



KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kittery.org

AGENDA for Thursday, April 23, 2015

6:00 P.M. to 10:00 P.M.

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 4/9/2015

PUBLIC COMMENTS - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

OLD BUSINESS

ITEM 1 (15 minutes) – Beatrice Way – Major Subdivision Plan Review

Applicant Richard Sparkowich, on behalf of owner Operation Blessing LP, requests comment and discussion with the Board regarding clarity on conditions of preliminary approval for the proposed five-lot subdivision on remaining land from the previously approved three-lot subdivision located between Highpoint Circle and Kittree Lane at Tax Map 61, Lot 8, in the Residential – Rural (R-RL) Zone.

ITEM 2 (15 minutes) – Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction.

Action: discuss amendment and schedule a public hearing. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone.

PRESENTATION/PUBLIC COMMENT

ITEM 3 – 6:30 P.M. Kittery Neighborhood Bicycle/Pedestrian Planning – Presentation and Stakeholder Workshop

The Kittery Area Comprehensive Transportation System (KACTS) Metropolitan Planning Organization and the Town of Kittery are working together, with consultants Sebago Technics, to study the Route 1 Bypass from Memorial Circle to the Sarah Mildred Long Bridge. This meeting is an opportunity to provide input on the future transformation of the Bypass, i.e. number of vehicle lanes, sidewalks, landscaping, bike lanes, etc. in light of the new bridge. Steve Sawyer, P.E. of Sebago Technics will present on the work accomplished thus far.

ITEM 4 – Board Member Items / Discussion

- A. Discussion of Foreside Forums Report
- B. Committee Updates
- C. Action List: review, edit and prioritize
- D. Other

ITEM 5 – Town Planner Items:

TBD

ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)

NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION. DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING. TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING CONTACT STAFF AT (207) 475-1323.

1 **TOWN OF KITTEERY, MAINE**
2 **PLANNING BOARD MEETING**
3 **Council Chambers**

UNAPPROVED
April 9, 2015

4
5 Meeting called to order: 6:00 p.m.

6 Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Secretary Deborah
7 Driscoll Davis, Mark Alesse, David Lincoln, Robert Harris

8 Members absent: None

9 Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner

10
11 Pledge of Allegiance

12
13 Minutes: March 26, 2015

14 Mr. Lincoln requested two additions and one change to the minutes, and Ms. Davis suggested an
15 amendment to clarify the discussion of action items.

16 **Ms. Davis moved to approve the minutes for the meeting of March 26, 2015 as amended.**

17 **Ms. Kalmar seconded.**

18 **Motion carried: 6-0-0**

19
20 Public Comment: Ms. Grinnell opened the public comment period.

21
22 Richard Sparkowich of 22B Old Farm Road addressed the Board in regard to his application for a
23 five-lot subdivision. Mr. Sparkowich referred to a vote on the Beatrice Lane project conducted
24 February 12. He said the Planner recommended recertification of the high intensity soil survey and
25 recertification of a wetland delineation that was done eight or nine years ago. Mr. Sparkowich was
26 not able to address the issue at the time because a motion was on the floor and expressed his desire
27 to address some of those comments and get clarification.

28
29 Chair Grinnell asked Mr. Sparkowich to hold his comments as the Board is unable to address
30 projects currently under review during the public comment session. Mr. Di Matteo suggested that
31 Mr. Sparkowich address his concern in writing.

32
33 The Board decided to hear Mr. Sparkowich by including an agenda item for that purpose at the
34 April 23, 2015 meeting. Ms. Kalmar and Ms. Grinnell asked that Mr. Sparkowich provide his
35 concern in writing prior to the meeting.

36
37 Ms. Grinnell closed the public comment section.

38
39 **ITEM 1 – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review**

40 **Action: grant or deny preliminary approval. Owner and applicant Peter J. Paul, Trustee of AMP**
41 **Realty Holdings, LLC, is requesting consideration of plans to develop a multi-family residential**
42 **cluster subdivision. The approximately 18 acres parcel is located on a portion of Tax Map 28, Lot**
43 **14 with frontage along Fernald Road and Route 236, in the Residential – Suburban (R-S) Zone with**
44 **portions in the Commercial (C-2) Zone and Resource Protection Overlay (OZ-RP) Zone. Agent is**
45 **Tom Harmon, Civil Consultants.**

46
47 Ms. Grinnell noted that two members have joined the Board since the project began and asked Mr.
48 Harmon to provide a short presentation.

49
50 Mr. Harmon described many aspects of the proposal including:

- 51 • It consists of nine single-family dwellings in four buildings on four lots on an 18-acre
- 52 piece of property with frontage on Route 236 and Fernald Road.
- 53 • The project was started approximately two years ago.
- 54 • A driveway was constructed onto the property “by some misunderstanding.”
- 55 • There has been some discussion about soils on the site and zoning revisions, and some
- 56 postponements have occurred in waiting for zoning changes to take place.
- 57 • They have remapped the soils on the parcel to fit the zoning ordinance.
- 58 • Two pieces of the property in the Commercial Zone were previously subdivided and have
- 59 been sold.
- 60 • The proposal is to divide the remaining land by creating four lots with nine single-family
- 61 units—three duplexes and one triplex.
- 62 • The property is served by municipal water.
- 63 • This is developed as a cluster subdivision, therefore there will be “a great deal” of open
- 64 space.
- 65 • After mapping soils, the applicant has concluded that ten units would be allowed.
- 66 • The road from Fernald Road has been shortened to 600 feet.
- 67 • Natural buffers will be retained for stormwater treatment.
- 68 • There is “a considerable amount of wetland” at the back of the property and the plans
- 69 show all of the wetland buffers and setbacks to meet current regulations.
- 70 • They propose a 20-foot-wide road with two-foot shoulder, but the use of pedestrian ways
- 71 is still up in the air and the applicant seeks feedback from the Planning Board.
- 72 • Electricity will be provided underground.
- 73 • A six-inch water line will run across Route 236 between the two commercial lots and into
- 74 the development, and a hydrant will be located in the cul-de-sac.
- 75 • Grading plans are included which shows the buildings, which are two- and three-bedroom
- 76 duplexes and a triplex with a two-car garage under the unit.
- 77 • The ordinance calls for a community septic, and they propose two systems, one to serve
- 78 five units and the other four units.
- 79 • The proposed road is designed for stormwater on the western side to flow to a catch basin,
- 80 then to a level spreader and into a natural buffer.
- 81 • The slopes of the site provide a challenge, and both the road and the homes will be cut into
- 82 the hillside.
- 83 • Design details and erosion control documentation have been provided.

84
85 Mr. Harmon requested direction from the Board on pedestrian ways, whether that is a sidewalk or
86 a path through the woods, and configuration of common and reserved open space.

87
88 Mr. Di Matteo noted the need for details on the proposed retaining wall, as suggested by the peer
89 reviewer, and Mr. Harmon said they would be provided with the final plan.

90
91 Mr. Di Matteo asked Mr. Harmon to explain the change in soil survey results and the meaning of
92 the letter provided by the soil scientist. Mr. Harmon explained that the Peru soil type previously
93 mapped was taken from the 1970s York County Soil Survey, which was used at the sketch plan
94 review phase. The Soil Suitability Guide describes Peru as “not good” for septic disposal. The Soil
95 Conservation Service and High Intensity Soil Survey no longer uses Peru soils in this area. It was
96 on the original map because the old system was used. The soil scientist remapped it and those soils
97 are now mapped as the Dixfield type, “which is not included as a soil that is not accepted for septic
98 disposal.”

99 Mr. Alesse asked whether Peru and Dixfield soils are the same thing.

100 Mr. Harmon said no, they are similar but have different characteristics.
101 Mr. Di Matteo explained his understanding that Peru soils still exist, but are now understood not to
102 occur in southern Maine and were reclassified as Dixfield.
103 Ms. Davis asked about how Peru soils are not suitable for septic systems but Dixfield would be.
104 Mr. Di Matteo explained that that is a separate discussion, and the Board has not yet dealt with
105 interpreting the suitability of soils not listed in the Soil Suitability Guide.
106 Mr. Alesse said he wants to ensure that this is more than just a name change, and a soil more
107 suitable to septic has been discovered there, and Mr. Harmon provided more explanation.
108 Mr. Di Matteo asked whether there is an official document to refer to for this change.
109 Mr. Harmon explained that the whole County has not been remapped, but the Soil Conservation
110 Service has provided this direction.
111 Mr. Di Matteo asked for resources from the Natural Resources Conservation Service to assist the
112 Board.
113 Ms. Davis asked whether CMA could look at this issue.
114 Ms. Kalmar noted that CMA has said before that they're not soil scientists, but she too wants more
115 information.
116 Ms. Kalmar asked whether the present sewer expansion will occur close to the proposed project.
117 Mr. Di Matteo explained that it only reaches to the other end of Fernald Road.
118
119 Ms. Kalmar explained that the plan was continued not to exceed 90 days from the December
120 meeting and the Board should have taken action on March 12.
121 Mr. Di Matteo noted that even before December, the plan had been on hold for a long time, and
122 that the Board should "start the clock over a little bit," provide notice to the Town of Eliot, and
123 schedule another public hearing.
124 Ms. Kalmar said that since several Board members haven't participated in a public hearing, it
125 makes procedural sense for the Board to hold another hearing.
126
127 Mr. Harmon asked the Board to discuss the options for providing a pedestrian way.
128 Discussion ensued concerning the standards for the road class, the Board's discretion to permit
129 deviations from the standard in a cluster subdivision, and the Fire and Police Departments'
130 recommendations. The Board concluded that they should hear a report from the Fire and Police
131 Chiefs and Mr. Di Matteo agreed to check in with them.
132 Ms. Davis noted that the Police Department had requested a connection to the commercial lot on
133 Route 236.
134 Mr. Di Matteo said the issue was addressed when those commercial lots were approved.
135 Ms. Kalmar said the Board had decided it would be disadvantageous for the residential
136 subdivision.
137
138 Ms. Davis asked whether there is any way to move the septic system located farthest from the
139 residences.
140 Mr. Harmon explained that it is the most appropriate place on the site and that another location
141 would involve a greater slope and thus more disturbance.
142
143 Mr. Lincoln asked about the minimum allowed width plus shoulders for the road.
144 The Board referred to Table 1 in Title 16, Chapter 8, Article IV and discussed trip generation, and
145 determined that the minimum for a Class II road is a 40-foot right-of-way, 20-foot paved travel
146 way, a five-foot pedestrian way, and gravel shoulders.
147 Mr. Lincoln asked whether the proposal meets the standard as presented.
148 Mr. Harmon said it does.
149 Mr. Lincoln said he would be in favor of "squeezing it down a little bit" due to the low number of
150 trips.

