

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

APPROVED
February 25, 2010

Meeting called to order at 6:12 p.m.

Board Members Present: Russell White, Scott Lincoln, David Kelly, Michael Luekens, Ernest Evancic, George Burke

Members absent: Joseph Carleton

Staff: Gerry Mylroie, Town Planner

Minutes: February 11, 2010 Planning Board Meeting

Mr. Evancic moved to accept the minutes as amended

Mr. Burke seconded

Motion carries by all members present

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Mitchell Elementary School Addition – Site Plan Amendment – Public Hearing/Plan

Review. Owners, Town of Kittery School Board propose an approximately 9,800 square feet gross floor area addition to the existing school building. The proposed expansion is located on School Lane in the Residential - Kittery Point Village (R-KPV) Zone, and recorded as Map 27 Lot 20 and Map 36 Lot 5. The owner's agent is Ken Wood, PE, with Attar Engineering and Mike Lassel, AIA, with Lassel Architects.

Mike Lassel, summarized the Town's request to provide for additional classroom space in an overcrowded school building and pointed out the proposed site improvements on the plan.

Lou Chamberlain, Attar Engineering, summarized the proposed site plan changes and noted those items that will not be changed, including utilities. A report to the State DHHS has been submitted regarding the septic system. A traffic study has been conducted and no impact has been determined. The intersection of Haley Road and School Lane will be reviewed for improvements. **Mr. Evancic** inquired about the inspection of the school's septic system, and who will ultimately be responsible for inspections. **Mr. Chamberlain** stated a yearly inspection/maintenance agreement can be established with a third party if the School Department so desires, and he will provide that information to the School Department. **Mr. Evancic** recommended a note be placed on the plan requiring a maintenance agreement and annual inspection. **Mr. Luekens** inquired about the modular classrooms. **Mr. Lassel** stated some classrooms would be disrupted and the modular units will be temporary, during the construction process, and then removed by the winter of 2011.

Public Hearing opened at 6:25 p.m.

Susan Emery, 5 School Lane noted her main concern was maintaining the rural character, wildlife and natural vegetation of the neighborhood, and specifically asked about the proposed fencing. The lights in the parking areas are left on during the summer and weekends, and requested they shut off when not needed, as was in the original plan. **Mr. Lassel** explained the fencing is approximately 3 feet high and is meant to block headlights with green plantings covering the fencing over time. The new standards for lighting will be applied to the proposed lights, and will be on timers. **Mr. Chamberlain** showed there is an existing 6 foot high stockade fence with landscaping, and the height can be worked with. **Chairman White** stated the fencing had to be high enough to block a vehicle to be an effective buffer. **Ms. Emery** stated cedar trees were planted to block the basketball courts, and this was acceptable, and preferable to high fences. **Debbie Driscoll, Pepperrell Terrace**, questioned why the septic system is not being changed given the increase in students, and if the system is not upgraded, will Barter's Creek be adversely affected. She requested that a light behind the gymnasium in the parking lot (abutting the Frisbee property), visible from four properties away, be shut off at night. Discussion followed regarding existing trees and vegetation and areas where trees will be removed. There was no further testimony, and **Mr. White** noted that further public testimony may be given as the project proceeds through the review stages.

Public Hearing closed at 6:40 p.m.

Mr. Lincoln inquired about icing over exterior courtyard doors. **Mr. Lassell** stated these doors have dormers or are part of a flat roof design, so there will be no icing. **Mr. Evancic** asked if the construction area will be secured to prevent air contamination in the remaining school areas. **Mr. Lassell** stated LEED guidelines will be adhered to, significantly reducing the impact of the construction process on air quality. Third party companies will monitor the effectiveness of the system. The bulk of the construction will be completed prior to the start of school. **Chairman White** asked if waivers have been requested. **Mr. Chamberlain** stated they are requesting a waiver to the 15 foot buffer along a parking area. **Mr. White** stated he was not sure the Board can grant the requested waiver, and this needs to be determined. He is also concerned about the removal of existing vegetation along the proposed 8-space parking area, and the issue of the intersection of School Lane and Haley Road.

