

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

**UNAPPROVED**  
**MARCH 10, 2016**

4  
5 **Meeting called to order: 6:00 pm**

6  
7 **Pledge of Allegiance**

8  
9 **Roll Call:**

10 Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Deborah Lynch,  
11 Mark Alesse, Dutch Dunkelberger

12 Board members absent: Secretary Debbie Driscoll-Davis

13 Staff present: Chris Di Matteo, Town Planner

14  
15 **Public Comment:** Ms. Grinnell opened the floor for public comment.

16  
17 Tom Emerson, 10 Ox Point Drive

18 Mr. Emerson's statement responded to the agenda item Memorial Circle and Related Improvement Plan at  
19 the 2/25/2016 Planning Board meeting. He recognized that none of the current Planning Board members  
20 were present at the time the plan was initially approved. This plan is one portion of a more overarching  
21 plan set forth by the State several years ago with the intent to improve safety on and around Route 1. The  
22 main purpose of the Memorial Circle and Related Improvement Plan was to increase safety and provide  
23 vehicle, pedestrian, and bicycle access. The direction of the project remains no different than what was  
24 originally approved. He stated his support for sidewalk access around the entire perimeter of Memorial  
25 Circle and all access points. Spending of infrastructure funds promotes only growth in the area.

26  
27 Ms. Grinnell closed the floor for public comment.

28  
29 **Minutes: February 11, 2016**

30  
31 **Ms. Kalmar moved to approve the February 11, 2016 minutes, as amended.**

32 **Mr. Alesse seconded.**

33 **Motion passed 4-0-2.**

34  
35 **Minutes: February 25, 2016**

36 Line 43 – to replace “Ms. Kalmar” with “Ms. Grinnell”

37  
38 **Ms. Kalmar moved to approve the February 25, 2016 minutes, as amended.**

39 **Mr. Dunkelberger seconded.**

40 **Motion passed 5-0-1.**

41  
42 **ITEM 1 – Yankee Commons Mobile Home Park Expansion – Final Subdivision Plan Review**

43 **Action: Approve or deny plan.** Owner/applicant Stephen A. Hynes Real Property Trust Agreement requests  
44 consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home Park for the property  
45 located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential – Rural (R-RL) Zones.  
46 Agent is Thomas Harmon, Civil Consultants.

47  
48 Jay Stevens, Civil Consultants

49 Mr. Stevens stated that all matters have been addressed and are incorporated in the plan after review with  
50 Town staff. He suggested the following revisions:

- 51 1. Condition of Approval Item 2 – should reference Town Code Title 16.10.8.2.2.
- 52 2. Condition of Approval Item 10 – rephrase to minimize ambiguity and ensure the Planning Board is  
53 aware of all changes.
- 54 3. Conditions of Approval Item 13j and 15 – should be combined into one item since it appears

55 redundant.

56  
57 Mr. DiMatteo and Planning Board concurred with Mr. Stevens' revision to Condition of Approval Item 2.

58  
59 Mr. DiMatteo and Planning Board reworded Mr. Stevens' revision to Condition of Approval Item 10 so to  
60 warrant recommendations required only by the Planning Board by removing the phrase "on the final plan as  
61 recommended by Staff, Planning Board or Peer Review Engineer, and as".

62  
63 Mr. DiMatteo explained that Condition of Approval Item 13j and 15 refers to specifically the earth/rock  
64 removal versus the entire plan and, therefore, suggested no changes to be made. The Planning Board  
65 supported that reasoning.

66  
67 Ms. Kalmar asked Mr. Stevens regarding Condition of Approval Item 13a that omits earth/rock removal  
68 hauling on weekends since it had been previously included in the plan. She asked if the intention is to prohibit  
69 on all weekends and if the phrasing was a deliberate omission. Mr. Stevens responded that removing  
70 weekends from the condition allows for more flexibility. Ms. Grinnell emphasized there would be no rock  
71 removal hauling during summer months. Mr. Stevens suggested including "weekends (unless approved by the  
72 Police Chief)" which was agreed upon by the Planning Board and Mr. DiMatteo.

73  
74 The Conservation Commission confirmed to Ms. Grinnell that all necessary documentation was received.

75  
76 Mr. Alesse asked if there are plans for monitoring air quality on any periodic schedule during time of  
77 construction. Mr. Stevens replied this concern is addressed in the monitoring section of the ERRP which  
78 states a log of idling vehicles would be maintained to evaluate characteristics of emissions and visual  
79 monitoring would be conducted to evaluate free dust. There would be no mechanical measurements taken.

80  
81 Mr. Alesse asked if the neighboring residents were notified of the project. Mr. Stevens replied a meeting was  
82 conducted to review plans and facilitate discussion, however, there was zero attendance from those residents.  
83 The park manager is aware of the process and a central bulletin board in the park includes information  
84 regarding the project.

85  
86 **Ms. Kalmar made a motion to grant approval for the Final Subdivision Plan for the 78-lot expansion of**  
87 **the Yankee Commons Mobile Home Park located at Idlewood Lane and US Route 1 for**  
88 **owner/applicant Stephen A. Hynes Real Property Trust Tax Map 66, Lot 24 upon the review and**  
89 **voting in the affirmative on the findings of fact.**

90 **Ms. Lynch seconded.**

91  
92 Mr. Dunkelberger noted he did not find a definitive decision on the suitability of the project.

93  
94 Ms. Grinnell reminded the Board that each finding of fact requires at least four affirmative votes to approve  
95 the final plan.

96  
97 Mr. DiMatteo added that the finding of Item H should begin as "neither the site nor the development".

