

APPROVED

**TOWN OF KITTERY
BOARD OF APPEALS**

November 15, 2005

Shapleigh School Cafeteria

CALL TO ORDER:

Chairman LaMarca called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT:

Sarah Brown, Brett Costa, Vern Gardner, Herb Kingsbury, Niles Pinkham, Janice Muir, Secretary and Michael LaMarca, Chairman

ALSO PRESENT:

CEO Heather Ross, Recorder Chris Kudym, William T. Conway, Michael J. Tague, Steven Pelletier, George Dow, Leisa Muccio, Suzanne Kuel, Bill Pennigan, George Lombardi, Bill Bailey, Susan Emery, Lisa Comeau, Peter McCloud, Paul McCloud, Debbie Driscoll, Cathy Barnhorst, Barry W. and Susan R. Hayes and others.

Chairman LaMarca led those present in the Pledge of Allegiance. The Chairman then outlined the hearing procedure and read the Notice of Hearings.

PUBLIC HEARINGS:

1. York Hospital requesting a Special Exception to the terms of Title 16, Section 12, Subsection 070.C of the new VR Zone (Page 1) to provide physical therapy and wellness programming as part of the new Kittery Community Center by leasing space within the new building at property located at 2 Cole Street/45 Woodlawn Avenue, Map 16, Lot 14, Kittery, zoned Village Residential.

Chairman LaMarca said he wanted to make sure that everyone in the audience was clear as to what the responsibilities of the Appeals Board would be that evening concerning the York Hospital appeal. The Chair said that the Town's earlier vote had been about the bond issue for the Community Center and that just because it had passed did not exclude the Town from the same rules that governed everyone else and what the Board was there to decide was whether or not the requested Special Exception submitted by the Hospital would be allowed. Chairman LaMarca continued by saying that whether it passed or not, the next step in the procedure would be for it to go to the Town Planner.

Mr. Gardner requested a Point of Order, recusing himself from hearing the Petition. Addressing the Chair, Mr. Gardner explained that he had participated with the Rec Department on a study within the last six months. Chairman LaMarca asked him to take a seat in the audience and proceeded with the public hearing.

Bob Guay, Chairman of the Building Committee for the Community Center, said he would make a short introduction and then present the project team. Mr. Guay said that last November after the vote for the Community Center had passed, York Hospital had come to them asking to be part of the project. The Hospital's proposal, he said, was to pay for their part of the building, the physical therapy center, and thereafter enter into a Lease Agreement with the Town

at fair market value. Mr. Guay said that partnering with an organization like the Hospital, which already had great community standing and was known for their great customer service and then to receive revenue from them was to him a “no brainer.” One of the many things he had mentioned to the Council when discussing this project was that they already had a strong relationship with York Hospital and that the Hospital’s existing physical therapy center on Shapleigh Road was staffed with Kittery residents; the Town knew them and they knew the Town. Mr. Guay said that the Town should feel honored that the Hospital selected them to partner with and that its physical therapy center would compliment their own programs. The process had been, he said, that they had several committee meetings, which York Hospital people attended, they spoke with the Town Council and then had a workshop, after which, the Council decided to hold a public hearing. The Council Minutes of April 11, Mr. Guay said, documented comments from both the public and Council members and that topics discussed included expected traffic, parking, and lease terms. Mr. Guay said that following that public hearing, the Council voted unanimously to send the question to the voters and that question was: should the Town enter into an agreement with York Hospital? At that point, he said, the Committee sent out flyers, articles and community forms specifically geared for the neighborhood, looking for public feedback and that this effort culminated in a resounding “yes” by 77% of the voters. Mr. Guay said that the Community Center was an existing, allowed use in the Village and that the Planning Board had changed the Zoning Ordinance to permit a use like this under a Special Exception. It was up to the Board tonight, he said, after hearing their presentation, to vote on this request and, hopefully, to allow them to proceed with this project. Mr. Guay then introduced members of the project team: Michael Tague of JSA Architects, Will Conway, site designer, and Steve Pelletier of York Hospital. Mr. Guay asked if the Board had any questions for him and Chairman LaMarca said they might have questions later, at which time Mr. Guay sat down.

Michael Tague, JSA, Inc., stepped before the audience and said he would like to give them a history of what the project really was, as well as go into the site issues. Mr. Tague said his firm had been assigned to design a community center and that one of the main features and intents of the new community center was to create a large function room for seniors who could come during the day, have their meals there and participate in different activities. Mr. Tague said that a community center needed to be located where people could walk to it, making it accessible to a large senior population base. The project, he said, included multi-purpose rooms, including an aerobics room, exercise room and gymnasium. Rooms would also be needed to accommodate the staff necessary to cover intended uses and programs. Mr. Tague said that the whole plan and design of the building and where it was located was within the 2,500 square feet allowed by the Town; they were just talking about finishing out the internal space and he then introduced Will Conway of Sabego Technics.

