

**TOWN OF KITTERY
PLANNING BOARD MEETING**

Thursday, September 8, 2005

APPROVED
Council Chambers
Meeting called to order at: 6:16 p.m.

Present: Chairman Russell White, Janet Gagner, Ernest Evancic, Scott Mangiafico, Doug Muir
Also Present: Mark Eyerman, Planner Jim Noel, Councilor Frank Dennett, Councilor George Hielshorn, Councilor Glenn Schwaery, Councilor Leo Guy, Earldean Wells- Chairperson of the Kittery Conservation Commission, Town Manager Jon Carter, Town Council Chair Ann Grinnell

1. ROLL CALL

Roll call noted.

2. APPROVAL OF PREVIOUS MEETING MINUTES

Moved to Old Business.

3. WORKSHOP DISCUSSION WITH TOWN COUNCIL: 6:15-8:30

See Action Items 9-8-05.

4. PUBLIC COMMENT ON NON-AGENDA MATTERS (20 MINUTES)

John Myhaver is here representing Jackie Abramian and Harold Dersimonian. They are contemplating bringing something before the Board. They have a 2.6 acre lot and are in the process of getting rid of a third dwelling unit. They would like to cut out a one-acre lot and have it stand on its own. They would like to know the appropriate procedures. Do they need to have a full subdivision hearing? Can they have an expedited review? They are somewhat concerned with the schedule in light of possible zoning changes in that area.

Planner Noel says that this is an approved subdivision on Haley Road consisting of 3-4 lots called Hutchins Cove. It is zoned RR. The applicants would like to re-divide a lot that they previously joined.

Chairman White says the procedure is an amendment to an approved plan. He tells them to work with Planner Noel to figure out what they need to submit. It is not a full subdivision review.

5. PUBLIC HEARING: CLD, INC. FOR LYNN SEWARD, 42 BARTLETT ROAD, KITTERY, ME. APPLICANT IS REQUESTING APPROVAL FOR WETLAND ALTERATION TO ACCESS A BUILDING SITE AND INSTALL EFFLUENT LINE TO SEPTIC SYSTEM. MAP 59, LOT 12, ZONED RURAL RESIDENCE.

A. Public Hearing

Chairman White introduces the application.

Mr. Marchese is with CLD Consulting Engineers. He is here tonight for a wetland alteration permit. Ms. Seward needs it to access the suitable area available on the site to build a single dwelling. The plan is to improve a way that currently exists to get to the upland area. He needs to install two 18" cross-culverts and 2 cubic yards of material for year-round access to the proposed building. The upland area is so small for a building envelope that they are going to another area for the septic system. It would be considered temporary impact on the wetlands in that they would be digging a very small, narrow trench, then installing a 2" PVC pipe to the septic area. The total area is 11.5 acres and the applicant can only have one dwelling due to wetlands on site and the wetland setback.

Steven Paul says that Mr. Marchese is describing a narrow ditch. Mr. Paul assumes that it has to be below the frost line.

Mr. Marchese says that is correct.

Mr. Paul says that a narrow ditch sounds very nice. It sounds like a disturbance to the wetlands. He is also concerned that if the pipe fails, we will have a discharge we don't want into the wetlands.

Chairman White asks for a further description.

Mr. Marchese says that they intend to use a ditch witch that is a small machine that someone walks behind. They would install a 2" force main that has a wall thickness of 1/4" thick and has a rating well beyond what the intended use is. The distance from the home to the septic is 400 feet. It will be one single laid pipe to the dwelling. It will be laid 3 1/2 feet to 4 feet deep. Because of the snow cover and the grass, the frost does not get that deep in that area.

Chairman White asks what would happen if the pipe were to fail.

Mr. Marchese says that if the pipe were to fail, you could tell in the wetland.

Chairman White asks if there are any alarms in there.

Mr. Marchese says to periodically pressure test the water line.

Planner Noel says that it would be required on a pump system that it have an alarm.