151 Ms. Davis explained her understanding that the Fire Chief advocated for a 60-foot right-of-way
152 assuming that the private road may become public.
153

154 Ms. Grinnell asked what is planned for the rest of the property.
155 Mr. Harmon said nothing is planned, and that would only change if the lots are not sold, if the
156 Town extends sewer service, and if the zoning changes to allow more units.
157 Owner and applicant Peter Paul explained that he intends for the road to be private and he is not
158 planning any more units in the future.
159

160 Discussion turned to the necessity of sidewalks.
161 Ms. Kalmar does not favor creating extra impervious surface with low traffic volume, if there is
162 still a safe place for people to walk.
163 Mr. Harris agreed with Ms. Kalmar.
164 Mr. Di Matteo asked the Chair to summarize the discussion on sidewalks and explained that the
165 Police and Fire Departments will only be weighing in on road width for emergency access, not the
166 need for sidewalks.
167 Ms. Davis, Mr. Alesse, and Ms. Grinnell, and Mr. Lincoln indicated their feelings that with a 20-
168 foot-wide paved road, a sidewalk is not needed.
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170 Ms. Kalmar asked that the open space proposal be addressed.
171 Mr. Di Matteo explained that the proposed open space configuration seems designed to provide
172 some flexibility in regard to drainage structures and other utilities, but that an open space
173 management plan would clear up some confusion as to how different areas are treated.
174 Mr. Harmon agreed and said he would provide a draft of a management plan for the next review.
175 Ms. Kalmar also noted the need to address cottontail habitat.
176

177 Ms. Davis said the Police Chief had asked about streetlights.
178 Ms. Kalmar pointed out that no exterior lighting is proposed other than on the buildings.
179 Mr. Harmon recalled a discussion and decision not to light the road.
180 Ms. Davis asked Mr. Di Matteo to confirm with the Police Chief.
181

182 Mr. Alesse asked about the no-cut buffer to the Kittery Land Trust property.
183 Mr. Harmon said that will be part of the management plan, that he has spoken with Executive
184 Director Christine Bennett and will discuss further with Mr. Di Matteo.
185

186 Ms. Kalmar noted that there has been a concern about the name Bartlett Hill, and Mr. Di Matteo
187 explained that the Fire Chief's concern is that although the road may not be named Bartlett Hill,
188 the development name may conflict with an existing road in the Town.
189

190 Conservation Commission member Don Moore asked about the community leach fields and
191 approval from the Maine Department of Health and Human Services (DHHS).
192 Mr. Harmon explained that DHHS approval is only required for larger, engineered systems, but
193 the septic system will have to be designed to DHHS standards to secure a building permit.
194 Ms. Davis asked whether there will be a pre-tank and filter for each property and Mr. Harmon said
195 there will. He also explained that they may meter the water for each unit and set aside payments as
196 a "capital reserve account" for those septic systems.
197

198 **Ms. Kalmar moved to accept the preliminary plan application as complete and schedule a**
199 **public hearing.**
200 **Ms. Davis seconded and asked whether there should be a second site walk.**
201 **Motion carried: 6-0-0**

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The Board scheduled a public hearing for Thursday, May 14, 2015.
The Board scheduled a site walk for Wednesday, May 6, 2015 at 9:00 a.m.

ITEM 2 – 2 Chauncey Creek Road – Shoreland Development Plan Review
Action: accept or deny plan application, hold a public hearing, approve or deny development plan.
Owners and applicants Daniel O. and Linda P. Seaward are requesting consideration of their plan to add a screen porch and deck to an existing single family dwelling at 2 Chauncey Creek Road, Map 36, Lot 63 in the Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Adam Pray, PLS of North Easterly Surveying, Inc.

Mr. Pray provided an overview of the project, including:

- It involves constructing an enclosed screen porch and deck.
- There is no new nonconformity and the 100-foot setback is met.
- Devegetated coverage is increased 0.1% to a total of 16.2%.

Mr. Di Matteo explained that the increase in devegetated coverage is the only reason the project is under Planning Board review.

Ms. Kalmar moved to accept the plan of Daniel O. and Linda P. Seaward, Tax Map 36 Lot 63 in Kittery Point Village.
Mr. Lincoln seconded.
Motion carried: 6-0-0

Ms. Grinnell opened the public hearing. No members of the public provided comment and Ms. Grinnell closed the public hearing.

Ms. Kalmar moved to grant conditional approval for the Shoreland Development Plan application dated March 19, 2015 for 2 Chauncey Creek Road (Tax Map 36, Lot 63) in the Kittery Point Village and Shoreland Overlay Zones, for owner/applicants Daniel O. and Linda P. Seaward.
Mr. Lincoln seconded

Ms. Davis questioned the side setback of less than 15 feet.
Mr. Pray explained that it is 1.5 feet from the side property line but the proposal is no more nonconforming.
Ms. Davis said that would normally go to the Board of Appeals but because the project is in the Shoreland Zone it is at the Planning Board.
Mr. Di Matteo explained that nothing is more nonconforming and the deck is within the existing condition of the retaining wall.

Ms. Grinnell asked the Board whether anyone had concerns about the Findings of Fact.

Motion carried: 6-0-0

Ms. Kalmar read the Findings of Fact:

WHEREAS: Daniel O. and Linda P. Seaward request approval to add a 403-square-foot deck and 22-square-foot steps to an existing single family dwelling at 2 Chauncey Creek Road, Tax Map 36, Lot 63, in the Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones, hereinafter the “Development;” and

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254 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;
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256 and pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by
257 the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):
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259 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the applicable
260 standards in the Land Use and Development Code, the Town Planning Board makes the following factual findings
261 and conclusions:

262
263 **FINDINGS OF FACT**

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265 **Chapter 16.3 LAND USE ZONE REGULATIONS**

16.3.2.17 Shoreland Overlay Zone

D. Standards

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development...

The proposed deck/screen porch is located in the Shoreland Zone (OZ-SL-250'). 403 square feet of deck replaces 403 square feet of existing devegetated area, a gravel patio. New devegetated area created through the addition of steps totals 22 square feet. This results in an increase of total devegetated coverage of the 2.5-acre lot from 16.1% devegetated coverage to 16.2% devegetated coverage.

AND

2. b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland.

The proposed deck is less than 500 square feet and is set back more than 100 feet from the high water line. This standard appears to have been met.

Vote: 6 in favor 0 against 0 abstaining

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Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS
Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

This is an existing conforming lot with a structure that is nonconforming to the side setback in the Kittery Point Village Zone. The proposed deck is not more-nonconforming. The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

A-C. The existing structure is nonconforming, but is located outside the required setback from the normal high water line. The proposed development does not increase nonconformity. These standards are not applicable.

Vote: 6 in favor 0 against 0 abstaining

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Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article X Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

The proposed construction of a deck and screen porch, with no water or sewer connections, does not pose a concern.

The proposed development does not appear to have an adverse impact. This standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

All but 22 square feet of the proposed construction replaces an existing impervious gravel surface. Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

The proposed development does not appear to have an adverse impact. With the conditions #2 and #3, this standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

This standard is not applicable.

Vote: 6 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

The proposed development does not appear to have an adverse impact. With conditions #2 and #3, this standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

5. *Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;*

The proposed development does not appear to have an adverse impact.

Vote: 6 in favor 0 against 0 abstaining

6. *Protect archaeological and historic resources;*

The proposed development does not appear to have an adverse impact

Vote: 6 in favor 0 against 0 abstaining

7. *Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;*

The proposed development does not appear to have an adverse impact

Vote: 6 in favor 0 against 0 abstaining

8. *Avoid problems associated with floodplain development and use;*

The proposed development does not appear to have an adverse impact.

Vote: 6 in favor 0 against 0 abstaining

9. *Is in conformance with the provisions of this Code;*

Finding: The proposed location of the deck, screen porch, and steps is no more nonconforming than what currently exists. The increase in devegetated area (0.1%) is negligible and within the limitations of the R-KPV and OZ-SL-250' Zones. The Board finds this standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

10. *Be recorded with the York County Registry of Deeds.*

Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit. Plans must include waiver and conditions of approval, if applicable.

Vote: 6 in favor 0 against 0 abstaining

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Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of Daniel O. and Linda P. Seaward, owners and applicants, to add a deck, screen porch, and steps to an existing single family dwelling at 2 Chauncey Creek Road subject to any conditions and/or waivers, as follows:

Waivers: None

Conditions of Approval (to be included on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)

- 284 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and
285 building construction to ensure adequate erosion control and slope stabilization.
- 286 3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan,
287 the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the
288 Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that
289 are, per Planning Board approval, to remain undisturbed.
- 290 4. All Notices to Applicant contained herein (Findings of Fact dated 4/9/2015).

291
292 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon
293 confirmation of compliance with any conditions of approval.

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295 **Vote of 6 in favor 0 against 0 abstaining**

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297 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the
298 York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five
299 (45) days from the date the decision by the Planning Board was rendered.

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303 **ITEM 3 – 100 Pepperrell Road – Shoreland Development Plan Review**

304 **Action: accept or deny plan application, hold a public hearing, approve or deny development plan.**
305 **Owners and applicants Jonathan King and James W. Stott are requesting consideration of their**
306 **plan to remove the 20th-century additions to the John Bray house and connect new construction**
307 **consisting of a main dwelling wing with attached garage, a guest wing, a summer house, and a deck**
308 **and pool. 100 Pepperrell Road is located at Map 27, Lot 45 in the Kittery Point Village (R-KPV)**
309 **and Shoreland Overlay (OZ-SL-250') Zones. Agent is Simon Jacobsen, Jacobsen Architecture,**
310 **LLC.**

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312 Owner Jonathan King read a prepared statement of introduction.

