

Meeting called to order at 6:09 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell

Members absent: Rich Balano

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

Pledge of Allegiance

Minutes: April 25, 2013

Postponed

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no public comment.

PUBLIC HEARING

ITEM 1 – Kittery Municipal Center/Memorial Park –Modifications to an Approved Plan

Action: Review final site plan and grant or deny preliminary or final approval. The Town of Kittery in conjunction with the Thresher Memorial Project Group proposes to create a Memorial Park (a.k.a Circle of Honor) on the east-side of Town Hall. The purpose is to enable the recognition of all men and women from Kittery that have given their lives in service to the Nation. Additional work includes: landscape treatment for Memorial Circle and an ornamental base for the Thresher memorial flag pole. The area is located at 200 Rogers Road in the Business Local (B-L) Zone and identified as Map 22 Lot 20A and 20. Project represented by a Thresher Project Group representative.

Gary Bears, Project Administrator, summarized the final submission for approval. The plan includes:

- a 25' diameter granite base around the flagpole,
- 2 commemorative granite signs in the circle and a variety of shrubbery and plantings
- a memorial park area adjacent to Town Hall with a cobblestone lined walkway,
- a 10-foot center Circle of Honor with a granite stone,
- a 16' x 16' square of memorial pavers,
- granite benches and plantings,
- 10-foot granite stone with bronze memorial plaque
- 3 flagpoles surrounding monument
- Bradford pear trees and miscellaneous plantings.
- Thresher flagpole will be illuminated 24 hours with a 220 watt LED fixture, including a nighttime sensor switch.

Mr. Melanson stated he hopes this can now move on, and asked about the rain garden.

Mr. Beers stated he understood this is a separate issue and has been approved by the DEP. It is included per the Board's direction. Mr. Mylroie concurred the rain garden has been approved by the DEP, but any further changes to this area would come back to the Board, such as the final design of the street width per MDOT. Mr. Alesse asked about completion time. Mr. Beers stated up to 60-days for all the granite work. The landscaping is ready to go. The lighting could be done in time to formally raise the flag in memorial circle by Memorial Day, and are hoping for a formal dedication ceremony on July 4, 2013.

Ms. Driscoll asked:

- How many lights will be used to illuminate the flagpole
- Granite signs in Memorial Circle

Mr. Beers responded:

- 1 light to illuminate the flag
- 2 granite signs identifying the Thresher with raised lettering

Ms. Grinnell stated the Board asked for engineered drawings and the ones submitted are too small and difficult to read and do not meet plan review criteria. Mr. Mylroie stated the plans include details and specifications.

Ms. Grinnell moved to postpone review. There was no second. Discussion continued.

Mr. Melanson noted the Wright-Pierce plans provide the information and the lighting specifications appear satisfactory, and he is prepared to move to the Findings of Fact.

Ms. Driscoll noted there appears to be a walkway to Rogers Road Extension from the Circle of Honor and could create a dangerous situation. It should be removed.

Ms. Grinnell moved to postpone this item until the Board receives plans in the size and manner as required by Town code.

Ms. Driscoll seconded

Mr. Melanson stated the Town Planner should be able to respond to these questions. Mr. Mylroie stated the plans include the engineered drawings and sketches to better illustrate the drawings. Materials have been specified and included with engineered drawings. The walkway was established to allow individuals to access Memorial Circle via the sidewalk, but this could be removed. Mr. Melanson asked what the next steps on this item will be. Mr. Emerson stated a public hearing and comment will follow. Motion fails with 3 in favor and 3 against (Tuveson, Melanson, Alesse), and no abstentions.

Mr. Emerson asked about parking allowances and, given the ages of those who may be visiting, handicapped parking should be provided. He agrees with Ms. Driscoll regarding the walkway from the sidewalk. Ms. Grinnell concurred with the parking issue noting there is not enough room in the existing Town Hall parking lot. Mr. Mylroie stated there is parking at the museum and around the front of the municipal building, the lot would be vacant on the weekends, and a parking area could be allocated for this project. Ms. Grinnell asked about the existing three flagpoles in Memorial Circle. Mr. Beers stated these will be removed and replaced behind the Circle of Honor monument, replaced by a proposed Thresher granite sign.

Public Hearing opened at 6:40 p.m.

Herb Kingsbury, Conservation Commission, asked if the rain garden is under consideration at this time.