Will Conway said that his firm had been responsible for the development of the site plan and that one of the things they were aware of, and the Building Committee had asked them to be very sensitive to, was the neighborhood - that Admiralty Village sort of surrounded the property. As a result, he said, what they tried to do was to set the building down where there was a fairly good grade change so that it would not appear too tall. The primary entrance, he said, would be on Woodlawn Avenue but they had also provided a secondary entrance from Manson Avenue in order to minimize traffic. Mr. Conway said that although there were a couple of trees that would have to be removed, most all the vegetation and trees would remain. In reference to storm water management, he said that naturally available areas would be augmented to accommodate any increased water drainage and they had worked closely with Mr. Rossiter, the Public Works

Director. Mr. Conway said they would also be introducing landscaping in the parking areas and that site lighting had been designed very carefully to minimize glare and lighting on existing residential properties. Mr. Conway then read from the Zoning Ordinance 16.32, Items 1 through 15, expressing his belief that each item had either been addressed or did not apply and said that the Planning Board had looked at all these guidelines and given them preliminary approval

Steve Pelletier, representing York Hospital, came forward and spoke about looking at the availability of a physical therapy center through the eyes of a patient. Mr. Pelletier said that health plans were reducing therapy visits in order to save money and, as a result, patients needed to be taught how to care for themselves, which included the need to participate in some kind of exercise. Mr. Pelletier said that this was a great opportunity for the citizens of Kittery and a great opportunity for the Hospital's therapists to work with patients to get better and to do it in a cost effective manner. He said that the only thing their request was about was allowing them to join with the Rec Center in order to help their patients.

Chairman LaMarca asked if there was anyone who wanted to speak in favor of the application and George Dow, 1 Bartlett Road, said he thought the project team did an extremely good job in pointing out the tremendous value of the partnership and that it made total sense. Mr. Dow said he realized people might be concerned about traffic and congestion in the area but that the traffic brought in from newly built condos was more than the physical therapy center would even think about bringing in. Mr. Dow said that rather than being a detriment to families, he saw it as only bringing value to the community and was totally in favor of it.

Chairman LaMarca asked if anyone else wanted to speak for the application and Leisa Muccio said she worked as a nutritionist and was there as a tax payer and citizen of Kittery. She said the Board was being asked to approve the partnering of York Hospital and the Rec Center and that it had already been approved by the Kittery Planning Board and Town Council, that it was well within the permitted square footage. Ms. Muccio said it was not a WalMart that was being brought into the community, that their zoning ordinances were very specific with built in checks and balances so any future proposition would be treated on a case-by-case basis. Ms. Muccio also said that the Hospital physical therapy units were all beautiful. She said that the people voted overwhelmingly to approve and she saw this as a win/win situation and asked the Board to please go forward.

Chairman LaMarca asked if there was anyone else and Suzanne Kuel, 90 Haley Road, said part of the reason she wanted to speak was to relay her experiences with the wonderful services of York Hospital. Her son, she said, had a very serious kidney injury and was in the hospital for nine days. Ms. Kuel said that he played soccer this year. She also said that she watched her father going through physical therapy and would like to urge the Board to approve the application, knowing the benefit of having this in the community.

Chairman LaMarca asked if there was anyone who was in opposition to the application and Bill Pennigan, 8 Cromwell Street, said asked if he could submit two letters and the Chair told him he could read the letters if he wished but he could not give them to the Board. Mr. Pennigan said that, as an abutter, he was opposed to the Special Exception; he was concerned about traffic, as well as about the combining of public and private uses. Mr. Pennigan said that from his house, he had a great view of the side of the building and questioned it being called a one-story, that his view of the fields would be pretty much knocked out. He also voiced concerns about lights, noise, drainage and overcrowding of people and cars, saying that the building and parking dwarfed the area. Mr. Pennigan also felt he would incur a loss of property value.

Chairman LaMarca asked if there was anyone else opposed to the application and George Lombardi, 105 Manson Avenue, said that in looking around the room, he saw perhaps three or four people that could actually walk to this community center besides him. Mr. Lombardi said that, to the best of his knowledge, the Zoning Board had to sign off on the project before the community center could even be built. He said that the Hospital did fine things but they were a for-profit organization and questioned the location of a proposed drainage ditch they were going to put in. Mr. Lombardi also said that the Hospital bought a duplex in the area that they wanted to rent out and his concern was if they were allowed to own a section of property like that, it wasn't like a regular person renting out a house, it was a for-profit corporation that was moving into their neighborhood. Mr. Lombardi said that most people that were within driving distance of the new center could almost drive to York Hospital just as fast and that the Hospital already had places on top of the hill, as well as in Berwick and York and perhaps others.

Chairman LaMarca asked if there was anyone else opposed and Bill Bailey, 28 Tenney Hill Road, came up to speak, saying that it sounded like a "free lunch." Mr. Bailey said he wanted to know if the ordinary person of the Town got a plus or minus. There would be fees, he said, and wondered why they couldn't use the community center they already had. Mr. Bailey was concerned about supporting zoning changes and even if the Hospital was well-intentioned, he didn't see how the Town could afford it, based on spending millions of dollars on this while they had people in the Town that were hungry. It was nice, he said, but he couldn't afford it.

Chairman LaMarca asked if anyone else was opposed and Susan Emery, 5 Mitchell School Lane, said she cared about all of Kittery's neighborhoods. Ms. Emery said she had been at the Planning Board meeting and it had not been her understanding that the Planning Board said that this project conformed to our Ordinances but that was something that came about after the public hearing. Ms. Emery also said that at the time of the vote no one had made it known that it was not allowed in the zone at the time. Ms. Emery said Mr. Pelletier said his concern was for York Hospital patients but the Board needed to be concerned about the people of Kittery. She then addressed the items of the Ordinance she felt were violated by the project. Among those issues addressed were: (1) adjacent properties lost their green space and would have a lowered quality of life; (2) a decrease in property values; (3) safety concerns about increased traffic (Ms. Emery wondered if Kittery would become a "designated" place for physical therapy as Wells was designated for stress tests for people in the area); (4) the proposal was not consistent with being in the Village Zone and did not fit in with the existing character in scale or in design; (5) congestion; (6) light and noise; (7) parking ...