Bill Eaton, Eaton Traffic Engineering, presented the traffic study and stated he found no problems with the proposed site addition on traffic patterns. However, the existing off-site location of the stop sign on the far side of the road is not in conformance with the Manual on Uniform Traffic Control Devices, and could be a legal liability to the Town. Discussions are underway with the Kittery Police, Fire and Public Works departments to resolve this issue. **Mr. Lassell** suggested the off-site discussions and resolutions could take some time and could delay the review and approval process of the school addition. **Chairman White** suggested the off-site resolutions could be a condition of approval. Other outstanding issues include: landscape requirements in parking areas, possible analysis of the impact of all exterior lighting, a septic capacity analysis from DHHS, and waiver requests. The proposed antenna is not show on the plan. **Mr. Lassell** explained the type of antenna has not been determined, though is more substantial than previously thought, and will need to be reviewed separately. If the details can be provided within the review period, the antenna can be included on the plan, but it will not be attached to the new building. **Chairman White** noted this is a Town project and it is important that the project follows the ordinance. The request to waive the buffer requirements alongside the proposed parking area may not be waive-able. **Ms. Emery** asked why there is a need for additional parking and additional lighting given there are no additional children attending the school. **Chairman White** explained the numbers are based on strict adherence to ordinance requirements, but asked Ms. Emery what her experience is with parking in the area. **Ms. Emery** stated there are few special events at the school, but when there is, parking is parallel down School Lane. Perhaps the additional lighting and parking, expense and impact on the neighborhood is not necessary. **Mr. Chamberlain** will also be requesting a waiver of the YCSCS review requirements.

Mr. Luekens moved to continue review of this item to March 11, 2010

Mr. Evancic seconded

Motion carries by all members present

ITEM 2 - Shapleigh Middle School Addition – Site Plan Amendment – Public Hearing/Plan Review.

Owners, Town of Kittery School Board propose an approximately 10,200 square feet gross floor area addition to the existing school building. The proposed expansion is located on Stevenson Road and Manson Road in the Residential – Rural (R-R) and Residential – Suburban (R-S) Zones, and recorded as Map 37 Lot 3. The owner’s agent is Ken Wood, PE with Attar Engineering and Mike Lassell, AIA with Lassell Associates.

Mike Lassell explained the school is expanding to include a 10,000 sf addition, additional parking spaces, sidewalks and curbing, and development of a rain garden for instruction and site drainage. The addition alleviates the overcrowding condition of the school, with no new staff or students. Additional site lighting in new parking areas and on the building are high cut-off lamps and meet ordinance requirements. **Lou Chamberlain** noted the school is on public water and sewer.

Public hearing opened at 7:15 p.m.

Dave Linscott, 24 Manson Road, explained the primary issue is the street parking in the area; the proposed sidewalks should continue the full length of Manson and connect to existing sidewalks; Stevenson Road should be local traffic only, but is used as a cut through from Route 236 to Route 1; large trucks and tractor-trailers should not be allowed; the road needs to be resurfaced; there is significant water drop off at the end of the street, and will be exacerbated with this addition. This is a dense neighborhood, and the multiple cars parking along the streets during numerous special events reduce the roads to one lane. The town needs to look at alternate locations for parking, and the town was looking at a two acre site for more parking. **Mr. White** noted this school is used by the Town, for sporting events with multiple schools, and other special events, resulting in significant parking problems. The ordinance does not appear to have parking provisions for use beyond students, staff and teachers.

Judith Kimball, 14 Manson Road, voiced her concern about the lack of sidewalks for the children and the increased traffic, creating a safety issue. She does not have a problem with the proposed parking area alongside her property, but parking has been and always will be a problem in this tight area. **Brian Pomerleau, 20 Stevenson Avenue**, presented his concern over parking during special events at the school and supported prior suggestions for sidewalks along the full length of the streets, and paving of the poor roads. **George Dow, 1 Bartlett Road**, represents the Council on the Building Committee, explained the Council has addressed these issues, but noted the Planning Board can only review the application on the ordinance requirements for this particular project site, and not the off-site issues. The off-site issues do need to be addressed and enforced, possibly by the police. The Council can post vehicular use restrictions of the road. **Mr. White** asked if he was aware of the two acre parcel mentioned earlier. **Mr. Dow** said no. **Tom Emerson**, Building Committee, noted this is a school project approved by the citizens of Kittery, and the Committee's financial responsibility is to the building and site improvements, not the off-site needs, though important. **Paul Houde**, Maintenance Director, School Department stated the Frisbee School lights will be moved to the Shapleigh School. **Mr. Mylroie** stated the Police Chief is aware of the problems in the area, but is concerned about enforcement.