98  
99 **Motion passed 5-0-1.**

100  
101 **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.**

*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*

<i>interpret these ordinances and plans.</i>
<p>Finding: The proposed mobile home park development is an expansion to the existing Yankee Common Mobile Home Park. The use is not a permitted or special exception in the Mixed-Use zone where the development is predominantly located, however, the superior court ruled that the Town's ordinance prohibiting mobile home parks from the Mixed-Use Zone is invalid under 30-A M.R.S. § 4358(3)(M).</p> <p>The proposed development does not meet the town's 6,000 s.f. minimum lot size per 16.8.12.3.C.1. In the same manner as the use is permitted in the Mixed-Use Zone through the state's mobile home statute, Title 16.8.12.3.C.1 is invalidated by 30-A M.R.S. § 4358(3)(A)(1)(b). The project includes filling of 900 sf of wetlands that will not have an adverse effect on the remaining wetland. A wetland alteration application has been submitted in accordance with 16.9.3.</p> <p>Conclusion: The standard appears to have been met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>B. Freshwater Wetlands Identified.</b>
<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>
<p>Finding: All wetlands have been delineated and mapped in accordance with applicable standards. A stream has been identified on the site and depicted on the plans</p> <p>Conclusion: The standard appears to have been met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>C. River, Stream or Brook Identified.</b>
<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>
<p>Finding: A stream has been identified on the site and depicted on the plans</p> <p>Conclusion: The standard appears to have been met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>D. Water Supply Sufficient.</b>
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
<p>Finding: The site is serviced by public water. The Kittery Water District has indicated ability to serve project.</p> <p>Conclusion: The standard appears to have been met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>E. Municipal Water Supply Available.</b>
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
<p>Finding: The site is serviced by public water and applicant has received confirmation from the Kittery Water District as to sufficient supply for the proposed development.</p> <p>Conclusion: The standard appears to have been met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>F. Sewage Disposal Adequate.</b>
<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>

<p>Finding: The site is serviced by town sewer and has received confirmation from the Town that the system is sufficient to support the proposed development  Conclusion: The standard appears to have been met.</p>
<p>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</p>
<p><b>G. Municipal Solid Waste Disposal Available.</b></p> <p><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></p>
<p>Finding: The applicant has expressed and provided information on plans to manage solid waste in the mobile home park in a manner that will support the proposed development  Conclusion: The standard appears to have been met.</p>
<p>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</p>
<p><b>H. Water Body Quality and Shoreline Protected.</b></p> <p><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></p>
<p>Finding: Neither the site nor the development is located in the Shoreland or Resource Protection Overlay Zones. The stormwater management plan includes features to treat stormwater in accordance with MEDEP requirements, and best management practices.  Conclusion: The standard appears to have been met.</p>
<p>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</p>
<p><b>I. Groundwater Protected.</b></p> <p><i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i></p>
<p>Finding: The site is serviced by town sewer and it does not appear the proposed development will adversely affect the groundwater. The applicant has provided analyses of the pre- and post-development stormwater management, and described that post-construction conditions will mimic pre-construction conditions relative to interaction of stormwater and groundwater. The general pattern and spatial distribution of stormwater discharge is similar pre and post. Further, most of the stormwater discharges are designed to flow through infiltration or bioretention BMPs, which will encourage infiltration of runoff to groundwater, further causing conditions post construction to mimic pre-construction conditions. The applicant's environmental consultant made an additional presentation of these and related findings to the planning board and the conservation commission and peer review engineer concurs.  Conclusion: The standard appears to have been met.</p>
<p>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</p>
<p><b>J. Flood Areas Identified and Development Conditioned.</b></p> <p><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></p>
<p>Finding: A portion of the site is located in the flood zone, however, no buildings or structures will be constructed within these zones.  Conclusion: The standard appears to have been met.</p>

Vote of 5 in favor 0 against 1 abstaining

**K. Stormwater Managed.**

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

Finding: The proposed development has received state permits and has been reviewed by the town's peer-review engineer. The designs meet applicable best management practices for management of flow and stormwater treatment.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

102

**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.*

Finding: The proposed development has received state permits and has been reviewed by the town's peer-review engineer. The applicant has prepared a Earth/Rock Removal Operations Plan reviewed by town staff and Peer-review engineer. Designs meet applicable management requirements for control of erosion.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 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.*

Finding: The proposed development is not subject to a state traffic movement permit. Vehicular and pedestrian circulation has been reviewed by the town's staff and peer-review engineer, a one-way circulation that accommodates pedestrian access has been provided. The applicant's Earth/Rock Removal Operations Plan includes reasonable strategies for limiting the impacts of construction-period impacts of trucking of excavated materials from the site.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 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.*

Finding:

1. No filling or development is proposed within the 100 year floodplain.
2. Development will utilize town sewer.
3. Development will utilize town sewer.
4. Development will utilize town sewer.
5. The applicant has received the MDEP Stormwater License and ACOE Permit

6. There will be no handling of hazardous materials.  
The applicant has completed an independent analysis of specific air quality impacts during construction activities, which concludes that emissions from planned construction activities will meet National Ambient Air Quality Standards recognized by the USEPA.  
Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 abstaining

103

**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, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*

Finding: The proposed development does not have any adverse effects to any known aesthetic, cultural and natural values that require protection. A 25-foot no disturb setback is required around the Wilson family cemetery located on the site and parking is also provided to accommodate visitors.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

**P. Developer Financially and Technically Capable.**

*Developer is financially and technically capable to meet the standards of this section.*

Finding: 16.10.7.2.P. Performance Guaranty and Town Acceptance to secure completion of all improvements required by the Planning Board and written evidence the Town manager is satisfied with the sufficiency of such guaranty. This is required as a condition of final approval, and will include restoration of off-site roadway impacts, as necessary. See draft conditions of approval #2 and #14.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 abstaining

104

**WETLAND ALTERATION FINDINGS OF FACT:** *The project includes 900 sf of wetlands filling associated with roadway construction. An application for wetlands alteration needs to be prepared and submitted per 16.9.3. Note that the MEDEP has issues a Permit by Rule for the filling.*

**16.9.3.7 Wetlands Alteration Approval Criteria**

***A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.***

Finding: The 900sf impacted was determined by the MDEP to be "low value". Construction in the area will result in better subsurface and stormwater drainage into the emergent wetland area. Peak runoff rates are not increased.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 abstaining

**B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.** The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.

Finding: Information supporting this standard is shown in the application and detailed in these notes.  
Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

**C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.** The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

Finding: This has not been requested or appears to be warranted.  
Conclusion: This standard is not applicable.