Chairman LaMarca asked if he could interrupt for just a moment to make a statement so everyone understood that he wanted anyone who wanted to voice their concerns to have the opportunity to do so, but they needed to stay focused. The parking lot and the actual building, he said, was not what they were voting on. The Chair said they were voting on York Hospital being able to move their business into that building; it was not an addition. He asked that comments be focused not on the issue of the community center being there, but that York Hospital would be moving into it.

Ms. Emery apologized for not being clear on that and said that concerning things like scale, she believed this "addition" was adding to something that was already too large. Chairman LaMarca said, again, normally they wouldn't do this but they wanted to make sure it was understood - there was no addition to the building.

Chairman LaMarca explained that in the event the appeal failed and York Hospital did not come in, the building would be exactly the same except York Hospital would not be in it. He

said the question they were dealing with was how would York Hospital's being there change anything.

Ms. Emery said that their being there was going to take away space that otherwise could be used for the general benefit of the citizens of Kittery in the Rec Center and continued with her list of concerns asking that the Board look at the question of whether or not having York Hospital there would detract from Kittery citizens' use of equipment, saying that it had been rumored that physical therapy patients would have priority over Kittery citizens in the use of equipment. Ms. Emery again mentioned traffic concerns and referred to the need for more intensive "screening" so that people who had been used to looking at a beautiful open green space would at least be looking at a beautiful screening of trees rather than at the building. Hours of operation was a concern, she said, because it was her understanding the physical therapy center would open as early at 6:00 in the morning, which she didn't think fit in with this residential neighborhood and that she thought it shouldn't open until 8:00.

Chairman LaMarca asked if there was anyone else opposed to the application. Hearing none, the Chair asked if there was anyone who wanted to speak about the application in any way and explained that the procedure of the Board was to allow rebuttals after hearing input in favor, opposed or about.

Lisa Comeau, Admiralty Village, Halstead Street, said she brought for the Board a copy of a letter she wanted to submit. Chairman LaMarca said the Board could not take written communication but she could talk about it. Ms. Comeau said she brought a copy of a traffic study along with a letter she had written along with three reports detailing accidents that happened within the last six months, one of them being a child hit by a car while riding a bicycle. Ms. Comeau said the partnering of York Hospital and the proposed Rec Center made it hard to express concerns about the Hospital's use without addressing concerns about the building itself; it was hard to separate the two. She said she brought letters to be read into the record and Chairman LaMarca told her that was allowed. Ms. Comeau said she had come prepared to paraphrase and the letters were from people who could not be there: Jane McCarthy, a resident of Halstead Street, wrote she lived in the Village because of its being strictly residential and was fearful of any rezoning that would allow businesses (because even if the Hospital was non-profit, the physical therapy aspect was for-profit) to come in, bringing increased traffic. A physical therapy center already existed and if it had to be relocated, it should be in a business area that would be more accessible rather than a residential area where there were more children... A Point of Order was requested from the audience concerning the Board's allowing Ms. Comeau to read letters from people who were not there because other letters had not been read. Chairman LaMarca said if it had been requested, it would have been allowed. A question was raised concerning the ability to make a statement during the rebuttal process and the Chair explained that the rebuttal was for the Applicant only and, as an example, Ms. Comeau said that the physical therapy center was a for-profit portion of the Hospital so it was within the rules, when a statement like that was made, the Applicant could stand up and say that the physical therapy center was not-for-profit; they could say some statement was in error and it's the Applicant that was allowed to do that.

Ms. Comeau read from another letter: Holly Elkins, 19 Cross Street, also in the Village, basically didn't remember hearing about a traffic study or when it was performed, if it was after the vote. Ms. Elkins said she had to deal with traffic all the time on Woodlawn Avenue and one of her pets had been killed. She had great concerns about the Hospital's physical therapy customers because of their large client base. Ms. Comeau then read from a letter from Valerie Martin of 17 Cole Street, who said she was concerned about allowing an exception in the zoning

for this particular developer and about the partnership, fearing what it would bring. She was all for keeping everything residential in that neighborhood and made mention of how important the field was to her because it was space their forefathers were smart enough to leave for them. Ms. Comeau read a letter from Harry Shejpan who said that the property they were speaking about was currently what was called a disturbed wetland and that his property would flood each time there was an overflow. The last letter, Ms. Comeau said, was from Mr. Mark McConnell who lived in the Village who was very concerned about the traffic in the area because of the density and narrowness of streets, as well as changing the zoning.

Ms. Comeau said she personally felt there were six or seven major issues with not just the Rec Center but also with allowing the change. She decided she wanted to talk about the biggest one, which was changing the zoning.

Chairman LaMarca said he had to stop her - the zoning had been changed and there was nothing they could do about that; it had been changed by the Town Council and the Planning Board and they couldn't stop it even if they wanted to. Ms. Comeau said they presently had a Petition and the Chair responded that this hearing had nothing to do with their Petition. He said the new VR and this Special Exception, with our criteria, was allowed so anything to do with the zoning had already been done and, as of tonight, it was allowed in that area. The Chair said that due to timing issues, anything having to do with the change of zoning or about the building, the Board had heard their concerns but it really didn't fall under their jurisdiction. The next step, the Chair explained, was the Town Planner, where those decisions were made, and he wanted to make sure everyone understood that.