Public Hearing closed at 7:50 p.m.

Board members discussed the parking arrangements on the plan, adjacent to the playground. **Mr. Emerson** stated the playground could be moved away from the parking area. **Chairman White** commented if this proposal was a mall next to a residence, the Board could not approve it with the known overflow of uses on available parking and life safety. The Town is the applicant and should address how this parking problem is going to be addressed. The Board is responsible for reviewing the off-site impact of new and expanded developments. **Mr. Luekens** stated the Board is charged to address the plan's harmony with the Town's Comprehensive Plan, including safety and quality of life, and the impact of inadequate parking remains a problem. **Mr. Mylroie** proposed to meet with all municipal parties in an attempt to address the parking and traffic issues.

Mr. Evancic moved to continue review of this item to the March 11, 2010 meeting

Mr. Kelly seconded

Motion carries by all members present

Break

Meeting resumed at 8:08 p.m.

ITEM 3 - Sluiceway Condominiums - Minor Subdivision/Condominium Ownership – Preliminary Plan Review/Decision. (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, PE with Civil Consultants. (Issue: Reservation of additional dwelling unit, etc.)

Mr. Mylroie acknowledged the receipt of the following items and requested they be included in the record: a written opinion by the Town Attorney regarding the Board's authority to deny the applicant's right to reserve an additional dwelling unit on this parcel [2/22/10]; a letter from Patrick Bedard, Attorney for the abutters, to the Town Attorney [2/19/10]; a letter from the project abutter's to the Board [2/22/10]; and §1602-109 Plats and Plans [items attached as **Exhibits-Item 3**]. **Chairman White** noted if the applicant wants a fifth unit, he needs to be more specific, or he can remove the request. **Tom Harmon** said the fifth unit could be located on unit A or D, but could not be more specific. **Chairman White** noted the legal opinion stated the following were required: "... legally sufficient description of the real estate to which each of those rights applies," and "The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel." **Mr. Lincoln** read from §1602-109(d)(3) "To the extent not shown or projected on the plats, plans must show any units in which the declarant has reserved the right to create additional units or common areas...". **Mr. Harmon** responded they wanted to reserve the right to add an additional unit in Unit A or Unit D. **Mr. Burke** stated he wanted to know which area the fifth unit would be placed. **Chairman White** noted the addition of the fifth unit would move this from a minor to a major subdivision, requiring an additional level of review.

Patrick Bedard, Attorney, representing abutters to the project: William & Susan Treadwell, Kathy Conner and David Gibson, John and Ann Boardman, Mary & Jonathan Carter, Robert and Carlene Baime, Sarah and Snowden Smith, referenced his letter of February 22, 2010, summarizing the need for location of the fifth unit and review as a major subdivision.

Gerry Mylroie, stated the area along Sparhawk lane is being delineated as a landscape strip and the landscape plan is being worked on with some of the abutters.

Bill Tredwell, Sparhawk Lane, summarized the issues in the abutters' letter of February 22, 2010:

1. Concern over the watershed and environmental impact;
2. Need for final number and location of all units;
3. Lack of a landscape plan.

Mr. Mylroie inquired about the abutters' request for a 40 foot buffer along the west side of the property.

Mr. Harmon explained there is a 40 foot strip along the first section of Sparhawk Lane, and a 20 foot buffer along the back section to the Baime property and to unit B. The Town Planner has met with the abutters to develop a landscape plan for the property. **Mr. Tredwell** stated they understand it is the Board's decision to establish a buffer, but they would like a wider buffer than what is proposed. **David Gibson**, 31 Pepperrell Road, stated the plantings should be chosen conscientiously, with more effort put into the buffer landscape plan, and for the Board to implement the plan and require a maintenance plan.

Mr. Mylroie suggested the Board could move forward and make a final decision at the next meeting or shortly thereafter. **Mr. Lincoln**, stated the abutting Avery parcel noted on the plan is incorrect, it should be 22D. The parcel was sold in 2008, and is currently owned by Grace Hagward. These corrections should be made for proper notification records. **Mr. Luekens** stated he is comfortable with the 20 foot buffer as it is consistent with other developments the Board has reviewed, and encourages the applicant to work with the abutters on the landscape plan. He asked the applicant how he reconciles the vertical and horizontal boundary requirements of the State condominium act with the application before the Board.

