

**Kingston Planning Board
Public Hearing
May 24, 2011**

The Chairman called the hearing to order at 6:30 PM. There were no challenges to the legality of the hearing.

Members in attendance:

Richard Wilson, Chairman
Ernie Landry
Jay Alberts
Ellen Faulconer, Alternate

Mr. Wilson announced that Ms. Faulconer would be a voting member for this evening's meeting.

Glenn Coppelman, Vice Chair (joined the meeting in progress)
Mark Heitz, BOS rep. (joined the meeting in progress)
Adam Pope (joined the meeting in progress)

Members absent: Dan Mastroianni, Richard St. Hilaire, alternate.

Also in Attendance: Glenn Greenwood, Circuit Rider Planner (arrived with the meeting in progress).

Bruce Mayberry
BCM Planning, LLC

Mr. Mayberry introduced himself; he has been working on Impact Fees since 1991. He had worked with Newton on their school impact fees in 1999. Mr. Mayberry provided the Board members with a hand-out and reviewed those topics dealing with Impact Fees in New Hampshire communities.

Mr. Mayberry stated that he had reviewed Kingston's current ordinance and due to changes in the statutes in 2004, he would suggest that there be some updates done to the ordinance. He added that the current ordinance would only be for roads and schools, to do anything else would require changing the ordinance.

He reviewed some basic Impact Fee principles; Impact Fees are for things of general benefit, town-wide facilities with one of the basic principles being "proportionality". He continued that the success of Impact Fees is always conditional on the Town's performance in providing the facilities; if not done in a certain period of time, the fees would need to be refunded. He clarified that Impact Fees are not only for future facilities, if there are facilities with excess capacity, the Town can recoup the cost of that capital improvement.

<Board note: Mr. Heitz joined the meeting at this time.>

Mr. Wilson asked about the Impact Fee regarding the debt service for the High School; Mr. Mayberry said that the cost of capital improvements can be recouped based on projected future enrollments. Issues involving enrollments were discussed. When asked about deadlines and refunding of fees, Mr. Mayberry explained that the Town needs to engage in moving toward the goal, not necessarily the actual construction of the facility; the deadline is on an individual fee when it is collected; the statute says 6 years. He clarified that Impact Fees should not be based on “theoretical” projects, there would need to be the ability to demonstrate a tangible improvement to show where the money has been allocated.

Mr. Wilson explained current building projects and the future projects in the CIP; it was clarified that Impact Fees are only based on new construction. Mr. Mayberry stated that some towns include additions per square footage for Impact Fees but that would need to be defined in the Ordinance.

Mr. Mayberry reviewed examples of Impact Fees based on the five standard housing types included in the Census: he reviewed an example of the impact fee schedule shown on his hand-out. He stated that Commercial Development has a significant impact on Public Safety and there can be fees allocated for this; he continued that ½ of Public Safety’s response is for Commercial. He recommends that if there are Impact Fees, the Town should not waive one sector over the other for “fairness”; the statute allows for waivers with criteria for those waivers such as not charging elderly housing for Impact Fees for schools but charging fees for emergency services. Mr. Mayberry added that Senior developments actually pay more for emergency services; another example would not be charging Assisted Living developments for Recreation Impact Fees.

Mr. Mayberry discussed some of the information required to determine Impact Fees and provide the basis for the proportional formula such as “Call for Service” data, Tax Assessor Data Base to establish the Town’s profile and service base; school enrollment ration to define impacts. He explained that this type of data helps to make for better defensibility of the Fees. He continued that he would also interview the Departments, review the available CIPs as the better the planning, the better the plan.

Mr. Heitz asked if there were a lot of challenges to Impact Fees. Mr. Mayberry answered that while there is always “grumbling”, there are not a lot of court challenges.

<Board note: Mr. Greenwood arrived at this time.>

The timing of the Impact Fee payments was reviewed; a subdivisions approval does not mean the immediate charging of Impact Fees; they are normally associated with receipt of the Occupancy Permits. Mr. Mayberry suggested that the Building Permit should have a note that explains that Impact Fees are due at the time of the Certificate of Occupancy. Mr. Mayberry explained that the grandfathered status of a subdivision from Impact Fees was for 4 years; Impact Fees are based on time of approval and grandfathering would last for 4 years; any new lots would use any new fee that had been established. Mr. Mayberry confirmed for Mr. Wilson that if a condominium development had been approved last year and the Impact Fees were adopted at the

next election; that development could not be charged Impact Fees for the next four years. Due to the four-year issue, Mr. Mayberry said that a lot of Towns keep an inventory of pending subdivisions to keep the fees, and possible fees, up-to-date. He added that subdivisions, to be grandfathered, would also need to have met thresholds of substantial development.