Ms. Comeau said basically what she was trying to do was to bring her neighborhood to them so they could see what she saw and her biggest concerns were traffic, disturbing wetlands and changing the character of the neighborhood. Ms. Comeau detailed specific roadway and traffic concerns, saying they already had traffic problems and asked what would happen when it got worse and what would happen if they had an electrical emergency or a snow storm? She said that because the project was going to replace with a parking area a 4 ³/₄ acre field that once serviced run-off, they would have to turn to a disturbed wetland and use it as a retention wall; they had deep concerns about ecological impacts, in particular, stuff coming off cars such as solvents, oil and gas going into the retention basin which would then go into Spruce Creek. Ms. Comeau said they felt they had a right to voice their concerns even if they were a little late in coming and suggested the Hospital find another location more corporately accommodating and told the Board this was a hard decision they were going to have to make and that the people of Admiralty Village were going to have to live with it for the rest of their lives.

Chairman LaMarca asked if there was anyone else that had new information and wanted to speak about the application in any way. A woman from the audience said there might be restrictions on the Deed to the property. She said she started tracing back the Deed and found the one she had a copy of at Book 1135, Page 347, which transferred the property from the American Legion to the Town of Kittery. The Deed refers to Lot 140 and specifically states that the property is "to have and to hold by said Town of Kittery itself as and for public use and for no other use and purpose whatsoever."

Chairman LaMarca asked if there was any other new information and Peter McCloud said he wanted to make a few points. He said he heard that the Rec Center and the physical therapy use weren't really connected but he thought they were. He spoke about the loss of green space and said that the Town required a certain amount of parking for any project so if the Hospital were not given a Special Exception, perhaps they wouldn't need to pave so much parking lot and they would be able to save Emery Field. He also said that although it was true

77% of the voters approved the partnership, those people were not aware of the traffic study. Mr. McCloud also mentioned his concern about the storm water drains and the amount of patients that would be seen on a daily basis. The Comprehensive Plan, he said, stated that zones should not be changed and this was a big change.

Chairman LaMarca asked if there was anyone else with new information and a woman from the audience said that voting to include the Center was illegal because of the Deed restrictions and should not be put out to voters since changing the zone was in direct defiance of those restrictions.

Chairman LaMarca asked if there was anyone else and Glenn Shwaery said he wanted to correct some things that had been said that weren't true about what the Planning Board recommended and what the Town passed. The Ordinance, he said, allowed a building that was within a certain maximum size. Mr. Shwaery said that the zoning changes did not allow any other businesses in so no one would see a body shop, convenience store or drug store coming into their neighborhood; this Special Exception concerned the physical therapy center only and nothing else. The notion that allowing the addition of York Hospital to this project was going to open up the flood gates to other businesses just wasn't true.

Chairman LaMarca asked if there was any other new information. Ms. Comeau stood up in the audience and wanted to know if she could ask the York Hospital representative a question. Chairman LaMarca said, no, he was sorry they had to go right by the rules, especially with a hot topic like this, and again asked if there was anyone else with new information.

Paul McCloud said it was hard to come up with new information but he would do his best. Mr. McCloud said the Hospital presented their proposal and told them that the Comprehensive Plan didn't apply, but he felt that the very fact this was mentioned meant to him that, of course, it did apply and he thought the Planning Board and Zoning Board should consider this. Mr. McCloud said that York Hospital could do their thing in other parts of Town and they weren't saying the Hospital wasn't a great enterprise but he thought if zoning had been changed, he didn't agree with that and the Hospital should not have a Special Exception. Mr. McCloud said he couldn't understand that on one hand the Board said the zoning had been changed and on the other hand the Hospital was applying for a Special Exception; he didn't believe it should be given to them.

Someone from the audience asked to read a letter he brought with him from Natalie and Joe LeClair of Manson Road, who were abutters. Ms. LeClair wanted to keep the family-type neighborhood character and said that her neighbor was quite concerned about the whole process.

Peter McCloud said he would just like to ask the Board for clarification – that they just said the change in the Ordinances had already been made, that was done, now this would be allowed by a Special Exception per vote, but Mr. Shwaery said a gas station, etc., or even a convenience store or anything else would not be allowed here in Kittery - that sounds to me like contract zoning.

Chairman LaMarca, reading from the Ordinance, clarified the location of the zone and said that what was changed or added was that in the VR area, under Special Exception, what was allowed under No. 5, was a school, education facility or hospital that occupies 3,000 square feet of floor area. The Chair said that was not them, it was done by the Town and the Planning Board. Mr. McCloud said it mentioned hospital - would that mean a methadone clinic, would that be allowed? He thought the residents should know that - if this exception was going to open them up. Chairman LaMarca said that's not what was in front of them.

Ms. Brown said perhaps they needed to make it clear. If a zone had a special exception, there was a list of allowed uses and there would be a public hearing for people to come before

this Board just to make sure there was nothing that would be adverse to their interests. This project is actually a permitted kind of business or use that use could receive a special exception.

Mr. Costa said it was a one-shot deal. Every time a special exception comes up for any business, they have to come to us; this isn't a blanket policy, it didn't give cart blanche to anyone.

Mr. Lombardi said he would like to add just one pertinent thing and spoke about school bus schedules and his concerns about heavy traffic congestion at the intersection that would be impacted by the physical therapy center.

