

# TOWN OF KITTERY PLANNING BOARD MEETING

## APPROVED

Council Chambers  
Thursday, April 10, 2008

Meeting called to order 6:12 p.m.

Members Present: Chairman Russell White, Joseph Carleton, Megan Kline, Michael Luekens, D. Scott Mangiafico and Douglas Muir

Members Absent: Ernest Evancic

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

**APPROVAL OF MINUTES** – **Ms. Kline** made a motion to approve the Planning Board meeting minutes as amended for 2/28/08; the motion was seconded by **Mr. Muir**, with all in favor to accept. **Ms. Kline** made a motion to approve the Planning Board meeting minutes as amended for 3/13/08; the motion was seconded by **Mr. Carleton**. All were in favor of accepting the minutes as amended.

**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** asked if there was anyone present who would like to comment on any non-agenda items.

**Earldean Wells** presented: A long time ago the Conservation Commission worked on signs that were used to designate wetland conservation areas. The Conservation Commission will contribute \$1,000. Chairman White suggested that there may be a wetlands mitigation account of some sort for situations of this sort.

**ITEM 1**      **Amendment to Title 16 Land Use and Development Code Zoning Ordinance**  
– Public Hearing: The Town Administration endeavoring to define zoning in accordance with the Comprehensive Plan and to update the official zoning map, proposes to amend Title 16 Land Use and Development Code as follows:

- ❖ The amendment of Title 16.08.020 – Definitions,
- ❖ The addition of Title 16.12.105 – Business Park (BP) Zoning District to Section 16.12,
- ❖ The addition of Article I – Master Development Plan, Titles 16.30.010 through 16.30.060,

- ❖ The amendment to Title 16.32 – Design and Performance Standards, Titles 16.32.645 through 16.32.700, and
- ❖ The amendment of Title 16.36 – Development Application and Review, Title 16.36.080.

**Planner Mowery** addressed the Board and the public explaining the Zoning Map and what is planned for the future.

Members of the Public - Comments:

**Jerry Richard** - asked Planner Mowery a few questions regarding the Zoning Map on display.

**Mr. (name not known)** – asked how are they handling the power lines? What I am concerned about is...even though you're taking the trees down, the lines are still there and they are susceptible to lightning strikes and they could fall down...and now a lot of people are in danger. I don't know if anyone has talked to the power company about burying those lines. That is a concern for safety.

**Chairman White** responded: after this Public Hearing tonight the Board will essentially decide whether or not to present this to the Town Council for its process and consideration.

**Fred Hall** – I owned part of that land (16A) for 30 odd years. In 2002, I spent 6 months before the Planning Board to authorize a gentleman by the name of Bill Cullen to build a business park on 16A and through negotiations, there were restrictions that were applied to him, such as; you couldn't build 30 feet from the line, you couldn't put water from one lot to another. We had a problem with the drainage in the back and he had an agreement so they wouldn't put a culvert so the water from, I'm going to say, the Eliot side to come into it. Now, if you join these three together, all the restrictions are removed.

**Chairman White** replied: if they are put under a master development plan which is one way the land can be developed...there are a couple of ways the land could be developed...smaller parcels are developed in a more normal fashion according to the proposal. If there is a large development plan as sort of a master plan that takes into account all the drainage and all those other issues. The lot lines are erased, but they look at the whole picture.

**Helen Badson** – When this property came under discussion of the Planning Board and this gentleman got permission to put a business development in there I came and listened to the meetings. He had beautiful plans and the Board was very strict about land use and tree cutting and it all looked great. And then he went in there and cut almost every single tree down, even the ones that he was supposed to not cut. So I am a little concerned. Even though you have these nice words in here about land use and open space and maintaining trees; when push comes to shove, who is there watching these guys when they are cutting this stuff.

**Durwood Parkinson** – I am representing some people who are interested in some of the properties within the Business Zone. I have had the opportunity to attend most if not all of meetings where you have discussed this proposal; and I think that goes back to last Fall. I want

to thank you for how close attention you have paid to the details. There has been several public meetings and several drafts of this. The end product you have now strikes a nice balance between the flexibility needed to have a good well designed large project and yet the guidance a Town should have in its Ordinance with the type of project it wants. I am hearing the comments from the public and it certainly would be the type of comments that I would be making if I were a neighbor to the property wanting to be absolutely sure that the property was developed in the best possible way so that it doesn't impact the neighboring properties, their homes, investments, etc. Hopefully it is understood that if this zone passes, that is just the first step of a development process that would be an extremely long and detailed process that would involve a very thorough local review by the Planning Board, the Planner, the Town's own engineering consultants. Then there would be an intense review at the State level from the Maine Department of Environmental Protection because of the size of the project with the particular focus on the storm water issues that a few people have raised. That is a major theme that is going through State regulations right now and there are new ways of controlling run-off. A project may require some review at the Federal level. It is not going to be a fast process and it will certainly be a process where the public has the right to weigh in and be heard. I am sure that the dialog like we have had on this zone will continue.