Vote of 5 in favor 0 against 1 abstaining

**D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).**

Finding: The project includes a reasonable and practicable mitigation plan through compensation and preserved open space and buffers which includes protection of approximately 36 acres planning board approved as 13 acres of open space, 11 acres of non-disturbed wetlands and 12 acres of no disturbance buffers.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

**E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.** In determining if no practicable alternative exists, the Board will consider the following:

The proposed use:

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;
2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and
4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

Finding:

1. Approved plan utilizes buffering and restrictions to enhance existing remaining 10.7 acres of wetlands
2. Net residential density allowance of 135 lots reduced to 78 and access street reroute avoids all but 900sf required to construct street.
3. The 50.1 acre site clustered to allow development on only 14.4 acres (roadways and lots);The stormwater management plan includes bio-retention areas and other enhancements to the wetlands on site.
4. MDEP and Town Peer Review Engineer have approved storm water management plan.

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

*F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives[as described in 16.9.3.7.F]:*

*The proposed use will not:*

- 1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;*
- 2. Unreasonably increase the flow of surface waters through the wetland;*
- 3. Result in a measurable increase in the discharge of surface waters from the wetland;*
- 4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;*
- 5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;*
- 6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.*
- 7. Result in a measurable alteration or destruction of a vernal pool.*

Finding:

1. Minimum filling proposed is de minimis compared to the remaining wetlands on site and will have no impact.
2. No apparent variation in stormwater flow
3. Unchanged
4. Minimal change
5. Minimum filling proposed is de minimis compared to the remaining wetlands on site and will have no impact.
6. Minimal impact on ambient area temperatures.
7. Not applicable

Conclusion: The standard appears to have been met.

Vote of 5 in favor 0 against 1 abstaining

105  
106 **NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings of Fact and based  
107 on these Findings determines the proposed Development will have no significant detrimental impact, and  
108 the Planning Board hereby grants Final Approval for the Development at the above referenced property,  
109 including any waivers/modifications granted or conditions as noted.  
110

111 **Waivers:** *[as presented on the Findings of Fact dated 3/10/2016].*

- 112 1. Scale of drawings. Section 16.10.5.2.A.2.  
113 Waiver for scale on overall site plan page (all other sheets conform to scale requirements).  
114 Larger scale allows the entire site to be viewed on one sheet.
- 115 2. Prevention of Erosion. Section 16.10.5.2.C.6, Subsection C.  
116 Since this ordinance was put in place much emphasis has been put on erosion control and  
117 prevention. Engineers Civil Consultants are Certified Professionals in Erosion and  
118 Sedimentation Control (CPESC) and are responsible for preparation of erosion control plans.  
119 In addition, the plans were reviewed and approved by town's peer-review engineer and MDEP  
120 during the course of SLoD regulatory review.
- 121 3. Review of storm drainage by YCSWC. Section 16.8.12.3.S.  
122 A storm drainage plan has been prepared and reviewed by the town's peer reviewer engineer.  
123 In addition, this portion of the project was also approved by MDEP during the course of SLoD  
124 regulatory review.

- 125 4. Minimum turnaround radius. Section 16.8.12.3.I.4.  
126 Waiver request to reduce cul-de-sac turn around radius from 50' to 30'. The turnaround only  
127 services 2 sites and a 30' radius is adequate. Fire Chief concurs.

128

129 **Conditions of Approval (to be depicted on final plan):**

130

- 131 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved  
132 final plan. (Title 16.10.9.1.2)
- 133 2. Prior to any earthwork a performance guarantee must be filed with the town in accordance with  
134 Town Code Title 16.10.8.2.2, Performance Guaranty Conditions. Site inspection shall be  
135 performed by the town's peer-review engineer.
- 136 3. A copy of the Earth/Rock Removal Operations Plan (ERRP), as contractually agreed by the  
137 Developer and selected General Contractor, must be submitted to the Town prior to the start of  
138 construction. See Conditions of Approval in Findings of Fact dated 3/10/2016 for restrictions on  
139 hauling.
- 140 4. Prior to any earthwork and in coordination with ERRP, a preconstruction meeting must be held  
141 on site and include: the general contractor; all selected subcontractors; the owner/applicant  
142 representative; the third-party engineer per Maine DEP requirements; project design engineer;  
143 representative(s) from Maine DEP; town's peer-review engineer; code enforcement officer;  
144 police chief; and fire chief.
- 145 5. Prior to the commencement of grading and/or construction within a building envelope, as shown  
146 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers  
147 must remain in place until the Code Enforcement Officer determines construction is completed  
148 and there is no danger of damage to areas that are, per Planning Board approval, to remain  
149 undisturbed.
- 150 6. Applicant/developer/contractor must follow the *Maine Erosion & and Sediment Control*  
151 *Practices Field Guide for Contractors, March 2015* for all work associated with earthwork and  
152 site construction to ensure adequate erosion control and slope stabilization.
- 153 7. A Street Naming application must be submitted to the Town for Planning Board review and  
154 approval per 16.8.3.1 prior to the issuance of any building/regulated activity permit.
- 155 8. Residency in the expanded Yankee Commons mobile home park section is age-restricted to 55  
156 years of age, or older. At least one of the tenant owners must be 55 years of age or older and all  
157 other approved occupants to be at least 40 years of age.
- 158 9. All Notices/Instructions to Applicant and Conditions of Approval not depicted on the final plan  
159 contained herein, Findings of Fact dated March 10, 2016.