Mr. Emerson stated it was not.

Public Hearing closed at 6:41 p.m.

Mr. Melanson moved to approve the plan as a final plan and read the Findings of Fact

Ms. Tuveson seconded

Ms. Driscoll stated if this is to move forward, the parking and path to the sidewalk should be addressed as conditions of approval.

Mr. Melanson amended his motion to include conditions to remove the path to the sidewalk and the addition of supplemental parking, including handicapped parking.

Ms. Driscoll seconded the amended motion

Ms. Grinnell asked how the supplemental parking could be accomplished – by the Town or by the project group. Mr. Mylroie stated additional parking has not been proposed, but there is area available to add additional parking and is so identified. Ms. Tuveson stated people will park and walk wherever they want, but adequate parking needs to be accounted for in the application.

The amended motion carries with four in favor, 2 opposed (Driscoll, Grinnell)

Original motion fails with three in favor and three opposed (Driscoll, Grinnell, Emerson)

Mr. Emerson stated he wanted to see the drawings and plans corrected and amended to reflect the amended motion, and presented in a size that can be reviewed.

ITEM 2 – Clayton Lane Subdivision - Modification to an Approved Plan Review

Action: Review subdivision plan, grant or deny preliminary approval. Josh Abbott, owner and applicant proposes to amend the previously approved 4-lot subdivision located off Remicks Lane (Clayton Lane) by dividing two lots, thereby creating 6-lots, and adding two duplexes, yielding a total of 9 dwelling units. The site is identified as Tax Map 65 Lot 12, ±21.4 acres in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Surveying, Inc.

Ken Markley, Easterly Surveying, summarized the application, noting there is also a Wetland Alteration permit application. The original subdivision was approved in September 2011. The applicant is requesting the division of two lots and review under the Cluster Subdivision Ordinance. The total wetland area totals 6.8 acres, including variable habitat; the upland area totals 14.1 acres; the road area totals 1 acre; road length is 670 feet with 20-foot pavement and 3-foot shoulders. Proposed lot 4B will be served by a well with the remainder lots served by public water. The applicant will provide in fee to the Kittery Land Trust (KLT) the property between the cul-de-sac [identified as ‘open space’] and the Town’s gravel pit to be included as an extension of the Russell Wood Farm. Applicant will also provide two parking spots at the cul-de-sac for use by the KLT. Open space totals 70% more than what is required for this size project. Applicant is requesting preliminary approval.

Ms. Driscoll asked about the conveyance of the northeasterly land to the abutters. Mr. Markel stated the Wilson abutter already uses the land and the conveyance did not alter the density calculations due to its small size. Ms. Driscoll asked about a homeowner’s association. Mr. Markley stated one will be established to address the KLT agreement and roadway. Ms. Driscoll pointed out the old family cemetery at lot 2B, noting this needs to be marked off prior to construction.

Public Hearing opened and closed at 6:56 p.m. There was no public comment.

Ms. Driscoll moved to accept the preliminary plan

Ms. Grinnell seconded

Mr. Melanson asked about the potential waivers. Mr. Markley stated the proposed road width is 20 feet with 3-foot shoulders, but the ordinance standard is 22 feet. ASHTO (American Society of Highway and Traffic Officials) standards indicate the proposed road could handle up to 47 units.

Motion carried unanimously by all members present.

OLD BUSINESS

ITEM 3 – Lewis Farm 2 – Residential Cluster Subdivision – Street Naming.

Action: Grant or deny approval for street naming application. Lewis Farm, LLC, owner, seeks final approval for street naming application reviewed and approved by Town Department Officials for the recently approved Lewis Farm Phase II Conservancy subdivision. Property is located off Lewis Road, Map 61, Lots 25 and 29 in the Residential – Rural Zone.

Chris DiMatteo stated in addition to the street naming request, a revision of a prior approval condition should have stated *Resource Protection Overlay Zone* instead of *Shoreland Overlay Zone*.

Jeff Clifford, Altus Engineering, stated on Sheet G-4, Note 1 reads:

Construct first 900 feet of road ‘F’ beyond the intersection of road ‘G’ and construct private drive (5 house lots). Road ‘G’ wetlands crossings and road base shall be built and stabilized until Phase 3.

Mr. Clifford stated the words *until Phase 3* should be stricken, as it does not make sense, and is a note error.

