



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, March 13, 2014

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

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 2/27/2014

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.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – (45 minutes) - Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review

Action: hold public hearing and review plan application. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

ITEM 2 – (45 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: hold a public hearing and make recommendation to Town Council. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions in Title 16.2.

OLD BUSINESS

ITEM 3 – (15 minutes) Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use

Development Code. Discuss proposed amendment and make recommendation to Town Council. Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

ITEM 4 – (15 minutes) Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration and Title 16.10.9.1.5

Requests for Extension. Discuss proposed amendment and make recommendation to Town Council. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

ITEM 5 – (30 minutes) - Board Member Items / Discussion

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|---|-------------------------------------|
| A. Action plan review and prioritization discussion | B. Comprehensive Plan Update Status |
| C. Quality Improvement Plan for Kittery Shore and Harbors | D. Other |

ITEM 6 – (30 minutes) – Town Planner Items

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|--|---|
| A. Kittery Town Planning & Development Briefing Book | B. Destination Marketing Program - Route 1BP to Kittery Gateway |
| C. Quality Improvement Overlay Zone | D. Sign Standards and Compliance |
| E. PNSY Bridge 1 Structural Repair Project | F. Other |

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 PLEASE CONTACT STAFF AT (207) 475-1323 OR (207) 475-1307.*

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

UNAPPROVED
February 20, 2014

4
5 Meeting called to order at 6:08 p.m.
6 Board Members Present: Tom Emerson, Karen Kalmar, Bob Melanson, Mark Alesse
7 Members absent: Deborah Driscoll Davis, Susan Tuveson, Ann Grinnell
8 Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

9
10 Chairman Emerson opened the meeting and noted there is a quorum, but four like votes will be
11 needed for approval.

12
13 Pledge of Allegiance

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15 Minutes:

16 Mr. Melanson moved to approve the minutes of January 23, 2014 as amended

17 Ms. Kalmar seconded

18 Motion carried unanimously.

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20 Public Comment: There was no public comment.

21
22 **ITEM 1 – Rt. 236 Commercial Lot Development— Paolucci Realty –Site/Subdivision Preliminary**
23 **Plan Review.** Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of
24 plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division
25 within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28,
26 Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

27 Tom Harmon introduced Jay Stevens, Civil Consultants and Peter Paolucci. He explained the owner
28 wished to use the property for wholesale and retail firewood sales in the meantime, prior to further
29 development. They wished to clear and grade the site for this use, and wish to receive preliminary and
30 final plan approval. Mr. Mylroie stated the plan is ready for final approval with conditions if the Board so
31 agrees. Mr. DiMatteo stated both the adjacent residential property will be on the final plan for this project,
32 and vice-versa. Plan review notes were discussed regarding buffers, easements, no-disturb areas, and notes
33 and conditions of approval that will be included on the final plan. Snow storage locations and a note to
34 preserve large trees on the site will be included on the final plan. There are no waiver requests.

35
36 Mr. Melanson moved to accept the preliminary plan and read the Findings of Fact with conditions as noted
37 for final approval

38 Mr. Alesse seconded

39 Motion carried unanimously by all members present

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42 **WHEREAS: Peter J. Paul Trustee of Paolucci Realty Trust, owner and applicant of Route 236 Commercial**
43 **Lot Subdivision,** proposes to divide an existing commercial lot located at 93 Route 236, thereby creating a second
44 division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map
45 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

46
47 Hereinafter the “Development”.

48
49 Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project
50 Application and Plan and other documents considered to be a part of the approval by the Planning Board in this
51 finding consist of the following (Hereinafter the “Plan”), prepared by Civil Consultant, Inc (or as noted):

52

- 53 1. Application and associated submittal information
54 *Town of Kittery Preliminary Subdivision Application for Peter J. Paul Trustee...* Date: 4/18/2013
55 2. Subdivision Plan Set entitled:
56 *Subdivision of Land of Peter J. Paul, Route 236, Kittery, Maine* Date: 4/18/2013
57 3. Wetland Alteration Application:
58 *Memorandum to Kittery Planning Board* Date: 4/29/2013
59 4. Submitted supplemental information:
60 *Subdivision Plan* REV Date: 1/22/2014
61 *Site Plan* REV Date: 1/22/2014
62

63 NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable
64 standards in the Land Use and Development Code, the Planning Board makes the following factual findings as
65 required by Section 16.10.8.3.4. and as recorded below:
66

67 FINDINGS OF FACT

68 **RED TEXT DENOTES COMMENTS BY CMA**
69

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
A. Development Conforms to Local Ordinances. <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>
Title 16.3.2.11.D.2 Standards has not been adequately addressed as it pertains to side yards in the Commercial Zones that abut residential use/zone. The Applicant does provide the required 40-foot wide yard (setback), however, the plan shows removal of existing vegetation that would provide a screen/buffer that is likely anticipated by the standard. With revised grading more existing vegetation can be maintained thereby creating a more effective separation between uses. The Board may want to consider applying a no-cut/no disturb buffer to the rear and side yards, with the exception of drainage requirements, since there is proposed a residential use in the residential zone abutting the commercial lots. At a minimum the plan must identify that the side and rear yards are to be maintained as buffers per Town Code Title 16.3.2.11.D.2 Standards for the Commercial Zone and 16.2 Definition of Buffer and No specific uses are defined at this time, and therefore cannot be evaluated with the Zoning, including parking and building, landscaping and other requirements. The lot is in the C-2 Zone and a wide variety of commercial uses are allowable. Maximum allowable building envelopes are defined.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified. <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Wetland delineation has been shown on the plan. No wetland filling proposed.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified. <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
The standard appears to have been met. Adjacent stream to the property has been identified on the plan.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient. <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
The standard appears to have been met. There is public water in the street.

Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available. <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
The standard appears to have been met. There is public water in the street. The Applicant has confirmation from the Water District that there is sufficient capacity to serve both domestic and fire protection purposes.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate. <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
The standard appears to have been met. Individual sewage disposal systems proposed. Applicant has obtained high-intensity soil mapping that indicates soils conducive for moderate sewage use.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available. <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
The standard appears to have been met. Applicant has stated there are no plans to use municipal solid waste services.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected. <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
The standard appears to have been met. No wetland filling proposed.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected. <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
The standard appears to have been met. Based on that the fact that only clearing and grading of the site is proposed. There is, however, no specific use and development proposed for this plan review, without such detail it is difficult to determine if future commercial development is unlikely to have an adverse effect the quality of groundwater.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned. <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
The standard appears to have been met. The subject property does not lie within the floodplain.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
K. Stormwater Managed. <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
The standard appears to have been met. The applicant has submitted information to the Town of Kittery demonstrating compliance with the applicable sections of Kittery's LUDC. The proposed stormwater management system uses a combination of a swale, level spreaders and a stormwater treatment buffer to treat stormwater on site.

The approach appears reasonable and adequate to manage stormwater from the current proposed clearing and grading of the site, however when future commercial development occurs additional measures will need to be undertaken for stormwater management.

Vote of 4 in favor 0 against 0 abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

The standard appears to have been met. The plan indicates an outline of erosion control practices. A full erosion control plan should be developed in conjunction with a stormwater management plan submitted to the Town for final review.

Vote of 4 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development will:

1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and
2. Provide adequate traffic circulation, both on-site and off-site.

Standard appears to be not applicable since there has not been a specific development submitted and the approval will not include a specific use at this time.

- a. The applicant has obtained a driveway permit from Maine DOT.
- b. Without a specific use(s) proposed for the lots it is difficult to determine if traffic has been managed appropriately.
- c. The Applicant has provided a letter that describes the anticipated traffic impact associated to the clearing and re-grading of the lots, not the ultimate use.
- d. The Applicant has accommodated an easement for shared access to the site from Route 236 to the proposed commercial lots.
- e. The applicant has indicated large sight distances north and south on Rte. 236

Vote of 4 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. Elevation of the land above sea level and its relation to the floodplains;
2. Nature of soils and sub-soils and their ability to adequately support waste disposal;
3. Slope of the land and its effect on effluents;
4. Availability of streams for disposal of effluents;
5. Applicable state and local health and water resource rules and regulations; and
6. Safe transportation, disposal and storage of hazardous materials.

The standard appears to be met.

1. It does not appear that filling or development is proposed within a 100 year floodplain;
2. The Applicant has provided wetland soils information prepared by a soil scientist and Applicant's agent indicates that the site can support subsurface wastewater disposal systems.
3. There are several sloped areas on site outside of the wetlands.
4. There is a stream located on site, north of proposed Lot #1. It is not clear from the information submitted that this stream is protected from potential effluent.
5. There are no other permits or licenses required. The Applicant is applying for a wetlands alteration with the Town of Kittery.
6. Not applicable. The Applicant has stated there are no plans for hazardous materials.

Vote of 4 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality,

<i>or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i>
Though the site contains a mature stand of trees and understory, there are no identified areas of scenic or natural beauty, historic sites, and significant habitat that would be adversely effected by the proposed commercial development. In lieu of clearing the entire lots for grading, the revised plan limits the disturbance to only the building envelope, thereby allowing for the preservation of more mature trees on site.
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining
P. Developer Financially and Technically Capable.
<i>Developer is financially and technically capable to meet the standards of this section.</i>
<i>16.10.8.2.3.A. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form acceptable to the Town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements.</i>
Vote of <u>4</u> in favor <u>0</u> against <u>0</u> abstaining

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Waivers: None

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan...(Title 16.10.9.1.2)
2. Maine DEP *Best Management Practices* notes for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization shall be included on the plan prior to signature and recording.
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 (CEO) determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed. Town Planning Staff will review with the Owner's representative those trees to be removed along the setback line and identify any trees due to their proximity may warrant a change to the proposed site grading.
4. The front yard of Lots 1 and 2 is subject to a public easement to the Town of Kittery for the construction of a paved walkway and associated street trees, furnished and installed by the owner and/or the developer.
5. Any and all development of the lots is prohibited prior to the approval of the Planning Board, with the exception of that development which has already been approved on February 20, 2014. Before operation commences all new businesses are required to submit a Business Use Application for review and approval by the Code Enforcement Officer and Town Planner.
6. Any proposed development other than what is depicted on the plan must receive prior planning board approval.
7. Plan Review Staff comments #1-4 dated February 13, 2014 (as noted in Instructions/Notice to Applicant, #7 in Findings of Fact, February 20, 2014).

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval and notices to applicant.

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings, including any waivers granted or conditions as noted.

Vote of 4 in favor 0 against 0 abstaining

DATE: February 20, 2014

111 Instructions/Notice to Applicant:

- 112
- 113 1. One (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or
- 114 legal documents that may be required, must be submitted to the Town Planning Department. The date of
- 115 Planning Board approval must be included in the signature block on the final plan.
- 116
- 117 2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting,
- 118 including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter
- 119 notification, and wetland mitigation.
- 120
- 121 3. Performance Guaranty Conditions. Prior to soil disturbance, the Developer must submit to the Planning
- 122 Department a Performance Guarantee and/or an escrow account to pay for any required field inspections or
- 123 improvements. See Title 16.10.8.2.2.
- 124
- 125 4. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York
- 126 County Registry of Deeds within 90 days of the final approval.
- 127
- 128 5. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County
- 129 Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days
- 130 from the date the decision by the Planning Board was rendered. See Title 16.6.2.A.
- 131 6. This approval by the Planning Board constitutes an agreement between the Town and the Developer,
- 132 incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of
- 133 Fact, any Conditions of Approval, and any requirements as set forth in Title 16, Land Use and Development
- 134 Code of Ordinances.