160

161 **Conditions of Approval (not to be depicted on final plan):**

- 162 10. Incorporate any plan revisions required by the Planning Board on the final plan and submit for  
163 Staff review prior to presentation on final Mylar.
- 164 11. Prior to start of any site development/construction, applicant shall pay a wetland mitigation fee  
165 of \$3,600.00.
- 166 12. Drafts of all easements must be provided for staff review prior to signing of final plan.
- 167 13. During the earth/rock removal period:
- 168 a) Hauling must be suspended on weekends (except when approved by Police Chief), and on  
169 Federal holidays and between June 30th and Labor Day.

- 170 b) Loaded vehicles must be suitably covered to prevent dust and contents from spilling or  
171 blowing from the load. Trucking routes and methods are subject to approval by the Chief of  
172 Police.
- 173 c) Additionally, unless prior approval by the Chief of Police is granted, the hauling routes are  
174 as follows:
- 175 1) All loaded trucks to proceed from site East on Idlewood Lane to Route 1
- 176 2) No other use of town-owned roads permitted. All access to be via I-95 or State  
177 highways
- 178 3) Northbound hauling trips:
- 179 • Northbound trucks to proceed south on Route 1 to I-95 *Maine Welcome Center*  
180 entrance, proceed through center and proceed on I-95 North, or turn left off  
181 Idlewood to North on Route 1.
- 182 4) Southbound hauling trips:
- 183 • All southbound trucks to proceed south on Route 1 directly to I-95 or Route 236.
- 184 5) Unloaded and Returning to Site:
- 185 • Proceed north on I-95 to the *Maine Welcome Center* entrance (mile marker 3)  
186 and continue to Route 1 north
- 187 • Proceed north on Route 1 to the intersection of Idlewood Lane
- 188 • Enter site off Idlewood Lane
- 189 d) Topsoil and subsoil suitable for purposes of revegetation may be stockpiled for use in  
190 restoring the location after extraction operations have ceased.
- 191 e) Access roads from extraction site to public ways must be treated with stone, calcium or other  
192 suitable materials to reduce dust and mud for a distance of at least one hundred (100) feet  
193 from such public ways to reduce dust and mud on such public ways.
- 194 f) No equipment, debris, junk or other material shall be stored at site except those directly  
195 relating to active extraction operations.
- 196 g) Temporary shelters or buildings erected for operations and equipment used removed within  
197 thirty (30) days following completion of excavation operations.
- 198 h) Debris, stumps, boulders and similar materials removed and disposed of in an approved  
199 location or, in the case of inorganic material, buried and covered with a minimum of two feet  
200 of soil.
- 201 i) Revegetated and properly restored to a stable condition adequate to meet the provisions of  
202 the *Maine Erosion & Sediment Control Practices Field Guide for Contractors*, March  
203 2015.
- 204 j) Applicant will provide the Town copies of all permitting applications, inspection results and  
205 reports required by State or Federal approvals from all involved regulatory agencies; third-  
206 party inspection results; and, those reports required for blasting monitoring in timely fashion.
- 207 14. The Developer is responsible for the repair or reconstruction of Idlewood Lane if damaged as  
208 part of the site's construction as determined by and to the satisfaction of the Commissioner of the  
209 Public Works. Prior to construction a surety acceptable to the Town of Kittery must be  
210 established in the amount to cover all costs for the reconstruction of 400 linear feet of Idlewood  
211 Lane (use of entire surety may not be required if full reconstruction is not required).
- 212 15. The Developer will provide copies of all project applications, permits, licenses, and related  
213 documentation, including any revision to the operations plans to the Town (to include all future  
214 construction correspondence with MDEP).

215 16. The Developer will engage in “Outreach” activities to the community (i.e. Yankee Commons  
216 Park residents; occupants of other residences on Idlewood Lane; and employees at Landmark  
217 Hill) during the project which will include neighborhood meetings, public notices, a project  
218 website, property inspections, and signs.

219

220 Notices/Instructions to Applicant:

221

222 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated  
223 with review, including, but not limited to, Town Attorney fees, peer review, newspaper  
224 advertisements and abutter notification.

225 2. State law requires all subdivision and shoreland development plans, and any plans receiving  
226 waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the  
227 final approval.

228 3. One (1) mylar copy and two (2) paper copies of the final plan (recorded plan if applicable) and  
229 any and all related state/federal permits or legal documents that may be required, must be  
230 submitted to the Town Planning Department. Date of Planning Board approval shall be  
231 included on the final plan in the Signature Block.

232 4. This approval by the Town Planning Board constitutes an agreement between the Town and the  
233 Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any  
234 Conditions of Approval.

235

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

238

239 Vote of  5  in favor  0  against  1  abstaining

240

241

242 APPROVED BY THE KITTERY PLANNING BOARD ON \_\_\_\_\_

243

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249

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

254

255 **ITEM 2 – Spruce Creek Ventures II - Cluster Subdivision Sketch Plan Review**

256 Action: approve or deny sketch plan. Owner/applicant Spruce Creek Ventures II requests consideration of a  
257 multi-family cluster subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot  
258 77-A) in the Residential – Urban (R-U) Zone. Agent is Chris Wilber, Chris Wilber Consulting.