Chairman LaMarca said he would like to make a statement because it seemed they might end up being there all night. He said the Board had heard the concerns about traffic and pollution and the public shouldn't forget they still had their own process to go through, so he really needed to restrict input or they would just keep having people saying everything over and over again. The Chair then asked if there was anything else about York Hospital that was pertinent. Ms. Comeau said in regard to the Special Exception, she thought there was a lot of confusion because everyone went to the poles thinking they were voting on whether or not to have York Hospital partner with the Rec Center and did not know that it did not fit into the zone; the zoning wasn't changed until afterwards. The zoning change, she said, was feeding a tremendous amount of fear. Chairman LaMarca said the Board fully understood that but there were processes that had to be followed and the argument most of you seem to have is changing Ordinances, which is not before us. A lot of your arguments are valid, the Chair said, this is the way the process goes, whether individually we like it or don't like it that the zone was changed, it doesn't matter. If the Petition works, then good but, as of right now, this is what we have to go by. Again, is there anything new about York Hospital?

Debbie Driscoll said she took exception to what was said as to the Special Exception because the Planning Board and Town Council changed it from Permitted Use to a special exception and she didn't think it was a permitted use and that every single aspect had to be considered before making an exception.

Chairman LaMarca said they would give the Applicants an opportunity for rebuttal and instructed them that they could answer a question or clarify a point only. Steve Pelletier said he apologized for being unclear or not providing information. York Hospital, he said, was a non-profit organization, they provided care regardless of people's ability to pay. Their physical therapy center was a non-profit service. He said they currently leased space in the Kittery Family Practice building, which was owned by Kittery Family Practice, and were a private entity. They have outgrown that space and have found it to not be handicapped accessible, so people with disabilities had great difficulty getting into that building; they didn't have automatic doors to help people get into the building and that was one of the standards they needed to meet. As far as he knew, they had not purchased any duplexes in Kittery. Their physical therapy places were in Wells, South Berwick, York and Kittery. They had been in the Kittery building 11 ½ to 12 years and they needed to upgrade in order to supply services to Kittery residents. Traditionally, he said, they were very good neighbors. They operated from 6:30 or 7:00 a.m. to 6:30 to 7:00 at night and not on weekends. Their traffic study showed they added one vehicle every ten to fifteen minutes, ten in the morning and 15 in the evening. Mr. Pelletier said that was the amount of traffic that would be added to the Kittery Rec Center.

Chairman LaMarca said they would now take a short break and asked members of the public to please not come up and talk to any of them.

A recess was called at 8:52 p.m.

Meeting was called back to order at 9:00 p.m.

Chairman LaMarca said that the Board would now hear from the Town. CEO Ross said this was a nonconforming lot and that York Hospital was requesting to include a physical therapy/wellness program center within the proposed Kittery Community Center. This was an allowed use and would be reviewed by the Planning Board as a hospital that occupied less than 3,000 square feet as allowed with approval from the Zoning Board as a Special Exception. CEO Ross then defined the term "Special Exception" as a use that would not be appropriate generally but would be allowed within certain specific criteria.

Chairman LaMarca closed the public hearing session and told members of the Board they could ask any one present any question.

Mr. Kingsbury asked how much of the total parking did the Hospital need if the physical therapy center were coming in – how would that change the parking? Mr. Conway said that out of approximately 140 spaces required for the building, about 14 would be attributable to York Hospital. Mr. Kingsbury clarified his question saying he wanted to know if York Hospital were not going to use the space, would that change the number of parking spaces? Mr. Conway said because the size of the building wouldn't change, the number of parking spaces would be the same.

Ms. Muir said she had three pages of questions for York Hospital and wanted to understand the relationship between the Town of Kittery and this business venture. Her first question was would they be providing an amount of money to build this 2,500 foot center and Mr. Pelletier said that was correct. Ms. Muir asked how much money they would be paying the Town for this 2,500 square feet and Mr. Pelletier said whatever it cost. Ms. Muir said she thought she heard they would be paying rent and Mr. Pelletier said that was correct, it was a land lease and they would do a long term lease for the Town at fair market value. Ms. Muir asked how much they were paying now for the square footage they had at Family Practice and Mr. Pelletier was not quite sure, but that it was market value and they had approximately 1,800 square feet, that it was probably between \$15 and \$20 a square foot. That was different, he said, than the land value, the land appraisers used a special calculation for the land value. Ms. Muir said she would like very much to know the amount they paid and Mr. Pelletier said it was probably about \$15,000 to \$20,000. Ms. Muir asked if they paid for any of the maintenance of the building where you were now located and if they paid utilities like heat, electricity, water or gas? Mr. Pelletier said he thought they paid for some of the utilities. Ms. Muir asked how much would they be paying for the 2,500 square feet in the new building and Mr. Pelletier said it would be a pro ration of their space, not only for the utilities but also for the maintenance, what was land maintenance and land operational costs, such as snow plowing. Ms. Muir asked about property taxes or would they be paying separately? Mr. Pelletier said that because they were a non-profit organization, they were not a taxable entity. Ms. Muir said she would like to see the floor plan again and said she heard rumors that the Hospital was going to buy the Community Center machinery for the exercise room and wondered if that was correct. Mr. Pelletier said that they had 11 or 13 pieces of nautical equipment that they would base in that room for their patient use and also for community use. Ms. Muir asked if he was referring to elliptical, tread mills, stationary bicycle and weight machines and Mr. Pelletier said yes. Ms. Muir said, so, it would be almost like walking into Planet Fitness? Mr. Pelletier said, or the Heart Health Center in York. Ms. Muir asked if this was new equipment and Mr. Pelletier said the equipment came from the Health Center in Newington and was seven or eight years old. Ms. Muir asked him if York Hospital were building their own building for their needed expansion, would they choose this