“Ballpark” Impact Fees were reviewed including possible fees for a SFR home; the amount of fees for a new library facility; fees for Police were usually lower than fees for Fire due to equipment costs. Mr. Heitz asked if Impact Fees for only for new buildings; Mr. Mayberry said that major capital equipment can also be part of the Impact Fees. Mr. Mayberry said that the Town can decide its policy on Capital Equipment as infrastructure. He re-iterated the need to demonstrate a proportionate demand on the development.

<Board Note: Mr. Coppelman arrived at this time.>

Mr. Alberts questioned the example shown on “slide 3” in Mr. Mayberry’s hand-out. Mr. Mayberry explained that it was an example of a Town with three Impact Fees: School, Recreation, Public Safety. Mr. Alberts asked if Impact Fees deter Commercial Development. Mr. Mayberry said that he hadn’t seen Impact Fees act as a deterrent. Mr. Wilson asked about road Impact Fees when a developer might already have to upgrade the road or intersection at the site of the proposal. Mr. Mayberry explained that usually a retail site, restaurant as an example, had a lot of human activity per square foot that added more to Public Safety versus other human activity and the fee schedule would reflect that.

Mr. Heitz asked Mr. Mayberry to confirm that improvement already completed, such as the library, could have Impact Fees applied for that or for future additions. Mr. Mayberry answered that if the building has excess capacity for the future, the Impact Fees could be charged to cover a new development’s share of recoupment; if the library had a consultant, for example, that used a rational method of expansion that could be used. Mr. Coppelman asked if, in the case of the library, it would be based on the delta between current capacity and additional capacity. Mr. Mayberry stated that it would need to have the same standard for current and future use.

Ms. Faulconer asked how Impact Fees were charged for multi-family units. Mr. Mayberry stated that Impact Fees are done on a per dwelling unit basis; some Towns’ formula goes by square footage, some by number of bedrooms.

Mr. Wilson confirmed that, if the Town wanted to assess for Public Safety and the Library, the Ordinance would need to be amended. Mr. Mayberry suggested amending the Ordinance to enable the Town to assess Fees based on the Statute then the Town could decide which fees to assess; have the proper public hearings and adopt fee schedules.

Mr. Mayberry stated that the scope of work would depend on the number of categories that the Town wanted and what he would need to look at for this. Possible areas include Public Safety which he suggested be broken down into two categories, Fire and Police, Fire being the biggest part of that portion of Impact Fees; School, Highway, Library. Mr. Mayberry said that culvert replacements that were in the CIP could be included for Highway.

<Board Note: Mr. Pope arrived at this time.>

Ms. Faulconer asked about other items being part of the CIP such as the Recreation Building; she asked about Open Space. Mr. Mayberry said that the statute prohibits using Impact Fees for Open Space but the other items, if in the CIP, were able to have fees assessed. Mr. Mayberry confirmed for Mr. Coppelman that normal maintenance items were not able to have fees assessed; Impact Fees for highways would have to be based on major arteries or intersections.

Mr. Mayberry noted that the current ordinance is extremely specific on fees and suggested taking the methodology out of the ordinance language; he explained that the fees are limited to what the Town's plans are by "evidence". For recreation fees, there would need to be a long-term plan with the need for the number of ball fields and how it was determined. He added that when determining the expansion capability of facilities, "reasonableness" is the guiding factor. Mr. Mayberry clarified that Open Space was prohibited by Statute but building trails for recreational use within that space can be used for Impact Fees. Mr. Mayberry cautioned against the CIP committee asking for "wish" lists. He added that Impact Fees can only come in to the Town as quickly as the growth is occurring. The ability of development within the Town was reviewed with the consensus being that there was a lot of possible developable land still available due to large parcels currently in current use.

Mr. Greenwood stated that it is used successfully in Brentwood; a considerable amount of money has been brought in, especially for the schools. Mr. Mayberry stated that the best way to think of it was to offset taxes. Ms. Faulconer said that even though there wasn't a lot of development now, it would be a shame to be sitting here five years from now wishing that Impact Fees had been established. Mr. Wilson agreed that it would be good to put in effect before growth occurred. The Board discussed the previous limited growth ordinance.