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137 **ITEM 2 – Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review**

138 Owner M&T Reality, Applicant Estes Oil & Propane Company, propose a 60,000 gallon bulk propane

139 storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4, Mixed Use, Residential

140 Rural and Shoreland Overlay zones. Agent is Edward Brake, ATTAR Engineering.

141 Ed Brake noted this is the fourth review by the Board, and two site walks have been cancelled due to

142 weather conditions, and asked the site walk be waived until final plan review. Mr. Emerson stated the site

143 walk could be conducted prior to final plan approval. Earledean Wells noted concerns of the Conservation

144 Commission:

- 145 1. Conflict of interest with Ken Woods as applicant's engineer and as a wetland specialist, and request a
- 146 Maine Certified Specialist conduct a survey of the entire parcel, specifically for a brook and vernal
- 147 pool.
- 148 2. No snow storage removal plan proposed.
- 149 3. Approval will set precedent for other businesses or industries not allowed in this zone.
- 150 4. General concern about environmental issues in the area and on the property.

151 Mr. Brake stated a vernal pool survey was conducted on May 9, 2013 by Mr. Woods and none were found.

152 The ordinance does not require a third party survey be conducted, and Mr. Woods is certified in NH,

153 where Maine does not require certification. Mr. Cuomo conducted the wetlands survey. Snow storage

154 will be included on the final plan. Discussion followed regarding areas of wetland survey and when

155 conducted. Mr. Emerson noted an abutter submitted a letter outlining concerns (Attachment 1).

156 Ms. Kalmar asked about roadway standards. Mr. DiMatteo explained this is not a street but a driveway

157 accessing the use, though should be built to standards applicable to the proposed use.

158 Discussion followed regarding identification of the resource protection zone boundaries on the plan;

159 abutters notices; resolution of vernal pool identification on site and potential vernal pools off site (Mr.

160 Brake stated, for the record, that he does not feel the applicant should have to pay for another wetland and

161 vernal pool survey); consideration of mitigating non-protected areas for wetland mitigation; roadway

162 landscaping and vegetation screening and maintenance of existing features; identification of septic test pits

163 on the preliminary plan, and sewer and water lines for future use; final Fire Department and Fire Marshall
164 approval as a condition;

165 Ms. Kalmar moved to include Mr. Williams' letter into the record

166 Mr. Alesse seconded

167 Motion carried unanimously

168
169 Mr. Emerson stated this use is a special exception use, *a use that would not be appropriate generally or*
170 *without restriction throughout the zoning district, but which, if controlled as to number, area, location, or*
171 *relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort,*
172 *convenience, appearance, prosperity, or general welfare.* He asked the applicant to be prepared to address
173 how the proposed facility meets this definition. He is concerned, and has heard concerns, about the impact
174 on an established business utilized by families and children should there be an accident on the site with the
175 proposed use. A site walk will be scheduled after April 15, during vernal pool season.

176
177 Mr. Melanson moved to continue review of the application in light of the need for another site walk and
178 further wetland and vernal pool assessment.

179 Ms. Kalmar seconded

180 Motion carried unanimously

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182 Break

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184 **ITEM 3 –Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration.**

185 Discuss proposed amendment and make a recommendation to Town Council. Proposed amendment
186 reduces the period of time in which extensions can be granted and modifies the process for extension
187 requests.

188 Mr. Mylroie summarized the Council's questions and requested changes to the proposed amendments to
189 Title 16. Mr. Emerson requested this be placed before the full Board for a final decision. The definition of
190 'substantially complete' needs to be reviewed.

191 Mr. Melanson moved this item continue to the February 27 meeting.

192 Ms. Kalmar seconded

193 Motion carried unanimously

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195 **ITEM 4 –Board Member Items / Discussion**

196 A. Comprehensive Plan Update - Deferred

197 B. Quality Improvement Plan for Kittery Shore and Harbors

198 Board representation is needed at the various Quality Improvement meetings.

199 Mr. Melanson summarized the status of the QIP for Kittery Shore and Harbors and stated a final draft
200 version should be completed soon. Mr. Mylroie stated once completed the Board would review and make
201 recommendations or acceptance to the Council.

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204 **ITEM 5 – Town Planner Items:**

205 Wallingford Square - Minor Plan Change: Parking is impacted due to the change from retail to restaurant
206 use. One additional parking space is needed and is available at the library parking area. If no objection,
207 this can be approved. Michael Landgarten, owner, explained there are 5 unused spaces and one of those
208 spaces will be leased for the time the restaurant will be in existence.

209 Ms. Kalmar moved to allow the Planner and Code Enforcement Officer review and approve this minor
210 plan change.

211 Mr. Alesse seconded

212 Motion carried unanimously

213

214 Mr. Melanson and Mr. Emerson suggested these kinds of administrative details should be left with the staff
215 to handle, with the Board dealing with the parking issues in the Foreside on a planning level.

- 216
217 A. Quality Improvement Overlay Zone; Not discussed.
218 B. Sign Standards and Compliance;
219 Mr. Mylroie summarized the issues behind revising sign standards and compliance with sign ordinance.
220 Mr. Emerson stated this issue began several years ago via a former Town Manager and Council. When
221 and how does the Board get involved in developing these standards that are part of the code?
222 C. Other - Review Board priorities.

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225 Ms. Kalmar moved to adjourn
226 Mr. Alesse seconded
227 Motion carried by all members present

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231 The Kittery Planning Board meeting of February 20, 2014 adjourned at 8:20 p.m.
232 Submitted by Jan Fisk, Recorder, March 3, 2014
233

234

ATTACHMENT 1



February 10, 2014

To: Tom Emerson, Chairman, Kittery Planning Board
Kittery Planning Board Members

Cc: Nancy Colbert Puff, Town Manager
Gerry Mylroie, Town Planner
Chris De Matteo, Asst. Town Planner
Earldean Wells, Chair Conservation Committee

From: Charlie Williams, Owner
Take Flight Aerial Adventure Park
506 Route US Rte. 1
Kittery, Maine 03904

Re: Proposed Estes Bulk Storage/Rte. 1

Dear Mr. Chairman and members of the Planning Board;

I respectfully requested that this letter be read aloud by a member of the Planning Board during the 2/13/14 Planning Board Meeting so that it may be entered into public record.

Upon hearing of the proposed plan to install two 30,000 gallon liquid propane tanks in back of my property my first reaction was that this will be a significant burden and negative impact to my existing business. After meeting with Mr. Estes on my property to discuss his plan a year ago and researching his proposal(s) I have concluded that it will not only be a burden and negative impact on my business but also to the town of Kittery. As an abutter, I am asking that this project be denied. I have outlined specific points into three separate categories.

Impact on the Town of Kittery:

- 1) This will be close to if not the largest wet land fill in the Towns' history according to the Chair of the Conservation Committee.
- 2) This proposal creates no new jobs for the town as far as the project has shown.

506 Route 1
Kittery, Maine 03904
(207) 429-8838
www.takeflightadv.com

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3) It should be known that other fuel companies are waiting and preparing to open similar businesses in Kittery. They are waiting the approval so they can start their process.

4) Public Works has noted little impact with the number of vehicles entering/exiting the proposed site. However, this number has changed and is still unclear. Public Works should review the proposal with new concrete numbers.

5) Having an established business there since 8/4/12 I must express a concern over what this will do to an already congested section of road. AM and PM rush hour can be very difficult to enter or exit into. Couple with the afternoon sun that blinds drivers headed south during the colder months.

6) There is no plan for a traffic light or turning lane to allow these trucks to safely navigate traffic.

7) There will be an increased potential for a serious motor vehicle accident involving either a small gas truck or a large, 18 wheel, gas truck.

8) To the best of my knowledge there are currently no large liquid propane storage tanks in the town of Kittery. What, if any additional costs will be required by the town to help prepare the town if and when there is a serious accident. Will additional fire department training or certifications be required through Maine FEMA, NFPA. *See attached article A.*

Impact on my existing business: Take Flight is an outdoor adventure recreation center that caters to school groups, camps, colleges, church groups, recreation departments, tourists and many other groups. We promote healthy outdoor physical fitness with a deep appreciation and acknowledgement of the surrounding natural environment.

1) If this proposal is approved the amount of dust and dirt during construction will impact the air quality and deter guests from wanting to visit our business.

2) The amount of dust will settle on my climbing structures and platforms will need to be cleaned periodically and be costly. Will Estes' Oil be responsible for paying for this cleaning?

506 Route 1
Kittery, Maine 03904
(207) 429-8838
www.takeflightadv.com



3) The aesthetic appeal of the surrounding woods and wetlands will be replaced by a paved road.

4) The aesthetic appeal of the surrounding wildlife will be replaced by the sounds and sites of diesel driven trucks going by.

5) The proposed development of the rest of the property, as shared with me by Mr. Estes during our meeting last year, will increase the traffic, noise, and reduce the overall aesthetics of the area. *See attached B*

6) The impact of any signage placed on property may impact the visual aesthetics of my property. What will the signage if any look like?

7) The Kittery Fire Chief noted during his attendance at the Planning Boards public hearing regarding the propane trucks that these trucks crash all the time and because of this they are outfitted with many safety features. He later noted that the propane truck drivers are some of the best. I'm not sure I fully understand why they crash all the time if they have the best drivers. However, being said I will now need to develop a response plan in our operations manual, and train my staff, to address what to do when one of these trucks crashes near my property and we have guests on an activity 35 feet in the air.

* It should also be noted that as a land owner on record I have yet to be notified in writing via mail by the town of any site walk or public hearing regarding this proposed project.

General concerns with the project: It is clear that the Planning Board has raised many questions regarding this project. Some of the questions below may be duplicated with that of the Planning Board.

1) Access across the proposed wet land has been attempted twice before by a previous land owner. In my opinion the reasons for denial should be at least reviewed by the Planning Board.

2) The company hired to perform the wet land and vernal pools delineation is the same company contracted for the development of the property. Given the amount of restrictions this area has along with sensitive nature of the property I believe it would be prudent if a third



party conducted the wet land and vernal pools assessments and delineations. It appears to be a conflict of interest to have one company do everything.

3) The number of trucks entering and exiting keeps changing. Public works should re-asses with the correct numbers.

