

**TOWN OF KITTERY  
PLANNING BOARD MEETING  
Council Chambers**

**APPROVED**  
Thursday, July 9, 2009

Meeting called to order at 6:06 p.m.

Members Present: Michael Luekens, Ernest Evancic, George Burke, Joseph Carleton, Douglas Muir, D. Scott Mangiafico  
Members absent: Russell White  
Staff: Sandra Mowery, Town Planner

**Minutes:** Planning Board Meeting, June 25, 2009  
**Mr. Carleton moved** to accept the minutes as amended  
**Mr. Muir** seconded  
Motion carries unanimously

**PUBLIC COMMENT** – There was no public comment.

**ITEM 1 - (15 minutes) Amendment to Title 16 Land Use and Development Code - Public Hearing -**  
The mandatory Shoreland Zoning Act (Act), 38 M.R.S.A. Section 435-449 and the guidelines for the Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines set forth in the Act and by the Board. This amendment to Title 16 incorporates the most current State shoreland zoning ordinances into the Kittery Ordinance. The Town administration, endeavoring to incorporate State recommendations for the Shoreland Zoning ordinance proposes the following:

- Amendment to Chapter 16.04 – General;
- Amendment to Section 16.08.20 – Definitions;
- Amendment to Chapter 16.16 – Administration and Enforcement;
- Amendment to Chapter 16.24 – Special Exceptions and Variances;
- Amendment to Chapter 16.28 – General Development Requirements;
- Delete Section 16.32.490 – Shoreland Zoning; and
- Add Chapter 16.34 – Shoreland Zoning.

The **Town Planner** noted that this item has been advertised twice and draft documents have been provided to the public. With public input, errors were found on the map that affected ordinance language in the General Development Zone, part C, regarding applicability. Recommended corrective language was presented and reviewed. Additionally, the **Town Planner** asked if the Board will schedule a public hearing to omit the definition change of ‘structure’ in the shoreland ordinance and, rather, change the definition in the general ordinance.

**Rob Nichols, Goodwin Road**, asked about the meaning of legally existing, nonconforming, cleared areas (Section 16.34.170.D). The **Town Planner** explained that this is a State requirement, and that if you have an existing, cleared area, there would be no issue. **Mr. Luekens** clarified that illegally cleared areas would not be grandfathered under the new ordinance. **Mr. Nichols** asked about references to zoning districts and the shoreland zone, and the **Town Planner** explained that zoning districts remain and that the shoreland zone is an overlay to existing land use areas. Board members reviewed ordinance sections that needed clarification regarding numbering (Section 16.34.170.2 and 3). The Town Planner will confirm correct numbering and location of references; clarify reference to native tree species (located in Design Handbook); and whether a patio or deck is considered a ‘structure’ (section 16.34.110) under the new definition proposed.

**Susan Emery**, School Lane, asked if the Kittery shoreland zoning ordinance is at least as restrictive as the state guidelines. Board members concurred that it was.

**Phyllis Ford**, Bond Road, noted that footnote number 6 in Table 16.34.090 referencing further restrictions in section 16.34.140.H.2 is incorrect and should reference section 16.34.140e. This will be

corrected in the "Notes to Table 16.34.090" section of the ordinance. Ms. Ford also asked about the review authority of the Kittery Port Authority.

**Everett Kimball**, inquired about dimensional requirements for clustered residential development and housing for the elderly, asking if this is in the existing ordinance. The Town Planner found that the dimensional requirements are existing, and had been included in 1998.

**John Carter** commended the Planning Board for their hard work, but encouraged them to move the ordinance and map along to Council for review and further hearings. The **Town Planner** advised that the ordinance will be forwarded to Council with the map, not separately. Two Councilors have been working with the planning staff and Board in workshops, so the ordinance will not be entirely new to the Council.

The Public Hearing closed at 7:08 pm

**Mr. Luekens and Mr. Mangiafico** discussed the process to move the ordinance forward, and suggested a preliminary approval contingent upon corrections that will be made based on this public hearing.

**Mr. Muir** asked about the inclusion of street design and construction standards and why they are included in the shoreland zoning ordinance. The Town Planner explained that this was done for ease of use, and some changes were made at the request of public safety. **Mr. Mangiafico** and other Board members recommended that the design & construction standards for streets be removed from the shoreland ordinance for separate review.

The Town Planner summarized the requested changes to Version 7 as follows:

- Remove references to street sidewalk and parking design standards on pages 18 through 23;
- Confirm continuity regarding KPA authority on page 2 (16.04.060) and on page 54 (16.34.140.E)
- References to note 6 on page 47 and 48; correction of note 6 from 16.34.140.H.2 to 16.34.140.E.
- Verify on page 60, re: correct section references and respond to the term native tree species.