The Board discussed the process necessary to move forward with this proposal. Mr. Mayberry offered the possibility of a tiered project to determine the feasibility of Impact Fees. Mr. Heitz asked if this was done as an hourly rate. Mr. Mayberry said that it could be either hourly or a fixed fee; determining whether it was reasonable to do the fees should probably come first. Mr. Wilson suggested that Mr. Mayberry contact Mr. Greenwood for any additional information he would need; he added that the Board or Mr. Greenwood could get the statistical information from the Police and Fire Departments. Mr. Mayberry told Mr. Heitz that when Newton's Impact Fees were done, it did include the new high school.

Mr. Landry discussed the potential value for Impact Fees, helping with the dollar value for the Town and the differences in property values based on new services and facilities. Mr. Mayberry confirmed that the general conclusion is that Impact Fees are used by places looking for quality development and gravitate towards this type of development; this type of community tends to be attractive to developers. He added that when developers come in, they ask what the Impact Fees "are", not whether the Town has them or not; Impact Fees seem to more of a common practice than they were 20 years ago. Mr. Mayberry and the Board discussed area with Impact Fees and positive growth. Mr. Greenwood commented that he was always surprised by the lack of negative discussion in Brentwood regarding Impact Fees, which are fairly high. Mr. Heitz commented that builders pass it on in the selling price.

Ms. Faulconer asked how the updated Ordinance would be prepared. Mr. Mayberry stated that he has a model that has a basic approach that he could amend to meet the Town's needs. He suggested that the Town's Counsel might have specific ideas on some of the language; they should review the proposal since they may need to be the one defending it. Mr. Greenwood explained that Brentwood used Mr. Mayberry's model for their ordinance. Mr. Mayberry cautioned that the ordinance needs to reflect changes in the Statutes.

Mr. Wilson thanked Mr. Mayberry and re-iterated that he should contact Mr. Greenwood about moving forward and gathering any information that he may need to move forward.

The Board continued the discussion after Mr. Mayberry left the meeting. Mr. Alberts was interested in an opposing viewpoint on Impact Fees. Mr. Greenwood stated that he was not an advocate for Impact Fees but he does recognize that they serve a purpose as a Planning tool. He explained that if there was a planning staff and adequate planning resources the Town might not need them but that wasn't the case in Kingston. He said that despite his belief, it has worked remarkably well in Brentwood, with limited negativity. Mr. Wilson commented that he had been against Impact Fees until he was informed about keeping taxes down. Mr. Heitz said that amount of the Impact Fees was substantial in relation to the costs of housing which averaged between \$200,00 to \$300,000 versus the same fee on a \$79,000 home.

Mr. Heitz commented on the costs involved in establishing Impact Fees; Mr. Greenwood agreed that there was an administrative cost to stay ahead of the curve in understanding Impact Fees; there are steps and protocols to be followed but he added that Kingston has the staff to be able to do it. Mr. Greenwood explained that while the Ordinance is prepared by the Planning Board, the oversight is done by the Board of Selectmen. The Board talked about the possible benefits of Impact Fees on not only future projects but current ones; forecasted growth versus actual growth and the impact on the fees; projected enrollments versus actual; methodology of Impact fees.

Mr. Wilson ended the discussion by confirming that the Board wanted to continue this discussion on an upcoming agenda.

Board Business

Correspondence:

- RPC Commissioners/ability for the Board to appoint alternates; no volunteers at this time.
- Letter to Plaistow Planning Board regarding notification procedures; the Board authorized the Chairman to sign.
- Affidavit regarding Voluntary Lot Merger for Diamond Oaks was signed by the Chairman; this is to be recorded at the Registry.
- Memo re: Russo Earth Care vehicles on Galloway property.

ACTION ITEM: Send Enforcement request to BOS re: Russo Earth Care as it has no approval for use on the site.

Mr. Alberts asked to return to the Plaistow notification discussion and asked if the Board was comfortable with the actions taken by Plaistow. Mr. Coppelman stated that, if nothing else, the Town of Kingston should have had to sign off on the plan. Mr. Greenwood explained that the applicant could have used the Municipal Town line as the property boundary but if not, there would need to be Kingston's signature on any registered plan; he suggested that because of this requirement, there appeared that there was no new plan.

The Board re-affirmed their decision to send the letter to Plaistow.

- The Board received the Order of ZBA appeal v. Paul Cain.
- Town and City Magazine
- Circuit Rider manifests for Mr. Greenwood to complete were giving to Mr. Greenwood to fill out and return to the Board.