Chairman White says that would simply say that the pump is not working.

Planner Noel says that it would be set at a dose and the septic system designer would design it so that they would know exactly how many gallons were going from the tank to the distribution area.

Mr. Mangiafico would like to know if the applicant can monitor what is actually getting to the other side.

Mr. Evancic is asking if there will be ledge that will be a problem.

Mr. Marchese says there is not in the wetland. If they ran into it, then they would try to go around it. If not, they would have to blast a trench, but they would try to avoid that.

Chairman White asks if there would be any need for remediation. If it is necessary to use heavy equipment, would that be a change to the proposal.

Mr. Marchese says the proposal is a 4"-wide trench through the wetland and not to use heavy equipment.

Peter Melende would be curious to know about the level of coverage of the house and the actual paving that will be going on. With two wetlands surrounding this, the run off could impact the wetlands, for example with gas or oil. He does not know if any minimum or maximum coverage was envisioned.

Donna Higgins is an abutter and does not feel like this proposal is a problem.

B. Board Deliberation

Chairman White asks if there are any waivers in this.

Planner Noel believes there are.

Planner Noel asks Jim Mr. Marchese to provide them.

Mr. Marchese reports that they requested 2 waivers.

Planner Noel does not see any problems with those 2 waivers. He believes Mr. Marchese addressed them.

Chairman White says that they are not required to provide a stormwater analysis but he would like to know about it.

Mr. Marchese says it was done with respect to the culverts and at the house. It is immeasurable because of the scope of the site. The analysis is keyed on the total. It is a gravel driveway. The grass would dissipate it and keep it in a sheet flow. It would have a very minimal effect on the wetlands.

Chairman White would like to go over again the temporary fill. On the site walk, it looked like there was an ATV trail blocked by rocks and that would become a water course in the event of a storm. Will the applicant remove the rock blockage and make it so trucks can get in?

Mr. Marchese says that in the dry season, they will not have to do any fill at all. They are not planning to fill it or add anything there.

Earldean Wells says that at the last meeting, the Board requested that they check to see if there was another access to the property, discuss the types of culverts that could be used to cross the wetlands, and look into a mitigation plan for the wetland disturbance.

Chairman White says these are good points; they are in the minutes. On the culvert issue, we have seen a lower profile one used rather than two round ones.

Mr. Marchese apologizes. He did look into it, but they do not make a box culvert that is that small. They are looking for two 18" culverts. The mitigation issue was addressed. Per the ordinance, they plan to pay the fee and have a mitigation area in a portion of the site that far exceeds the area that they will be impacting. That will be noted in the deed.

Ms. Wells says they were asked to investigate another way onto the property.

Chairman White says the question is whether this is the only way you can do this in terms of access to the property.

Mr. Marchese says that the lot has a lot of frontage on Bartlett Road and a small amount on Charles Hill Road. Bartlett is paved and Charles Hill is gravel. They would prefer to enter off of a paved road because of safety issues.

Mr. Muir says that if they entered off of Charles Hill, it seems that they would need to cross the other wetland. There doesn't seem to be an access available that would involve not crossing a wetland.

Mr. Mangiafico has a question on the number of waivers.

Planner Noel calls the Board's attention to page 285. The applicant has asked for waivers on 16.28.500 a, B.1, and B.4. Planner Noel does not think the fill material is germane to that.

Mr. Marchese says that he did ask for 3 waivers. They are all together. One was for fill material.

Planner Noel thinks that we do not need the waiver for the fill material.

Chairman White thinks that we could add it as a note on the plan that it will be clean gravel.

Planner Noel says B.1 is existing in the proposed contours. #4 is the evaluation of wetland functions. He believes they provided something from the Department of Conservation

addressing that. He would indicate that they do not need that waiver.

Mr. Marchese agrees.

Planner Noel says that the only waiver they are looking for now is the contours of the property. We have a letter stating there are no wildlife concerns, a letter regarding rare and botanical features.