313
314 Mr. Jacobsen provided an overview of the project and architectural plans, including:

- 315 • The Hoyt House's many uses over the years have resulted in a lack of maintenance,
316 whereas the Bray House has received attention since 1950.
- 317 • They will remove the "insensitive" and economical additions from 1850 and 1950.
- 318 • The addition will be built around the Bray House without touching it, except with an
319 "incision" glass link.
- 320 • The same amount of square footage being removed will be added, within 150 square feet.
- 321 • The current structure steps over the setbacks and the proposal is less nonconforming.
- 322 • The separate entrance and "interlocking pavilions" are in the Maine vernacular.
- 323 • The structure is expansive because it is intentionally designed for single-floor living.
- 324 • The goal is to make sure the Bray House lasts another 400 years.

325
326 **Ms. Kalmar moved to accept the plan application for Jonathan King and James Stott at 100**
327 **Pepperrell Road, Map 27, Lot 45, Kittery Point Village and hold a public hearing.**

328 **Ms. Davis seconded.**

329 **Motion carried: 6-0-0**

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Ms. Grinnell opened the public hearing.

333 Sandra Rux of 103 Pepperrell Road addressed the Board, pointing out:

- 334 • This plan “destroys her view.”
- 335 • She objects “from a historical viewpoint,” as a historian and professional in the field.
- 336 • The house is on the National Register.
- 337 • There are several adverse affects, an adverse affect being defined as an alteration
- 338 inconsistent with the Secretary of the Interior’s Standards for the Treatment of Historic
- 339 Properties:
 - 340 - In order to put the Bray House back by itself they have to entirely reconstruct the
 - 341 east end and a large part of the west end.
 - 342 - The plan does not address how the Secretary of the Interior’s standards will be
 - 343 met.
 - 344 - There is a change in character of the property’s use or setting—the front of the
 - 345 house was previously used for gardens and building around it does nothing to
 - 346 restore its historical context.
 - 347 - The most harmful things are the deck and pool, particularly the large hardscape
 - 348 deck. The Bray house becomes a backdrop for a pool deck which is hardly in
 - 349 keeping with historical context.
 - 350 - The introduction of incompatible visual, atmospheric, or audible elements—the
 - 351 deck and the pool are incompatible as they are situated in this plan.
- 352 • Other concerns:
 - 353 - Septic, and whether there are three bedrooms or four.
 - 354 - Water runoff from the pool deck to the shore.
 - 355 - The Comprehensive Plan talks about preserving views and open space—people in
 - 356 the community walk by and stop and look at the view.
 - 357 - Changes the character of Kittery Point Village.

358
359 Deborah Martin of 97 Pepperrell Road also addressed the Board, noting:

- 360 • Numbers related to percentage of the lot built upon don’t work out.
- 361 • What does the 19.8% nonvegetative cover include?
- 362 • Very concerned about changing the character of the neighborhood.
- 363 • A little concerned about how many houses there are because it doesn’t look like a single-
- 364 family home.

365
366 Ms. Grinnell closed the public hearing.

367
368 Ms. Davis asked the applicant to address the letter from Maine Historic Preservation Commission
369 (MHPC) dated April 7, 2015.

370 Mr. Mark Johnson of Jacobsen Architecture said they would, and asked how the Board would like
371 to prioritize MHPC’s comments, where some are related directly to the Bray House and some to
372 the addition.

373 Ms. Kalmar asked about the “force of law” of the MHPC’s recommendations.

374 Mr. Di Matteo explained that the Commission was invited to comment as required by code, and
375 the Board needs to make a positive finding on the protection of archaeological and historic
376 features, so this was a logical step to gather information from the experts to give the Board some
377 guidance on how to make a positive finding. He said that the burden is on the applicant to “sell”
378 how the MHPC comments should apply and how the project protects natural, cultural,
379 archaeological, and historic resources.

380 Mr. Johnson addressed the three MHPC comments regarding the Bray house and the twelve
381 comments directed to the proposed additions, and read from the Secretary of the Interior’s
382 Standards Design Guidance for Compatible New Additions to Historic Buildings. He said they

383 have considered and implemented that guidance. “We took design cues from the siding, the
384 fenestration type, and the simple form and the module of the Bray house while respecting the
385 massing and prominence that the house holds on the site. We did this by stepping in the back with
386 the addition of the guest wing and only constraining the new addition to one story.” The net square
387 footage of livable space is almost the same as what the new addition plus Bray house is. The Bray
388 footprint of roughly 20 feet by 40 feet was used as a “constraining module” to set the sizes of the
389 gable structures. The pool was located on top of the ground for minimal disturbance and to avoid
390 blasting which would endanger the house.

391

392 Ms. Davis pointed out that 16.3.2.2.17 discusses conserving visual points of interest and she is
393 concerned with the garages blocking the view of Pepperrell Cove. The Comprehensive Plan also
394 identifies it as scenic. She clarified that the original house is oriented toward the water. She asked
395 whether there is a possibility of moving the septic system to the road side of the house in the
396 interest of protecting the water.

397 Mr. Johnson said they are reducing the home from four to three bedrooms and cannot place the
398 system in the front setback.

399 Ms. Davis asked about the air compressors and generators and their noise and visibility.

400 Mr. Johnson said they could hide them better and are investigating the possibility of geothermal
401 energy.

402 Ms. Davis referred Mr. Johnson to page 66 of the Comprehensive Plan for information on scenic
403 roads, and mentioned that metal roofs may be dealt with in the Code.

404

405 Ms. Kalmar asked about whether the applicant has considered the strong recommendation from
406 MHPC to conduct a Phase 1 Archaeological Survey.

407 Mr. Johnson responded that they will discuss it.

408

409 Mr. Alesse is concerned about the assessment of the Hoyt House and thinks it could be saved.

410 Mr. Johnson responded that the owners are looking to donate the Hoyt House, and that it competes
411 with the Bray House and is not structurally sound. They are focusing on what is actually on the
412 National Register.

413 Ms. Grinnell asked for confirmation that the Hoyt House is not on the Historic Register.

414 Mr. Johnson said it is not.

415

416 Mr. Lincoln asked whether the applicant is making any changes based on the MHPC observations.

417 Mr. Johnson said they would look to the Board for guidance, but reminded the Board that the
418 recommendations are not binding.

419 Mr. Di Matteo described them as like a peer review.

420 Mr. Jacobsen added that they take the comments seriously and need time to consider them.

421 Mr. Lincoln added that the Bray house appears on the Register because of its architecture and the
422 fact that it was in a settlement. The MHPC comments also talk about the historic character of the
423 landscape. The proposal is significantly different visually than what is there now. He sees the
424 recommendation for an archaeological survey as critical. Not to do that would be in contradiction
425 with what everyone is agreeing is an important historic site.

426 Mr. Johnson said the owners agreed to conduct the survey.

427 Mr. Lincoln referred also to the “removal of distinctive features” that should be avoided, the
428 “essential form and integrity” that should be maintained, and how a pool and deck “will
429 completely change the undeveloped character.” He suggested that the applicant refer to the
430 Comprehensive Plan, pages 66, 226, 227, 214, 215, 217, 218, and 219 to determine that they are
431 following its direction. He asked about the plan for the inside of the house, which the MHPC
432 recommended preserving.

433 Mr. Johnson reiterated that the plaster and beams will be preserved, there will be hidden LED
434 lighting rather than recessed lighting, and the paneling will be restored as necessary. The two
435 upper rooms are bedrooms and will be reconfigured to one bedroom.
436 Mr. Lincoln confirmed that there will be three bedrooms in the entire structure.
437 Ms. Davis asked whether there will be more than one kitchen, and Mr. Johnson said there will be
438 two.

439
440 Ms. Grinnell expressed her desire to see the Hoyt House donated and moved off site, and Mr.
441 Johnson concurred that that is the desire of the applicant.

442
443 Ms. Kalmar reviewed the staff notes, asking about:

- 444 • Septic and test pits, which Mr. Johnson said will be addressed.
- 445 • Meeting dimensional requirements, and that she understood that not meeting the setback
446 was necessary to separate the wings.
- 447 • Removal of trees and the standards of 16.9.2.2.

448 Ms. Kalmar explained that 16.9.2.2.A says cutting for authorized uses is allowed, and as a single
449 family dwelling the use is allowed.

450 Mr. Di Matteo explained the applicability of the standards regarding clearing no more than 25% of
451 the lot or 10,000 square feet, whichever is greater. The allowance to take 40% by selective cutting
452 in ten years is part of that clearing, because if not the whole lot could eventually be cleared. The
453 lot has been cleared over the years and has a legally nonconforming clearing, so to move existing
454 trees is not allowed. The site is already “maxed out.” It is similar to the devegetated area standard.
455 He reported that the State concurs with that interpretation.

456 Mr. Johnson proposed mitigating the removal of six trees by planting elsewhere, an opportunity to
457 reestablish tree growth within the 100-foot setback from the water.

458
459 Ms. Kalmar addressed the question of whether the proposal meets the definition of a dwelling unit
460 in the Shoreland Zone, and expressed that it meets the definition because it is intended “for only
461 one family at a time.”

462 Mr. Jacobsen added that by the building code, because the entire space is connected, enclosed,
463 heated, and cooled as one, it is considered one dwelling unit.

464
465 Ms. Kalmar suggested that more information will be gathered and the Board needs more
466 information from the archaeological survey.

467 Mr. Di Matteo explained that if such information might change the decisions of the Board, they
468 should wait for it, otherwise gathering the information could be a condition of approval. He
469 suggested there should be more information as to how the plan considers the comments of the
470 MHPC, as well as scenarios for addressing the clearing of trees and area devegetated by the
471 proposed structures. The Board also mentioned conducting a site walk.

472
473 Ms. Kalmar added that she wants to see the effect of the MHPC comments on the plan, and Ms.
474 Davis noted that the Comprehensive Plan must be taken into consideration as well.

475
476 **Mr. Lincoln moved to grant conditional approval for the Shoreland Development Plan**
477 **application dated March 19, 2015 for 100 Pepperrell Road (Tax Map 27, Lot 45) in the**
478 **Kittery Point Village and Shoreland Overlay Zones, for owners and applicants Jonathan**
479 **King and James W. Stott.**

480 Mr. Lincoln suggested that the Board determine and spell out conditions.

481 Ms. Davis expressed her concern that without additional information, determining conditions is
482 not possible, and the only option is to continue.