Mr. Melanson moved to accept the requested street names for Lewis Farm II, as follows:

1. Driftwood Lane
2. Smokey Hollow Drive
3. Applewood Way

Ms. Tuveson seconded

Discussion followed regarding use of historically significant names to road names.

Motion carried unanimously by all members present.

Mr. Melanson moved to amend condition #3 of the Lewis Farm II Residential Cluster Subdivision Findings of Fact dated March 14, 2013 to read as follows:

Vegetation within the Resource Protection Overlay Zone to be managed in accordance with Resource Protection Overlay Zone requirements. In addition, all 100-foot wetland and Resource Protection Overlay Zone setbacks that impact building lots are to be clearly signed with appropriate Town of Kittery placards.

Ms. Grinnell seconded

Motion carried unanimously by all members present.

Mr. Melanson moved that on Sheet G4 Phasing Notes, #1, language *until Phase 3* be stricken.

Ms. Grinnell seconded

Motion carried unanimously by all members present.

ITEM 4 – Desjardins/Old Post Road New Dwelling – Modification to an Approved Plan

Action: Continue plan review, grant or deny preliminary/final approval. Michael Desjardins, owner and applicant, requests approval to construct a second story addition to the existing office building, for a residential dwelling-unit. The property, located at 122 Old Post Road in the Business Local zone, Tax Map 14, Lot 15, is proposed to be brought in compliance with street trees and buffer planting requirements that were not enacted at the time of the 2003 approval.

Michael Desjardins represented the project.

Mr. DiMatteo noted the amendment of condition #2 per the Board's request.

Jeff Clifford explained the function of the sump pump and drainage pattern. The design of a rain garden to accommodate water from the sump pump would not work. A redesign includes a leaching catch basin with a new sump discharge to the northerly side of the building and removal of the existing sump pipe. The discharge would then flow into the Town's catch basin.

Ms. Tuveson moved to grant final approval and to include new condition language #2.

Ms. Grinnell seconded

Motion carried unanimously by all members present.

Whereas Michael Desjardins, owner and applicant of 122 Old Post Road, proposes to construct a single dwelling-unit within a new second story addition to the existing single story office building and thereby amending the previously approved 2003 Site Plan. The property is located in the Business Local zone, Tax Map 14, Lot 15. Hereinafter the "Development". Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan").

Plans Submitted (Set of 4 Sheets)

1. Application (2/20/13)
2. Approved Site Plan (12/24/03)
3. Amended Site Plan (with (2/15/13)
4. Architectural Elevation (annotated 2003 Site Plan) (2/20/13)

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

FINDINGS OF FACT

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 interpret these ordinances and plans.

The proposed development, with the requested waivers and the recommended plan changes, is in conformance with the Comprehensive Plan and Town Code. Applicant requests to reduce the width of the landscape planter strip from 15 feet to 6 feet, and add two street trees and 14 additional plantings along the existing picket fence. The request is reasonable and in keeping with the size of the property and the proposed project.

Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified. <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
The Board finds this standard is not applicable. There are no wetlands on the site.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified. <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
The Board finds this standard is not applicable. None have been identified.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient. <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
The Board finds this standard is not applicable. The property is currently connected to municipal water.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available. <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
The standard appears to be met. The property is currently connected to municipal water and the proposed development incurs a limited demand.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate. <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
The standard appears to be met. The property is currently connected to municipal sewer and the proposed development will not cause an unreasonable burden on municipal services.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available. <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
The standard appears to be met. The property is currently managed for solid waste disposal.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected. <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
The Board finds this standard is not applicable.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected. <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
The Board finds this standard is not applicable. Site is serviced by public sewer
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned. <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project</i>