**Mr. Burke** moved to grant preliminary approval with corrections as reviewed and the removal of street design standards

**Mr. Carleton** seconded

**Mr. Luekens** asked what the advantage is in providing a preliminary approval at this time, as the ordinance is not complete. Members noted that a preliminary approval provides the State with a sense of Board action and direction.

**Motion carries unanimously**

Break

**ITEM 2 – Spruce Creek Subdivision – a Major Subdivision –Public Hearing** – Terry Gagner, Owner, proposes to construct a 10-lot cluster residential development consisting of single-family dwelling units on ±15.2 acres, Tax Map 38 Lots 13 B through 13 F, situated in the Rural Residential (**RR**) zoning district. The owner's agent is Thomas Harmon of Civil Consultants.

**Tom Harmon** summarized the project proposed to date, noting access points, travel ways, water and sewer lines and connections, landscape and lighting design, stormwater plan

**Earldean Wells, KCC**, requested a landscape plan and asked about the width of the path to the dock, and material used on the path. **Mr. Mangiafico** noted that it is a mulch path and appears to be the same size as the pier, approximately 6 feet wide. **Mr. Harmon** stated the width will be included on the final plans.

The Public Hearing opened at 7:46 p.m.

**Gay Lakin**, Ox Point Drive, noted that all properties on Ox Point Drive are deeded to the center of the creek, and those property owners did not receive abutters notices.

**Phyllis Ford**, Spruce Creek Association, asked how the stormwater runoff is currently handled and will be handled, and whether better management practices can be applied to help save the trees that will have to be removed to accommodate a stormwater management plan. **Ms. Ford** also asked:

1. what is the height of the light at the cul-de-sac, and is it necessary or could it be removed;

2. is the dock path meandering, will the vegetation be preserved or augmented, and how will the dock be utilized (such as in storage of watercraft);
3. is the unbuildable lot (F) part of the calculation for the cluster subdivision. If so, only buildable areas should be included, not an unbuildable lot that would be used to meet open space requirements.

**Susan Emery**, 5 School Lane, asked the Board to consider alternate means to treat the stormwater runoff and clarify the calculations provided for buildable areas, and if lot 13F, an unbuildable lot, is included in the density calculations. Without lot 13F there appears not to be enough area for the proposed development.

The Public Hearing closed at 7:56 p.m.

**Terry Gagner**, owner, stated that the light in the cul-de-sac can be removed if approved by public safety. **Tom Harmon** stated that the 10-acre minimum is based on buildable soils, not buildable lot areas, but does not know the exact calculations. The parcel is 15.1 acres with approximately 4.5 - 5 acres in open space, but the 10 acre minimum for cluster development includes some of the open space acreage. Discussion followed regarding drainage to the rear of the house lots to vegetated areas and grass, and then to the 100' wetland setback, and the possible replacement of concrete with a permeable surface around the cul-de-sac. **Earldean Wells** noted that the wetland identification is not present on all plan sheets. The **Town Planner** stated that there have been no revisions to the staff notes from the last meeting and that this was a public hearing, with no action scheduled. **Mr. Luekens** questioned the calculations utilized to determine the buildable area for the development. The **Town Planner** will request that CMA review the calculations to determine the accuracy and provide a response to the Board. **Mr. Harmon** briefly discussed the waiver requests. The Town Planner stated that the applicant must re-submit for preliminary review (August 13, 2009) and receive peer review specific to their requests. Also, if there was an error in notifications for public hearing, another public hearing will be held.

**ITEM 3 –Plenary Site Plan –Final Review** - Town of Kittery, Owner, proposes to construct a new 60' X 84' salt shed building and a new 50' X 48' office and operations building on ±8.25 acres at 200 Rogers Road, located on Map 22 Lot 20A situated in the Commercial 3 (**C-3**) and Urban Residential (**UR**) zoning districts. The Owner's agent is Rick Rossiter, Director of Kittery Public Works.

**Rick Rossiter** reported that spruce trees had been planted to buffer Kittery Estates and the area abutting the Estates has been cleared and cleaned. The planned screening to Shephard's Cove includes a berm and trees. Other requested notes and changes to the original plan were reviewed. **Mr. Mangiafico** asked about an agreement with Kittery Estates for access to the municipal parking lot. **Jon Carter** stated that an agreement was made whereby the municipal lot could be used by Kittery Estates special events. A sidewalk in front of the museum, linking the municipal property with Kittery Estates, will be built. **Mr. Burke** recommended that the notation "approximate" regarding the location of the salt shed, be removed from the plan. There being no other issues to discuss, the Findings of Fact were read into the record as follows:

Whereas, the Town of Kittery, Owner, proposes to construct a new 50' x 84' salt shed building and a new 50' x 48' office and operations building on ±8.25 acres at 200 Rogers Road, located on Map 22 Lot 20A situated in the Commercial 3 (C-3) and Urban Residential (UR) zoning districts.