Mr. Harmon stated the boundaries are defined by survey and the limits of the units are defined by a mathematical equation. The building envelope satisfies the requirement and is fairly common. The Spruce Creek condominium project for Terry Gagner currently before the Board is exactly the same thing.

Mr. Bedard countered the Condominium Act does not differentiate between freestanding homes and a multi-unit building with condominiums. Unless a project is before a review authority, this method could certainly get through. However, there is no case law saying you can omit the vertical and horizontal dimensions, has not been done legally under the Maine Condominium Act and, until the Act is changed, this theory is not supported by law. **Mr. Burke** disagreed, the outline defines the unit.

Mr. Kelly motioned to continue review of this item

Mr. Burke seconded

Motion carries by all members present

ITEM 4 - Marshall's Rental Center – Preliminary Site Plan - Acceptance/Schedule Public Hearing.

Richard Marshall, Owner, proposes to occupy the second floor of a renovated building in addition to the first floor with a total of 1440 SF retail/1590 SF warehouse and 3,030 SF office space and re-construct an existing building with 1st floor retail 1,200 SF, second floor office 1,200 SF and 1st floor warehouse 3,750 SF. The development is located at 56 State Road in the Business – Local Zone and recorded as Map 8 Lot 43. The owner's agent is Ken Wood, PE with Attar Engineering.

Ken Wood, agent, stated the owner does not have a site plan for the project as it has been in the same location for a number of years. He does have building permits, but ordinance design guidelines require 11 additional parking spaces prompting Board review. This is not an amendment to an approved plan. There is a net decrease to the building size so that a sprinkler system is not required.

Mr. Mylroie stated the Board's action at this time is to accept the plan and schedule a public hearing. The applicant has also requested four waivers. Discussion followed regarding the history of the building permits for the project, and the release of the stop work order on 11/23/2009. **Chairman White** asked if the Board has sufficient information to proceed. There followed discussion regarding stormwater runoff, amounts and direction. **Mr. Marshall** commented when the property was purchased over 25 years ago, drainage ran from the property, west across Route 1, to the Golden Harvest and into the pond. Since the construction this past summer, further drainage upgrades have been made, running under the road to catch basins. **Chairman White** commented he felt waiver requests 1 (YCSWCD waiver) and 2 (Stormwater plan) were probably fine. **Mr. Mylroie** stated the traffic impact analysis (waiver request 3) is probably not necessary, but the Board will be reviewing entry designs, and the lighting plan (waiver request 4) is also not necessary.

Mr. White motioned to find the application substantially complete and schedule a public hearing, based on the Planner's input and Board discussion

Mr. Evancic seconded

Motion carries by all members present

ITEM 5 - Street Design and Construction Standards Amendments to Title 16 Land Use and Development Code – Workshop/Schedule for Public Hearing. Consider amendments recommended by town Public Safety officials.

Following a brief discussion, Board members desired a workshop to further address the amendments.

Mr. Luekens suggested the Board move the item to a Public Hearing to keep the process moving along and, if necessary, can schedule another public hearing if further discussion is warranted.

Mr. Burke moved to schedule this item for a public hearing on March 11, 2010

Mr. Luekens seconded

Motion carries by all members present

ITEM 6 - Amendments to Title 16 Land Use and Development Code – Shoreland, Resource Protection and Related Zoning Amendments. – Schedule Public Hearing. The mandatory Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt shoreland/resource protection zoning law consistent with, or no less stringent than, the minimum requirements. A proposed amendment to the Code including the Zoning Map incorporates the requirements into Kittery's Municipal Code. The amendment must be reviewed by the Planning Board and recommended to the Town Council for adoption.

Mr. Mylroie summarized progress and action to date on these amendments. State DEP comments have been received and will be incorporated in the ordinance. The 1999 Shoreland ordinance amendments were not included in the existing ordinance, affecting space standards in some zones. The DEP has indicated the ordinance must comply with the 1999 conditional approval. It is requested the Board move this item, with

revisions, to a public hearing on March 11 when the Board will request it be forwarded to the Town Council for review and adoption at the March 22, 2010 meeting.

Chairman White announced he will not be at the March 11 Board meeting.