4) In the 1/10/14 letter from Kenneth Wood to the Assistant Town Planner it was concluded that on Mr. Woods' observation of the wetlands, no vernal pools were found and no egg masses were found.

a) What methodology was used? Was the Maine State Vernal Pool Assessment Form used? *See attached C*

b) Photos are strongly encouraged during this assessment. Can we view these photos?

c) No egg masses were observed during the May 9th visit. Since May 9th is just a day prior to the end of the usual time period given to accurately assess vernal pools in this region it would likely be assumed that the eggs had hatched. The assessment period for wood frogs is April 10 through April 25th. Salamanders April 20th – May 10th *see attached D*

d) If the rest of the property was evaluated (beyond the wetlands) can these documents be made public along with the methodology and photos.

e) The difference between wood and tree frogs is somewhat explained by Mr. Wood in the same letter dated 1/10/14. Besides having different Latin names they also have different sounds. Mr. Woods isn't saying we didn't hear one or the other or both but rather they are different. Having him explain this on the site walk in April would have been helpful/educational.

5) There is no information regarding the required sidewalk that needs to be installed. Per 16.3.2.13 section 7 under Traffic and Circulation Standards and Table 1- Chapter 16.6. Article IV There needs to be a sidewalk installed on the site plan that would about the same sidewalk I had to put on my site plan before any approval was given. Given the current revisions of Section 16.8 it appears that this sidewalk needs to be installed also. *see attached E*

506 Route 1
Kittery, Maine 03904
(207) 429-8838
www.takeflightadv.com



6) The Planning Board should verify that all necessary natural features are noted on the site maps for this project. This includes woodland vernal pools near the site (on the property) and a natural spring located approximately 200' from the last bend in the proposed road before the gas tanks. *See attached F (photos).*

7) The current site plans have been modified as noted in the letter from Attar Engineering dated 1/22/14. This plan change would, under the conditions of the Maine Department of Environmental Protection render the current permit invalid until the new changes have been reviewed and approved by the MDEP.

8) Based on the confusion/inconsistency around the numbers given over the last 10 months of how much wetland is being filled in, how long the road is, what is paved and not paved it would seem prudent for the town to request CMA Engineers to actually assess how much is being filled in and does it coincide with the current site maps and application sent in to the MDEP by the applicant.

9) Noted in a previous meeting the Kittery Fire Chief said he had no concern over the current plans for this project. He noted that the tanks are equipped with warning alarms if something goes wrong. Given the proximity of these tanks on the property can the alarm system be explained? Having contacted other towns that currently have large storage tanks it was reported that they do not have any alarm type system but rather Maine FEMA requires an extra strong odor be added to the propane and that smell is then reported. This is a concern given the location of the tanks.

10) There are numerous other concerns outlined in the supplemental packed that I assume the Planning Board will address.

Respectfully,

A handwritten signature in black ink, appearing to read "Charlie Williams".

Charlie Williams, Owner
Take Flight Aerial Adventure Course

506 Route 1
Kittery, Maine 03904
(207) 429-8838
www.takeflightadv.com

GAS PAINS on I-293

12/19/13
A



A propane tanker jackknifed and slid off Interstate 293 north Wednesday morning, shutting down the highway for the rest of the day while crews unloaded the tank and removed the damaged truck. The entire highway reopened just after 8 p.m.

THOMAS ROY/UNION LEADER

Jackknifed propane tanker closes I-293 to traffic for hours in aftermath

By PAUL FEELY
and PAT GROSSMITH
New Hampshire Union Leader

MANCHESTER — A tanker transporting 9,000 gallons of propane overturned on Interstate 293 North early Wednesday morning, forcing the closure of both sides of the busy highway for almost five hours and the evacuation of buildings near the accident scene.

Crews from 15 state and local agencies were involved in getting the tanker back on its wheels and removing the propane.

"This was a very complicated process, involving many different agencies and departments," said District Fire Chief Michael Gamache. "But the vehicle was uprighted, the propane transferred, no injuries were reported and residents are back home."



Traffic on I-293 is backed up shortly after the accident. Later, the road was shut down in both directions and traffic rerouted; nearby residents on Front Street were told to leave their residences as a precaution.

THOMAS ROY/UNION LEADER

► See Propane, Page A3

From Page One

☆

Propane

Continued from Page A1

The tanker tipped over and became stuck in a snow bank just before 6 a.m. Wednesday north of Exit 7 near the Amoskeag traffic circle, city Police Lt. Maureen Tessier said.

State police said the driver of the truck lost control, hit a passenger vehicle and jackknifed. Gamache said he was unaware of any injuries.

Initially, one southbound lane of travel was shut down as workers prepared to remove the propane from the truck. Bill Boynton, public information officer for the state Department of Transportation, said the stretch of highway from Exit 7, after the Amoskeag traffic circle, to the split with Interstate 93 was closed at 11:30 a.m.

Southbound lanes of I-293 were opened to traffic just be-

fore 5 p.m. Wednesday, while the left lane on the northbound side between exits 6 and 7 opened around 6:30 p.m., though the right lane remained closed.

While the tanker was intact and no leaks were detected, fire officials requested an emergency evacuation of the nearby Stonyview Way Condominium complex at 1760 Front Street, as well as two homes north of the accident scene, due to the explosive nature of the cargo.

"The evacuation was ordered as a precautionary measure as officials assessed the situation to determine the best course of action in removing the disabled tanker safely from the area," Tessier said.

Gamache said fire officials found that a wider evacuation of buildings within a half mile

radius of the accident wasn't necessary.

The William B. Cashin Senior Activity Center at 151 Douglas Street in Manchester was designated as a shelter, though at 2 p.m. Wednesday a receptionist at the front counter of the center said they had not seen any evacuees arrive, and had received a call from fire officials telling them not to expect anyone the rest of the day.

"We determined around mid-afternoon it was safe to let the residents back into their homes," said Gamache. "The danger wasn't completely gone, or we would have opened the highway, but the situation was under control enough to allow them to return."

The propane tanker was righted using wrecker cranes, and placed on a

flatbed truck. Officials then began the process of draining the propane gas, which lasted a little over two hours.

Message boards along the state's highways were used to alert motorists to closures and detours. Route 3A was closed during the operation due to its proximity to the crash. Front Street remained open to traffic.

A second accident involving an overturned propane truck happened about 1 p.m. Wednesday in Bow. No injuries were reported, but the truck brought down live electrical wires on White Rock Hill Road. The cause of the rollover had yet to be determined as of Wednesday evening, but police said slippery road conditions were likely a factor.

pfeely@newstote.com
pgrossmith@newstote.com



Maine State Vernal Pool Assessment Form



INSTRUCTIONS: Complete all 3 pages of form as thoroughly as possible. Most fields are required for pool registration.

Observer's Pool ID: _____ MDIFW Pool ID: _____

1. PRIMARY OBSERVER INFORMATION

- a. Observer name: _____
- b. Contact and credentials previously provided? No (submit Addendum 1) Yes

2. PROJECT CONTACT INFORMATION

- a. Contact name: same as observer other _____
- b. Contact and credentials previously provided? No (submit Addendum 1) Yes
- c. Project Name: _____

NOTE: Clear photographs or digital images of a) the pool and b) the indicators (one example of each species egg mass) are required for nonprofessional observers and encouraged for all observers.

3. LANDOWNER CONTACT INFORMATION

- a. Are you the landowner? Yes No If no, was landowner permission obtained for survey? Yes No
- b. Landowner's contact information (required)
Name: _____ Phone: _____
Street Address: _____ City: _____ State: _____ Zip: _____
- c. Large Projects: check if separate project landowner data file submitted

4. VERNAL POOL LOCATION INFORMATION

- a. **Location** Township: _____
Brief site directions to the pool (using mapped landmarks):

b. Mapping Requirements: At least 2 of the 3 must be submitted (check those submitted):

- USGS topographic map with pool clearly marked.
- Large scale aerial photograph with pool clearly marked.
- GPS data (complete section below).

GPS location of vernal pool

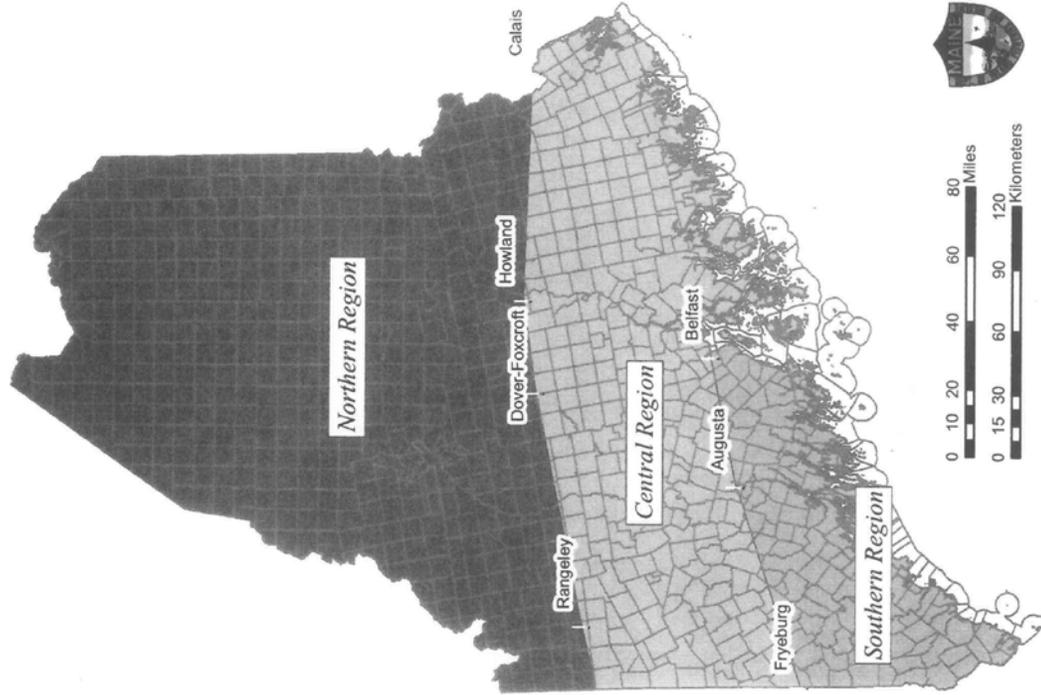
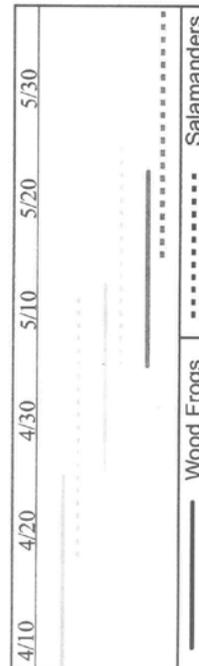
- Longitude/Easting: _____ Latitude/Northing: _____
Check Datum: NAD27 NAD83 / WGS84 Coordinate system: _____
Check one: GIS shapefile
- send to Jason.Czapiga@maine.gov; observer has reviewed shape accuracy (best)
 The pool perimeter is delineated by multiple GPS points. (excellent)
- Include map or spreadsheet with coordinates.
 The above GPS point is at the center of the pool. (good)
 The center of the pool is approximately _____ m /ft in the compass direction of _____ degrees from the above GPS point. (acceptable)

A)