<p><i>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>The Board finds this standard is not applicable. Property is outside of the flood plain</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>K. Stormwater Managed. <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i></p>
<p>The standards appears to be met. The applicant's agent has submitted a revised plan and drainage analysis and CMA's comments (attached) that incur minor changes are reflected in the conditions of approval.</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>L. Erosion Controlled. <i>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.</i></p>
<p>The standard will be met. A note will be included on the plan stating the applicant's contractor will follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval).</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>M. Traffic Managed. <i>The proposed development will:</i></p> <ol style="list-style-type: none"><i>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</i><i>2. Provide adequate traffic circulation, both on-site and off-site.</i>
<p>The standard appears to be met. The proposed development does not incur a significant change to traffic circulation.</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>N. Water and Air Pollution Minimized. <i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"><i>1. Elevation of the land above sea level and its relation to the floodplains;</i><i>2. Nature of soils and sub-soils and their ability to adequately support waste disposal;</i><i>3. Slope of the land and its effect on effluents;</i><i>4. Availability of streams for disposal of effluents;</i><i>5. Applicable state and local health and water resource rules and regulations; and</i><i>6. Safe transportation, disposal and storage of hazardous materials.</i>
<p>1. The development is located outside of FEMA designated floodplains. 2 thru 6. The Board finds these standards are not applicable to this development.</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected. <i>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.</i></p>
<p>The Board finds this standard is not applicable. Property is not located near any protected/significant aesthetic, cultural or natural areas.</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>P. Developer Financially and Technically Capable. <i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p>The standard appears to be met.</p>
<p>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>

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

Waivers:

1. 16.10.5.2.B.2 – Plan Scale
2. 16.10.5.2.B.10.k. – Topographic Contours
3. 16.3.2.8.D.C.2 – Landscape Planter Strip
4. 16.10.5.2.C.6 – Erosion/Sedimentation Control Plan

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

1. Applicant shall provide a revised plan that incorporates the following plan notes:
 - a. Indicated the walkway to the handicapped ramp will be paved with bituminous concrete;
 - b. Specify overflow pipe specifications, suitable for vehicle loading;
 - c. Contractor will follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.); and
 - d. Indicated plant species for landscape planting strip.
2. The Department of Public Works director shall formally approve the proposed drainage analysis, location of new drainage structure and plantings in the public ROW. Contractor will coordinate with DPW the final location of the new drainage structure and the coring of the existing catch basin.
3. Any additional changes and modifications to the final plan must be approved by the Planning Board.

The Planning Board accepts the above *Findings of Fact* as read, *Application Waivers* and *Conditions of Approval* if any, and approves the proposed *Development* and authorizes the Planning Board Chairman to sign the Final Plan and Findings of Fact after the said conditions have been met.

Vote of 6 in favor 0 against 0 abstaining

Approved by the Kittery Planning Board on May 9, 2013

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 5 – Yankee Commons Mobile Home Park Expansion – Subdivision Plan Review.

Action: Continue Review of Preliminary Plan Application. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 79 sites on 50 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lot 24, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.

Gary Beers, owner's agent, noted the Board directed the applicant to seek a mineral extraction permit from the CEO in September, 2012, which was denied. They sought an appeal of this decision through the Board of Appeals who reversed the Code Enforcement's decision. The Planning department sought legal opinion on the Board of Appeals decision. Applicant is now seeking a 90 day continuance to allow an opportunity to review the legal opinion and other avenues.

Ms. Tuveson moved to grant a 90-day continuance.

Ms. Grinnell seconded

Motion carried unanimously by all members present.

Break

ITEM 6 – Pearson Meadows Cluster Subdivision off Wilson Road – Sketch Plan.

Action: Continue Sketch Plan Review, discuss site walk, approve Sketch Plan concept if in compliance with Town Code and provide direction to Applicant. Owner Gail Beverly Burns and applicant Chinburg Builders, Inc., is requesting consideration of their plans for an 11-lot subdivision a 24.5 acre parcel off Wilson Road., Tax Map 54, Lot 14, Residential-Rural, with and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Jeff Clifford, Altus Engineering, noted the details of the sketch plan were presented to the Board on March 14. Since that meeting, a site walk was held with the DEP and it was noted there was no evidence of rabbit species on the site; a pre-application meeting with the DEP for stormwater management was held; a site walk with the Planning Board was held on April 16.

Ms. Driscoll summarized the site walk minutes and confirmed unidentified site walk participants. Board members viewed areas of proposed homes, areas of proposed walking trails, and followed the driveway to the Burns' home.

Mr. Emerson noted the project is within sight of two scenic roadways identified in the Comp Plan, where it is recommended there not be two access roads to a single property. He suggested a revision to reduce the impact on the wetlands, reduce the roadway length, reduce the amount of tree cutting, and reduce the impact on the abutting Devon Woods.

Ms. Driscoll concurred and noted the sight distance to the left is not as clear as that at the Burns' driveway. Mr. Alesse and Ms. Grinnell concurred.