Mr. Burke moved to schedule this item for a public hearing on March 11, 2010

Mr. Lincoln seconded

Motion carries by all members present

Planner's Time

1. Updated status of comments by Milton Hall and other miscellaneous recommendations from the Conservation Commission and the Board of Appeals;
2. Letter from Jeff Clifford, P.E., regarding mapping inaccuracies as depicted on FIRM mapping and other data map sites.
3. Kittery Citizen's Guide Committee requested a representative from the Planning Board to serve on the Committee. Mr. White volunteered with a back up {did not see who that back up was}.

ITEM 7 - Planning Board Business Plan 2010 - Discussions about Goals and Implementation.

Mr. Mylroie spoke to the Growth Management Plan report prepared by Councilor Beers. A representative from the Planning Board is needed. A copy of the Capital Improvement Programming report by Councilor Beers was provided and explained to Board members. Members were invited to the March 8, 2010 Council meeting to hear a presentation on the CIP and recommended a joint workshop with the Council and Planning Board. **Mr. White** suggested a couple of delegates meet rather than having numerous meetings which are difficult to attend, and compressing the process would be beneficial.

Mr. Kelly motioned to adjourn

Mr. Burke seconded

Motion carries unanimously

The Planning Board meeting of February 25, 2010 adjourned at 9:45 p.m.

Submitted by Jan Fisk, Recorder – March 1, 2010

EXHIBITS – ITEM 3



cc PB

B232010AM1123

February 22, 2010

Mr. Gerald R. Mylroie
Kittery Town Planner
200 Rogers Road
Kittery, ME 03904

Re: Sluiceway Condominium

Map 18 6 E 22

Dear Gerry:

You have asked whether the Planning Board can deny the Sluiceway Condominium the approval to include future development rights within its proposed condominium project.

Relative Provisions of the Act

The Sluiceway Condominium development is proceeding under the Condominium Act (hereafter the "Act") as set out in 33 M.R.S. 1601-101 *et seq.* As such, the proposed Condominium development must meet all the provisions of the Act. It must also satisfy all relevant standards in our Land Use and Development Code Zoning Ordinance and any relevant state statutes as determined and applied by the Planning Board. Since some provisions of the Act are relevant to the issues of development rights, they bear repeating here. To begin with, Section 1601-103(11) of the Condominium Act defines a development right as:

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Attorneys at Law

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(11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium; [Emphasis added]

Section 1602-105(a) (8) of the Act describes what area and details must be contained within the condominium Declaration.

Among other things, this section requires:

(8) A description of any development rights and other special declarant rights . . . reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised; [Emphasis added]

Finally, of importance here is Section 1602-109(3) of the Act requiring all Plats and Plans contain certain information including:

§ 1602-109. Plats and plans.

. . .
(b) Each plat must show:

. . .
(3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel; [Emphasis added]

As noted in the above references to the Act, the condominium developer (commonly called the declarant) can reserve certain rights for future development within the condominium project. The development rights, however, must be consistent with the provisions of the Act.¹

Discussion

I have reviewed the subdivision plan presented to the Planning Board for approval. Paragraph 3 of the "Development Restrictions" as shown on that Plan states:

3. Any future division of the lots shall constitute a revision to the plan and shall require approval from the Town of Kittery Planning Board subject to the criteria of the state's subdivision statute, the standards of the Town of Kittery subdivision ordinance and conditions placed on the original approval.

I see no other reference to any proposed future development rights. Section 5.2(A) of the Sluiceway Condominium Declaration

¹For example, Section 1602-107(b) provides:

If units may be added to the condominium, the declaration must state the formulas to be used to reallocate the allocated interest among all units included in the condominium after the addition

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submitted to the Planning Board states that the Developer reserves the right "To create on the Property a total of one (1) additional Unit . . ." even though "any future Units . . . [are] not depicted on the Plat and Plans." No specifics as far as location or other details of the future development rights appear to be set out anywhere.

The Planning Board can require the declarant to show the description and location of any future development unit(s) that are proposed to be located as part of the Sluiceway Condominium. The Board should be able to determine that such unit(s) is consistent with Kittery's ordinances and any relevant statutes. If this is done to the Board's satisfaction, the Declarant is entitled to set forth the future development rights as part of the Condominium Declaration and Plans. When and if such future development rights are exercised, the Board must assure that they fully comply with our subdivision ordinance as well as any state and other municipal ordinances that exist when the development rights are sought to be exercised.

MC EACHERN & HORNHILL
Attorneys at Law

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Whatever determination the Planning Board makes with regard to these proposed future development rights should be properly documented and set forth as part of the approval process.

