

# TOWN OF KITTERY PLANNING BOARD MEETING

**APPROVED**

Council Chambers  
Thursday, May 8, 2008

Meeting called to order 6:05 p.m.

Members Present: Chairman Russell White, Joseph Carleton (Mr. Carleton arrived at (6:20 p.m.), Ernest Evancic, Megan Kline, Michael Luekens and D. Scott Mangiafico

Members Absent: Douglas Muir

Also Present: Sandra Mowery, Town Planner, Earledean Wells, Kittery Conservation Commission, and Lisa Goms, Recorder

**APPROVAL OF MINUTES** – Minutes were not available for review.

**PUBLIC COMMENT** – Public comment is welcomed on non-Agenda Planning Board matters. The Planning Board is a quasi-judicial Board and issues regarding items on the Board's agendas are subject to comment only during the official review process.

**Chairman White** suggested that Planner Mowery go ahead with her report first while waiting for people to arrive.

**Planner Mowery** stated: I received the Superior Court decision on the recreational center and want to talk to you about the decision. The Board read the Findings of Fact and voted on each finding. The Board then motioned to approve with conditions. As you know, there were two (2) findings that did not have a majority vote; that is the votes on those finds were 3/2. I cannot believe the Superior Court did not recognize that the final decision of the Board, to approve, was unanimous. This judgment went to the fact that there were two findings that had votes of 3/2 and, therefore, in its entirety, did not gain Board approval. What this means to the Town is that we (*the Town*) start from the beginning with engineers with new submittals to the Board and the full review... which I understand from the Town Manager will not happen. Maybe some day, but for now it is a dead issue. So, in summation, if anyone board member, at any time during the review process, feels adamantly that the ordinance has not been satisfied, then (*perhaps*) the Board should not proceed to the motion and vote.

**Mr. Mangiafico** said: Under the old rules, it would have passed with the 3/2 vote. The new rules say you need 4 affirmative votes to pass and we didn't have a full Board.

The Board continued to discuss the quorum issue.

**Earldean Wells** announced that signs for conservation areas are expected within the next few weeks. There are five different signs. We (*the Town*) need to be assured that if we charge the cost of these signs to the wetland mitigation account that the language is in the ordinance that permits payment. **Ms. Wells** asked the Board to consider how they are to pay for the signs.

**Planner Mowery** notified the Board that she has edited the draft wetland ordinance to include the Board's suggested revisions. She went on to say that during the editing, she compared this draft to the State recommended wetlands ordinance and determined the need to prepare a draft (based on the State version) for the Board to consider. There will be two draft wetland ordinances for the Board to consider at the next workshop.

**Chairman White** asked if there was anyone present for Public Comment.

**Frank Dennett** commented that he noticed on the agenda that a couple of items had map and lot numbers and that the street names should be included on the agenda so that the public can tell where a property is located exactly.

**ITEM 1**      **Amendment to Title 16 Land Use and Development Code Zoning Ordinance – Public Hearing/*Discussion with Action*:** The Town Administration, endeavoring to assure continuity of service during periods of appointment and composition to the Planning Board and Zoning Board of Appeals, proposes to amend Section 16.040(A) and 16.050(A) so that seated members may serve until their successors are appointed and duly sworn.

**Mr. Dennett** said: For most Board's, at this time, the period of service is three (3) years. At the end of the third year this period of service abruptly stops. This revision will allow, if the board member is willing and if it is necessary, a continuance of service for an unspecified period of time in order to maintain a full compliment of board members. This is not a requirement. It is up to the member involved after the expired term. Ultimately it is the intent of Council that this applies to all Town boards, excepting Port Authority board members who serve under a separate authority. This already applies in regards to Council and the School Committee and the ordinance to the cable TV.

**Chairman White** asked for further public comment on this item. Having none the Chair closed the Public Hearing.

Board Discussion

**Mr. Mangiafico** made the following motion: I move that the Board recommend to Council approval of Item 1 - Amendment to Title 16 Land Use and Development Code Zoning Ordinance as presented to assure continuity of board member service. **Mr. Carleton** seconded the motion.

**VOTE:** 6/0 all were in favor.

**Chairman White** asked if there was anyone present who would like to speak on Planning Board issues that are not on the agenda. No comments were heard.

**ITEM 2 Request to Name a Private Way – Discussion with Action:** Carroll L. Rowan, applicant, proposes to name a street that intersects with cul-de-sac and end of the street known as Pickernell Lane, the right-of-way being situated on Map 59 and abutted by Lots 4, 9A, 9B and 9C.