Mr. Clifford noted the owner would like to retain their privacy while accessing the rear property. He also noted a vernal pool on the site requires a 100-foot buffer. Discussion followed regarding changing the road direction by utilizing the homeowner's driveway, maintaining the owner's lot as a 'remainder lot', site distances, and abutting property buffers.

Ms. Tuveson moved to accept the sketch plan concept and move to preliminary plan review.

Mr. Melanson seconded

Mr. Emerson noted this is a suburban subdivision located between two scenic roadways, and the Comp Plan directs retention of the rural character of the community, which he does not believe this project accomplishes.

Motion carries with five in favor and one abstention (Alesse)

ITEM 7 – Estes Bulk Propane Storage/U.S. Route 1 – Sketch Plan.

Action: Continue Sketch Plan Review, discuss site walk, approve Sketch Plan concept if in compliance with Town Code and provide direction to Applicant. Owner M&T Reality, and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering,

Lou Chamberlain, ATTAR Engineering, explained the plan has changed since the March 14 submittal to illustrate the Resource Protection zone and the flood zone area. Mr. Alesse asked about the dangers of two large propane tanks in this area especially if there is hunting and danger of a stray bullet. Mr. Chamberlain stated he cannot answer this question at this time, but could pursue for preliminary review.

Ms. Driscoll concurred and asked if an earthen buffer could be designed to provide additional protection. Mike Estes stated studies conducted by Homeland Security have shown that typical bullets hitting mobile propane tanker trucks do not penetrate. The proposed tanks at the site are three-times thicker than those on tanker trucks, and the valves are constructed within safety guidelines. Mr. Emerson asked about potential development along the long road accessing the tanks. Mr. Estes stated he does not intend to go forward with any other kind of development on this property at this time. Ms. Driscoll asked about the road finish and emergency vehicle access. Mr. Estes stated he would pave the first 700-800 feet, with a dirt road the remaining distance.

Herb Kingsbury, Conservation Commission, asked if the Board will be addressing the plan review notes regarding wildlife habitat, vernal pools, etc. Mr. Emerson stated these issues will be further reviewed at the preliminary review stage, and the Commission may address these in writing to the applicant.

Mr. Melanson moved to accept the sketch plan concept for Estes Bulk Propane storage
Ms. Tuveson seconded
Motion carried unanimously by all members present.

Mr. Melanson moved to proceed with review of Items 10 and 11 prior to Items 8 and 9.
Ms. Grinnell seconded
Motion carried unanimously by all members present.

ITEM 8 – Board Member Items: Comments and Discussion

Mr. Emerson:

- Reminded the Board members of the Conservation Workshop on 5/28 at the Wells Reserve. Mr. Mylroie will enroll members wishing to attend.
- May 15 meeting with Comp Plan Update Committee at 6:00 p.m. Information on population, housing and build-out analysis will be discussed. Ms. Tuveson reminded the Board of the pending state legislation that should also be considered and discussed. Mr. DiMatteo also noted there are legal criteria and a process for establishing moratorium. Ms. Driscoll asked about the number of building lots approved and will research this.
- Mr. Emerson asked staff to provide a calendar of public meetings for the Board.
- Mr. Mylroie noted the following upcoming meetings:
 1. Wednesday, May 15 (above);
 2. Thursday, May 16, Kittery Foreside Quality Improvement Plan, 6:00 p.m. with a presentation for future.
 3. Tuesday, May 28 – Conservation Workshop, Wells (above).
 4. Thursday, May 30, MDOT Public Information meeting on Sarah Long Bridge at Kittery Community Center, 6:00 p.m.
- Ms. Driscoll asked about the new ‘Freebie Barn’ at the Transfer Station. Where’s the building permit? Mr. Mylroie stated he has asked for information on this.
- Ms. Driscoll asked about issues at Frisbee Pier. Mr. Melanson stated Al D’Amico has blocked the launch area at the pier in order to collect fees. A temporary restraining order and a prescriptive easement are being pursued. The property is owned jointly by Mr. D’Amico and Dr. Allister. Ms. Driscoll noted the dumpster for the restaurant has been located in the parking lot. Mr. Mylroie stated he has followed up on this issue.
- Mr. Melanson stated the BIG project would be before the Board as a public hearing at the May 23 Board meeting.
- Mr. DiMatteo asked to include projects in the last Board meeting of the month when a determination of completeness is before them. Mr. Emerson asked this be held off for awhile until the Board can get some of the code issues before them taken care of. Mr. Melanson added an 11-item agenda is too much for staff and Board members to adequately hear. Board members discussed the June agenda.
- May 29, presentation to Council by the Wood Island group.
- Kittery Farmer’s Market opens May 29.