Recommended Periods for Vernal Pool Egg Mass Survey by Geographic Region

Optimal times for counting egg masses of pool-breeding amphibians vary according to geography, elevation and weather. Egg mass counts are generally best conducted just past the peak breeding period. For wood frogs, this occurs approximately 1 to 2 weeks after full chorus. Salamanders have a more extended breeding period and their eggs do not hatch as quickly as wood frogs. Therefore, surveys to count salamander eggs should be conducted slightly later in the breeding season, generally 2-3 weeks following wood frog egg counts. **These recommendations are only guidelines and conditions may vary annually and locally thus requiring best professional judgment for the optimal timing of egg mass surveys.**

Region	Wood Frogs	Salamanders
Southern	April 10 - April 25	April 20 - May 10
Central	April 25 - May 10	May 5 - May 25
Northern	May 5 - May 20	May 15 - June 5



9

E

TJ

RECODIFICATION - ORDAINMENT – 07/26/2010
(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; and 3/25/13)

Table 1 - Chapter 16.8, Article IV
DESIGN AND CONSTRUCTION STANDARDS FOR STREETS and PEDESTRIAN WAYS

Page ONE	PUBLIC STREETS					PRIVATE STREETS			
	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Design and Construction Standards	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Average Daily Trips (ADT)	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Street Width Design:									
a. Right-of-way				60'	60'	60'		40'	40'
b. Travel Pavement				22'	22'	20'		20'	18' gravel
c. Sidewalk/Pedestrian way				6'	6'	5'		5'	5'
d. Paved Shoulder				2' walk side 8' opp. Side	2' walk side 8' opp. Side	2' walk side 8' opp. Side	Same standards as public streets (Primary collectors, secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes.	N/A	N/A
e. Gravel Shoulder				2' opp. Side	2' opp. Side	2' opp. Side		both sides	N/A
f. Enclosed Drainage	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.	sidewalk side	sidewalk side	not required	N/A	N/A	
g. Parking				one side	emergency	emergency		emergency	No
Street Gradients:									
a. Longitudinal (Min. to Max)				.05% to 6%	.05% to 7%	.05% to 8%		.05% to 9%	1.0% to 10%
b. Side Slope (horiz. to vert.)				3 to 1	3 to 1	3 to 1		2 to 1	2 to 1
c. Road Crown				1/4" per ft	1/4" per ft	1/4" per ft		1/4" to 1/2" per ft	1/4" to 1/2" per ft
Cut-de-sac:									
a. Street Length to Radius				N/A	1,500'	1,200'		600'	400'
b. Boundary Radius				N/A	65'	60'		50'	50' or 40' X 40' turn tee
c. Paved Radius				N/A	50'	50'		40'	gravel 40' or 18' X 18'
d. Second Access				Yes	Yes: can be emergency only	Not desirable		Not Allowed	Not Allowed



255
256



U

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

UNAPPROVED
February 27, 2014

4
5 Meeting called to order at 6:03 p.m.

6 Board Members Present: Tom Emerson, Karen Kalmar, Mark Alesse, Deborah Driscoll Davis, Susan
7 Tuveson, Ann Grinnell

8 Members absent: Bob Melanson

9 Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

10
11 Chairman Emerson opened the meeting and noted there is a quorum, but four like votes will be
12 needed for approval.

13
14 Pledge of Allegiance

15
16 Minutes:

17 None available

18
19 Public Comment:

20 Steve Workman, 10 Bridge Street, advocating pedestrian walkways at the Sara Long Bridge. He has
21 participated on all the bridge committees, and noted the Eastern Trail connection. A shared use path
22 outside of the roadway on the upstream side creating safe connections on the Kittery side was proposed.
23 There is a safe connection down the Albacore Parkway on the Portsmouth side to the Market Street
24 Extension, part of the Portsmouth Gateway project. He was concerned the pedestrian use had been
25 excluded from the current design. Following a June 2013 meeting with MDOT staff, a suspended
26 sidewalk was proposed, and stated a shared use path was too costly. This proposed suspended sidewalk
27 would not be next to the rail bed and would be caged. It is now proposed that the suspended walk will be
28 factored into the current design, at approximately \$2 million, for future construction. He discussed various
29 transportation plans under review in Portsmouth. He asked stake holders to reconvene to discuss the
30 MDOT plan to defer the addition of a suspended walk but to consider inclusion in the current bridge
31 design. He asked the Board to support this further level of review and discussion between all parties.
32 Discussion followed regarding the costs of the train beds and total bridge costs.

33
34 There was no further public comment.

35
36 Public Hearing

37
38 **ITEM 1 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use**
39 **Development Code.** Action: review amendment and make recommendation to Town Council.

40 *Amendment includes changes to 16.7.3.5.10. Contiguous Non-Conforming Lots* that would allow for more
41 consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

42 Public Hearing opened at 6:23 p.m.

43 David Jones, Attorney, noted the proposed amendment, 16.7.3.5.12, clearly separates lots in and out of the
44 shoreland zone and preserves the common sense approach to expand a lot within the shoreland zone, and
45 urged the Board to adopt the proposed changes.

46 There was no further testimony. The Public Hearing closed at 6:26 p.m.

47 Board members discussed the numbering, punctuation and grammar of the proposed amendment. Mr.
48 DiMatteo explained the DEP minimum lot size of 20,000 sq feet in the shoreland zone.

49 Mr. Emerson requested the changes discussed be highlighted and returned for final review.

50

51 Ms. Grinnell moved to continue review of Title 16.7.3 Nonconformance.

52 Ms. Driscoll Davis seconded

53 Motion carried by all members present

54

55 Mr. Mylroie brought up the MDEP requested revisions to the Shoreland Zones in the 2000 and 2010
56 orders. Mr. DiMatteo stated this will be on the March agenda for further review.

57

58 **OLD BUSINESS**

59

60 **ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.**

61 Action: review amendment and schedule a public hearing. An amendment to the Town Code to address
62 the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in
63 Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed
64 amendment also includes changes to the net residential area calculations.

65 Earledean Wells, Conservation Commission, noted the following issues relative to proposed language to
66 16.7.8.1, and Board discussed:

- 67 - including view easement exclusion from gross area;
- 68 - impact of new FEMA flood plain definitions and rules;
- 69 - excluding a percentage of setbacks and buffers from wetlands, streams, ponds, etc. including
70 protection of man-made ponds/wetlands, etc;
- 71 - change 'non-residential' to 'commercial';

72 Mr. Emerson suggested adding a 50% exclusion to setbacks and finalizing following a public hearing.

73 Members concurred.

74

75 Ms. Tuveson moved to schedule a public hearing on this item

76 Ms. Driscoll Davis seconded

77 Motion carried by all members present

78

79 **BREAK**

80

81 Board members agreed to review Item 5 out of sequence.

82

83 **ITEM 3 – Board Member Items / Discussion**

84 A. Punch List Item;

85 Following the Board workshop, it was decided members will determine what items from the punch list will
86 be included on agendas. Mr. DiMatteo explained the inclusion of the determination of completeness
87 segment was brief, in order to move the applicant along. Detailed review of an application will always be
88 on the first meeting of each month. Prioritize punch list items (change name to 'Action List?').

89 Mr. Emerson explained items directed to staff from the Town Manager or Council is not controlled by the
90 Board, but the Board can determine priority on the punch list. It was recommended such requests
91 submitted to staff be communicated to the Board prior to substantive staff effort. Members discussed sign
92 ordinance revisions and the need for Board input prior to presentation of a final document.

93 Issues to discuss with Council at workshop:

- 94 - Council sponsorship of code amendments;
- 95 - Simplify Council reports - Board will prepare;
- 96 - Amendment proposals to Council will be reduced to twice each year. Discuss possibility of allowing
97 consideration of emergency amendments.
- 98 - Activities in Town (e.g. Economic Development, Quality Improvement, Destination Marketing) that
99 impact Board deliberation. Board members need to be involved in these meetings, and a list of these
100 activities is needed.

101

- 102 B. Review By-Law changes - Deferred;
- 103 C. Discuss legal issues associated with Waivers; Action TBD;
- 104 D. ‘Non-Conforming Structure Replacement outside the Shoreland Zone’; Action TBD;
- 105 E. Other

106 On the next agenda, the Board will discuss:

- 107 1. Action item lists,
- 108 2. Determine priority of items,
- 109 3. List of standing / advisory committees.

110

111 Ms. Kalmar asked to include 16.8.16.9, Flag Lots on the Action List.

112 Plan Expiration Period amendment will be included on the next agenda.

113

114 **ITEM 4 – Town Planner Items:**

- 115 A. Quality Improvement Plans for Kittery Shore and Harbors - Work in progress.
- 116 B. Sarah Mildred Long Bridge Plan Update Status-Interest in working with NH to add sidewalk.
- 117 C. Town Planning Board Briefing Book. Work in progress by Mr. Mylroie.
- 118 D. Other
 - 119 - Branding. (add to Action List)
 - 120 - Rotary / Rt. 236 design.

121

122

123 **NEW BUSINESS**

124

125 **ITEM 5 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review**

126 Action: review and accept or deny preliminary plan application and schedule a public hearing. Owner
127 Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the
128 division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle
129 and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL)
130 Zone. Agent is Ken Markley, Easterly Survey Inc.

131 Ken Markley introduced Jeff Clark, Attorney for Richard Sparkowich, and responded to staff comments.

132 Mr. DiMatteo explained the review needs to determine whether the application is complete to take to a
133 public hearing for review. Mr. Markley explained the review is for a right-of-way plan and not a
134 subdivision plan.

135

136 Ms. Kalmar moved to accept the preliminary plan and schedule a public hearing

137 Ms. Tuveson seconded

138 Motion carried by all members present

139

140

141 Ms. Tuveson moved to adjourn

142 Ms. Grinnell seconded

143 Motion carried by all members present

144

145

146 The Kittery Planning Board meeting of February 27, 2014 adjourned at 9:06 p.m.

147 Submitted by Jan Fisk, Recorder, March 9, 2014

148

**Town of Kittery
 Planning Board Meeting
 March 13, 2014**

Beatrice Way – Right-Of-Way Plan Review

Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Site Visit	Board's discretion	
YES	Determination of Completeness/Acceptance	February 27, 2014	GRANTED
	Waiver Request:	16.8 Article IV, Table 1 – Street Design Standards	TBD
YES	Public Hearing	March 13, 2014	PENDING
YES	Preliminary/Final Plan Review and Approval	Begin March 13, 2014	PENDING

Applicant: The purpose of these Plan Review Notes is to assist in Development Plan Review process. Complete compliance, however, is not all inclusive of the Town's plan review requirements; other local, state and federal approvals may be required. Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices by the Town Planner and the Town's plan review consultant, CMA Engineers, Inc. While the Planning Board (PB) refers to Plan Review Notes during the plan review process the comments and recommendations are non-binding until approved by the PB. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. 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.

BRING PACKET INFO FROM 2/27 MTG

Staff Comments

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. September 13, 2012 the Applicant withdrew their request for an extension to complete the project and finalized the road construction and essentially completing the 2008 approved subdivision in November 2012.