area to build in all of Kittery? If so, why, and if not, why not? Mr. Pelletier said that this area and its relationship to this project offered their patients a very good advantage. In their other facilities, they had noticed that where folks needed additional care or use of gym equipment, there was so much they could do inside the office and then they gave them other places to go. Ms. Muir said that didn't sound efficient but regarding their need to expand, would they choose this site, or Admiralty Village, in which to build your new business or would you take a look at other sites in the Town. If you want to locate here, can you tell us why and if you thought there was a better place, why? Mr. Pelletier said this would probably not be their first choice but, hopefully, close to the Rec Center, wherever it was located. Ms. Muir asked were their other facilities located near to a community center, if they existed? Mr. Pelletier said that in Wells, South Berwick and York, those Towns were not lucky enough to have a community center. Ms. Muir asked if they only saw patients with prescriptions or was there a walk-in service at the Physical Therapy Center, in other words, do patients come from around the country? Mr. Pelletier said not from around the county, just adjacent Towns: Eliot, Portsmouth, probably a few from South Berwick and a few from York. What happened, he said, was when a therapist became established, people would come from other towns for physical therapy. Ms. Muir asked if the main reason they would like to leave their present location was they would like to expand? Mr. Pelletier said there were two reasons, they would like to expand and the issue of handicapped accessibility. Ms. Muir said this was 800 more square feet than your other location, how long would it be before they would want to expand again? Mr. Pelletier said he would look at the demographics of Kittery along with the growth of the population and need. Ms. Muir asked if they would be asking the Town of Kittery to increase the building in an effort to meet their needs in the future or would they remove themselves from the building? Mr. Pelletier said it was very difficult to forecast. Ms. Muir said she would like him to summarize what the benefits of a physical therapy center were to the Town of Kittery – she knew it had benefits to people of South Berwick, Wells and York - what were the positives for residents of Kittery? Mr. Pelletier spoke about accessibility and that with physical therapy it was critical to get in as soon as possible and many times patients were in too much pain to drive and had to have someone else drive them. Ms. Muir asked what percentage of clients would be Kittery residents and Mr. Pelletier said approximately 50% and of that number, 20% to 30% worked at the Navy Yard. Ms. Muir asked if could he see any cost to Kittery? Mr. Pelletier said it was a win/win situation and it was free. Ms. Muir said that in her lifetime she had never had a free lunch so this was a fantastic situation and she was trying to get down to was it really a free lunch or were there other things going on? Mr. Pelletier said they were paying for their part of the building, sharing design costs, utility expenses, snow plowing, landscaping. Ms. Muir said that all that was pro rated and Mr. Pelletier said that was correct. Ms. Muir said that according to the numbers, it would be a benefit to them to be a part of the Community Center financially. Mr. Pelletier said they were not successful financially, that was not their mission – their mission was if they could deliver care to the community - any revenue they generated after they paid for salaries and expenses went back into services or upgrading technology. When he looks at his job, the question he asked was how were they providing services in the community and did everyone get care that came to our doors. Ms. Muir said basically that covered what she had and thanked Mr. Pelletier.

Ms. Muir asked if she could ask one last thing. She said she had heard someone say that the creation of a mixed use area in the Village would most likely disqualify them for federal and state grants in an area of the Village and asked if anyone had any proof of this? Ms. Comeau said she was referring to HUD type programs that allowed you to rehab your home at an

incredible one percent interest rate and they had very strict guidelines on who could apply for these types of loans. Because Admiralty Village is a low and middle income neighborhood, there was a question came up as to whether they would be allowed or what they were talking about doing. Ms. Brown said the zone was not disqualified because that statement was incorrect - it was not becoming a mixed-use zone. Ms. Muir said she just wanted the facts and wondered if anyone had some proof. Ms. Brown said that although people kept saying it, they hadn't actually changed the zone and they were not changing the zone tonight with their decision; it was still the same zone it was except there was one Special Exception added in the Special Exception section. Ms. Brown said that in any zone, there were two pages of what you could do and then there were the special exceptions and they were very specific. Ms. Brown said the whole thing seemed pretty common sense to her and a point she wanted to bring up, as somebody who uses the Rec Department very regularly, was what I see as an amazing benefit - not even talking about the physical aspect, but the psychological piece for the elderly - the elderly people in the area are at least half of the people using the Center and what is so awesome is that there is such a mix of ages - there are my little kids and the elderly and there's interaction. Ms. Brown said that people asked for this and what she saw as such an amazing benefit was to have elderly people who are hurt and coming for physical therapy to come to a place where other things are going on. The fact that this is also saving us money, she thought was a "no brainer" and she had received so much information and went to meetings about design and construction; people were invited over and over again and the process had been really long. The Town, she said, voted on this, people were excited - even people who didn't support the Rec Center were excited to see that there was an effort to bring in revenue - there will always be nay-sayers and she thought that with very few specific issues the Board had to look at the fact that the majority of arguments made at the last two meetings were from people who did not want to see the Rec Center expanded and she thought it was a shame. Ms. Brown said this was a great union here and she couldn't do anything but applaud it.

Chairman LaMarca said he had a couple of questions. The first one regarding the exercise room, he understood they were putting equipment in there, so could he go into the exercise room and use the equipment without restriction and without having to go through the Physical Therapy Center? Mr. Pelletier said the only courtesy they would ask was if there was a therapist and patient using the equipment, we wouldn't ask the patient to stop using the equipment before they were through. It was brought to the Board's attention that there would be equipment in the tenant's space and the exercise equipment was transitioned to by the patients. Chairman LaMarca asked what the height was from parking lot to roof? Mr. Tague said the peak of the roof was 35 feet and discussion continued about the height of the building.

Mr. Kingsbury said whatever happened with York Hospital would not make any difference to the height of the building, the size of the parking lot, the number of parking spaces, or the lighting because it would be the same whether the physical therapy unit was there or not.