Chairman White thinks that to be on the safe side, we need to grant that waiver.

Mr. Mangiafico moves, after having reviewed the requests for waivers for Lynn Seward, 42 Bartlett Road, Kittery, with respect to her application for wetland alteration to access a building site and install an effluent line to the septic system, that the two waivers dated August 4, 2005, and requested by CLD, in particular, 16.28.500.B.1 to waive the existing and proposed contours and B.4 the evaluation of the wetland functions, both be approved.

Ms. Gagner seconds.

All in favor.

Mr. Mangiafico moves, after reviewing the Kittery Land Use and Development Code and the application by Lynn Seward, 42 Bartlett Road, Kittery, for wetland alteration to access a building site and install an effluent line to the septic system, as shown on a Plan submitted by CLD engineers, and on a site plan dated 12/2004, revision date 2/05, and on a standard boundary survey site plan dated 12/04, and also having reviewed a letter dated 8/26/05 regarding the wetland crossing and mitigation plan and other attached documents, to approve the application as submitted.

Mr. Muir seconds.

Mr. Mangiafico would add that Chairman White would sign the Plan for the Board.

Mr. Muir seconds the amendment.

Chairman White wants a note on the plan specifying the type of fill. Does it say anywhere that the mitigation area will be recorded on the deed and recorded at the York County Registry of Deeds?

Mr. Marchese would add that.

Mr. Mangiafico adds that condition to his motion.

Mr. Muir seconds.

All in favor.

Chairman White says that any aggrieved party can appeal this decision to the Superior Court in 45 days. He asks the applicant to accept the approved minutes as findings of fact.

Ms. Seward agrees and thanks the Board.

Chairman White notes that the Conservation Commission did submit a memo for this item.

Planner Noel believes he distributed it to the Board.

6. PRELIMINARY PLAN: SPRUCE POINT HOME OWNERS ASSOCIATION. APPLICANT(S) ARE REQUESTING A MODIFICATION TO AN APPROVED SUBDIVISION PLAN. APPLICANT(S) PROPOSE TO ELIMINATE A DISCONTINUED RIGHT OF WAY. MAP 39, LOTS 1, 1-1, MAP 32, LOTS 3, 4, ZONED RURAL RESIDENCE.

Chairman White introduces the application.

Ed Sabatini is representing the Spruce Point Homeowners. They are hoping to gain permission. This was done to reconnect a parcel that was separated off 7-8 years ago. Last time they were here, the Board was looking for Chief O'Brien's permission because it is 250' longer than the

required maximum of 1200' for a road and so it would need a secondary access. He thought this was no longer necessary because they will pave the road so he'll have better access. They have been in a few times. They had approval to abandon the right of way if they left in the utility easement back in 2003, he thinks. The newer modification is also to eliminate the utility right of way so that it's a clean deed and the four lots won't have that encumbrance.

Planner Noel says that he would like to point out to the Board the September 4, 2002, minutes where highlighted. When this was before the Board, there was a motion to approve it with conditions: 1. The Board wanted a new driveway accessing the property. 2. The 18' gravel road was to be changed to a 16'-wide paved road with one-foot gravel shoulders. There is a letter from the members of the homeowners association attesting that they would implement it. There is a letter from Chief O'Brien that he agrees to the 16'-wide paved road. Planner Noel would suggest to the Board that the applicants have met the submission requirements of that motion and received the acceptance of the Board in 2002.

Mr. Mangiafico asks if the request for waiver is for the length of the road. It's beyond our maximum. He thinks it must be that because it does not meet the code.

Planner Noel thinks that is from the hammerhead to the old Savante property.

Chairman White says it does not indicate what standard is to be waived. Is this the wrong form? He shows it to the applicant. It does not show what ordinance standard the applicant is asking the Board to waive.

Mr. Sabatini approaches. He says he is looking to eliminate the Savante right of way. The right of way just parallels the current road.

Mr. Muir shows where it says new right of way.