Early in 2013 the applicant submitted an application to amend the 2008 Subdivision with the addition of a new Right-Of-Way that would allow the creation of one additional lot. The Modification of an Approved Plan included splitting the remaining 57-acre land into two lots; one with existing dwellings (total of 5) and the other with a single proposed dwelling. The applicant was not amenable to the requirements under the recently adopted cluster ordinance requiring setting aside open space, regardless of the number of lots being proposed. The Board never acted on the application within the required timeframe and thereby making it null and void.

The applicant has now submitted a Right-Of-Way Plan application. The applicant had submitted the application earlier, stating that they were beyond the 5 year period that would trigger subdivision; and as of 2/27/14, deeds have been submitted confirming this.

Review to date

Plan Information

Staff has the following comments:

- 1) Parcel perimeter shown does not coincide with what is shown on the Tax Map. Tax Map 61 Lot 8 shows a parcel that connects to Old Farm Road via a narrow extension of land. The plan submitted does not show the connection/frontage on Old Farm Road?
- 2) Plan information per Title 16.10.5.2.B.7. *Surveyed acreage*.....missing total wetlands for parcel A {shown on revised plan REV 2/27/14}
- 3) Plan information per Title 16.10.5.2.B.8. *Names and addresses*record owner information for parcel across from Gasbarro is missing. {shown on revised plan REV 2/27/14}
- 4) Plan information per Title 16.10.5.2.B.10.h. *setbacks Existing and Proposed*.....not shown on plan
- 5) Title 16.10.5.2.C.2.b. *Essential physical features*.....Forest cover is not shown

Title 16.8.16 Lots

16.10.8.3.4.S.1 requires that a Right-Of-Way Plan “does not create any nonconforming lots or buildings”.

To make a positive finding on the above standard the proposed plan needs to conform to provisions under 16.8.16. Staff has the following comments:

- 1) Parcel A looks like a Flag Lot. Provision A under 16.8.16.9 Lot Shape prohibits “flag lots” but does not define them:

A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

Staff contends that a lot that looks like a “flag” (in that the street frontage is along a narrow portion of land, the pole of the flag) is a “Flag Lot”. The applicant’s agent, Ken Markley, Professional Land Surveyor, contests that the proposed lot is not a flag lot because it is not created “in which narrow strips are joined to other parcels in order to meet minimum lot size requirements...” Staff obtained advice from MMA’s legal department to address this issue. In her second email Attorney Seel clarified her first email and concurred with Staff’s initial assumption. (see 2/27/14 PRN)

- 2) Parcel A does not meet the 3:1 lot length to width ratio. As required in 16.8.16.9.A, the lot length cannot be more than three times the width of the lot. This measurement is based on the definition of Lot Width found in 16.2.

Lot width means the horizontal distance between the side lot lines, measured at the setback lines.

Side Lot Lines is essentially defined in 16.8.16.5 and states they “must be substantially at right angles or radial to street lines.” Front Yard is defined in 16.2 and means “an open area unoccupied by any structure...on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.”

Staff does not agree with the agent’s calculations on determining lot width. An email with Mr. Markley’s calculations and Staff’s comments is attached for reference. (see 2/27/14 PRN) When considering the definition of Lot Width and meanings associated with “side lot line” and “front yard”, Parcel A is not in compliance to 16.8.16 Lots.

Driveway

Title 16.2 Definitions, the length of a driveway is 500 feet. The current proposal anticipates a driveway in excess of 500 feet. In addition, the Applicant may want to consider having the wetland impact incurred by the eventual driveway now, since such disturbance needs Planning Board approval. Staff may have more information after Public Safety has an opportunity to comment on the application.

Wildlife Habitat

Potential vernal pool habitat is shown on the plan. The pool identified outside the depicted wetlands should be shown with a 100-foot setback, required by State and Federal regulations. As mentioned in staff comments under *O. Aesthetic, Cultural and Natural Values Protected* (in the draft findings, following), this particular area is uniquely situated between two significant wildlife habitats; Lewis Farm Conservation Subdivision open space and the Town Forest to the north, and Hill Creek and associated wetlands to the south. (see Att.1, 2/27/14 PRN)

The Board can consider requiring a condition of approval that restricts the disturbance (clearing and cutting) in the 100-foot wetland (and proposed vernal pool) setback, with the exception of a driveway to access the future dwelling. This measure would help ensure continuity through the habitat corridor (see Att.1, 2/27/14 PRN).

Waiver Request

The applicant has submitted a request for the Planning Board to waive the requirements in Table 1, Chapter 8, Article IV in Title 16 *Design and Construction Standards for Streets and Pedestrian Ways*. It is Staff's understanding the Applicant claims that since the Average Daily Trips (ADT) are less than what is typically attributed to one household (10 ADT) the current proposal does not apply to the street standards.

If the street standards are not applied, then there shouldn't be a need for a street, which is the only method in this case to split the subject parcel and provide the required frontage. The Board may want to consider modifying or waiving specific components of Table 1, as they may not apply at this point in time. If this is the case, the Plan and conditions need to be clear on what those items are and if any of them are required at a later date, if and when more dwelling units are accessing the new street.

Frontage

The above assumes the Board concurs with the Applicant's plan not to provide access for the existing dwellings to the new street. Inherent in the current proposal, Parcel B is created and provides legal frontage to the existing dwellings where there was none (or sufficient) before. In 2008, the parcel, Map 61 Lot 8, was approved to be subdivided resulting in 3 new lots, and "remaining lot area" as noted on the plan. The latter is important since at the time of the subdivision the "remaining lot area" included four dwelling units that equates to a developed lot. It is questionable if the plan should have been approved with the remaining lot having less than the required 150 feet of frontage.

In summary, the Board should consider the access to the current dwellings and require that it be changed to the new street to conform to Town's definition of "Street Frontage". This would also require that the new street be built to standards identified in Table 1, Title 16.8.4, for Class I, to be upgraded to Class II requirements for subsequent dwellings.

Recommendation

Board should determine after hearing public testimony and the applicant's presentation what staff comments are relevant. Staff did not complete reviewing the plan with public safety and other town officials at the time of preparing the packets, but plan to have information for the meeting.

If the Board concurs with the comments above, Staff recommends the plan application review and the Public Hearing be continued to a subsequent meeting so the applicant can revise the plan and address the comments.

KITTERY PLANNING BOARD

DRAFT FINDINGS OF FACT

UNAPPROVED

for

Beatrice Way Right-Of-Way

Right-Of-Way Plan Review

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”), prepared by . Easterly Surveying, Inc (or as noted):

1. Right-Of-Way Plant entitled:
Proposed Division of Land & “Beatrice Way” Right-Of-Way Plan... , Kittery, Maine REV Date: 2/27/2014
2. Submitted application, cover letters and associated documentation: Date: 2/06/2014

Hereinafter the “Plan”.

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section **16.10.8.3.4. and as recorded below:**

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
A. Development Conforms to Local Ordinances. <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>
See Staff comments above.
Vote of __ in favor__ against __ abstaining
B. Freshwater Wetlands Identified. <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Appears to meet the standard. Wetlands are shown on the plan. Plan references 2007 data, wetlands should be re-certified, especially within the likely impacted areas of the parcel.
Vote of __ in favor__ against __ abstaining

C. River, Stream or Brook Identified. <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
<i>It is apparent from the aerial photo/orthoimagery that not all the stream features on the parcel have been shown on the plan. The stream, or portion of, that is likely to be impacted has been shown on the plan.</i>
Vote of __ in favor__ against __ abstaining
D. Water Supply Sufficient. <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
<i>Appears to meet the standard. Private wells are used on abutting properties and service the existing dwellings. A private well is anticipated and there appears to be enough space to meet required setbacks from septic fields.</i>
Vote of __ in favor__ against __ abstaining
E. Municipal Water Supply Available. <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
<i>Not applicable. Municipal water is not available. A private well is anticipated.</i>
Vote of __ in favor__ against __ abstaining
F. Sewage Disposal Adequate. <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
<i>The standard appears to be met. Individual subsurface wastewater disposal system proposed.</i>
Vote of __ in favor__ against __ abstaining
G. Municipal Solid Waste Disposal Available. <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
<i>The standard appears to be met. The proposed development does not require any changes to municipal solid waste service.</i>
Vote of __ in favor__ against __ abstaining
H. Water Body Quality and Shoreline Protected. <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
<i>The standard appears to be met. Portions of the development are located within 250 feet of wetlands but the development should not adversely affect the quality of the water body.</i>
Vote of __ in favor__ against __ abstaining
I. Groundwater Protected. <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
<i>The standard appears to be met. The proposed development should not adversely affect the quality or quantity of groundwater.</i>
Vote of __ in favor__ against __ abstaining
J. Flood Areas Identified and Development Conditioned. <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps,</i>

and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

The property does lie within the floodplain, and it is not clear to what extent. There are some plan notes that indicate flood hazard area, though the delineation does not correspond with the current FIRM.

Vote of __ in favor__ against __ abstaining

K. Stormwater Managed.

Stormwater Managed. The proposed development will provide for adequate stormwater management

There are no indication as to how the proposed road will be graded and how stormwater will be managed.

Vote of __ in favor__ against __ abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

There are erosion control notes on the plan.

Vote of __ in favor__ against __ abstaining

M. Traffic Managed.

The proposed development will:

1. *Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
2. *Provide adequate traffic circulation, both on-site and off-site.*

The standard appears to be met.

Vote of __ in favor__ against __ abstaining

N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. *Elevation of the land above sea level and its relation to the floodplains;*
2. *Nature of soils and sub-soils and their ability to adequately support waste disposal;*
3. *Slope of the land and its effect on effluents;*
4. *Availability of streams for disposal of effluents;*
5. *Applicable state and local health and water resource rules and regulations; and*
6. *Safe transportation, disposal and storage of hazardous materials.*

The standard appears to be met.

1. It does not appear that filling or development is proposed within a 100 year floodplain, however, anticipated driveway access will;
2. The Applicant has provided a portion of the 2006 HHE-200 report for the test pit locations shown on the plan. No current letter/report by a soil scientist stating that the site can support subsurface wastewater disposal systems.
3. No topographic information in the area of the test pits to evaluate slope.
4. Not applicable. It appears the streams on site are not in the vicinity of
5. The Applicant needs to address.
6. Not applicable. No hazardous materials anticipated.