483 Mr. Johnson explained the Phase 1 archaeological survey would only be educational, not prevent
484 the development.

485 Discussion ensued concerning procedure.

486 **Mr. Harris seconded.**

487

488 The Board discussed conditions and developed a list:

489 1. Phase 1 Archaeological Survey

490 2. Addressing Maine Historic Preservation Commission recommendations

491 3. Addressing 16.3.2.17 and the Comprehensive Plan in regard to conserving visual points
492 of access

493 4. Addressing staff note six and 16.9.2.2., and approval of a tree removal plan

494 5. Addressing meeting dimensional requirements of 16.7.3.5.5

495 Ms. Davis expressed her desire to address metal roofs because they are not in keeping with the
496 character of Kittery Point Village.

497 Mr. Lincoln finds that continuing the appearance of Kittery Point Village is not a requirement of
498 the Board and there is no substance in the code to address that, though it may be an aspect of the
499 Comprehensive Plan's guidance.

500 Ms. Grinnell asked Mr. Jacobsen to address the use of metal roofs in the context of the MHPC
501 comments and he said the aesthetic of the building isn't determined by the material of the roof, so
502 they would be willing to match the Bray house or discuss colors and finishes.

503 Ms. Kalmar also does not find a place in the code where metal roofs affect character.

504 6. Minimizing noise from the compressor, update on use of geothermal

505 Further discussion about metal roofs ensued.

506 Mr. Di Matteo asked the Board for clarification that all items discussed are conditional for final
507 plan approval and the expectation is that staff address them.

508 Ms. Grinnell confirmed that is the motion and expectation.

509 Mr. Lincoln asked about having a site walk.

510 Mr. Di Matteo explained that there is no opportunity for a site walk after the plan is approved.

511

512 **Mr. Lincoln withdrew the motion.**

513 Ms. Grinnell added an update on the Hoyt house donation to the list.

514 **Mr. Harris agreed.**

515 **Withdrawal carried: 6-0-0**

516

517 **Ms. Kalmar moved to continue for no longer than 90 days from April 9, 2015 the review of**
518 **the request of owners and applicants Jonathan King and James W. Stott for consideration of**
519 **a Shoreland Development Plan located at 100 Pepperrell Road (Tax Map 27, Lot 45) and**
520 **schedule a public hearing for May 14, 2015.**

521 **Mark Alesse seconded.**

522 **Motion carried: 6-0-0**

523

524 The Board scheduled a site walk for Wednesday, May 6, 2015 at 8:00 a.m.

525

526 **ITEM 4 – Board Member Items**

527 Ms. Davis addressed the code amendments recommended at the previous meeting regarding
528 guaranties and wants to confirm that it won't include houses.

529 Mr. Di Matteo explained the intent of the amendment is to guarantee infrastructure improvements,
530 for example in a subdivision including a road necessary to access the lots.

531 Mr. Lincoln suggested that the amendment state it is for infrastructure.

532 Mr. Di Matteo explained it could also apply to common space.

533

534 Discussion of Maine Municipal Association training.

535

536 Mr. Lincoln followed up on a discussion from the Board Retreat about working with the Economic
537 Development Committee and longer-range planning. He found in their January 6 report that the
538 Committee also is interested in engaging with the Planning Board to gain knowledge of growth
539 limitations and what the Planning Board might see as impediments to business growth.

540 Ms. Davis suggested that the Board invite the Committee to a meeting or workshop.

541 Ms. Kalmar will contact Committee Chair George Dow for a written summary.

542

543 **Ms. Davis moved to adjourn.**

544 **Mr. Alesse seconded.**

545 **Motion carried: 6-0-0.**

546

547 The Kittery Planning Board meeting of April 9, 2015 adjourned at 9:15 p.m.

548

549 Submitted by Elena Piekut, Assistant Town Planner, April 15, 2015.

Town of Kittery Planning Board Meeting April 23, 2015

Beatrice Way – Major Subdivision Plan Review

Applicant Richard Sparkowich, on behalf of owner Operation Blessing LP, requests comment and discussion with the Board regarding clarity on conditions of preliminary approval for the proposed five-lot subdivision on remaining land from the previously approved three-lot subdivision located between Highpointe Circle and Kittree Lane at Tax Map 61, Lot 8, in the Residential – Rural (R-RL) Zone.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	Scheduled 6-12-14	APPROVED
NO	Site Visit		HELD
YES	Determination of Completeness/Acceptance	Scheduled 12-11-14	GRANTED
	Waiver Request:		TBD
YES	Public Hearing	Scheduled for 2-12-15	HELD
YES	Preliminary Plan Review and Approval	Initiated 2-12-15, continued to 3-12-15	APPROVED w/ CONDITIONS
	Discussion/Decision	Applicant requested for 4-23-15	
YES	Final Plan Review and Approval		

Applicant: Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Background

Operation Blessing LP, represented by Richard Sparkowich, received subdivision approval in August 2008 for three lots. The remaining 58 acres (with existing access from Old Farm Road) maintains 78 feet of frontage along a right-of-way that formerly was owned by Goodhouse Construction (Highpoint Circle developer) and currently co-owned by abutters Hanson and Gasbarro.

Through numerous iterations that included an amended subdivision plan, a cluster Sketch Plan, and a Right-Of-Way plan, the Board granted approval of the conventional subdivision concept June 12, 2014. The Applicant submitted a preliminary plan application for a conventional subdivision including a Request for Special Exception as required for non-clustered subdivision. The Board granted preliminary approval with conditions on March 12, 2015. A site walk and public hearing have been held.

Mr. Sparkowich came before the Board during the public comment session on April 9, 2015 and was placed on this agenda so that his concerns may be formally heard. His comments in writing and minutes from the past meetings for context are attached for your reference.

Summary of Requests

Mr. Sparkowich presents two issues in his 4/16/15 email and plan attached.

1. Wetland delineation clarification

This issue has been previously discussed—most recently in February and March of this year (see minutes). There was a specific motion in February to have the applicant recertify the high intensity soil survey and wetland delineations from 2006 (but not those done in 2014). Completing that work was then made a condition of the preliminary approval in March. You may find it worth revisiting the video from March 12, where at about 2 hours 59 minutes, Mr. Markley illustrates the specific wetland edge they proposed to delineate again “to the south and west of proposed parcel I.” Later during that meeting, the Board made simply “re-delineating the wetland” one of the conditions.

It seems the need for clarification lies in determining the acceptable scope of the re-delineation. Since re-certification means re-delineating the wetlands because the original firm/professional is no longer available, the subset of wetlands identified on the attached plan seems reasonable to Staff given the anticipated development in the near future. The final plan must clearly identify the different sources and dates of the delineation.

2. Street Naming and Acceptance

With consideration of the attached letter from abutters Morin and Burke, Mr. Sparkowich would like the Board to consider conditioning the approval of the Street Naming Application with approval of the Petition for Acceptance of a Public Street. Apparently Mr. Morin and Ms. Burke do not want to cooperate with the Street Naming Application without assurances that the street will be a public town street.

The abutters, Map61 Lot 8-E, have a Kittree Lane address but according to Mr. Sparkowich the property has no deeded rights to Kittree Lane. The Tax Assessor made the decision to use Kittree Lane in addressing the new lots in this area with the issuance of the first building permit from the 2008 approved 3-lot subdivision (Sparkowich was the applicant), where it was clear at the time that the street would have to be accepted as a public street by Town Council if ‘Highpointe Circle’ was to be used as a street name.

Recommendation / Board Action

Item 1:

The request seems reasonable. Staff suggests that the Board consider requiring delineation of not just the wetland edges shown on Attachment 1 (in blue), but also the areas highlighted in yellow in order to determine the building envelope for the planned home site.

If the Board concurs they can ***Move to amend the record*** to reflect that the wetland areas “south and west of proposed parcel I” are to include the areas denoted on the plan exhibit submitted with the Plan Review Notes for *Beatrice Way – Major Subdivision Plan Review* dated 4/23/2015.

Item 2:

Staff does not believe that pre-conditions in the manner the applicant is suggesting is appropriate. Staff will plan to work with the Applicant and abutters to make an effort to resolve the issues prior to the submittal of the Final Plan.

ATT #1

rec'd 4/10/15

APPROVED: TOWN OF KITTREE

DATE OF APPROVAL:

Richard P. Saroca & Barbara A. Saroca
 TAX MAP 48 LOT 13
 Y.C.R.D. BOOK 1548 PAGE 817
 F.E. HOLDING LLC
 PORTLAND, ME 04101

David F. Amund
 TAX MAP 35 LOT 17B-12
 35 CEDAR DRIVE
 KITTREE, ME 03904

Tom C. McColligan
 TAX MAP 39 LOT 17B-13
 36 CEDAR DRIVE
 KITTREE, ME 03904

Edward T. Janauskas, Jr. & Nicole B. Heltzer
 TAX MAP 55 LOT 18
 Y.C.R.D. BOOK 1482 PAGE 457
 15 AUTUMN LAKE
 KITTREE, ME 03904

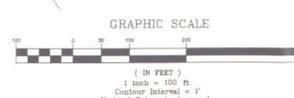
YORK, ME REGISTRY OF DEEDS

Received at _____ h _____ m _____ s, and Filed in Plan Book _____ Page _____

ATTEST: _____ Register

LINE	BEARING	LENGTH
L1	S30°56'10"E	59.39'
L2	N84°41'44"W	63.97'
L3	S87°36'26"W	13.39'
L4	S79°54'39"W	156.82'
L5	N10°09'21"W	30.00'
L6	S88°47'19"W	44.47'
L7	S89°41'57"W	44.82'
L8	S69°25'21"W	83.00'
L9	S39°02'54"W	135.43'
L10	S64°28'04"W	103.93'
L11	S27°10'37"W	5.00'
L12	S69°17'15"W	85.07'

CURVE	LENGTH	RADIUS
C1	65.52'	200.12'
C2	44.92'	334.56'
C3	13.16'	200.12'
C4	14.56'	334.56'
C5	24.06'	25.00'
C6	111.39'	105.00'
C7	131.00'	105.00'
C8	30.10'	105.00'
C9	273.59'	105.00'
C10	34.00'	25.00'
C11	29.28'	274.56'



- PLAN REFERENCES:
- "MINOR SUBDIVISION OF LAND OF OPERATION BLESSING LIMITED PARTNERSHIP, HIGHPOINTE CIRCLE & KITTREE LANE, KITTREE, MAINE, PREPARED FOR OPERATION BLESSING LIMITED PARTNERSHIP, PREPARED BY CIVIL CONSULTANTS, DATED AUGUST 14, 2008 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 331 PAGE 46.
 - "HIGHPOINTE ESTATES, 9 OLD FARM ROAD, KITTREE, MAINE, PREPARED FOR GOODHOUSE CONSTRUCTION COMPANY, PROPERTY OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, GEORGE T. & LORETTA G. MARTIN, & OPERATION BLESSING LIMITED PARTNERSHIP, PREPARED BY CIVIL CONSULTANTS, LAST REVISED 5/28/04 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 281 PAGE 39.