Pursuant to the Application:

A Determination of Completeness was granted on April 04, 2009.

A Preliminary Review was conducted on April, 04 2009 and May 14, 2009.

A Public Hearing was conducted on May 14, 2009.

A Final Review was conducted on July 9, 2009.

A Final Approval was granted on July 9, 2009.

Project Description: The Town of Kittery proposes to modify the existing developed site. The Project Plans and other documents considered to be a part of the approval by the Planning Board in this ruling consist of the following:

1. A copy of the Approved Site Plan for Kittery Town Hall, sheet C1 (sheet 1 Of 12) dated February 21, 1997.
2. A letter from the Kittery Water District dated March 26, 2009 confirms available capacity to supply.
3. A letter from the Kittery Police department dated April 15, 2009 with no recommended changes.
4. A letter from the Kittery Sewer Department dated April 01, 2009 confirms available sewer capacity.
5. A letter from the Kittery Public Works Department dated May 21, 2009 regarding notes to be added to the Site Plan.
6. A letter from the Kittery Sewer Department dated June 23, 2009 accepts the proposed sewer design.

NOW THEREFORE, based on the entire record before the Board and pursuant to the applicable standards set out in the Land Use and Development Code, the Board makes the following factual findings as required by Section 16.36.070.C.1.

#### Findings of Fact

1. a. Pollution. The proposed development will not result in undue water or air pollution.

- i. The elevation of the land above sea level and its relation to the floodplains;
- ii. The nature of soils and subsoils and their ability to adequately support waste disposal;
- iii. The slope of the land and its effect on effluents;
- iv. The availability of streams for disposal of effluents
- v. The applicable state and local health and water resource rules and regulations;
- vi. The safe transportation, disposal and storage of hazardous materials;

Vote of 6 in favor 0 against 0 abstaining

b. Sufficient Water Supply. The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

Vote of 6 in favor 0 against 0 abstaining

c. Municipal Water Supply. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

Vote of 6 in favor 0 against 0 abstaining

d. Erosion. 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.

Vote of 6 in favor 0 against 0 abstaining

e. Traffic. The proposed development will 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. Furthermore, the proposed development will provide adequate traffic circulation, both on-site and off-site.

Vote of 6 in favor 0 against 0 abstaining

f. Sewage Disposal. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Vote of 6 in favor 0 against 0 abstaining

g. Municipal Solid Waste Disposal. 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 utilized.

Vote of 6 in favor 0 against 0 abstaining

h. Aesthetic, Cultural and Natural Values. 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.

Vote of 6 in favor 0 against 0 abstaining

i. Conformity with Local Ordinances and Plans. The proposed development conforms to duly adopted subdivision regulations and ordinances, the comprehensive plan, and the land use and development codes. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Vote of 6 in favor 0 against 0 abstaining

j. Financial and Technical Capacity. The developer has adequate financial and technical capacity to meet the standards of this section.

Vote of 6 in favor 0 against 0 abstaining

k. Surface Waters – Outstanding River Segments. Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in MRSA Title 38, Chapter 3, Subchapter I, Article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Vote of 6 in favor 0 against 0 abstaining

l. Ground Water. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Vote of 6 in favor 0 against 0 abstaining

m. Flood Areas. 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.

Vote of 6 in favor 0 against 0 abstaining

n. Freshwater Wetlands. 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. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

Vote of 6 in favor 0 against 0 abstaining

o. River, Stream or Brook. 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 MRSA Title 38, Section 480-B, Sub-section 9;

Vote of 6 in favor 0 against 0 abstaining

p. Stormwater. The proposed development will provide for adequate stormwater management;

Vote of 6 in favor 0 against 0 abstaining

NOW THEREFORE on the 9<sup>th</sup> of July, 2009 the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed project will have no significant detrimental impact, and the Kittery Planning Board hereby votes to grant approval of an Amendment to

an Approved Site Plan for Kittery Town Hall, for the addition of a new sand salt building and a new office building at the above referenced property, contingent upon the following conditions per Title 16.36.070.D.