Board Business, continued:

MM&S to approve the April 26, 2011 minutes as written. (Motion by Mr. Coppelman, second by Mr. Alberts) **Motion passed 4-0-2** with Mr. Heitz and Mr. Pope abstaining.

There were no ordinance updates for the Board to discuss this evening. Mr. Wilson will continue working on the livestock ordinance to bring to the next discussion.

Mr. Wilson reviewed the discussion on the Brox access/Roadstone Drive with the Board of Selectmen; the Town's attorney will be contacted to review the feasibility of the issues involved prior to any review by the assessors. Mr. Coppelman suggested the possibility of the State coming down to talk with the parties regarding a signalized intersection at a spot other than Roadstone.

Gravel Pit Renewals: Mr. Wilson noted that Mr. Landry and Mr. Alberts went on the gravel pit site walks. Mr. Landry commented that Mr. Early's plan was reviewed during the site walk and appeared very complete. He and Mr. Alberts agreed that the site is consistent with the plan. Mr. Early stated that no product had been removed during the year but he intends on removing some soon. Mr. Landry said that the plan stated it was Industrial but the Tax Maps show it to be in the Commercial III zone; he suggested that the plan should reflect the zone accurately. Mr. Coppelman said that the plan is supposed to show the area that is being worked for the current permit; he asked if this was shown. Mr. Alberts stated that he did not believe that it was. Mr. Greenwood confirmed that the plans are supposed to show the proposed excavation sites.

ACTION ITEM: Mr. Faulconer to contact Mr. Early to come in and mark the extent of the proposed upcoming excavation on the existing plan.

The permit will be signed after this is completed.

Mr. Landry reviewed the Magnusson Gravel Pit walk; last year's excavation was shown; Mr. Magnusson is planning on similar amounts this year. Mr. Landry stated that they could see in general the area shown on the plan; he suggested that it would be helpful to have a clearer plan;

the current plan is about 10 years old and due to the updates on that plan, it would be helpful to have a clearer plan to review. The type of plan required was discussed. Mr. Greenwood discussed the age of the grandfathered pit, previous requirements and the hand-drawn plan.

ACTION ITEM: Mr. Wilson will bring a copy of the appropriate tax map page to Mr. Magnusson to update his drawing of the gravel pit excavation to make it more legible for the Board.

ACTION ITEM: Ms. Faulconer to make 2 large copies of the tax map for Mr. Wilson to bring to Mr. Magnusson.

The Board, by consensus, decided that once Mr. Magnusson's updated plan was received, the gravel permit would be signed by the Chairman.

Plan Review

<Board note: Mr. Alberts recused himself from the discussion/vote regarding the Coolen application.>

MM&S to schedule the Coolen application for June 21, 2011 at 8:15. (Motion by Mr. Coppelman, second by Mr. Landry). **PUNA**

<Board note: Mr. Alberts returned to the Board.>

The Board reviewed the Solar Hills application; Mr. Greenwood stated that there was no surveyor stamp or wetlands scientist stamp on the plans; these are requirements for a completed submission. He added that the applicant had added tax map numbers to the proposed subdivision which was the responsibility of the Town and should be removed from the application.

MM&S to NOT schedule the Solar Hills subdivision on an upcoming agenda due to it being an incomplete submittal. (Motion by Mr. Coppelman, second by Mr. Pope) **PUNA**

ACTION ITEM: Mr. Greenwood will write a letter to Mr. Lavalle to let him know the Board's decision regarding the two required stamps and the tax map number removal.

Mr. Wilson told the Board that there were copies of the Wetlands submittals from Mr. St. Hilaire.

Mr. Landry asked if there was any updated from anyone regarding the Board's projects for this year. Mr. Wilson stated that there was none at this point.

ACTION ITEM: Mr. Landry and Mr. Greenwood will meet regarding the Master Plan project prior to June 28th.

Due to the limited agenda, the Board decided to cancel the June 7th meeting.

Mr. Coppelman reviewed actions taken at the organizational meeting of the CIP with the next meeting being in early September.

The procedure for putting approved minutes, as opposed to draft minutes, on the web site was discussed.

ACTION ITEM: Ms. Faulconer to review the minutes posting procedure with Ms. Grant.

The mylar for First Congregational Church was received; there was no signature block on the mylar; the Chairman signed and dated the mylar in the hopes that the registry would record without the signature block.

MM&S to adjourn at 8:55. (Motion by Mr. Coppelman, second by Mr. Heitz) **PUNA**