- CON'D.
- "PLAN OF LAND OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, 9 OLD FARM ROAD, PREPARED BY CIVIL CONSULTANTS, DATED 1/7/04 AND RECORDED AT THE Y.C.R.D. ON SEPT. 6, 2012 AS PLAN BOOK 357 PAGE 1.
 - "BOUNDARY PLAN PREPARED FOR A. DAVID MANN, KITTREE, MAINE, PREPARED BY THOMAS F. MORAN, INC., DATED FEB. 16, 1987, STAMPED "PROGRESS PRINT" MAR. 4, 1987.
 - "SHEET 1 OF 2 PLAN OF LAND, LEWIS ROAD, KITTREE, YORK COUNTY, MAINE, FOR A. DAVID MANN, PREPARED BY THOMAS F. MORAN, INC., DATED JULY 31, 1989.
 - "CONCEPT SKETCH, CONVENTIONAL LAYOUT, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTREE, YORK COUNTY, MAINE, 03904, TAX MAP 61 LOT 8", PREPARED BY OLD CONSULTING ENGINEERS, DATED MAR., 2007.
 - "HIGH INTENSITY SOIL SURVEY, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTREE, YORK COUNTY, MAINE, TAX MAP 61 LOT 8", PREPARED BY OLD CONSULTING ENGINEERS, DATED MAR., 2007.

ZONING DATA PER TOWN OF KITTREE LAND USE AND DEVELOPMENT CODE 16.3.2.1 (SEE NOTE #7):
 ZONE: Rural Residential (R-RL)

- REQUIREMENTS:
- MINIMUM LAND AREA PER DWELLING UNIT: 40,000 Sq. Ft.
 - MINIMUM LOT SIZE: 40,000 Sq. Ft.
 - MINIMUM STREET FRONTAGE: 150 FT.
 - MINIMUM FRONT SETBACK: 40 FT.
 - MINIMUM SIDE SETBACK: 20 FT.
 - MINIMUM REAR SETBACK: 20 FT.
 - MAXIMUM BUILDING COVERAGE: 15%
 - MAXIMUM BUILDING HEIGHT: 35 FT.



PURPOSE OF PLAN:
 THE PURPOSE OF THIS PLAN IS TO PROPOSE A SUBDIVISION OF A 57.05± AC. PARCEL OF RECORD INTO FIVE LOTS. THIS PLAN ALSO PROPOSES A 60' WIDE RIGHT OF WAY TO BE KNOWN AS "BEATRICE LANE".

- NOTES:
- OWNERS OF RECORD:
 TAX MAP 61 LOT 8
 57.05± Acres (Based on Record Surveys)
 OPERATION BLESSING, LP
 Y.C.R.D. BOOK 14129 PAGE 908
 DATED JUNE 8, 2004
 - BASIS OF BEARING IS PER PLAN REFERENCE #1.
 - APPROXIMATE ADJUTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
 - THE EXTERIOR BOUNDARY SHOWN HEREON IS PER RECORD PLAN REFERENCES RECOVERED AT THE TIME OF SURVEY. SEE REFERENCE PLANS FOR FURTHER INFORMATION.
 - FLOOD HAZARD AREAS SHOWN HEREON ARE BASED ON PLAN REFERENCE #5.
 - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
 - DIMENSIONAL REQUIREMENTS SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTREE PRIOR TO DESIGN OR DEVELOPMENT.
 - TEST PIT LOCATIONS AND RESULTS FOR PROPOSED PARCELS A AND I ARE PER PLAN REFERENCE 7. SEE SAID PLAN AND REPORT BY MICHAEL DUOMO, SOIL SCIENTIST, TEST PIT LOCATIONS AND RESULTS FOR PROPOSED PARCELS B AND H WERE PROVIDED BY JOE NIEL, SOIL SCIENTIST.
 - FOR STORM WATER MANAGEMENT BEST MANAGEMENT PRACTICES, SEE REPORT AND PLANS (SHEETS 1 OF 2 AND 2 OF 2) BY ATTAR ENGINEERING FOR BEATRICE LANE.
 - FOR PLAN AND PROFILE, EROSION, AND SEDIMENT CONTROL DETAILS AND SITE DETAILS SEE SHEET C1, C2, C3 AND C4 PREPARED BY ATTAR ENGINEERING DATED 10/20/14.
 - HOUSE AND GARAGE LOCATIONS SHOWN ARE APPROXIMATE FOR DEMONSTRATION PURPOSES ONLY. ACTUAL LOCATIONS WILL DEPEND ON INDIVIDUAL LOT OWNERS' PREFERENCES AND ADHERING WITH KITTREE TOWN CODES.
 - WETLANDS ON THE EAST SIDE OF THE STREAM WERE DELINEATED BY MAINE CERTIFIED SOIL SCIENTIST JOE NIEL IN 2014. WETLANDS ON THE WEST SIDE OF THE STREAM WERE DELINEATED BY WOOD LOT ALTERNATIVES SEE HIGH INTENSITY SOIL SURVEY DATED SEPTEMBER 2008 AND RE-CERTIFIED IN 2015, BY CERTIFIED SOIL SCIENTIST MIKE DUOMO.

staff suggestion

FOR REVIEW

-PRELIMINARY-

SUBDIVISION PLAN
 BEATRICE LANE

FOR PROPERTY AT
 22/24 Old Farm Road/Highpointe Circle/Kitree Lane
 Kitree, York County, Maine
 OWNED BY
 Operation Blessing, LP
 c/o Richard D. Sparkowski
 PO Box 4069, Portsmouth, NH 03802

North
 EASTERLY
 SURVEYING, Inc.
 191 STATE ROAD, SUITE #1
 KITTREE, MAINE 03904

REV.	DATE	STATUS	BY	CHKD	APPRO	REV.	DATE	STATUS	BY	CHKD	APPRO
K	3/12/15	OPEN SPACE	B.M.K.	K.D.M.	K.D.M.	F	9/19/14	ADDED TEST PITS 1-5 PER JUN. 7/1/14	B.M.K.	K.D.M.	K.D.M.
L			B.M.K.	K.D.M.	K.D.M.	E	6/11/14	REVISE SETBACKS / AREAS	A.M.P.	K.D.M.	K.D.M.
M			B.M.K.	K.D.M.	K.D.M.	D	5/27/14	REVISION OF PROPOSED LOT LINES	A.M.P.	K.D.M.	K.D.M.
N			B.M.K.	K.D.M.	K.D.M.	A	2/21/14	REVISIONS AS PER REVIEW BY PLANNER	A.M.P.	K.D.M.	K.D.M.
O			B.M.K.	K.D.M.	K.D.M.	B	5/9/14	ADD SURVEYED WETLANDS	A.M.P.	K.D.M.	K.D.M.
P			B.M.K.	K.D.M.	K.D.M.	C	5/21/14	REVISIONS AS PER REVIEW BY PLANNER	A.M.P.	K.D.M.	K.D.M.
Q			B.M.K.	K.D.M.	K.D.M.	A	2/21/14	REVISIONS AS PER REVIEW BY PLANNER	A.M.P.	K.D.M.	K.D.M.

SCALE:	PROJECT NO.:	DATE:	SHEET:	DRAWN BY:	CHECKED BY:
1" = 100'	12726	2/5/14	S-1	A.M.P.	K.D.M.

DRAWING NO: 12726-DIVISION-REV-0210-2014
 FIELD BOOK NO: "Kitree #2" **Tax Map 61 Lot 8**

From: [Rick Sparkowich](#)
To: [Chris DiMatteo](#)
Cc: [Elena Piekut](#); [Kenneth Markley](#); anngrinnell2@comcast.net
Subject: Operation Blessing Ltd. P. Items for KPB 4/23/15 Meeting
Date: Thursday, April 16, 2015 10:49:55 AM

Chris,

In response to your request during our meeting in the Town Office yesterday, Operation Blessing requests direction from the Kittery Planning Board on the following issues:

1. Will a partial Wetland Delineation be acceptable for Parcels A and I, focused only on the limited areas that could be built on - in lieu of trying to recertify one and one half miles of wetland edge, 90% of which is irrelevant, for our 5 - Lot Subdiv. Application? We tried contacting Woodlot Alternatives, that did the surveys and reports on Lot 61-8 nine years ago. We found that they were no longer in existence, and their work was taken over by Syntec Corp. in 2007.

In order for their engineering dept. to recertify our wetlands, they wanted to know, precisely what areas would we need done, because they would have to rebores and reflag the wetland edge again. They were unable to give us an estimate. We can't imagine what that would cost, Chris, since you reaffirmed, yesterday, that the Planning Board voted to have the whole wetland edge recertified. This is the reason that we feel that a limited area of wetland edge should be recertified.

I will be delivering a plan to your office, this morning (at your request) that highlights the specific, limited, areas that we have made arrangements to recertify.

2. "STREET NAMING APPLICATION" and "PETITION FOR ACCEPTANCE OF A PUBLIC STREET" in need of being discussed, in light of abutters

input that we now have. We delivered a copy of a letter received from Lot 61-8E, (Daniel Morin and Gabrielle Burke, dated 4/14/15) to the Planning

Dept., yesterday. Apparently when they secured the property in August 2014, the builder/owner went to the Planning Dept. to get an address. The

Town ended up assigning the address as: 12 Kittree Lane. This has led to significant confusion and needs to be rectified in order for us to move ahead,

to comply with the condition the KPB requested at the 3/12/15 meeting. This stretch of paved road is an extension of Highpointe Circle, not Kittree lane.

Respectfully Submitted,

Rick Sparkowich, Gen. Partner

residential/commercial development at 42 State Road, Map 3, Lots 5, 6 & 7 in the Business Local 1 Zone. Agent is Jeff Clifford, P.E., Altus Engineering, Inc.