Should you have any further questions for me concerning this, don't hesitate to give me a call.

Very truly yours,



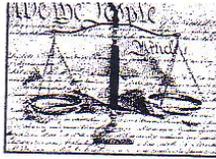
Duncan A. McEachern

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February 19, 2010

Duncan McEachern, Esq.
McEachern & Thornhill, P.A.
10 Walker Street
P.O. Box 360
Kittery, Maine 03904

Re: Sluiceway Condominium-James Austin
FAXED AND MAILED-439-8893

Dear Duncan:

As you know I represent a number of the abutters to a condominium development project known as the Sluiceway Condominium and located at 37 Pepperrell Road, Kittery Point, Maine. I have represented the abutters at a number of meetings and plan on attending the next meeting scheduled for Thursday, February 25, 2010 at 6 p.m.

I am writing to you because I believe the Planning Board referred a question to you after the most recent meeting on the Sluiceway Condominium. It involved a portion of the condominium Declaration which allowed Sluiceway to go from a 4 unit subdivision to a 5 unit subdivision by providing as follows in Section 5.2 A:

"Developer reserves the right but not the obligation until eight (8) years from the date of the recording of this Declaration:

A. To create on the Property a total of one (1) additional Unit, and Limited Common Areas appurtenant to such Unit on the land as described in the attached Exhibit A (which describes the entire real property on which this condominium is situated), all pursuant to Section 1602-110 of the Condominium Act. To create this additional Unit the Declarant may divide an existing unit, combine or reconfigure two or more existing units, and/or use portions of the common elements. The Declarant may not take any portion of a unit already sold to unit purchasers. Declarant makes no assurances regarding the boundaries of any unit subsequently created or when it may do so, except that it must be done, if at all, within 8 years of the recording of this declaration."

This language would give the Declarant, Sluiceway Condominium, (which is not identified as a person or legal entity), the right to create a 5 unit subdivision. There are two problems with approving this language.

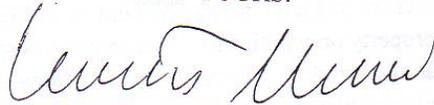
First, there is no way to know exactly how this 5th condominium unit would look. Where would it be located? Would there be lot coverage issues? Would there be impervious surface area issues? Would new construction affect the drainage on the site? Would the new unit affect the need for water or sewer? Will there be setback issues? There are too many questions when approval is sought for an additional dwelling unit which is undefined. Any approval should provide that for any additional unit the Declarant needs to make an application to the Kittery Planning Board to have this reviewed and approved.

Second, this 5th unit would take this from a minor subdivision to a major subdivision. A major subdivision is defined as "any subdivision containing more than four lots." See Kittery Land Use and Development Code Zoning Ordinance, sec. 16.08.020, Definition of Subdivision, Major. A lot is defined in such a way that it is not applicable to the definition of subdivision. (It is defined as being any lot created prior to July 13, 1977 which is inconsistent with a subdivision that creates lots in 2010.) A subdivision, by either State law or zoning ordinance in the Town of Kittery, is defined as a division of a tract or parcel of land into three or more lots within any five years period, and "(t)his definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise..." See Kittery Land Use and Development Code Zoning Ordinance, sec. 16.08.020, Definition of Subdivision; 30-A M.R.S.A. 4401(4). Thus, it makes sense that if this is a division of land into 5 separate condominium units it would be a major subdivision. Thus, by permitting this additional unit without requiring the review as a major subdivision the developer bypasses the more stringent requirement of a major subdivision in the Kittery ordinances.

The abutters to this project are requesting that the developer adhere to the Kittery Zoning Ordinances and Maine law. Specifically, no 5th unit should be approved at this time. The Declaration recorded in the York County Registry of Deeds, and the plans approved by the Kittery Planning Board, should provide that any additional units must first obtain approval from the Kittery Planning Board and the entire 5 unit development should meet the requirements of a major subdivision.

If you have any questions, please do not hesitate to contact me.

VERY TRULY YOURS:



PATRICK S. BEDARD

cc: Bill Tredwell
Town Planner
Chairman, Kittery Planning Board ✓

EB 22 2010 PM 5:29

Date: February 22, 2010

To: Planning Board, Town of Kittery

From: Abutters to the proposed Sluiceway Condominium Project

Re: Sluiceway Condominiums Project

We, as abutters and concerned town residents, feel that there has been a lack of disclosure on the part of the developer throughout the permitting process for the Sluiceway Condominium project. We must request that this project be fully defined and reviewed before any approval is given.

