation Commission meeting on the evening of May 14th.

Administrative Issues

An Intent to Cut for a property on Country Pond was signed.

Purchase orders covering the new ambulance and its various components were signed. Discussion was held as to whether the highway department will assume ownership of the old ambulance, and Richard St. Hilaire advised that he would prefer to take title to the Fire Department's former forestry truck. He noted that the town probably can realize more than the \$5,000.00 offered as a trade-in allowance if they just put the old ambulance out for bid. Because the amount approved by voters in March included the trade-in allowance, an additional \$5,000.00 needs to be located to meet the cost of the new ambulance. It was agreed that, for now, the sum will be taken from the Highway Department's radio line since it was thought that the old ambulance would be going to that department.

Review of Previous Meeting Minutes

It was agreed to withhold action on the May 6th and May 8th meeting minutes until a future date.

Adjournment

There being no further business, the meeting adjourned at 8:35 pm and the Board retired to address administrative issues.

**Respectfully submitted,
Catherine Grant
Administrative Assistant**