Mr. Clifford: Summarized the project, noting this has been changed since originally before the Board in May, 2014 and brings the structure closer to State Road, per Ordinance recommendation.

- 125' x 40' (first floor) with permitted business uses
- 125'x45' (second floor) with 5 residential condominiums
- Associated parking requirements: upper level for residential and business use; parking deficiency could be pursued through a shared use with the businesses at preliminary review;
- Access from State Road (entrance and exit), and Love Lane (entrance only);
- State Road sidewalk; landscaping; screening and fencing;
- Stormwater to be handled through an existing drain and a subsurface system for cooling of site drainage; though below MS-4 threshold, proposed drainage plan would comply;
- Traffic: Project is in an Urban Compact area; proposed uses will be well below 100 trips per hour requiring state review;
- Sidewalk along Love Lane isn't practical due to the grade;
- Lighting, snow storage, etc. will be addressed.

Ms. Davis: Referenced the gravel area off Love Lane, noting it would be a good area to landscape and not be used for parking in the future.

Mr. Alesse: Where will snow be stored on site?

Mr. Clifford: This is a tight site, and sometimes you have to haul snow away.

Mr. Lincoln: Love Lane is described as a collector road in the Comprehensive Plan. Suggests working with DPW regarding location of an entrance drive off Love Lane onto the property, regarding site distances and speed.

Ms. Kalmar: It appears the Board of Appeals will need to deal with a shared parking plan.

Ms. Grinnell: Could a crosswalk connect with existing sidewalks to the crosswalk at TD Bank? This could be discussed with DPW.

Ms. Kalmar moved to approve the 42 State Road sketch plan submitted by Aaron Henderson, HGC, LLC, for property located at 42 State Road, Map 3 Lots 5,6, and 7.

Mr. Lincoln seconded

Mr. DiMatteo: With the issues noted in the plan review notes and Board discussion, the applicant appears well directed.

Motion carried: 6-0-0

PUBLIC HEARING

ITEM 2 – Beatrice Way – Preliminary Major Subdivision Plan. Action: Hold a Public Hearing, accept or deny preliminary plan. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Map 61 Lot 08, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Ken Markley: Noted this was originally proposed as a 15-lot cluster subdivision and is now before the Board as a 5-lot subdivision.

- Beatrice Lane is proposed at slightly over 500 feet in length with a hammerhead turnaround for minimal impact;
- Noted existing parcel off Old Farm Road, but all parcels will be accessed via Beatrice Lane;

Ms. Grinnell read a public hearing statement

The Public Hearing opened and closed at 6:40 p.m. There was no public comment
Mr. DiMatteo noted letters submitted from Joe and Linda Gasbarro (12/9/14) and James Rothwell (1/26/15) were included in the Board's packets and are part of the public record.

Mr. Markley: There was a High Intensity Soil Survey conducted in 2006 and 2007 and the parcel has not been disturbed and doubts there would be a change, so a recertification should not be necessary. The majority of the wetlands adjacent to the lots were re-delineated in 2014, and believes the studies should be accepted.

Ms. Kalmar moved to continue review of the Operation Blessing major subdivision proposal, not to exceed 90 days.

Mr. Alesse seconded

Discussion followed regarding soils and wetland study re-certifications, and the Board agreed this was in order.

Mr. Markley: Surprised that the common open space area was located by staff, and is far removed from the building lots. The open space will be located in the southeast area of the large parcel and will be included in legal documents.

Mr. Harris: Questioned the need to re-certify soil and wetland studies. Land doesn't change from one year to the next and this seems redundant.

Mr. DiMatteo: Only the soil and wetland studies that were done in 2006 need to be re-certified, not the 2014 wetland study.

Motion carried: 6-0-0

Ms. Kalmar moved to have applicant re-certify HISS and wetland delineations from 2006

Mr. Lincoln seconded

Ms. Davis: There has been a fair amount of logging done since 2006 affecting the soils

Motion carried: 5 - 1 (Harris) - 0

Ms. Davis: Is the applicant aware of issues that came up in the site walk, such as:

- When will the Woods Road be closed?

Mr. Markley: When the project is approved lots will be accessed via Beatrice Way, and Woods Road will be closed.

- Is it the intention to intensify the buffer along Woods Road?

Mr. Markley: It should be allowed to grow and refill in a natural state.

Ms. Grinnell: The Town Manager, Attorney and Planner have discussed Tom Emerson's position as a member of the Planning Board while presenting an application before the Board. It has been decided, and mutually agreed, that Mr. Emerson cannot continue as a Board member.

Mr. Lincoln: Requested permission to read Mr. Emerson's letter of resignation (Attached).

Ms. Grinnell. Tom will be missed.

~~**ITEM 3 – Old Armory Way Mixed Use - Preliminary Site Plan. Action: Hold a Public Hearing, accept or deny preliminary plan.** Owner/applicant Ken McDavitt requests approval to construct two condominiums (total of three dwelling units) with 8 commercial boat slips at 15 Old Armory Way, Map 4, Lot 51 in the Mixed Use Kittery Foreside Zone, Shoreland and Commercial Fisheries/Maritime Activities Overlay Zones. Agent is Ken Wood, P.E., Attar Engineering, Inc., Eliot, Maine.~~

~~Ms. Grinnell: Noted she was dismayed to receive a letter from Matthew Howell on February 9 stating she had bias towards this project and should recuse herself. She stated she does not have bias and will not recuse herself. Any project before her and the Board must follow the code. It appears Mr. Howell read a newspaper article that misquoted what happened at the site walk of February 4. At the site walk, residents~~

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained in the Findings of Fact (dated: March 12, 2015).

Conditions of Approval (Not to be included on the final plan):

5. Revise the site plan (C-2) to reflect the minor plan changes staff recommended in the 3-12-15 Plan Review Notes, including removal of plan reference to snow storage at the front of the property.
6. Revise the site plan (C-2) to include additional tall shrubs and small trees in the area adjacent to the property to the east (M60-L22, Henry VIII Carvery), approximately 50 feet in from Route One, to aid in screening the proposed parking from view.

103

104 The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings
105 of Fact upon confirmation of compliance with any conditions of approval.

106

107

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

108

109 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the
110 York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five
111 (45) days from the date the decision by the Planning Board was rendered.

112

113

114 ITEM 2 – Beatrice Way –Major Subdivision Plan - Preliminary Plan Review.

115 Action: grant or deny preliminary plan approval. Owner Operation Blessing LP, and applicant Richard
116 Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot
117 subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Map 61 Lot 08,
118 in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

119 Ken Markley: Addressed the CMA Review, noting many of the issues have been addressed. Suggested
120 holding off on the wetland crossing issue at this time.

121 Mrs. Sparkowich: [Attached]

122 Mr. Markley: Suggests a road association rather than a homeowner's association; a condition of approval
123 could be included that no further land division would be allowed without Board approval; addressed
124 Preliminary Plan approval requirements including addressing Highpoint Circle and Kittree Lane;
125 recertification of wetlands, as soils has already been done; finalization of boundary survey; required open
126 space is as proposed.

127

128 Break

129

130 Ms. Kalmar suggested the Board proceed with voting on the special exception request that a conventional
131 subdivision was appropriate for this development versus a cluster subdivision to avoid pushing the
132 development to the rear of the property where the valuable habitat is located. A conventional subdivision
133 requires a special exception.

134
135 Ms. Kalmar moved to grant a special exception for a conventional subdivision for the Beatrice Way
136 subdivision.

137 Seconded by Mr. Harris

138 Mr. Lincoln: Where will this special exception be shown?

139 Mr. DiMatteo: In the final Findings of Fact.

140 Motion carried: 6-0-0

141

142 Ms. Kalmar moved to grant the request for a waiver from a cul-de-sac to a hammerhead.

143 Mr. Lincoln seconded

144 Ms. Davis: We seem to have issues regarding hammerheads vs. paper cul-de-sacs, which leads to more
145 development.

146 Mr. DiMatteo: This is a reasonable request, as a standard cul-de-sac takes up more space and a
147 hammerhead has less impact. The paper cul-de-sac allows for a more reasonable layout of lots.

148 Ms. Kalmar: I see the logic of less impervious surface, but the frontage is still there, it just isn't paved.
149 We're benefitting the natural resources.

150 Discussion followed regarding driveways onto the hammerhead, parking in the hammerhead area that
151 could impede emergency vehicles.

152 Motion carried: 6-0-0

153

154 Ms. Kalmar moved to waive review by the York County Soil and Water Conservation District
155 (16.9.1.3.C).

156 Ms. Davis seconded

157 Motion carried: 6-0-0

158

159 Ms. Kalmar moved to waive the requirements for sidewalks on Beatrice Lane.

160 Mr. Harris seconded

161 Ms. Davis: Requests that further development of the rear acreage would require sidewalks.

162 Ms. Kalmar: When waiving a required improvement, the objective must be met. Given the size of the
163 proposed project, the roadway and shoulder would provide a safe place to walk. Less pavement the
164 better.

165 Ms. Davis: Concerned about future 'woodlot management' and trucks on the road.

166 Ms. Kalmar: Timber harvesting is not a permitted use in the Rural zone.

167 Mr. Markley: There has been no timber harvesting since 2010. Woodlot management would be to
168 remove damaged and diseased trees and for personal firewood use.

169 Motion carried: 6-0-0

170

171 Board discussion of Plan Review Notes:

172 1. Vernal Pools/Wetlands: Protection of the vernal pool areas with other wetland, forested wetland and
173 open space areas, avoiding fragmentation. Mr. Markley: The proposed open space area meets the
174 concerns of the Conservation Commission and ACOE. Brett Taylor, Potential Buyer: Would like to
175 retain property value and conserve the land, and this proposal meets those objectives. It is not my
176 intention to develop beyond my single family home, but doesn't want to diminish his future property
177 value, perhaps for his children. Discussion followed regarding locations of protected open space
178 areas.

179 2. 'woods road': Road will become part of proposed parcel H and blocked at both ends following
180 recording at YCRD. Plan will illustrate blocked areas. Buffer of trees need not be included.