Ms. Muir said someone had asked if this was going to be a designated physical therapy area. Mr. Pelletier said he thought the reference was would this become like the cardiac testing area, like they had in Wells and the answer was no, it was not, it was by community. Ms. Muir said so this building is where Kittery residents could come for their physical therapy if their doctor prescribed to them that had to have it, this is one place they could come to get it and it's a place where residents throughout this area could come to get this kind of help? Mr. Pelletier said correct.

Ms. Muir said it is time to declare votes and she had listened very attentively to everyone and did a lot of homework. Unlike Sarah, she did not use the Community Center for a number of

reasons, mainly her pursuits were elsewhere but she did appreciate the use of the Community Center and she had heard this would bring the community together. She's not sure how this would happen but she had heard people say it. It was very hard for her to separate York Hospital, she had gone to Emery Field and looked at it and saw kids playing and things happening, it seemed to her personally that 60% would be covered with tarmac and she thought it had to do with recreation, but that was fine. She would, however, like to keep it totally a community center. She didn't think there was really good reason for the business to be there, that 2,500 square feet could be used in other ways as far as she was concerned and she thought it did add and would add to the traffic in that very compact area as it was today so, personally, she would be voting no.

Chairman LaMarca said asked for a motion. Ms. Muir moved that the application of York Hospital requesting a Special Exception to the terms of Title 16, Section 12, Subsection 070.C of the new VR Zone be approved to provide physical therapy and wellness programming as part of the new Kittery Community Center by leasing space within the new building at property located at 2 Cole Street/45 Woodlawn Avenue, Map 16, Lot 14, Kittery, zoned Village Residential. Construction shall be in accordance with a sketch submitted and dated and signed by a representative of York Hospital and Michael LaMarca, Chairman.

Ms. Brown made a motion to approve the application, seconded by Mr. Costa. A show of hands vote was taken with the following result: five in favor, one opposed. Motion passes 5/1, with Ms. Muir in opposition.

Chairman LaMarca said that with that vote, this appeal had passed and that any interested party with standing had the right to appeal the decision of this Board within 45 days in the York County Superior Court and they would try to get Findings of Fact out within seven days. Chairman LaMarca informed the parties that this approval was not a Building Permit as they would still need to see the Code Enforcement Officer for that, it simply granted the CEO the authority to issue said Permit. He then asked that a representative of York Hospital come up for signature, at which time Mr. Pelletier came forward.

Chairman LaMarca thanked everyone, saying he knew it was an emotional issue and he appreciated everyone coming out.

2. Cathy Barnhorst requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490.N.2.A (Page 316) to construct a 14' x 40'5" addition to an existing front (street side) of house with chimney at property located at 186 Whipple Road, Map 17, Lot 18, Kittery, zoned Urban Residential.

Mr. Gardner returned to his seat on the Board.

Chairman LaMarca invited the Applicant to make a presentation, if so desired. Ms. Barnhorst said they submitted another application to try again to put an addition on their house, saying they were in a water zone but met setbacks by putting the addition on the front of the house, street side. She said they really felt they had no adverse affect on the water and, hopefully, the Board could look at it and ask them questions about what they wanted to do.

Chairman LaMarca asked if there was anyone present that would like to speak in favor of the application. Hearing no response, the Chair asked if there was anyone present that would like to speak opposed to the application.

Peter McCloud stood and said that at that moment he was there to represent the Kittery Conservation Commission and read a statement to the Chair and members of ZBA asking the Board to not approve the application because of nonconformance with required wetland setbacks.

Chairman LaMarca asked if there was anyone else opposed to the application and William Dennett stood and said he was an abutter and they could imagine the impact of moving the front of this house 15 feet closer to an abutter and he also believed this was an encroachment on the wetland zoning hoped the Board would summarily reject the application.

Chairman LaMarca thanked him and asked if there was anyone present who wanted to speak about the application in any way. Hearing no response, the Chair asked for CEO Ross' report. The CEO said that Title 16.32.490 required a 100 feet setback and that Ms. Barnhorst's proposal was 70 feet from the high water mark, which was no closer than the existing building.

Chairman LaMarca asked if the Board had questions. Mr. Gardner said he had been to see the house, as did Ms. Muir, Mr. Kingsbury and Ms. Brown, said there was no number on the house. Chairman LaMarca told the Applicant that it was an Ordinance to have a number on your house.

Mr. Kingsbury asked what the closest point of the addition was and CEO Ross said 70 feet. Mr. Kingsbury said so the addition is not conforming. The Chair said, just for discussion purposes, they did not want to make it more nonconforming; they were talking about getting closer to the water, it was within 100 feet. Ms. Brown said there was no question but it was going away from the water on the side. Mr. Gardner said it was really close to the driveway. The Chair asked if there was any setback at all and CEO Ross said there was no setback from the driveway but the side was at least 15 percent from the property line and a right of way came down that way but driveway was in the right of way. The Chair said so he understood the only reason they were here was that the addition was within 100 feet of wetland? Ms. Brown asked Mr. Dennett where he lived if they shared that right of way? Mr. Dennett said the bungalow did. Ms. Brown said but you live in the house and he said he lived in the house up from the bungalow.

A motion was made to extend the meeting to 11:00 p.m. by Ms. Brown, seconded by Mr. Costa, with all in favor.