Vote of __ in favor__ against __ abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics,

<i>historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i>
The site does have significant wildlife habitat in the form of potential vernal pools located to the rear/westerly portion of the property. The Board should consider this and the proximity of the Lewis Farm Conservation Subdivision's open space to the north and the large expanse of wetland and wildlife habitat to the south that ultimately extends to Spruce Creek.
Vote of __ in favor__ against __ abstaining
P. Developer Financially and Technically Capable. <i>Developer is financially and technically capable to meet the standards of this section.</i>
Vote of __ in favor__ against __ abstaining
S. For a Right-Of-Way Plan. The Proposed ROW: <i>1. Does not create any nonconforming lots or buildings; and</i> <i>2. Could reasonably permit the right of passage for an automobile.</i>
<i>1. It appears that Parcel B, that includes existing dwelling units, has sufficient frontage, where before, the 57 acre plus parcel had insufficient frontage thereby making it non-conforming. The Board should consider, however, if access to these units should be from the proposed Right-Of-Way, where the legal frontage (see Title 16.2 Street Frontage) is obtained, or from the existing location of Old Farm Road.</i> <i>It appears that Parcel A does not have a front yard, as defined in Title 16.2 Yard, Front. This is relevant in that in order to find that the proposed lot is conforming, the appropriate provisions of the Code have to be applied. These include: Title 16.8.16 Lots and associated terms defined in 16.2. If the applicable provisions cannot be met then the lot and ROW design needs to change.</i>
<i>2. This standard appears to be met.</i>
Vote of __ in favor__ against __ abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

- 1.

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. Final Plan must include notes that reflect adherence to the Maine DEP *Best Management Practices* for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization.
2. 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 (CEO) determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
3. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. See Title 16.10.9.1.2.

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

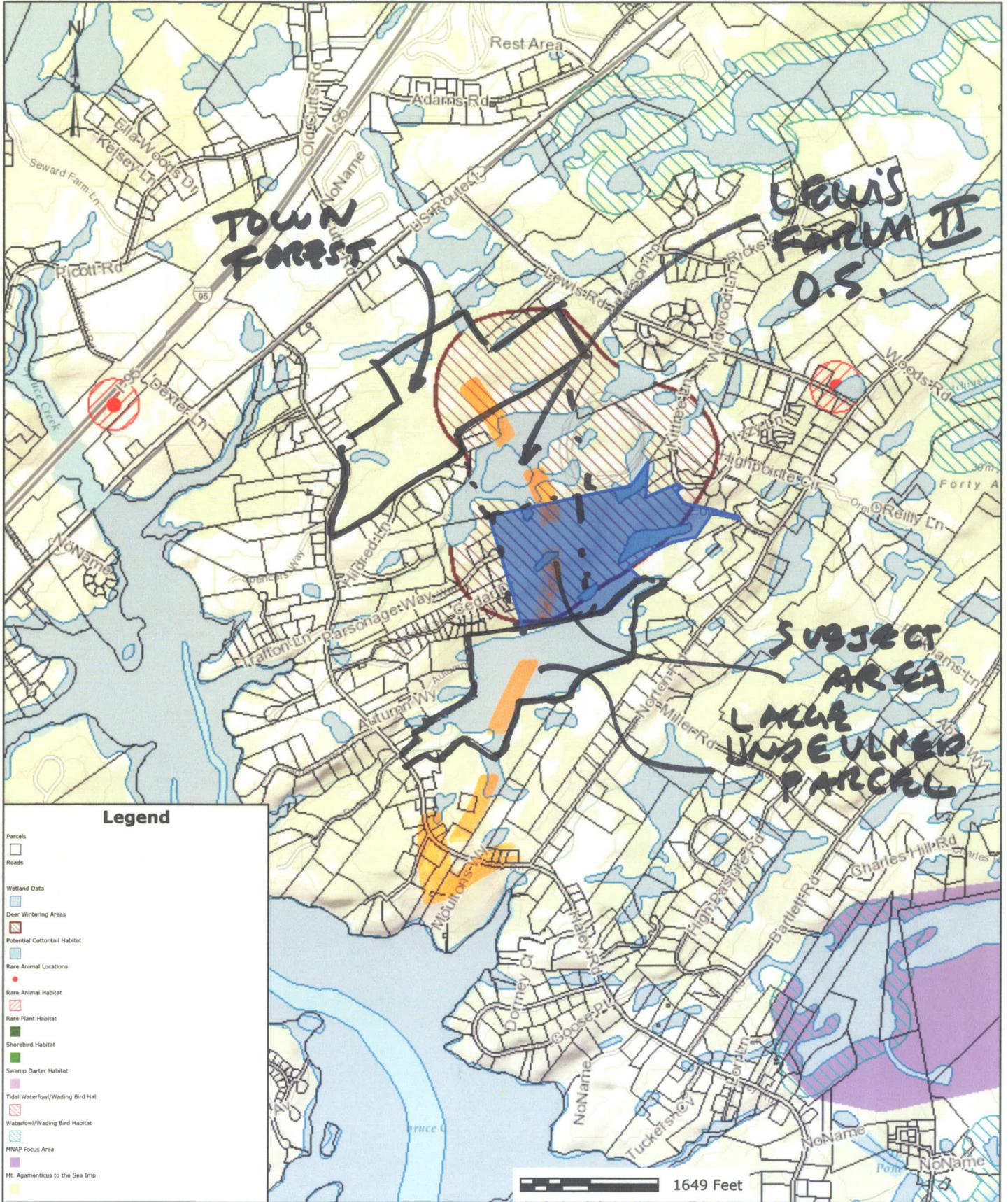
APPROVED BY THE KITTELY PLANNING BOARD ON _____, 2013

Vote of __ in favor__ against __ abstaining

Thomas Battcock-Emerson, Planning Board Chairman

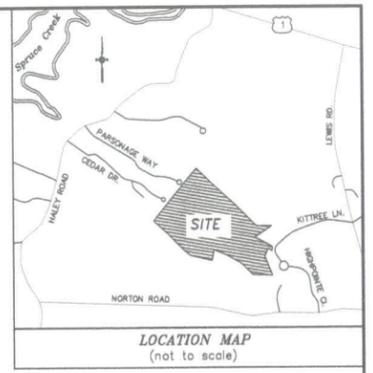
Instructions/Notice to Applicant:

1. One (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. The date of Planning Board approval must be included in the signature block on the final plan.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification, and wetland mitigation.
3. Performance Guaranty Conditions. Prior to soil disturbance, the Developer must submit to the Planning Department a Performance Guarantee and/or an escrow account to pay for any required field inspections or improvements. See Title 16.10.8.2.2.
4. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
5. **An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered. See Title 16.6.2.A.**
6. This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, any Conditions of Approval, and any requirements as set forth in Title 16, Land Use and Development Code of Ordinances.



**Town of Kittery,
Maine**

This information has been compiled from various public and private sources. While every attempt has been made to provide accurate information, neither the municipality nor the service host guarantee the accuracy of information provided herein.



ZONING DATA PER TOWN OF KITTRIE LAND USE AND DEVELOPMENT CODE 16.3.2.1 (SEE NOTE #7).

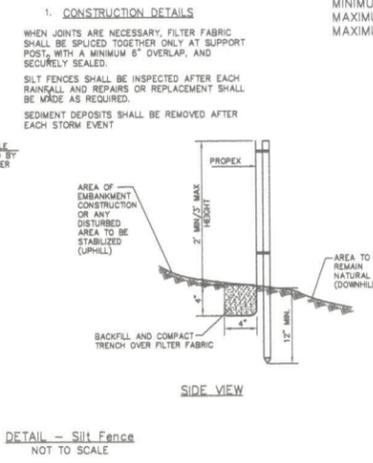
ZONE: Rural Residential (R-RL)

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 LAND DIVISION OF A 57.59± AC. PARCEL OF RECORD INTO TWO PARCELS: PARCEL A CONTAINING 45.11± AC. AND PARCEL B CONTAINING 11.71± ACRES. THIS PLAN ALSO PROPOSES A 50' WIDE RIGHT OF WAY TO BE KNOWN AS "BEATRICE WAY".

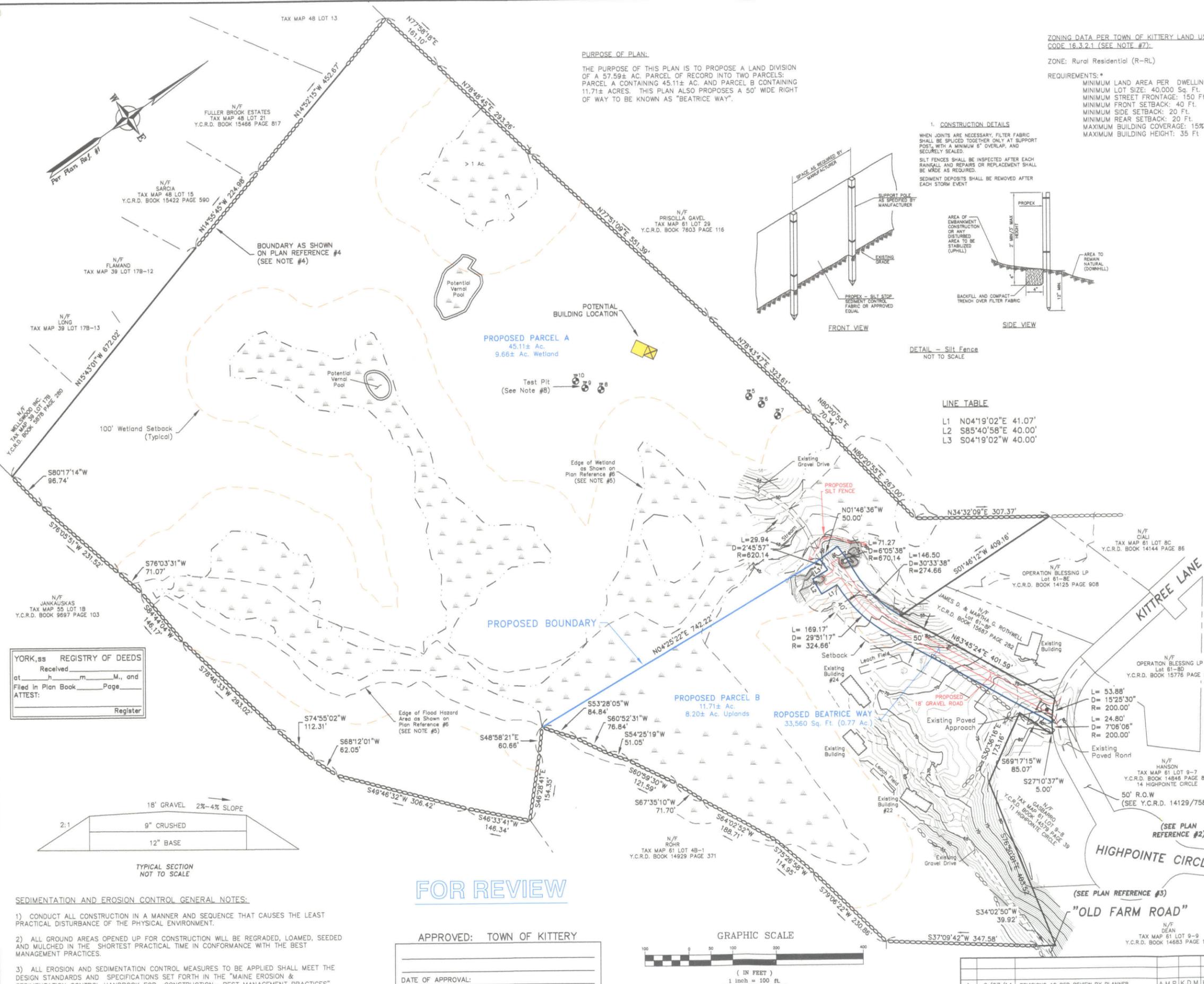


LINE TABLE

L1	N04°19'02"E	41.07'
L2	S85°40'58"E	40.00'
L3	S04°19'02"W	40.00'

- PLAN REFERENCES:**
- "MINOR SUBDIVISION OF LAND OF OPERATION BLESSING LIMITED PARTNERSHIP, HIGHPOINTE CIRCLE & KITTRIE LANE, KITTRIE, 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, KITTRIE, MAINE, PREPARED FOR GOODHOUSE CONSTRUCTION COMPANY, PROPERTY OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, GEORGE T. & LORETTA C. 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 291 PAGE 39.
 - "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, KITTRIE, 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, KITTRIE, 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, KITTRIE, YORK COUNTY, MAINE, 03904, TAX MAP 61 LOT B.", PREPARED BY CLD CONSULTING ENGINEERS, DATED MAR. 2007.
 - "HIGH INTENSITY SOIL SURVEY, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTRIE, YORK COUNTY, MAINE, TAX MAP 61 LOT B.", PREPARED BY CLD CONSULTING ENGINEERS, DATED MAR., 2007.