259

260 Chris Wilber, Chris Wilber Consulting

261 Mr. Wilber’s presentation of the sketch plan included the following statements:

- 262
- The sketch plan is a culmination of discussions from site walk.
  - The narrowing of the road width by 2 feet from 20 feet to 18 feet resulted in a 10% grade.
- 263

- 264 • Mike Waters determined that a water line meter could be placed at the end of the private road. The  
265 plan has been able to progress with the ability to service town water to the units.  
266 • The cluster development would consist of 3 free-standing duplexes for a total of 6 individual units.  
267

268 Mr. Wilber clarified to Ms. Kalmar that only pedestrian access to Bridge Street is planned.  
269

270 Ms. Grinnell did not recommend placing a sidewalk along the drive toward Old Post Road. Mr. DiMatteo  
271 suggested that is a question for the preliminary design plan. Mr. Wilber added that pedestrians will most  
272 likely walk across the front of the property toward Bridge Street. Ms. Kalmar agreed that there should not be  
273 a sidewalk.  
274

275 **Mr. Harris made a motion to accept the application.**

276 **Mr. Alesse seconded.**

277 **Motion passed 6-0-0.**  
278

279 **Mr. Dunkelberger made a motion to approve the sketch plan dated 2/1/2016 for owner/applicant**  
280 **Spruce Creek Ventures II for cluster subdivision of 3.02 acres located at 9 Cook Street and Old Post**  
281 **Road (Tax Map 3, Lot 77-A) in the Residential – Urban (R-U) Zone.**

282 **Mr. Alesse seconded.**

283 **Motion passed 6-0-0.**  
284

### 285 **ITEM 3 – 93 Picott Road – Right of Way Plan Review**

286 Action: Accept or deny application; Approve or deny plan. Owner Herbert and Carolynn Marsh and Applicant  
287 Graystone Builders, Inc. propose a Right-Of-Way to access two new lots located at 93 Picott Road (Tax Map  
288 49 Lot 7) in the Residential-Rural (R-RL) Zone. Agent is Bill Anderson, Anderson Livingston Engineers.  
289

290 Walter Woods, Graystone Builders

291 Bill Anderson, Anderson Livingston Engineers

292 Mr. Anderson's presentation included the following statements:

- 293 • The purpose of the project is to create a private pathway across the existing field. There will be no  
294 new entrances onto Picott Road.
- 295 • The area consists of mostly fields and trees and the plan requires a minimal amount of tree removal.
- 296 • The existing water main line runs diagonal and directly through the property. The Kittery Water  
297 District agreed that service connections would be added and additional extension of the main lines is  
298 unnecessary.
- 299 • The proposed road requires minor construction. The grade falls 1% away from Picott Road and the  
300 steepest grade is 4%. All drainage would travel to the rear of the property instead of to the road or  
301 abutting property. The proposed name is Appletree Lane.
- 302 • Construction and Right-of-Way would be located 31 and 20 feet, respectively, from a cemetery on the  
303 property. A note was added that there will be no excavation or disturbance within 25 feet of the  
304 cemetery.
- 305 • Set back in the rear property from the principle structure is 100 feet to a large wetland and 25 feet to  
306 a smaller wetland.
- 307 • The most prevalent issue is the interpretation of the corner lot ordinance which states a corner lot is  
308 defined as "Such corner lots, located at the intersection of two streets, are deemed to have a side rather  
309 than a front yard between the principal building and the side street. Such side yard may not be less  
310 than the front yard requirements of uses located on the side street." Mr. Anderson understood the  
311 ordinance to conclude that the two front lots would have 40-foot setbacks from Picott Road and 20-  
312 foot setbacks from the proposed Appletree Lane.  
313

314 Mr. DiMatteo noted that the public hearing is discretionary for a Right-of-Way application. The Board  
315 determined the public hearing is unnecessary.  
316

317 Mr. Harris asked to clarify where the existing dwellings are located along Picott Road. Mr. Woods confirmed  
318 there is one dwelling, a barn, and a garage.

319  
320 Mr. Dunkelberger asked to clarify the justification for the 20-foot setback at the corner lot. Mr. Anderson  
321 questioned the wording of the ordinance and in what situation a corner lot would require a 20-foot setback  
322 along the road. Ms. Kalmar noted that one area is designated the front yard and the other the side yard yet both  
323 are equal in size. Mr. Anderson noted that the ordinance refers to front and side yard versus setback. Also, the  
324 ordinance does not define a front and side yard. Mr. Dunkelberger recited that “Such side yard may not be less  
325 than the front yard” and the front yard has a 40-foot requirement. Mr. DiMatteo suggested that the street  
326 frontage definition speaks to this matter. Mr. Dunkelberger recommended to find a way to conform to a 40-  
327 foot setback on both sides since the existing lot is already non-conforming. The Board concurred with Mr.  
328 Dunkelberger. Mr. Anderson suggested that the corner lot ordinance be revised.

329  
330 Mr. Anderson proposed two alternatives (1) move the road further which only results in a sharper curve and  
331 less building area, or (2) remove the garage.

332  
333 Mr. Woods affirmed that the garage could be removed to meet the 40-foot setback.

334  
335 Mr. Woods clarified to Ms. Lynch that there are 3 proposed subdivision lots.

336  
337 Ms. Grinnell appreciated seeing the entire layout of the picture.

338  
339 Ms. Kalmar asked to clarify the lay of the land. Mr. Woods explained the different ownership amongst the  
340 lots and his ownership dictates he could have a home built and that could only rented and not sold for 5 years.  
341 Mr. DiMatteo suggested that as long as the owner conveys the other two lots prior to his homestead property  
342 than the owner has the exemption.