181 3. Highpointe Circle extension acceptance: Discussion followed regarding the history of this road area,
182 whether the town would accept the extension to the hammerhead at Kittree Lane. Mr. Sparkowich
183 agrees the town should take it over. The Board requested the applicant to submit the necessary
184 applications for street acceptance and naming to the town.

- 185 4. Boundary Plan: Agent will submit a boundary plan.
186 5. Density calculations: Will be addressed.
187 6. Wetland delineation: A re-certified delineation will be prepared for the area to the south and west of
188 proposed parcel I.
189 7. ROW/Easement for parcel A and I: Reference will be made as an 'easement'. Include plan note to
190 state 'driveway no longer than 500 feet serving two dwellings are permitted'. Submittal of a wetland
191 alteration application is needed.
192 8. Sidewalk: Previously addressed.
193 9. Homeowner's association: In lieu of a homeowner's association, establish a road association and a
194 deed covenant for the parcel where the open space area is located.
195 10. Condition of final approval restricting further division of land without receiving Board approval.
196

197 Mr. Markley: Owner would like a waiver to place a driveway longer than 500 feet.
198 Discussion followed regarding the authority to grant such a waiver. No decision was made.
199

200 Discussion returned to the open space location.
201

202 Break
203

204 Brett Taylor: I am spending a lot of money for this property and don't want to give up my rights as my
205 heirs may want, in 50 years, to be able to access the rear of the property.

206 Discussion followed regarding code requirements to establish contiguous open space as well as a
207 reduction in required open space for conventional subdivisions; review process of various development
208 scenarios.

209 Ms. Grinnell: Asked for a Board consensus regarding the applicant's open space design. The Board did
210 not reach a consensus (2 consenting; 4 not consenting).
211

212 Ms. Kalmar moved to grant preliminary subdivision approval to the Beatrice Lane subdivision plan as
213 revised February 19, 2015 with conditions: resolution of open space issue; include stone wall closure of
214 'woods road' on the plan; receipt of boundary plan; road acceptance petition application; include net
215 residential acreage and density calculations on plan; re-delineation of wetland area; include plan note to
216 state 'driveways no longer than 500 feet serving a maximum of two dwellings are permitted'; road
217 association and back parcel covenant for open space maintenance; wetland alteration application.

218 Ms. Davis seconded

219 Motion carried: 6-0-0
220

221 Members agreed to review Item 5A out of agenda order.
222

223 Ms. Kalmar moved to extend the meeting 15 minutes

224 Ms. Grinnell seconded

225 Motion carried: 6-0-0
226

227 ~~ITEM 3 – Town Code Amendment - Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7~~
228 ~~Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding;~~
229 ~~16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required.~~

230 ~~Action: review amendment and schedule a public hearing. Proposed amendment: codifies the need to hold~~
231 ~~a pre-construction meeting; updates provisions associated with inspections; and provides clarity through~~
232 ~~minor changes where needed.~~

233 Mr. Harris: Read from a prepared statement regarding the proposed amendment language.

234 Discussion followed regarding rewording of the proposal.

**Town of Kittery
Planning Board Meeting
April 23, 2015**

Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction.

Action: discuss amendment and schedule a public hearing. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		NOT HELD
YES	Initial Planning Board Meeting	December 18, 2014	
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH	TBD
YES	Review/Approval/ Recommendation to Town Council		TBD

Background: Following is the original code language regarding reconstruction of nonconforming buildings as written prior to the ordinance update of 2010. This section was not transferred to the 2010 code update.

16.28.140 Reconstruction of nonconforming buildings.

Any legally nonconforming building which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his or her agent, may be restored or reconstructed in conformity with the dimensions of the original building within twelve (12) months of the date of said damage or destruction, provided, however, that such restoration or reconstruction shall not enlarge the size or make it more nonconforming than the prior nonconforming building. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed. (Ord. 12-99; land use and dev. code § 7.3.4, 1994)

Since the update of 2010, the language in Title 16.7.3.5.6 addresses nonconforming building reconstruction only within the Shoreland or Resource Protection Overlay Zones (and setback restrictions), where Planning Board review is required. After an initial review by the Board, Staff has provided another draft for consideration.

Summary:

1. The Code currently lacks a provision to allow the Code Enforcement Officer to issue permits for the reconstruction of nonconforming structures located outside of the Shoreland or Resource Protection Overlay Zones. This issue is addressed with the proposed new language in section C.
2. The amendment allows for a longer period of time (18 months vs. 12 months) for reconstruction and eliminates cause (no fault vs. damage other than willful act of the owner/agent), creating consistency with the existing overlay reconstruction language (16.7.3.5.6.A and B). The longer period of time is more adequate to resolve conditions equivalent to those in 16.7.3.5.6.A (damage is > 50% of the value) than B (damage is < 50% of the value).

The Board may want to consider an amendment that divides this provision into two scenarios as it is for properties in the Shoreland Overlay Zone (A and B). The Board of Appeals could review and approve those properties that incur loss of > 50% of the value and determine if a reconstruction can be built in a more conforming manner, i.e. further outside a yard or wetland setback. Properties that incur less damage are allowed to be built in place with a permit obtained by the CEO.

3. Staff proposes new language that clarifies applicability of a section within the overlay zones, removing parenthetical language.

If the Board finds these amendments acceptable, a motion would be in order:

Move to schedule a public hearing for the proposed amendments to Title 16.7.3.5.6 Nonconforming Structure Reconstruction.

1 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

2
3 A. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located less
4 than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or
5 destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction
6 or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of
7 the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in
8 compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent
9 as determined by the Planning Board. ~~(in cases where the structure is located in a Shoreland Overlay of~~
10 ~~Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.~~

11
12 B. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located
13 less than the required setback from a water body, tributary stream, or wetland and removed, damaged or
14 destroyed by any cause through no fault of action by the owner by 50% or less of the market value of the
15 structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from
16 the Code Enforcement Officer ~~or the Planning Board (in cases where the structure was located in the Shoreland~~
17 ~~Overlay or Resources Protection Overlay Zone)~~ within twelve (12) months of the established date of damage or
18 destruction. [Amended and moved; formerly 16.7.3.5.6.D]

19
20 C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is
21 removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained
22 from the Code Enforcement Officer within eighteen (18) months of the date of said removal, damage or
23 destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior
24 nonconforming structure. Nothing in this section prevents the demolition of the remains of any building so
25 damaged or destroyed.

26
27 D. In the Shoreland or Resource Protection Overlay Zone(s), if the total amount of floor area and volume of the
28 original structure can be reconstructed beyond the required setback area, no portion of the reconstructed
29 structure may be reconstructed at less than the setback requirement for a new structure. When it is necessary to
30 remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section
31 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has
32 been partially damaged must be made to the Code Enforcement Officer. [Amended and moved; formerly
33 16.7.3.5.6.C]

34
35 E. In no case will may a structure be reconstructed or replaced so as to increase its non-conformity. In the
36 Shoreland and Resource Protection Overlay Zones, if the reconstructed or replacement structure is less than the
37 required setback it may not be any larger than the original structure, except as allowed pursuant to Section
38 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area
39 and volume of the reconstructed or replaced structure at its new location. [Amended and moved; formerly
40 16.7.3.5.6.B]

41
42 F. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical
43 extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section
44 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.
45 [Moved; formerly 16.7.3.5.6.E]

46
47 END

of the maps to be ultimately approved by Council. Ms. Grinnell: The next step would be to have staff prepare maps for Board review (February 22). Ms. Davis: If a pay-per-bag program is instituted in Town, trash will still have to be picked up. Mr. DiMatteo: Will confirm whether Council can consider a new amendment that is not Title 16 related.

ITEM 5 – Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction Action: discuss amendment. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone. General discussion followed regarding no fault and willful acts; proposal is to mimic state requirements for reconstruction in the shoreland zone; requirement period for reconstruction, start vs. finish; impact of building permit periods; in 16.7.3.5.6.B re: 'no fault or action by the owner', confirm this is the state's language. This item will be re-written and reviewed in February.

Recess

Item 1B (cont'd):

Ms. Kalmar: In reference to comments (December 2, 2014) from the Proposal Review Group's review of Title 16 amendments:

- Item 4 (page 4) Title 16.2.2: Does not believe the wording should be re-considered. The underlying rationale was to have a partial deduction for land with substantial development constraints.
- Item 4 (page 4) Title 16.7.8.3 (lines 93-95), the reference should be renamed as suggested, but should remain in this location so residents can easily see that Net Residential Acreage does not apply to single divisions while also being directed to the pertinent ordinance section for such divisions.
- Item 6 needs to be further reviewed. Additionally the existing Title 16.9.1.4.3 is missing from the proposed amendment language, which she believes is an unintentional omission. Mr. DiMatteo: Item 6 should be removed from Council consideration and re-visited; additionally Item 7 is similar and should also be removed from Council consideration at this time.

Ms. Kalmar: Board members should have the updated November 10 document.

Mr. DiMatteo: Rather than revising the November 10 document, an additional memorandum should be included noting omission of Item 6 and 7 from Council consideration.

Ms. Kalmar moved to adjourn

Ms. Davis seconded

Motion carried unanimously

The Kittery Planning Board meeting of December 18, 2014 adjourned at 8:45 p.m.

Submitted by Jan Fisk, Recorder, December 27, 2014.

**Town of Kittery
Planning Board Meeting
April 23, 2015**

Bicycle/Pedestrian Improvement Plan – Presentation and Stakeholder Workshop

The Kittery Area Comprehensive Transportation System (KACTS) Metropolitan Planning Organization and the Town of Kittery are working together, with consultants Sebago Technics, to study the Route 1 Bypass from Memorial Circle to the Sarah Mildred Long Bridge. This meeting is an opportunity to provide input on the future transformation of the Bypass, i.e. number of vehicle lanes, sidewalks, landscaping, bike lanes, etc. in light of the new bridge. Steve Sawyer, P.E. of Sebago Technics will present on the work accomplished thus far.

Project Tracking

REQ'D	ACTION	COMMENTS	STATUS
	Report to Board	1/21/15 progress report **Please bring to meeting**	PROVIDED
	Public Meeting #1	Scheduled for 4/23/15	
	Public Meeting #2	TBD	

Background

KACTS and the Town of Kittery are working together on a bike/ped planning effort funded by KACTS. KACTS is the Metropolitan Planning Organization for this area, tasked with planning and programming federally funded transportation projects in Kittery, York, Eliot, South Berwick, Berwick, and Lebanon. Engineering and surveying firm Sebago Technics was hired as the consultant for the project and will be working further with Alta PLANNING + DESIGN, a firm that specializes in this area.