Conditions of Approval

1. The Developer and the Developer's contractor(s) must adhere to the Best Management Practices for Stormwater Management required by the Kittery Land Use Ordinance and the Maine DEP.
2. Prior to the issuance of building permits for the new office building, the Developer must acquire approval from the Kittery Fire Chief for a fire sprinkler system and fire protection in the most southerly existing public works building.
3. This Approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Project Plans and Reports, the Zoning Board of Appeals and the Planning Board Findings of Fact, and any Conditions of Approval imposed by the Planning Board.
4. Signing of this instrument by the Planning Board constitutes approval. A period of one year shall be set forth for the guaranty time within which required improvements must be completed.
5. Building permits are not to be issued by the Code Enforcement Officer until all conditions of this agreement are satisfied.
6. By vote of the Planning Board herein, the Vice-Chairman is authorized to sign the Final Plan and this Findings of Fact on behalf of the Planning Board.

Vote of 6 in favor 0 against 0 abstaining

So approved by the Kittery Planning Board on the 9<sup>th</sup> day of July, 2009.

**ITEM 4– Sluiceway Condominiums a Minor Subdivision –*Preliminary Review continued*** – Tudor and James Austin, Owners, propose a four (4) unit condominium development on a 6.25 acre parcel located at 37 Pepperrell Road, situated on Map 18 Lot 22 in the Kittery Point Village (**KPV**) Zoning District. The Owner's agent is Thomas Harmon with Civil Consultants.

**Mr. Carleton** excused himself from review as he had provided advice to the applicant on this project in the past.

**Tom Harmon** summarized issues with the project including:

1. The setback along Sparhawk lane has been increased;
2. No trees will be removed from the shoreland zone without approval of the CEO. The area is heavily landscaped and the applicant does not believe additional landscaping is warranted, beyond the arborvitaes along Sparhawk lane, previously proposed.
3. The first section of the road will be built to private lane standards (20' wide with 3' shoulders) with the remaining roadway built to private way standards (18' wide, paved, no shoulders). The first section will extend past the first house, with a new entrance to the driveway. Beyond, there are only three house lots.
4. Originally, the fire chief required a fire hydrant within 1,000 feet of a home, and this was accommodated. The issue of hydrant location has not been resolved with the fire chief.
5. Covenants and homeowners documents are being reviewed by the Town attorney.

The **Town Planner** stated that the fire chief has indicated he does not object to the road width but is awaiting further information regarding construction standards. Board members reviewed the staff notes and remaining issues under review by CMA. Considerable discussion followed regarding the dock area and the condominium owner rights to the dock. Members discussed including language in the covenants and on the plan to restrict additional piers and outlining owner's rights. **Earldean Wells** asked about the pathway to the dock. **Mr. Harmon** noted that the proposed driveway could be used by cars to back up to the dock. After further discussion, **Mr. Harmon** stated that the driveway would be removed and members agreed that a built driveway was not needed. The **Town Planner** stated that a condition of approval should be that there is no vehicular access from Sparhawk Lane.

**Patrick Bedard**, representing abutters, summarized issues of concern:

1. request that the Board not waive the soil suitability report;
2. the amount of impervious surfaces, including buildings, driveways, patios, etc. is unknown;
3. no topographic report or stormwater management plan;
4. no landscape plan or inclusion of a green strip, per section 16.32.1050;
5. financial capability of developer is unknown.

**Kathy Conner**, Pepperell Road, noted that landscaping is very important to the abutters as vegetation had previously been removed and should be replaced.

**Mr. Muir** asked if we need legal guidance regarding the issue of building footprints to determine impervious surface and runoff. The **Town Planner** stated that the Board should require specific details in the drainage report. **Mr. Bedard** stated that State Condominium Act requires plats and plans with vertical and horizontal boundaries. The completion of stormwater and landscaping plans may well eliminate the concerns of the abutters, but without this information the impact of the project is unclear. [**Mr. Bedard** provided copies of the State Condominium Act to Board members] The **Town Planner** reiterated that the abutters need parameters as to the size, character, and impact of the homes to be built at this location. A discussion regarding this issue with the Town Attorney will be arranged. **Mr. Luekens** stated the Board must decide whether to grant waivers of a stormwater management plan and soil suitability report, and that without knowing building dimensions, it is less likely that those waivers can be granted. [**Mr. Harmon** spoke from the audience, inaudible] This item will continue under preliminary review following receipt of additional material.

**Planners Time:**

- A public hearing will be held on August 13, 2009 for amendment to the definition of structure.
- The Board will have another workshop on the Accessory Dwelling Unit ordinance before having a joint workshop with Council.

The Planning Board meeting of July 9, 2009 adjourned by rule at 10:00 p.m.

Submitted by Jan Fisk, Recorder, July 15, 2009