343  
344 **Ms. Kalmar made a motion to accept the Right-of-Way application dated 2/18/2016 from owner**  
345 **Herbert and Carolynn Marsh and Applicant Graystone Builders, Inc. to propose a Right-Of-Way for**  
346 **access two new lots located at 93 Picott Road (Tax Map 49 Lot 7) in the Residential-Rural (R-RL)**  
347 **Zone.**

348 **Ms. Lynch seconded.**

349 **Motion passed 6-0-0.**

350  
351 **Ms. Lynch made a motion to schedule a public hearing for the Right-of-Way application dated**  
352 **2/18/2016 from owner Herbert and Carolynn Marsh and Applicant Graystone Builders, Inc. to**  
353 **propose a Right-Of-Way for access two new lots located at 93 Picott Road (Tax Map 49 Lot 7) in the**  
354 **Residential-Rural (R-RL) Zone.**

355 **Ms. Kalmar seconded.**

356 **Motion passed 6-0-0.**

357  
358 Site walk is scheduled for April 12, 2016 at 10:30 AM.

359 Public hearing is scheduled for April 14, 2016 Planning Board Meeting.

360  
361 Mr. Wood’s added that the street naming application is in process with the Tax Assessor.

362  
363 **ITEM 4 – Seward Farm Lane – Major Subdivision Sketch Plan Review**

364 Action: Accept or deny application; Approve or deny sketch plan. Owner/Applicant Gary Seward et al  
365 requests consideration of a 15-lot conventional subdivision on remaining land along a previously  
366 approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the  
367 Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Ken Markley, North  
368 Easterly Surveying.

369  
370 Ken Markley, North Easterly Surveying

371 Mr. Markley’s presentation included the following statements:

- 372
  - The farm on Picott Road has been owned since 1962 by the Seward Family. In 1994, the Right-  
373 of-Way was approved to divide the back portion of the property into five lots. Ten years later

- 374 the road was relocated to improve access and safety.
- 375 • The Seward Family proposes 12 residential house lots plus 4 open space areas along the
  - 376 existing road. Three of the proposed open space areas are sized approximately 14 acres, 22
  - 377 acres, and 7.9 acres. Lot 9 would remain an open space with soccer fields and a parking lot
  - 378 along Picott Road.
  - 379 • The road upgrade is not expected to widen the width of the road or generate any adverse impact
  - 380 on the wetland.
  - 381 • High tide causes a salt water vegetation in the pond area resulting in a limitation for a 250-foot
  - 382 Shoreland setback requirement. The wetlands will require some additional work which has not
  - 383 been written in depth in the plan.
  - 384 • Mr. Markley raised two questions for the Planning Board:
    - 385 ○ Whether the Right-of-Way construction could be performed the existing 50-foot wide
    - 386 road. The reasons being: 1) previous construction has been performed at 50 feet, 2) the
    - 387 natural vegetated buffer and expanding outward would require reconfiguration, 3)
    - 388 surrounding mitigation areas, and 4) the houses on this lot would need an update to their
    - 389 deed.
    - 390 ○ Whether conventional subdivision is feasible. Each lot will have 1 acre on an existing
    - 391 road, thus, the road only requires updating to a serviceable level. The Seward Family
    - 392 does not intend building expansion beyond this plan or a cluster subdivision.
    - 393

394 Ms. Kalmar accepted a conventional subdivision. It would not change the existing character of this

395 neighborhood. Mr. Dunkelberger agreed and expressed no issues in granting a special exemption. Ms.

396 Lynch concurred and noted a conventional subdivision plan preserves more of what exists today

397 compared to a cluster development.

398

399 Ms. Kalmar voiced the existing road is a required improvement and digging up the road is unnecessary.

400 Ms. Lynch asked the responsibility of paving. Mr. Norman Albert, Commissioner of Public Works,

401 stated the Seward Family is currently negotiating with the Town for the Swards to provide necessary

402 changes for draining and utility sleeves prior to Town providing paving. He confirmed the road would

403 meet the 20-foot Town standards and the Right-of-Way would not be increased.

404

405 Ms. Lynch asked the estimated cost of paving the road. Mr. Albert stated estimated costs are \$75,000 -

406 \$80,000. Mr. Harris asked about underground service. The five houses use wells and a water line

407 installation is required, if the project continued. Fire Chief David O'Brien informed Mr. Albert that the

408 2,000-foot length of the road would require at least one fire hydrant. The Town would absorb the

409 expense to extend the water line from Kelsey Lane to the road.

410

411 If the project was denied, the Town and Swards would not entertain the tradeoff for the sports field and

412 engage in selling the property. The family wants to keep the farm and be good stewards for Town

413 athletics.

414

415 Mr. Dunkelberger and Ms. Grinnell reminded that there are topics separate from the Planning Board

416 such as negotiations with the Town Council.

417

418 Ms. Kalmar asked where the 15% open space requirement has been met. Mr. Markley noted in Lot 9

419 and east of the powerlines would meet the 15% minimum requirement.

420

421 Ms. Earldean Wells, Conservation Commission asked if paving would interrupt wetland area and

422 collars. Mr. Markley responded in the negative.