These groups, with involvement from the Town, identified a study area focused on the Route 1 Bypass, from Memorial Circle to the Sarah Long Bridge, and extending outward along Walker Street, Government Street, South Eliot Road, Dennett Road, and the Old Post Road, bounded by Routes 1 and 95. See below. Further evaluation has narrowed the study area to just the Route 1 Bypass, as the other streets seem to have adequate pedestrian and bicycle facilities.



Next Steps

This meeting is an opportunity for the Planning Board and the public, as well as other boards and committees, business-owners, Town staff, and bike/ped advocates, to provide input on the facilities available and needed to enable safe and reasonable bicycle and pedestrian use in this area, especially in light of the new Sarah Long Bridge. Ideas and discussion may include vehicle lanes, bike lanes, sidewalks, landscaping, signage and pavement markings, use of the Bridge, connections to other routes (the East Coast Greenway, for example), etc.

We have publicized this meeting online, in the newspaper, with the agenda, through staff (including Police, Fire, and Public Works), through the Recreation Department and the Maine Bicycle Coalition, and via a direct mailing to businesses along the Bypass section in question.

Mr. Steve Sawyer, PE of Sebago Technics will make a presentation on the work accomplished thus far to establish and refine the study area, then facilitate a workshop-style meeting with the Board and public to discuss and record ideas and concerns. We plan to host a second meeting in a few months, after the consultant has processed the input of this workshop and begun development of the plan.

Recommendation / Board Action

No formal actions needed. The Board should assist Mr. Sawyer in leading the meeting with input from stakeholders in attendance, offer the guidance of documents such as the Comprehensive Plan, and for future consideration, begin to think about how the code currently supports or could support the ultimate recommendations of a Bike/Ped Improvement Plan.

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
1	8/9/2012		16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor (for May 2015 TC workshop)	2	Staff to draft language for review	
2	10/13/2012	TE	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	CDM to discuss with DPW, report to PB	
3	2/14/2013	DD	DEFINE COMMERCIAL RECREATION (for May 2015 TC workshop)	2	CDM to propose / December 2014; re-draft for 1/22/15 discussion; Re-send 12/18 pkt to PB for HOMEWORK; Board discussed reducing to priority 2; staff is reviewing all permitted uses/definitions, creating table of uses	
5	4/25/2013		WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	1	KOSC wants input; workshop postponed to May 28	
6	4/26/2013		ROADS / SIDEWALKS TO NOWHERE (ROW plans)/Shared Driveways/ROW Standards/Emergency access roads	1		
7	8/22/2013	Staff	Site dev pre-meeting; CMA construction inspection; Ref: 16.4.4.1.A (for May 2015 TC workshop)	1	Discussed December, 2014; staff drafted language for review, reviewed 3/12/15. Public Hearing and recommendation to Council 3/26/15	Pending
8	10/24/2013	Staff	HAT - Highest Annual Tide: no Elevation 6 (for May 2015 TC workshop)	1	January, 2015	
9	10/24/2013		16.7.8 Soil Suitability Guide; discontinue; replace with Net Residential Acreage calculations	Done	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval; 5/5/15 TC workshop	Pending
10	11/14/2013		Fines	3	CDM to discuss with TM	
11	11/14/2013	Staff	16.7.3.5.6 Structure replacement <u>outside</u> of shoreland zone (missing from code)	1	Proposed language reviewed 12/18/14; no action; staff to provide draft for 4/23	
12	11/14/2013		Review flood hazard ordinance; 16.5.3.4; (esp. <i>No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.</i>)	3	Coordinate w CMA; draft language, if needed	
13	12/12/2013 3/28/2013	- -	<u>Comp Plan Items</u> Pedestrian / Bike paths / Bike Racks CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year	CPC* - -	 CDM will provide existing bike path plan; disc. 12/18; req. input from T. Emerson 1/22/15; input to CPC when appropriate May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability; PB input to CPC* when appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
14	1/23/2014		Outdoor Seating/Use of Public Way; extend to other zones	Pending	PB review: 10/23/14; rev. language 12/18/14; 1/22/15 discussion; <u>Foreside only</u> ; CDM to work w/ NCP/TC to add to Title 5 permanently; bring to TC 4/17/15	Pending
15	2/27/2014		Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Done	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14; Effective 2/28/15	Done
16	2/27/2014	AG	List of Committees/Boards to monitor	Done	CDM to place in 2/26 packets	Done
17	2/27/2014		Flag Lots (16.8.-16.9)	Done		Pending
18	3/13/2014		Septic pretreatment requirement as bonus (See also: VIII.3.i.ii 2015 Code Amendments: Briefing Book, #38)	Done		Pending
19	3/27/2014	DD	Kittery Historic Resources; historic designation identification	3		
20	5/8/2014	Staff	<u>Sign ordinance changes:</u> Message boards/internal & external lights & timers Window/A-frame & portable signs/banners Sign character/appearance/administration & enforcement	2	Workshop: 7/14/14; Int'l Sign Assoc. 10/23/14 16.8.10.2.C approved by TC, effective 2/28/15	Done
21	5/22/2014	DD	Parking credits	1	Staff review; PB to discuss/recommend amendment if needed; PB to analyze results of Foreside Forum	
22	1/22/2015		<u>Shoreland Zone:</u> Invasive plants; shoreland invasive plant removal Excavation Structure replacement; time periods Shoreland definition	3	CDM to research Code for use of term;	
23	1/8/2015		Foreside Review Committee (16.3.2.15.F)	1	Discussed 1/22; Board to analyze and discuss results of Foreside Forums 4/23	
STAFF						
24	2/28/2013		UPDATE DESIGN STANDARDS FOR LED LIGHTING:	Staff		
25	10/13/2012		BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances	Staff/CPC	Workshop; Sustain So ME; set up January 2014 workshop; Further discussion; PB input to CPC when appropriate	
26	10/24/13 Amendment		DPW Road Cuts; Title 12 amendment; approved by PB 10/24/13; to Council 11/25/13	Staff	Revise per Council Action / Re-visit: January 2015; 1/15: Shared notification w/ DPW & Planning per CDM	
27	10/24/2013		Definition: Substantially complete re: development vs. building permits (for May 2015 TC workshop)	Staff	Staff draft definition differentiating from bldg permits as appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

COMPLETED ITEMS		
Complete	LEGAL NOTICES IN PACKET OR EMAILED TO PB MEMBERS (email to PB @ same time sent to publication)	Complete
4/25/2013	UNBUNDLE ZONING AMENDMENTS	Complete / Ongoing
Complete	BUILDING PERMIT LIST IN PACKETS	Complete / Ongoing
3/25/2013	Amendment: 16.8.24.2 F (LED lights); amended 12/14 (allowing LED lighting)	Ordained: 3/25/2013; ordained 12/14
3/25/2013	DISCUSS PUBLIC NOTICES; ABUTTER'S LIST EARLY, INCLUDE M/L AND PHYSICAL ADDRESS; Sales (assessor) close April 1; system update in Fall	Complete
4/25/2013	Amendment: Speciality Food & Beverage	ordained 6/10/2013
1/24/2014	Foreside workshop with Council	
1/24/2014	REVIEW REPORT TO COUNCIL (RTC) FORMAT	1/24/2013
4/25/2013	PB Workshop Update: training; education; conflict of interest; attendance/voting;	Retreat: January 10, 2014; MMA workshop 3/25/14
4/25/2013	Title 16.11 Marine Development	Ordained: 1/27/2014
2/14/2013	Outdoor Seating/use of public ROW extension period/Title 5 (Seasonal only; extend sunset date)	To Council 6/9/14
	Proposed Ordinance Changes on line	Packets posted online
4/24/2013	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING (at sketch plan)	
	Waivers;	January 2014
	Post Building Permits on Web Site	Provided in Board packets
11/14/2013	ByLaw Changes	Adopted 1/22/15
2/28/2015	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Effective 2/28/15

3/19/2015	15-050	Nate Hubbard	10 Thaxter Lane	64	22	R	New	Construct second floor on existing garage. Studio+bath	\$34,000.00	\$443.00
3/19/2015	15-051	Kevin Quinn	9 Sunset Drive	5	4A	R	Maintenance	Change landing from 3'x3' to 5'x3' keeping existing stairs	\$750.00	\$34.00 -
3/19/2015	15-052	Structure Consulting Group	533 US Route 1	66	27-5	C	Maintenance	Verizon Wireless Tower - swap 9 of 12 existing antennas, add 3 radio heads and 2 junction boxes, add 2 hybrid fiber cables	\$40,000.00	\$700.00 -
3/19/2015	15-053	Global Montello Group Corp	286 US Route 1	31	4	C	Refit	Commercial refit for convenience store and gas station	\$0.00	\$100.00 -
3/23/2015	15-054	Dave Anderson/(Grinell)	5 Stimson Street	3	15	R	DEMO	Demo existing house		\$20.00 -
3/24/2015	15-055	John Bayuk/Linda Cheatham	144 Pepperrell Rd	36	77	R	New	Construct new 24'x20' garage, 20'x6' breezeway and remove existing garage per Planning Board approval	\$103,000.00	\$1,261.00 -
3/26/2015	15-056	Ann Grinnell	5 Stimson Street	3	15	R	New	Construct New house per plans	\$290,000.00	\$3,505.00
3/26/2015	15-057	Patrick Winn & Victoria Trickett	141 Brave Boat Harbor Rd	63	19A	R	New	Add on 14'x18' family room and 6'x12' bathroom to existing home	\$15,000.00	\$205.00 -
3/31/2015	15-058	Thomas Emery	41 Bartlett Road	56	13-4	R	Maintenance	Reshingle home	\$8,360.00	\$25.00 -
3/31/2015	15-059	Void	Void	-	-	-	-	-	-	-
3/31/2015	15-060	Lennox/Yankee Candle	318 US Route 1	38	13A	C	Maintenance	Replace RTU unit	\$9,000.00	\$235.00 -
3/31/2015	15-061	Andrew Chick	99 State Road	8	13	C	Refit	Commercial refit for Kittery Discount Smoke Shop	\$500.00	\$107.50 -