**Chairman White** commented that this item was tabled during the March 13<sup>th</sup> planning board meeting because the applicants did not want the (*staff*) suggested street name to be approved. The name now proposed is the one that the applicant does want.

Board Discussion

**Planner Mowery** said she received an email from Mary Jane Rowan requesting the street name Rowans Way. Staff has reviewed the request and all required staff signatures have been acquired.

**Chairman White** asked if any member of the public wished to speak. Having no reply he advised the board to make a motion.

**Mr. Mangiafico** made the following motion: I move that we (*the Board*) approve the name for a private way, Item #2 as Rowans Way, as requested by the applicant. **Ms. Kline** seconded the motion.

**VOTE:** 6/0 with all in favor. Motion passes. Application was approved.

**ITEM 3 Kittery Shore Condominiums – Major Subdivision – Determination of Completeness/Preliminary Review/Scheduling of a Public Hearing:** Beli-Nari Properties, LLC, owner, proposes to construct a cluster residential development consisting of 4 duplex structures and two (2) single-family dwellings on ±15.2 acres on Map 38, Lots 13B through 13F situated in the Rural Residential (**RR**) Zoning District. The owner’s agent is Northeast Civil Solutions.

**Chairman White** recognized Jim Fisher, Northeast Civil Solutions

**Jim Fisher** approached the podium and said: In essence, we would like to find that the application and all the materials that you (*the Board*) have before you are complete. The site walk is scheduled for next week. We would like to pin down the time for a Public Hearing and would like to go over the preliminary review this evening. We also have a request for a particular waiver and finally I would like to discuss the proposed name for the road, which is Spruce Shore Drive. We still need the feedback from the Director of Public Works toward that end. Mr. Fisher handed out, to Board members, the application for the request for waiver. Mr. Fisher then gave an extensive overview of the project and commented on the staff notes.

**Chairman White** said based on Title 16.36.060 the application looks to be substantially complete.

**Planner Mowery** agreed that the application was substantially complete. The applicant has submitted sufficient information do a thorough review.

Board Discussion

**Mr. Mangiafico** asked the Planner if there was a Shoreland Development Plan. Mr. Mangiafico then pointed out 16.32.850(K).

**Ms. Kline** said: As of February 2007 the intent is that when waterfront development is proposed the Planning Board must have a shoreland development plan for review. Secondly, the Port Authority needs to be aware that such a proposal is before the board. The Planning Department should track these parcels with regards to change of use - even though it's a good thing. As far as waterfront development is concerned, because the Port Authority is a separate entity, it needs to be notified. If the Port Authority has issues we (*the Board*) want to know sooner rather than later.

**Mr. Mangiafico** suggested that the applicant put together a Shoreland Development Plan.

More deliberation regarding the dock issue continued.

**Mr. Mangiafico** made the following motion: I move to find the application substantially complete for Item #3 Kittery Shore Condominiums, a major subdivision for Beli-Nari Properties, LLC, to construct a cluster residential development consisting of 4 duplex structures and two (2) single-family dwellings on ±15.2 acres on Map 38, Lots 13B through 13F situated in the Rural Residential (**RR**) Zoning District. The owner's agent is Northeast Civil Solutions. This approval, if the board grants, would have the following conditions: First the applicant will submit a Shoreland Development Plan, and secondly, a public hearing is held. Finally, when the conditions are met the applicant and Planner will set a meeting date for a public hearing. **Mr. Muir** seconded the motion.

**VOTE:** 6/0 unanimous all in favor that the application was substantially complete.

**Chairman White** asked if the Board had any comments regarding the street name – Spruce Shore Drive.

**Ms. Kline** noted that the applicant proposes to remove about 17 Spruce trees from the area, which will be leaving about four (4).

**Chairman White** asked if there were any comments from the Public.

**Mr. Ecker**, an abutter, noted that “please clarify” is written in several places in the staff notes said and he wants to know if these issues will be addressed.

**Planner Mowery** responded that this was the first look at this project and yes the will be addressed.

A Site walk is scheduled for Tuesday, May 13<sup>th</sup> at 4:30pm

**Chairman White** closed the Public Hearing portion of the meeting.

There was much deliberation regarding the waiver request.

**Mr. Mangiafico** made the following motion. I would move that we (*the Board*) approve the waiver requests for Beli-Nari Properties, LLC. Map 38, Lots 13B through 13F located within the Rural Residential (**RR**) and partially in the Commercial (**C**) zones. The first is a waiver of Section 16.32.470 York County Soil & Water Conservation District review ,since, as that the applicant states, both CMA Engineers and the DEP are reviewing the project. I also move that we (*the Board*) approve the waiver of Section 16.36.060 (B)(3)(D. - Submission contents. The motion was seconded by **Ms. Kline**.