423

424 **Mr. Dunkelberger made a motion to accept the sketch plan dated 2/17/2016 for owner/applicant Gary**

425 **Seward et al for a 15-lot conventional subdivision on remaining land along a previously approved**

426 **private Right-of-Way (Seward Farm Lane) located at 39 Picott Road (Tax Map 46 Lot 4) in the**

427 **Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones.**

428 **Ms. Kalmar seconded.**

429 **Motion passed 6-0-0.**

430

431 **Mr. Dunkelberger made a motion to schedule a site walk and continue the sketch plan**  
432 **owner/applicant Gary Seward et al for a 15-lot conventional subdivision on remaining land along**  
433 **a previously approved private Right-of-Way (Seward Farm Lane) located at 39 Picott Road (Tax**  
434 **Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones not to**  
435 **exceed 90 days.**

436 **Ms. Kalmar seconded.**

437 **Motion passed 6-0-0.**

438

439 Site walk is scheduled for April 12, 2016 at 11:15 AM.

440

441 **ITEM 5 – 9 Pocahontas Road – Wetland Alteration and Shoreland Development Plan Review**

442 Action: Accept or deny application; Approve or deny plan. Owner Brian Seaward and Applicant Gary  
443 Hall requests consideration of a 12-foot gravel driveway to cross 350 sq. ft. of a .26-acre wetland on a  
444 6.47-acre lot located at 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation  
445 (R-RLC) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Ken Markley, North Easterly  
446 Surveying.

447

448 Mr. Markey’s presentation included the following statements:

- 449 • The lot was divided in 1948 and since then has not been developed. There is an isolated wetland  
450 that spans to both boundaries plus three relatively high value, smaller wetlands which could  
451 possibly be vernal pools.
- 452 • The 12-foot driveway would be placed at an even distance between two vernal pools with a 12”  
453 collar with 18” overlay of gravel and seashells. It will cover 205 sq. ft. which requires a wetland  
454 alteration application.
- 455 • After discussion and site walk with Maine DEP, it was determined there is minimal potential  
456 impact on the land. Maine DEP determined it is a Tier 1 review.

457

458 Ms. Wells expressed no concerns for the plan and Mr. Dunkelberger noted that the overall impact  
459 appears to be minimized.

460

461 Mr. DiMatteo suggested to add an approval from Maine DEP and Army Corps of Engineers under the  
462 Conditions of Approval.

463

464 **Ms. Kalmar made a motion to accept the Wetland Alteration and Shoreland Development application**  
465 **dated 2/17/2016 from applicant Gary Hall for 9 Pocahontas Road (Tax Map 52 Lot 3) in the**  
466 **Residential–Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250) Zones.**

467 **Ms. Dunkelberger seconded.**

468 **Motion passed 6-0-0.**

469

470 **Ms. Kalmar made a motion to grant approval for the Wetland Alteration and Shoreland**  
471 **Development Plan application dated 2/17/2016 from applicant Gary Hall for 9 Pocahontas Road**  
472 **(Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay (OZ-**  
473 **SL-250) Zones upon reading and voting in the affirmative of the findings of fact.**

474 **Ms. Dunkelberger seconded.**

475 **Motion passed 6-0-0.**

476

477 **Findings of Fact**

478 **For 9 Pocahontas Road**

479 **Wetland Alteration Plan Review**

480 **Shoreland Development Plan Review**

---

481  
 482 **WHEREAS:** Owner Brian Seaward and Applicant Gary Hall requests consideration of a 12-foot  
 483 gravel driveway to cross 350 sq. ft. of a .26-acre wetland on a 6.47-acre lot located at 9 Pocahontas  
 484 Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay  
 485 (OZ-SL-250) Zones, hereinafter the “Development” and  
 486  
 487 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan  
 488 review notes prepared for 3/10/2016}  
 489

Wetland Alteration and Shoreland Development Plan Review	3/10/2016
Approval	3/10/2016

490  
 491 And pursuant to the application and plan and other documents considered to be a part of a plan  
 492 review decision by the Planning Board in this Finding of Fact consisting of the following  
 493 (hereinafter the “Plan”): {as noted in the plan review notes prepared for 3/10/2016}  
 494

- 495 1. Wetland Alteration Application, received 2/17/2016  
 496 2. Shoreland Development Review Application, received TBD  
 497 2. Shoreland Development and Wetland Alteration Plan, North Easterly Surveying, Inc.,  
 498 received 2/16/2016  
 499 3. Purchase and Sale Agreement, received 2/17/2016  
 500

501 **NOW THEREFORE,** based on the entire record before the Planning Board and pursuant to the  
 502 applicable standards in the Land Use and Development Code, the Planning Board makes the  
 503 following factual findings and conclusions:  
 504

505 **FINDINGS OF FACT**

506 **Chapter 16.3 LAND USE ZONE REGULATIONS**

<b>16.3.2.17.D Shoreland Overlay Zone</b>
<i>1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...</i>
<u>Findings:</u> Maximum devegetated area in the Shoreland Overlay Zone is 20%. The proposed development does not exceed devegetated coverage amounts
<u>Conclusion:</u> The requirement appears to be met.
<b>Vote: 6 in favor 0 against 0 abstaining</b>

508  
 509 **Chapter 9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT**  
 510 **Article III Conservation of Wetlands Including Vernal Pools**  
 511

<b>16.9.3.7 Wetlands Alteration Approval Criteria</b>
<b><i>A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet</i></b>

wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

Findings: The 350 square foot wetland impact does not appear to have an adverse impact on the remaining wetland.

Conclusion: This requirement appears to be met.

Vote of 6 in favor 0 against 0 abstaining

***B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.***

Findings: The intent of the driveway is to access a single-family dwelling, which is a permitted use in the R-RLC and OZ-SL-250 zones. Driveways are a permitted activity within regulated wetlands.

Conclusion: This requirement appears to be met

Vote of 6 in favor 0 against 0 abstaining

***C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.***

Findings: The proposed development has a total wetland impact of less than 500 square feet and does not require a wetland mitigation report.