ITEM 9 – Town Planner Items:

- A. Board Review Determination for a proposed Modification to an Approved Plan;
- B. Green Head Lobsters;
- C. Other

NEW BUSINESS

ITEM 10 – Stone Meadow Cluster Subdivision, Brave Boat Harbor Rd. – Preliminary Plan Review.
Action: Accept or deny preliminary plan application and schedule site walk and/or public hearing. Owner Acadia Trust, N.A, and applicant Harbor Street LP, is requesting approval of their plans for a 27-lot

subdivision on a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Durwood Parkinson, Applicant's Attorney, requested the Board accept the preliminary plan and move to a public hearing, and offered a neighborhood meeting with concerned residents outside of formal plan review.

Mr. Parkinson presented that Board member Alesse is an owner of property approximately three lots away from the subject property entrance, and that Mr. Alesse has participated in discussions on this project outside of Board meetings which is considered ex parte communication. If this information is correct, they are requesting that Mr. Alesse step down from consideration of this application.

Mr. Alesse stated he does live near the project and it is no secret that he considers this is a large and inappropriate development in the area. He stated he attended one informational meeting called by some neighbors to share information, prior to Board review, and noted the only information gathered was that this was a large development, proposed by out-of-state interests with no connections with the Town of Kittery. Mr. Alesse stated he has not discussed this with Board members, but as a member of the community and on a public board did not believe it was inappropriate to listen to community concerns.

Mr. Parkinson stated it is totally inappropriate to solicit concerns of neighbors outside of public meetings, and noted there is case law and information in the MMA Manual relative to this issue. Planning Board members sit in judgment of applications similar to a court case. Additionally, Mr. Alesse's comment, "I do consider this an inappropriate development" is a prejudgment of the application. Mr. Parkinson stated it is Mr. Alesse's job to sit and not make judgment until all the information is considered. On that basis alone, he should step aside. It is the decision of the Board members, excluding the challenged member, to determine if he should step down.

Mr. Alesse stated he will not voluntarily step down, and that he relies on the Comprehensive Plan that directs development to areas in Town where there is infrastructure to handle this size of development, which is how he made the judgment that this size development is inappropriate.

Ms. Tuveson noted she and Ms. Driscoll attended an MMA seminar regarding this issue that discussed financial consideration as well as bias on the part of Board members when considering an application. It is the responsibility of the Board to provide a fair and impartial hearing for all applicants.

Ms. Tuveson moved that Mr. Alesse step down

Mr. Melanson seconded

Ms. Driscoll stated the worse case would be to allow a member to remain on the Board and have the Board's decision challenged in court. She suggested it is in the Town's best interest for Mr. Alesse to step down. Mr. Alesse stated the applicant would receive a fair and impartial hearing from him. He noted Ms. Tuveson's request to recuse herself because she had a financial interest in a project and noted that he does not have a financial interest in this one, but does believe this is a subdivision out of character with the rural area in which it is located. He is not unalterably opposed to the project. Mr. Emerson noted it is difficult to separate Board responsibility from community member, but it must be done. Ms. Grinnell understands what Mr. Alesse is stating, but the ordinance is what directs the Board in their decision making process. It is unfortunate, but the Board must be fair and follow the ordinance.

Mr. Alesse stated he would volunteer to step down.

Ms. Tuveson withdrew her motion

Mr. Melanson seconded

Mr. Alesse withdrew his participation as a Board member on this application

Ms. Tuveson moved to accept Mr. Alesse's decision to recuse himself in this matter

Mr. Melanson seconded

Motion carried unanimously by all voting members (5)

Ms. Grinnell asked if Mr. Alesse can participate in Board discussion. Ms. Driscoll noted he may not participate in Board discussions, but may participate as a member of the public.

Mr. Alesse stepped down from the Board panel and sat in the audience.