**VOTE:** 6/0 in favor of accepting the waiver request.

A Public Hearing is scheduled for June 26, 2008 Planning Board meeting.

**Break (5 minutes)**

**ITEM 4**      **Beatrice Way Subdivision – Minor Subdivision – Preliminary Review/Scheduling of a Public Hearing:** Operation Blessing Limited Partnership. Owner, proposes to create a 3-lot subdivision on Beatrice Way, an existing 50-foot right-of-way. The proposed site located on Map 61, Lot 8 consists of ±3.2 acres situated in the Rural Residential (**RR**) Zoning District. The owner’s agent is Civil Consultants.

**Chairman White** recognized Carl Beal, Civil Consultants.

**Mr. Beal** approached the podium and identified revisions made to the plans at the request of the planning board. Mr. Beal said: we are again before the Board seeking preliminary approval for this 3-lot subdivision which is to be carved out of the 65 acre parcel owned by Operation Blessing, adjacent to Highpointe Estates. The last time we were before the board there was considerable discussion regarding the proposed roadway and the applicable roadway standards. Following that meeting I communicated with the Kittery Fire Chief and the Director of Public Works. The Fire Chief’s requested a 20-foot wide paved road with 3-foot shoulders on both sides in accordance with the road standards. We have revised the plans accordingly. **Mr. Beal** continued the presentation.

Board Discussion

Request for waivers were discussed.

**Ms. Kline** said there should be one name only for the street, as required by 911, for safety issues.

**Planner Mowery** instructed the applicant to complete an application for street naming.

**Chairman White** asked for a completeness motion.

**Mr. Mangiafico** made the following motion: I move that, after reviewing Title 16.36.060 Development Application and Review - Submission of Contents, we (*the Board*) find the application substantially complete for Item 4 Beatrice Way Subdivision a minor subdivision. Operation Blessing Limited Partnership, the Owner, proposes to create a 3-lot subdivision on Beatrice Way, an existing 50-foot right-of-way. The proposed site located on Map 61, Lot 8 consists of ±3.2 acres situated in the Rural Residential (**RR**) Zoning District. The owner's agent is Civil Consultants, and that we approve the following waiver requests: Section 16.32.470 York County Soil & Water Conservation District review, since, CMA, Inc. is reviewing the drainage and erosion control plans for the project. Section 16.32.550.B. since CMA, Inc will review the stormwater management and erosion control plans and Section 16.32.550 since CMA, Inc. says such a survey would not add information of value to the technical review.

The motion was seconded by **Mr. Carleton**.

**VOTE:** 6/0 Motion passes.

Having found the application substantially complete the board asked the Town Planner schedule a Public Hearing.

**Chairman White** asked if there was anyone present who had any comments.

**Ms. Wells** commented on a letter written by Rick Rossiter, dated March 7, 2008, which says the existing culverts crossing Haley Road in this location can not manage an increase in stormwater runoff. I just want this information to be considered.

A site walk was scheduled for May 13<sup>th</sup>, 2008 at 3:30 pm.

**ITEM 5**      **Amendment to Title 16 Land Use and Development Code Zoning Ordinance**  
**Discussion with Action/Scheduling of a Public Hearing:** Howard Patten, applicant, requests an amendment to Title 16.08.020 – Definitions – “Corner Lot”. The applicant's agent is Dean K. Bouffard, PC.

**Chairman White** recognized Dean Bouffard.

**Mr. Bouffard** approached the podium and stated: I think the issue before the Board tonight is whether or not to have a Public Hearing on the proposed ordinance change. Mr. Bouffard brought attention to Section 16.28.080.

Board Discussion

After much discussion regarding the scheduling of a public hearing, **Chairman White** commented that the applicant has not demonstrated a need or benefit to the zoning district at large, that the request for an amendment appears to be solely for a particular lot in order for the applicant to develop that lot. Historically, the Board has received proposals for amendments to the Ordinance from Town staff. The requests are evaluated in workshops where applicability to the district, abutting districts and other ordinances are studied and considered with care.

**Chairman White** suggested tabling the item. The Board indicated they were not certain how to proceed, and asked the Planner to seek advice from the Town Attorney.

**PLANNER'S TIME:**

**ADJOURNMENT**

Meeting adjourned at 9:30