**Mr. Parkinson** continued: What happens when you have a particular parcel of land that might be in two zones. That is the case with this parcel, it is partially in the SR Zone and partially in the proposed BP Zone. The suggestion that I would like to make is for the Board to consider the possibility of some language being added to this zone that would allow some flexibility for a project to straddle between two zones.

**Planner Mowery** passed around a handout containing the proposed language to be written.

**Mr. Parkinson** read proposed language.

**Chairman White** suggested that public comment be held until the Town Attorney can make comments to the Board and then continue the public comment.

**Duncan McEachern** – My concern with this is probably as much process as substance. As I read it; it says a parcel that straddles a common boundary line...right now there is only one parcel. I suppose somebody could find these other parcels with the existing parcels so they eliminate that boundary so that this parcel would straddle (Mr. McEachern illustrating on the map where he was referring to). My major concern is notice to the public of what is actually in the document that the Board is considering and what it could potentially mean.

Discussions continued.

**Chairman White** resumed the public comment.

**Steve Tapley** – I think the Planning Board is headed in the right direction with this from the comments that I have heard, but I think it's dangerous. These two sentences might have ramifications throughout the whole Town. If you do it in one location, then I think you are opening up a bunch of things elsewhere. I would hate to see that you could do something like

this and then all of a sudden, it's right in your backyard. You see the Business Park...that's great we should have a Business Park, but as the way you are headed right now is the correct way, I think that the zoning lines are there for a reason and when you start jumping over those for something like this, I think it is dangerous territory. I hope that the Planning Board looks long and hard at this. So at this point, I do not agree with what he is trying to do here.

No further public comment was heard.

**Chairman White** said: This is definitely worth further consideration and we should probably include it in a future workshop and gather more materials. At this point, the Planner can schedule this.

**Chairman White** asked if there was any further public comment on the document that was presented.

**Chairman White** closed the public hearing.

Lengthy deliberations continued regarding fire safety issues, the height of the structures, and the Board's position on such matters, etc. The Board made amendments to the wording.

Motion from Board to pass to Town Council for further consideration

**Mr. Mangiafico** made the following motion: I would move that the Board move Item #1 Title 16 Land Use and Development Code Zoning Ordinance discussed tonight; move to recommend to the Town Council that they consider for adoption this amended version as discussed and as noted by the Chairman of the Planning Board. The motion was seconded by **Mr. Luekens**.

**VOTE:** Unanimously voted to forward to the Town Council – 6/0.

Break 8:05

Meeting resumed – 8:17pm

**ITEM 2 Major Subdivision – Final Review:** DSS Land Holdings, LLC. Owner proposes to construct a mixed-use development with commercial development fronting on Route #1 and a 6-lot residential subdivision fronting on Adams Road; on 29.67 acres situated in the Mixed Use (**MU**) and Rural Residential (**RR**) Zoning Districts; Map 60, Lots 24 and 24A. The owner's agent is Attar Engineering.

**Chairman White** recognized Ken Wood, Attar Engineering

**Ken Wood** approached the podium and commented that there have been some minor changes to the plan since the last meeting. Modifications were made to the entrance of the structure and the traffic issues and the walkways. The lighting was also modified.

**Bill Straub** explains the lighting setup of the project.

No further Public Comment was heard.

Board Discussion

Much deliberation continued regarding the extension of the Mixed Use District zoning boundary line.

**Mr. Mangiafico** made the following motion: Having reviewed 16.28.060, I would move that the Board approve the zoning boundary extension requested under Item #2 - Major Subdivision: DSS Land Holdings, LLC. Their request is for a triangle extension of the Rural Residential District approximately 40 feet into the Mixed Use District a maximum of 40 feet. It is a triangle approximately 40 by under 150 feet. I would move that the Board approve that zoning boundary extension based on 16.28.060(A)(1-7) as reviewed by the Chairman that it meets those standards. The motion was seconded by **Ms. Kline**.

**VOTE** 5/0/1 abstention (Mr. Muir abstained)

Applicant will return for final approval and Findings of Fact.

**ITEM 3 Major Subdivision – Final Review:** KBM Builders proposes to construct an 8-lot residential subdivision with access from Dennett Road and lot frontage on a proposed right-of-way situated on 14.13 acres in the Suburban Residential (SR) Zoning Districts; Map 12, Lot 1. The owner’s agent is Anderson Livingston Engineering, Inc.