- NOTES:**
- OWNERS OF RECORD:
TAX MAP 61 LOT B
57.59± Acres (Based on Record Surveys)
OPERATION BLESSING, LP
Y.C.R.D. BOOK 14125 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 REFERENCED PLANS FOR FURTHER INFORMATION.
 - THE WETLAND DELINEATION AND FLOOD HAZARD AREAS SHOWN HEREON ARE BASED ON PLAN REFERENCE #6 AND INFORMATION PROVIDED BY THE CLIENT. WETLANDS MUST BE VERIFIED PRIOR TO DESIGN OR CONSTRUCTION.
 - 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 KITTRIE PRIOR TO DESIGN OR DEVELOPMENT.
 - TEST PIT LOCATIONS ARE PER PLAN REFERENCE #7. SEE SAID PLAN AND REPORT BY MICHAEL CUOMO, SOIL SCIENTIST, DATED SEPT. 2006 FOR A COMPLETE DESCRIPTION OF SOILS AND TEST PITS. NOT ALL TEST PITS ARE SHOWN.

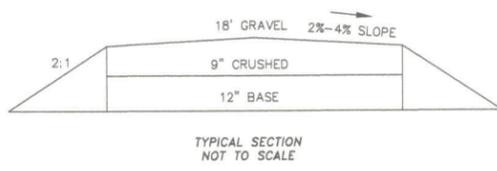


YORK,ss REGISTRY OF DEEDS

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

ATTEST: _____

Register

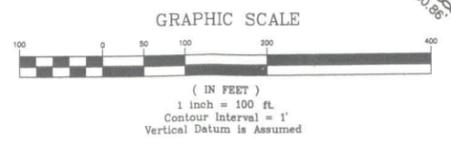


- SEDIMENTATION AND EROSION CONTROL GENERAL NOTES:**
- CONDUCT ALL CONSTRUCTION IN A MANNER AND SEQUENCE THAT CAUSES THE LEAST PRACTICAL DISTURBANCE OF THE PHYSICAL ENVIRONMENT.
 - ALL GROUND AREAS OPENED UP FOR CONSTRUCTION WILL BE REGRADED, LOAMED, SEEDED AND MULCHED IN THE SHORTEST PRACTICAL TIME IN CONFORMANCE WITH THE BEST MANAGEMENT PRACTICES.
 - ALL EROSION AND SEDIMENTATION CONTROL MEASURES TO BE APPLIED SHALL MEET THE DESIGN STANDARDS AND SPECIFICATIONS SET FORTH IN THE "MAINE EROSION & SEDIMENTATION CONTROL HANDBOOK FOR CONSTRUCTION- BEST MANAGEMENT PRACTICES".

FOR REVIEW

APPROVED: TOWN OF KITTRIE

DATE OF APPROVAL: _____



REV.	DATE	REVISIONS AS PER REVIEW BY PLANNER	STATUS	BY	CHKD	APPD.
A	2/27/14	REVISIONS AS PER REVIEW BY PLANNER		A.M.P.	K.D.M.	K.D.M.

PROPOSED DIVISION OF LAND & "BEATRICE WAY" RIGHT-OF-WAY PLAN

FOR PROPERTY AT
22/24 Old Farm Road/Highpointe Circle/Kittrree Lane
Kittrree, York County, Maine

OWNED BY
Operation Blessing, LP
c/o Richard D. Sparkowich
PO Box 4069, Portsmouth, NH 03802

North
EASTERLY
SURVEYING, Inc.
SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
KITTRIE, MAINE 03904
(207) 439-8333

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

DRAWING No: 12726_DIVISION_FEB5_2014
FIELD BOOK No: "Kittrree #27"

Tax Map 61 Lot 8

**Town of Kittery Maine
Town Planning Board Meeting
March 13, 2014**

ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and schedule a public hearing. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion/	8/22/2013, 1/9/2014	HELD
	Workshop	December 3, 2013	HELD
	Planning Board Code Subcommittee (PBCS) Mtgs.	2/4/14; 2/12/14; 2/18/14	
YES	Schedule Public Hearing	Review 2/27/14; PH Scheduled for 3/13/14	
YES	Review/Recommendation to Town Council		TBD

BACKGROUND

Through the review of recent subdivision projects, an issue with the application of Article VIII, 16.7.8.1. (Land Not Suitable for Development) has been raised. According to the Maine State Soil Scientist, the referenced document, *Soil Suitability Guide for Land Use Planning in the State of Maine*, is out of date and no longer applicable. The Planning Board initiated discussions on the issue with input from Bill Straub, CMA, Peer Review Engineer. He concurred that the use of the document for regulatory purposes is no longer appropriate.

This portion of the Town Code is referenced in Title 16.2 Definitions.

Net residential acreage means the gross available acreage less the area required for streets or access and less the areas of any portions of the site which are unsuitable for development as outlined in Article VIII of Chapter 16.7.

The Board last discussed the proposed amendment at the February 27, 2014 meeting. At the December 3 Workshop, the specifics related to the amendment and the issues surrounding soil suitability and its applicability to net residential area and septic were discussed. The Board made subsequent changes at the January 9 and February 27 Board meetings and the February 4, 12 and 18 meetings of the PBCS, which are included in the amendment herein. .

REVIEW

The attached amendment is based on how other towns in Maine address soils associated with development suitability and the calculation of net residential acreage in general. The latest draft also includes the change to the portion of the Code, 16.8.11.5, where “Land Not Suitable for Development” is currently referenced, and requested inclusions following the February 27, 2014 review.

RECOMMENDATION

Considering the input from the soil scientists and engineers, Board and PBCS review and discussions, the revised amendment is ready to forward to Council for adoption.

1 **Proposed Amendment – EDITS THROUGH 2/18/14 PBCS MEETING & 2/27/14 PB MEETING**

2 **Article VIII. Land Not Suitable for Development**

3
4 **16.7.8.1 — Locations and Sewage.**

5 The Planning Board may not approve portions of any proposed development that:

- 6 1. Are situated below sea level;
- 7 2. Are located within the one hundred (100) year frequency floodplain as found in the definition;
- 8 3. Are located on land which must be filled or drained, or on land created by diverting a watercourse,
9 except the Planning Board may grant approval if central sewage collection and disposal system is
10 provided.
- 11 4. Has any part of the development located on filled tidal wetlands.
- 12 5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability
13 Guide for Land Use Planning in the State of Maine.

14
15 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

16
17 Article VIII. Net Residential Acreage

18
19 16.7.8.1 Net Residential Acreage Calculations

20 The Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel. To
21 calculate the Net Residential Acreage the following land area must be subtracted from a parcel's gross
22 area:

- 23 A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest*
24 *Annual Tide (HAT) levels* for the most current year.
- 25 B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year.*
- 26 C. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, lakes, streams and
27 other water bodies.
- 28 D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled.*
- 29 E. All land located within existing easements, excluding view easements, and rights-of-way, as well as
30 proposed rights-of-way, parking and associated travel ways, including driveways that service two
31 (2) or more dwelling units.
- 32 F. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any
33 physical feature, natural or manmade, such that it creates a barrier to the central development of
34 the site and no means of access is proposed nor likely to be provided in the future. However, to
35 demonstrate that identified isolated land may be considered developable for the purpose of this
36 calculation, the applicant must submit a plan and supporting documentation for the Board's
37 consideration.
- 38 G. All land zoned commercial.
- 39 H. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- 40 I. All land identified as exposed bedrock, or soils with a drainage class of *poorly drained*, and/or
41 *very poorly drained* as defined in Title 16.2 *Soils.*
- 42 J. Fifty (50) percent of all land that is characterized with a drainage class of *somewhat poorly*
43 *drained*, unless public sewer is utilized, in which case no land area is subtracted.
- 44 K. All land area within a cemetery/burying ground as defined in Title 16.2, including associated
45 setback per MRS Title 13 §1371-A *Limitations on construction and excavation near burial sites.*

- 46 L. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection
47 Overlay Zone not included in 16.7.8.1.A -K.
48

49 16.7.8.2 Documentation

50 The Net Residential Acreage calculation must be supported by verifiable information and accurate data
51 and shown on the subdivision plan or other plan when applicable.
52

53

54

55 **Title 16.2 Definitions**

56

57 Tidal Land, Filled: means portions of the submerged and intertidal lands that have been rendered by
58 human activity to be no longer subject to tidal action or below the natural low-water mark after October 1,
59 1975.

60

61 Soils

62 1. ~~“Poorly drained soils” means soils where water is removed so slowly that the water table is at or~~
63 ~~within twelve (12) inches of the ground surface for six to nine months of the year.~~

64

65 2. ~~“Very poorly drained soils” means soils in an area where water is removed so slowly that the water~~
66 ~~table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

67 A soil’s drainage class must be determined by a Maine Certified Soil Scientist and based on the NRCS
68 Supplemental Key for the Identification of Soil Drainage Class based on the Maine Association of
69 Professional Soil Scientists, Key to Drainage Classes, March 5, 2002 or subsequent revisions.

70 Cemetery and Burying Ground: A private or public place set apart for the interment of the dead. In the
71 absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information
72 from the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the
73 interment area is determined by starting with a 10-foot distance from existing tombstones and expanded,
74 where necessary, to form a final rectilinear area.