Conclusion: This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining

***D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).***

Findings: The final plan depicts the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the wetland alteration. A wetland mitigation fee is also required.

Conclusion: This requirement appears to be met

Vote of 6 in favor 0 against 0 abstaining

***E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Board will consider the following:***

*The proposed use:*

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the

wetland impact;

2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and
4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

**Finding:** The proposed development crosses at the wetland's narrowest point so as to minimize the impact, to the greatest possible extent.

**Conclusion:** This requirement appears to be met.

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

*F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives {described in 16.9.3.7.F}:*

*The proposed use will not:*

1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;
2. Unreasonably increase the flow of surface waters through the wetland;
3. Result in a measurable increase in the discharge of surface waters from the wetland;
4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.
7. Result in a measurable alteration or destruction of a vernal pool.

**Findings:** The 350 square foot wetland impact does not appear to have an adverse impact on the remaining wetland.

**Conclusion:** This requirement appears to be met.

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

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515

## **Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

### **Article 10 Shoreland Development Review**

#### **16.10.10.2 Procedure for Administering Permits**

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

1. Maintain safe and healthful conditions;

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

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

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

*3. Adequately provide for the disposal of all wastewater;*

Finding: The proposed development does not require a connection to an existing septic system.

Conclusion: Requirements 1 & 2 appear to be met. Requirement 3 is not applicable.

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

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

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

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

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

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

Finding: Shore cover is not adversely impacted

*6. Protect archaeological and historic resources;*

Finding: There does not appear to be any resources impacted.

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

Finding: The proposed development is not in the Commercial Fisheries / Maritime Uses Zone

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

Finding: The proposed development is not located in a flood zone.

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

Finding: The proposed development complies with the standards of Title 16.

Conclusion: Requirements 5, 6 and 9 appear to be met. Requirements 7 and 8 are not applicable.

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

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

Finding: A plan suitable for recording has been prepared.

Conclusion: As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote of 6 in favor 0 against 0 abstaining

516  
517 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the  
518 review standards for approval and, therefore, the Planning Board approves the Shoreland  
519 Development and Wetland Alteration Plan for owner Brian Seaward and applicant Gary Hall for a  
520 12-foot gravel driveway to cross 350 sq. ft. of a wetland on a 6.47-acre lot located at 9 Pocahontas  
521 Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay  
522 (OZ-SL-250) Zones subject to any conditions or waivers, as follows:  
523

524 **Waivers:** None

525  
526 **Conditions of Approval** (to be depicted on final plan to be recorded):  
527

- 528 1. No changes, erasures, modifications or revisions may be made to any Planning Board  
529 approved final plan. (Title 16.10.9.1.2)
- 530 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work  
531 associated with site and building construction to ensure adequate erosion control and slope  
532 stabilization.
- 533 3. An upland buffer zone adjacent to the wetland boundary equal in size to the wetland alteration  
534 must remain preserved and undisturbed.
- 535 4. Prior to the commencement of grading and/or construction within a building envelope, as  
536 shown on the Plan, the owner and/or developer must stake all corners of the envelope. These  
537 markers must remain in place until the Code Enforcement Officer determines construction is  
538 completed and there is no danger of damage to areas that are, per Planning Board approval,  
539 to remain undisturbed.
- 540 5. No trees are to be removed without prior approval by the Code Enforcement Officer or the  
541 Shoreland Resource Officer. Efforts to protect existing trees must be in place prior to  
542 construction.
- 543 6. Approval by the Maine DEP and Army Corps of Engineers.
- 544 7. All Notices to Applicant contained herein (Findings of Fact dated 3/10/2016).

545  
546 **Conditions of Approval** (not to be depicted on final plan):

- 547 8. Incorporate any plan revisions on the final plan as recommended by Planning Board, Peer  
548 Review Engineer or in Staff notes dated 3/10/2016, and submit for Staff review prior to  
549 presentation on final Mylar.

550  
551 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings  
552 of Fact upon confirmation of required plan changes.

553  
554 Vote of 6 in favor 0 against 0 abstaining

555  
556 APPROVED BY THE KITTERY PLANNING BOARD ON March 10, 2016

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Ann Grinnell, Planning Board Chair

**Notices to Applicant:**

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
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.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - 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.

**ITEM 6 – Board Member Items / Discussion**

Ms. Grinnell encouraged all residents to attend and participate in the Comprehensive Planning Committee’s Public Forum on Saturday, March 12, 2016 from 10:00 – 12:30 PM held at the Kittery Community Theater, 120 Rogers Road, Kittery, ME.

Operation Blessing project is still finalizing details and has requested an extension.

**Ms. Kalmar made a motion to grant a 3-month extension for Operation Blessing to expire on June 12, 2016.**

**Mr. Alesse seconded.**

**Motion passed 6-0-0.**

**ITEM 7– Town Planner Items:**

The Economic Development Committee (EDC) would like to share the progress of their projects with the Planning Board.

E2 Tech is hosting a forum on preserving scenic views called Don’t Make a Scene, Man! Scenic Impacts of Development on Thursday, March 24, 2016 from 7:15 – 10:00 at the Congregation Bet Ha’am, 81 Westbrook Street, South Portland, ME. Fee is \$15 for members.

605 **Mr. Alesse made a move to adjourn.**

606 **Mr. Dunkelberger seconded.**

607 **Motion carried 6-0-0.**

608

609 The Kittery Planning Board meeting of March 10, 2016 adjourned at 8:15 p.m.

610

611 Submitted by Marissa Day, Minutes Recorder, on March 17, 2016

612

613 *Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been*  
614 *made to ensure the accuracy of the information the minutes are not intended as a verbatim transcript of comments at*  
615 *the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the*  
616 *video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*