Details of the project have been gradually added by the developer only at the insistence of the Board, town staff, and other stakeholders, such as the Conservation Commission. This ongoing lack of detail in the plans has made us increasingly uncomfortable with the intended size of the project and how it will affect not only the homes that surround the parcel but also the Spruce Creek watershed and the community at large.

We understand that this land will be developed. Our intent is not to block the development. Rather, as Kittery Point residents, we are concerned that this environmentally sensitive area may be degraded as a result of this development. We want to protect the wildlife, natural vegetation and Spruce Creek watershed. We would like to see development in this area occur consistent with the goals and objectives of the Town of Kittery Comprehensive Plan.

We are particularly concerned that the plan calls not only for a total of four buildings but also includes a provision to add a fifth building. We see that one building envelope is disproportionately large and want to know what the developer intends for it. It seems generous to allow even three total buildings on this parcel which actually includes only 2.28 acres of land outside the 100-foot wetland setback and setback from Barter's Creek. We ask that the Board take this opportunity to reconsider the density of the proposed development given its proximity to a body of water identified by the State of Maine and the DEP as one of seven coastal watersheds most at risk from development within Maine.

Additionally, we request that the Board stipulate that there be a 40-foot vegetated buffer consisting of native plants and trees along the entire west side of the developer's property. The buffer will assist mitigation of stormwater runoff generated by the development's impermeable surfaces and serve as a wildlife corridor as well as a visual screen. This buffer would not be a part of any individual's landscaping. The buffer and the area within the 100-foot wetland setback (called Limited Common Areas A, B and C in the current plan) would be managed by the condominium association with minimal disturbance. Additionally, we ask that the 40-foot buffer be installed before any building permits are issued.

We understand the complexity of the issues raised and we thank the Board for your volunteer stewardship and commitment to our community's well-being.

Robert and Carlene Baime

David Gibson and Kathleen Connor

John and Ann Boardman

Snowden Smith

Jonathan and Mary Carter

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Maine Revised Statutes

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[§1602-108](#) **Title 33: PROPERTY** [§1602-110](#)
Chapter 31: MAINE CONDOMINIUM ACT
Article 2: CREATION, ALTERATION AND TERMINATION OF CONDOMINIUMS

§1602-109. Plats and plans

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible, bear the seal and signature of the land surveyor, engineer or architect under whose direction the plat or plan was prepared. [1981, c. 699, (NEW).]

(b) Each plat must show:

(1) The name and a survey or general schematic map of the entire condominium; [1981, c. 699, (NEW).]

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate; [1981, c. 699, (NEW).]

(3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel; [1981, c. 699, (NEW).]

(4) The extent of any encroachments by or upon any portion of the condominium; [1981, c. 699, (NEW).]

(5) The location and dimensions of all easements serving or burdening any portion of the condominium; [1981, c. 699, (NEW).]

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number; [1981, c. 699, (NEW).]

(7) The location with reference to any established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number; [1981, c. 699, (NEW).]

(8) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate;" [1981, c. 699, (NEW).]

(9) The distances and courses between noncontiguous parcels of real estate comprising the condominium; [1981, c. 699, (NEW).]

(10) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited

common elements described in section 1602-102, paragraphs (2) and (4); and [1981, c. 699, (NEW).]

(11) In the case of real estate not subject to development rights, other matters customarily shown on land surveys. [1981, c. 699, (NEW).]

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT." [1981, c. 699, (NEW).]

(d) To the extent not shown or projected on the plats, plans must show:

(1) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number; [1981, c. 699, (NEW).]

(2) Any horizontal unit boundaries, with reference to established datum and the unit's identifying number; and [1981, c. 699, (NEW).]

(3) Any units in which the declarant has reserved the right to create additional units or common elements, section 1602-110, subsection (c), identified appropriately. [1981, c. 699, (NEW).]

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans. [1981, c. 699, (NEW).]

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b) and (c), or the declarant may record an affidavit that plats and plans previously recorded conform to the requirements of those subsections. [1981, c. 699, (NEW).]

SECTION HISTORY
1981, c. 699, (NEW).

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