Jeff Clifford, Altus Engineering, summarized the revised plan noting it has been scaled back to 27 lots from 40 lots. There is now 71% open space; a 120-160-foot woodland buffer has been added along Brave Boat Harbor Road except for a school bus stop area and a cistern location, retaining the rural character of the roadway; the secondary access road for emergency vehicles has been removed per Planner and Board request, so a road length waiver will be requested; the road length is now 2300 feet; the trails have been removed, but access along the roadway has been included to access Brave Boat Harbor Road; wetland and poorly drained soils plan and open space vicinity plan have been included; the Town's identified shorebird zone is no longer shown on state mapping, however all proposed lots are located outside of the 250-foot zone area; the pond on the adjacent property is identified. As part of the DEP Site Location permit, areas of possible vernal pools were identified with a significant pool located within the 250 foot zone area and will not be impacted; another pool was identified in a man-made wetland area though not considered a significant vernal pool by the DEP. The ACOE has jurisdiction on this pool and a 100-foot buffer has been established by moving the road and re-locating a lot. An amphibian breeding area was identified, but is not a considered a vernal pool as there is an outlet and is not isolated.

Board and staff comments addressed by the applicant:

- A. Illustrated connections with adjacent parcels, including natural resources; illustrated 250-foot shoreland and shorebird areas;
- B. Central gathering area illustrated;
- C. Widened shoulder for pedestrian access and bus stop area along Brave Boat Harbor Road included;
- D. Deletion of southerly road access; waiver requested;
- E. Common open space and easterly buffer, and wooded buffer area along Brave Boat Harbor Road illustrated;
- F. Proposing a 30,000 gallon cistern for fire protection. The fire chief requested a dry line, but that does not provide protection at this time and is approximately ½ mile away from water line.

The applicant requested acceptance of the preliminary plan a schedule a public hearing.

Ms. Tuveson: man-made vernal pool.

Response: it is a category one wetland area with a 100-foot setback.

Ms. Grinnell: secondary road.

Response: road standards allow 1,500 feet for secondary collectors; proposed road length is 2300 feet.

Ms. Grinnell: request to map water within 250' of project.

Response: a pond has been illustrated on the vicinity map, and is a minimum of 100 feet from property line, and site wetlands identified; Mr. DiMatteo stated the abutter requested identification of natural resources, however, these issues will not impact a decision as to whether the application is complete and ready for a public hearing. The substantive review begins following acceptance of a complete application.

Board members discussed a second site walk to the area; a neighborhood meeting with the applicant and engineers; and the importance of attending the public hearing. Mr. Parkinson stated anyone interested in having a neighborhood meeting should contact Mr. Falzone to make arrangements.

Mr. Melanson asked if the Board wished to have a site walk before or after the public hearing. Ms. Driscoll suggested a site walk following the public hearing may be more effective. Mr. Emerson concurred.

Mr. Clifford noted that Chris Coppi, a Wetland Specialist with the DEP, had visited the site.

Mr. Melanson moved to accept the preliminary plan submittal for the Stone Meadow Cluster Subdivision, Brave Boat Harbor Road and schedule a public hearing.

Ms. Grinnell seconded

Motion carried unanimously by all voting members

Mr. Emerson stated the public hearing will be tentatively scheduled for June 13 subject to meeting agenda items.

Ms. Grinnell suggested there not be as large an agenda as this one for the public hearing on this item.

Break

Mr. Alesse rejoined the Board

ITEM 11 – Landgarten/578 Haley Road Renovations – Shoreland Development Plan Review

Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner and applicant Michael Landgarten is requesting approval of plans to expand an existing non-conforming building located on Haley Road, Tax Map 26, Lot 36, in the Kittery Point Village and Shoreland Overlay zones. Agent is Jesse Thompson, Kaplan Thompson Architects.

Jesse Thompson summarized the request, noting the 100-foot wetland setback passes through the existing house, and the entire project is within the 250-foot shoreland zone. The proposal is to renovate the existing structure with the addition of a screened porch, deck and vertical expansion. The area and volume expansion does not exceed 30% and the expansions to not encroach any further into the wetland setback. Ms. Tuveson commended the applicant on the clarity of the submittal drawings.

Ms. Grinnell moved to accept the application and schedule a site walk.

Ms. Tuveson seconded

Motion carried by all members present.

Mr. Melanson moved to adjourn

Ms. Tuveson seconded

Motion carried unanimously

The Kittery Planning Board meeting of May 9, 2013 adjourned at 9:40 p.m.

Submitted by Jan Fisk, Recorder – May 14, 2013