Ms. Brown said she appreciated that they reconfigured and were coming back and she would ask the abutter if he would be pretty much opposed to any addition on that house? Mr. Dennett said yes because of the wetland zones and it infringed on everyone who had waterfront. Ms. Brown asked him if he ever put an addition on his home and Mr. Dennett said he always thought it would be nice to connect his house with the bungalow to increase the value of the land. Ms. Brown said so you're concerned about the wetland setback and also your view and access. Mr. Gardner asked does this adversely affect your view? Mr. Dennett said it looked like an L-shaped addition, it was an appendage to the footprint toward the water, now it was alongside the house, not any closer to the water than it was on the front of the house but it was projecting toward his line, which affected the view. Mr. Gardner said it extends six feet over and if it were that six feet less, would you be as opposed to it? The Chair said they couldn't judge on view and he would have to say the bigger problem was the 70 feet but he would also have to say it was funny the testimony from both Applicant and Abutter was that the Applicant first was going to put it in the back and there was no way, then the side, and again now in the front, they're completely moving away from the water. He said he saw it as no closer than and so didn't see a problem because it was actually further away.

CEO Ross said within a shoreland zone you were allowed a 30% expansion. Ms. Brown asked if the expansion of the garage took away from the 30% of the house and the CEO said no.

The Chair asked if there were other questions and then asked for a motion. Ms. Muir moved that the application of Cathy Barnhorst requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490.N.2.A be approved to construct a 14' x 40'5" addition to an existing

front (street side) of house with chimney at property located at 186 Whipple Road, Map 17, Lot 18, Kittery, zoned Urban Residential. Construction shall be in accordance with a sketch submitted and signed and dated by Cathy Barnhorst and Michael LaMarca, Chairman.

A motion to approve the application was made by Mr. Gardner, seconded by Mr. Costa. The motion was passed by a show of hands vote as follows: six in favor, one opposed. Motion passes 6/1, with Mr. Kingsbury in opposition.

The Chair said that any interested party with standing had the right to appeal the decision of this Board within 45 days in the York County Superior Court and they would try to get Findings of Fact out within seven days. Chairman LaMarca informed the Applicant that this approval was not a Building Permit as she would still need to see the Code Enforcement Officer for that, it simply granted the CEO the authority to issue said Permit.

3. Barry W. and Susan R. Hayes requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 040.D (Page 235) to replace an existing sunroom/greenhouse on an existing foundation with a one (1) story hip roof structure (footprint remaining the same) at property located at 76 Picott Road, Map 49, Lot 12, Kittery, zoned Rural Residential.

Chairman LaMarca invited the Applicants to make a presentation, if they so desired. And Mr. Hayes said he would make a quick statement. He said they no longer used the green house and didn't need it anymore so they would like to incorporate it into the rest of the house since their house was a very small one. The foundation, he said, was all in tact and the new structure would be put onto the existing footprint, the only issue was closeness to the road.

The Chair asked if there was any one who wanted to speak in favor, in opposition or in any way about the application and received no response. CEO Ross said this was a conforming lot with a nonconforming house. Mr. and Mrs. Hayes wanted to take down the existing greenhouse and build a structure on same footprint, the new construction being no closer to the required setback than the existing structure.

The Chair asked if the Board had any questions and Ms. Brown said she loved their house and really appreciated when someone came in with a modest request. Mr. Gardner said he visited the property as had Ms. Brown.

Ms. Muir moved that the application of Barry W. and Susan R. Hayes requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 040.D be approved to replace an existing sunroom/greenhouse on an existing foundation with a one (1) story hip roof structure (footprint remaining the same) at property located at 76 Picott Road, Map 49, Lot 12, Kittery, zoned Rural Residential. Construction shall be in accordance with a sketch submitted, dated and signed by Barry Hayes and Michael LaMarca, Chairman.

A motion to approve the application was made by Mr. Costa, seconded by Mr. Pinkham. Motion passed with a show of hands vote as follows: seven in favor, zero opposed. Motion passes 7/0.

CEO Ross said the next regular meeting was Tuesday, December 13 with three appeals. The next regularly scheduled meeting would then be the 27th, a couple of days after Christmas. The Chair, hearing no opposition, said they would meet on the 13th of December and then whatever the first meeting date in January would be.

FINDINGS OF FACT
Application of York Hospital

1. York Hospital was looking for a Special Exception to allow them to have a physical therapy/wellness program center in the new Kittery Community Center.

CONCLUSION

1. The issues of parking lot coverage, ground water intrusion, traffic flow, financial benefits, green area and character of the neighborhood were all discussed and, per Section 16.24.060.A through D, the Board found that this application was consistent with the conditions to approve the Special Exception by a vote of five to one, Ms. Muir in opposition.

FINDINGS OF FACT
Application of Cathy Barnhorst

1. Ms. Barnhorst requested a Miscellaneous Appeal in order to add a 14 x 40 foot addition to the front of her house, which would be going away from the water.

CONCLUSION

1. This was a conforming lot with a nonconforming house.
2. The Board found, per 16.28.130, that the new addition was no closer than and, in fact, further away from the water and granted the application by a vote of 6/1, with Mr. Kingsbury in opposition.

FINDINGS OF FACT
Application of Barry W. and Susan R. Hayes

1. Barry and Susan Hayes were looking for a Miscellaneous Appeal to replace an existing greenhouse with a new room and roof of the same footprint on the same foundation.

CONCLUSION

1. This was a conforming lot with a nonconforming house
2. The Board found, per 16.28.130, that the new structure was no closer to the boundary than already existed and granted the application by a unanimous vote, 7/0.

Chairman LaMarca made a motion to adjourn, seconded by Ms. Muir, with all in favor.

Meeting was adjourned at 10:30 p.m.