**Mr. Mangiafico** read the following sections of Title 16.36.070.C. Findings of Fact and the Board voted as follows:

- 1.a. **Pollution.** i.; ii.; iii.; iv.; v.; and vi. **Vote of 6 in favor 0 against 0 abstentions**
- 1.b. **Sufficient Water Supply.** **Vote of 6 in favor 0 against 0 abstentions**
- 1.c. **Municipal Water Supply.** **Vote of 6 in favor 0 against 0 abstentions**
- 1.d. **Erosion.** **Vote of 6 in favor 0 against 0 abstentions**
- 1.e. **Traffic.** **Vote of 6 in favor 0 against 0 abstentions**
- 1.f. **Sewage Disposal.**

- Vote of 6 in favor 0 against 0 abstentions
- 1.g. **Municipal Solid Waste Disposal.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.h. **Aesthetic, Cultural and Natural Values.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.i. **Conformity with Local Ordinances and Plans.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.j. **Financial and Technical Capacity**  
Vote of 6 in favor 0 against 0 abstentions
- 1.k. **Surface Waters – Outstanding River Segments.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.l. **Ground Water.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.m. **Flood Areas.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.n. **Freshwater Wetlands.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.o. **River, Stream or Brook.**  
Vote of 6 in favor 0 against 0 abstentions
- 1.p. **Stormwater.**  
Vote of 6 in favor 0 against 0 abstentions

**Mr. Mangiafico** continued: NOW THEREFORE, the Kittery Planning Board has, in their Findings of Fact, determined that the proposed project will have no significant detrimental impact, and the Kittery Planning Board hereby resolves to grant **approval with conditions** to KBM Builders for the development of an 8-lot residential subdivision at the above-referenced property contingent upon the following conditions:

**Conditions of Approval**

1. Prior to the sale of any lot, the developer must cause a rider to be attached to the deeds for each and all lots that references the recorded Maintenance Agreement for the private road.
2. Prior to the sale of Lot 8 the developer must cause a rider to be attached to the deed for Lot 8 that states the historical rock wall that lies within Lot 8 must remain undisturbed.

3. The final location of the electrical transformer boxes must be acceptable to CMA, Inc. Prior to installation, the developer must have verification from CMA. Inc. that transformer locations do not negatively impact the stormwater runoff system.
4. Prior to the issuance of building permits for each individual lot, the developer must provide the Code Enforcement Officer with copies of all state and local permits required for the subsurface waste disposal systems.
5. Prior to the Issuance of Building Permits by the Town's Code Enforcement Officer, the Developer must submit to the Town Planner a Performance Guarantee in the form of a bond or escrow account to cover the full costs of the required improvements. The performance guarantee must be acceptable to the Town Manager and be filed with the Town Treasurer. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) shall be set forth for the guaranty time within which required improvements must be completed.
6. Prior to a request for consideration of street acceptance as a public street, the Developer must submit as-built data that verifies to the Town's satisfaction, that the street has been built to Town standards.
7. The Code Enforcement Officer shall issue no occupancy permits until all conditions of this agreement have been satisfied.
8. This Approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Project Plans and Reports, the Board's Findings of Fact, and any Conditions of Approval imposed by the Planning Board.
9. Signing of this instrument by the Planning Board constitutes approval. A period of one year shall be set forth for the guaranty time within which required improvements must be completed.
10. By vote of the Planning Board herein, the Chairman is authorized to sign the Final Plan on behalf of the Planning Board.

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

**ITEM 4 Plenary Site Plan – Sketch Plan Review:** B&F Land Development, owner, proposes to remove the existing building and parking lot and to construct two new office buildings and parking lot at 240 U.S. Route #1, located on Map 22, Lot 13 situated in the Commercial-1 (C-1) Zoning District. The owner’s agent is Christopher Baudo, RA.

**Chairman White** recognized Christopher Baudo.

**Mr. Baudo** approached the podium and stated: The proposed project entails two buildings, one of which will be used as a mixed use building, and the other smaller building will be designated as retail. The proposal at hand for the subject parcel proposes the demolition of the existing buildings that sit on the site. This application has been before the ZBA prior to seek relief with the wetland setbacks and that Board has denied us so we now have positioned the proposed buildings within the setback limitations. The larger of the two buildings maintains the 50 foot setback from the existing wetland. The second building also maintains the 50 foot setback. The proposal from the Route #1 bypass we have had discussions with the State of Maine Department of Transportation in which we have proposed re-landscaping and rebuilding the island along the bypass. Our proposal was to re-landscape and rebuild the island. Mr. Baudo continued to review and explain the plan to the Board.

Board Discussion

**Mr. Mangiafico** made the motion to extend meeting to 10:15 pm VOTE: 3 in favor, 3 opposed.

**Mr. Mangiafico** made the motion to extend meeting to 10:10 pm VOTE: 3 in favor, 3 opposed.

The Board decided that the meeting would be extended to 10:05 pm - all were in favor.

**Chairman White** recognized David Durling – abutter

Mr. Durling had questions and concerns regarding the driveway and new parking lot.

Site walk will be scheduled by Planner Mowery.

**PLANNER’S TIME:**

**ADJOURNMENT:**

Meeting adjourned 10:05pm