75 **Net residential acreage** means the land area identified for regulatory purposes as developable and is
76 means the gross available acreage less the area required for streets or access and less the areas of any
77 portions of the site which are unsuitable for development land area identified as outlined in Article VIII of
78 Chapter 16.7 Net Residential Acreage. The Net Residential Acreage is used to determine the maximum
79 number of dwelling units allowed on a parcel.
80

81

82 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

83

84 **16.8.11.5 Application Procedure.**

85 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,
86 Development Plan Application and Review, and the following:

87 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch
88 Plan:

89

- 90 1. Calculations and maps to illustrate:

- 91 a. proposed dimensional modifications and the dimensional standards required in the zone in which the
92 development will be located;
- 93 b. non-buildable area (land ~~not suitable for development area~~ as defined in ~~Article VIII of Chapter Title~~
94 ~~16.7.8.1~~);
- 95 c. net residential acreage and net residential density; and
- 96 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

**Town of Kittery Maine
 Town Planning Board Meeting
 March 13, 2014**

Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code. Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Held 6/27/13 and 10/24/13 and 1/23/14	
YES	Schedule Public Hearing	Scheduled for 2/27/14	
YES	Public Hearing	2/27/14 Public Hearing	HELD
YES	Review/Recommendation to Town Council	Pending	

Staff Comments

Background

On February 12, 2013, Mary Thron and Raymond J Arris received approval from the BOA to alter a lot line between two contiguous non-conforming lots. The applicant’s original goal was to simply transfer property from one non-conforming lot (M58 L42) to the abutting non-conforming lot (M58 L42A) to accommodate a new septic field without the need of an easement.

The BOA did not grant this request because the outcome would make an existing nonconforming lot more nonconforming. Property M58 L42 is currently 35,415 square feet in size, less than the 80,000 square feet required in the Residential Rural Conservation zone. Transferring land would reduce the already undersized lot making the property more non-conforming. The BOA, however, granted an equal land swap, creating an irregular (zig-zag) property line between the lots, something the applicant is trying to avoid with this proposed code amendment.

In addition to Title 16, the State’s Mandatory Shoreland Zone (MRSA 38, Chapter 3, and Subsection 435-449) applies to those properties located within the Shoreland and Resource Protection Overlay Zones. The State’s minimum standards prohibit the creation of a “more non-conforming” condition. On 10/24/13 the Board continued the application to allow Staff additional time to work with the Maine DEP (MDEP) and the applicant’s attorney, David Jones, on an amenable code amendment.

Review

At the January 23, 2014 meeting, the Board reviewed the revised amendment including input from the applicant’s attorney and Michael Morse with the MDEP. The Board requested the amendment be revised to address formatting and clarity regarding how the provision is applied when a subject property is located in or out of the Shoreland Overlay Zone.

The most recent revised draft addresses the Board’s comments, along with the applicant’s original intent, and the portion that applies to the Shoreland Overlay Zone is supported by the MDEP. Comments incorporated from MDEP include:

- 1) The reference to the *Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards* be referenced in a note.
- 2) When both subject lots do not conform to the State's minimum lot dimensional requirements, property lines cannot be adjusted.
- 3) The reference *residential dwelling units* be replaced with *principal structures and uses*.
- 4) Language that addresses the legal, non-conforming status of a lot-of-record after a property line has been adjusted and, though the lot is altered, does not constitute a "new lot".

In addition to MDEP comments, a draft prepared by Attorney Jones (in consideration of the Board's 1/23/14 comments), Staff and the Town Attorney made the following additional changes that:

- 5) Provide specific standards for adjustment of non-conforming lots outside the Shoreland Overlay Zone.
- 6) Remove the proposed amendment (*Adjustment of Common Boundary Line of Non-Conforming Lots*) from 16.7.3.5.10 Contiguous Non-Conforming Lots to a separate stand-alone section, though still applicable to non-conforming lots (proposed as Title 16.7.3.5.12); and
- 7) Create a separate stand-alone section for *Single Lot Division* (proposed as 16.7.3.5.11, *Single Lot Division of a Nonconforming Lot*) and renumbered code sections 16.7.3.5.13 and 16.7.3.5.14.

The rationale for re-numbering the proposed amendment, *Adjustment of Common Boundary Line of Non-Conforming Lots* and the existing section *Single Lot Division*, is that 16.7.3.5.10 specifically targets the treatment of contiguous non-conforming lots that, depending on the situation (A, B, or C), may be required to merge into a single lot. The proposed amendment to adjust a common boundary line between two non-conforming lots, each having a legally created principal structure, is not applicable here because 16.7.3.5.10.B (*Contiguous Built Upon Nonconforming Lots*) states that in such situations the lots need not be combined.

In the same manner, *Single Lot Division* targets a "single lot" not "contiguous non-conforming lots". With this in mind, this section is better separated from Contiguous Nonconforming Lots, but still remains under Article III Nonconformance.

Related Code Amendments

It became evident while working with MDEP the Title 16 Shoreland Zoning provisions are not fully in compliance with the State's *Mandatory Shoreland Zoning Act*, specifically with two MDEP Department Orders (dated 2000 and 2010) issued when Kittery amended their Shoreland Zoning. The conditions of approval noted in these orders were never fully complied with and include *16.7.3.5.10 Contiguous Non-Conforming Lots*.

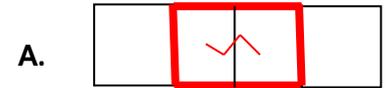
Staff has initiated a review process and have provided MDEP a draft that includes the required amendments. An abstract of the draft (Title 16.7 only) is included for the Board's reference. After MDEP review, the draft will be included on a Board agenda for review and action.

Recommendation

With the latest changes in place, and with no other issues raised, the Board can recommend adoption to the Town Council.

1 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

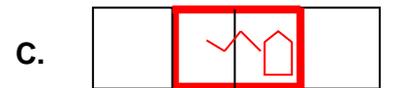
2 A. Contiguous Nonconforming Lots. If two or more
3 contiguous nonconforming lots or portions thereof are in
4 common ownership and if a combination of such lots or a
5 portion thereof constitutes a lot of nearer conforming size, such
6 combination is deemed to constitute a single lot.



8 B. Contiguous Built Upon Nonconforming Lots. If there
9 exists a legally created principal structure on each of the
10 contiguous nonconforming lots or portions thereof that would
11 otherwise require the lots to be combined as provided herein,
12 the contiguous lots need not be combined to create a single lot
13 as required by Section A above.



15 C. Contiguous Partially Built Upon Lot. If one or more of
16 the contiguous nonconforming lots is vacant or contains no
17 principal structure, the lots must be combined to the extent
18 necessary to meet the purposes of this Code as required by
19 Section A above.



21 This subsection does not apply:

22 1. to any Planning Board approved subdivision which was recorded in the York County Registry of
23 Deeds on, or before July 13, 1977;

24 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface
25 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and
26 the State of Maine Subsurface Wastewater Disposal Rules; and

27 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

28 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are
29 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square
30 feet of lot area.

31
32 **16.7.3.5.11C. Single Lot Division of a [s1] Non-Conforming**
33 **Lot.**

34 If two principal structures existing on a single lot legally created when recorded, each may be sold on a
35 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as
36 practicable to the dimensional requirements of this Code. If three or more principal structures existing on a
37 single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board

38 determines that each resulting lot is as conforming as practicable to the dimensional requirements of this
39 Code. (Ordained 1-23-12; Effective 2-23-12)

40

41 **16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming Lots.**

42

43 **A.** The common property line of two non-conforming lots of record, each with legally created principal
44 structures, can be adjusted if:

45 1. the Code Enforcement Officer determines that the resulting lots are not more non-conforming than
46 the existing lots with respect to the dimensional requirements of this Code; or

47 2. when^[s2] the lots are located entirely outside the Shoreland Overlay Zone, the Board of Appeals
48 determines that each resulting lot is as conforming as practicable to the dimensional requirements of
49 this Code; and

50 a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

51 b. each resulting lot is not less^[s3] than the smallest residential lot permitted under the town's land
52 use base zones, Title 16.3, when served by public sewer; or

53 3. when^[s4] all or part of either lot is located in the Shoreland Overlay Zone, the Planning Board
54 determines that each resulting lot is as conforming as practicable to the^[s5] Maine Department of
55 Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal
56 structures and uses¹; and

57 a. each resulting lot is not less^[s6] than 20,000 S.F. in lot size and not less^[s7] than 100 feet in shore
58 frontage^{2,3}; and

59 b. a lot that is conforming to the^[s8] MDEP Mandatory Shoreland Zoning minimum lot standards for
60 principal structures and uses remains conforming to those requirements¹; and

61 c. common boundary lines may not be adjusted when^[s9] both subject lots are non-conforming
62 according to the State's^[s10] minimum lot dimensional requirements.¹^[s11]

63

64 ¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum
65 Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and
66 adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

67 ² Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint
68 ownership

69 ³ Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and
70 State of Maine Subsurface Wastewater Disposal Rules or public sewer is required

71

72 **B.** It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming*
73 *Lots*)^[s12] to allow for the creation of an additional lot. A property line adjustment in accordance with this
74 subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a
75 legally non-conforming lot of record, not applicable to the joining of lots.

76

77 **16.7.3.5.1314 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

78 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
79 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the
80 requirements of this Code for both the original and addition or enlargement of the structure or use.

81

82 **16.7.3.5.1412 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

83 The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are
84 not to be considered part of the structure for such determination. Step landings may not exceed three feet
85 by three feet (3'x3') in size.

**Town of Kittery Maine
Town Planning Board Meeting
March 13, 2014**

Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration and Title 16.10.9.1.5 Requests for Extension. Discuss proposed amendment and make recommendation to Town Council. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	1/23/14, Continued to 3/13/2014	
YES	Schedule Public Hearing		
YES	Public Hearing		
YES	Review/Recommendation to Town Council	1/23/14/Pending	

Background

The prior amendment was not approved by Town Council, see packet info from 1/23/14. This amendment review was continued by the Board for input by staff and a member of the Code Subcommittee. The attached amendment reflects those changes.

Recommendation

Depending if the Board determines whether or not another public hearing is needed, and if there is consensus with the latest changes, another recommendation to the Town Council can be made.

1
2 The following amendments are recommended by Staff and PBCS review:

3
4 **Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

5
6 **Article IX. Post Approval**

7 **16.10.9.1 Post Approval Actions Required.**

8
9 **16.10.9.1.4 Approved Plan Expiration.**

10
11 A. ~~An approved subdivision plan's approval by the Planning Board will expire if work on the development~~
12 ~~has not commenced within one (1) calendar year from Planning Board date of approval. or Where work~~
13 ~~has commenced within one calendar year of approval, is not substantially such approval will expire unless~~
14 ~~work is substantially complete within three (3) calendar years from of the original date of Planning Board~~
15 ~~approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original~~
16 ~~approval date not to exceed ten (10) years.~~

17
18 B. ~~A non-subdivision~~ For all other development plans, ~~plan's approval by the Planning Board approval~~
19 ~~will expire if work on the development has~~ not commenced within one (1) calendar year from date of
20 approval. or Where work has commenced within one year of approval, such approval will expire if work is
21 not substantially complete within two years ~~from of the original~~ date of Planning Board approval. ~~The~~
22 ~~Planning Board may, by formal action, grant extensions for an inclusive period from original approval~~
23 ~~date not to exceed three years.~~

24
25 C. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration
26 date upon written request by the developer for an inclusive period from the original approval date, not to
27 exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

28
29
30 **16.10.9.1.5 Requests for Extension.**

31 ~~The Planning Board may grant extensions to expiration dates upon written request by the developer, on a~~
32 ~~case-by-case basis. {Moved to C. above}~~