Mr. Sabatini says that is a driveway coming off the hammerhead in place of the long right of way. He shows Spruce Point Road on the map. The road and driveway would allow access to the property to eliminate the right of way going through the back yards.

Ms. Gagner thinks that he has the frontage already.

Chairman White asks if this should be set up for public hearing.

Planner Noel says it is a good question. He does not know.

Chairman White says that we are looking at discontinuing a right of way that has not been in use. We have the signatures of the members of the homeowners association. He does not know that this affects abutters. That would be the reason for having a public hearing. He is not sure he sees the need to go through that process if we have all the materials before us.

Planner Noel asks if Mr. Sabatini is aware of any objections to this.

Mr. Sabatini says that this is well away from any abutters. The landowners own both sides of the right of way. There are no abutters other than the owners.

Planner Noel says that we can squeeze them in for public hearing.

Mr. Mangiafico does not think we need a public hearing for this.

Chairman White thinks the ordinance allows us to proceed without a public hearing unless we feel we need one. Someone would have to give him a reason for a public hearing.

No one speaks.

Mr. Mangiafico moves, having reviewed the current application of the Spruce Point Homeowners Association to eliminate a discontinued right of way at Map 39, Lots 1 and 1-1, and Map 32, Lots 3 and 4, and finding it substantially complete and compliant with the Comprehensive Plan and Land Use and Development Code and 16.36.070.C.1, that the Board approve the revision to the approved subdivision plan and also plan dated 11/03 revision date 11/11/03, the original plan dated 7/1998 with a plan approval date of 6/3/1999.

Ms. Gagner seconds.

Chairman White asks for a plan with the deletion of the right of way.

Mr. Sabatini will provide it.

Mr. Mangiafico modifies his motion to add that the new plan be submitted and that Chairman White sign that for the Board.

Ms. Gagner seconds.

Chairman White reiterates that the Board believes this to be a minor modification of an approved plan with no issues that would affect the abutters or the town and the ordinance allows us to make that judgment in this type of case.

All in favor.

Chairman White says that any aggrieved party can appeal this decision to the Superior Court in 45 days and asks the applicant to accept the minutes of the meeting as findings of fact.

Mr. Sabatini agrees.

7. PRELIMINARY PLAN/SCHEDULING HEARING: FIRST STEP LAND DEVELOPMENT, INC./ THE BRIERS AT MEAD FARM, WHIPPLE ROAD. PROPOSING TO AMEND AN APPROVED SUBDIVISION WITH THE ADDITION OF A COMMUNITY PIER, DOCK, AND FLOAT SYSTEM. MAP 17, LOT 43, ZONED URBAN RESIDENCE.

Chairman White introduces the application.

Mr. Mangiafico says that the issue of his being an abutter has been brought up. Originally, he sat on the Kittery Port Authority in reviewing the application. When this development came to the Planning Board, he stepped down, since we had plenty of people to review the project. At one of the hearings, he did step down, and after consultation with the town attorney, it does not appear he needs to step down. He would ask the opinion of the rest of the Board. He owns part of a property within 150' of the development. Under the Kittery Port Authority rules, he was not an abutter because it goes by shore frontage. There is a request to review the issue of a potential conflict of interest on his part.

Attorney McEachern says he has not issued an opinion on this. He was here before and Mr. Mangiafico stepped down. Mr. Mangiafico thought he had a conflict. He told Attorney McEachern that he was an abutter for notification purposes. Attorney McEachern knew that Mr. Mangiafico was not an abutter and felt that his being within 150 feet does not represent a conflict. There may be other elements that come into it. His view, if he were to give an opinion, is that the fact that Mr. Mangiafico has ownership interest in a property within 150 feet does not constitute a conflict of interest.

Chairman White does not feel it is a per se conflict. He asks Mr. Mangiafico if he feels that his prior participation on this issue as a member of the Kittery Port Authority would make him incapable.

Mr. Mangiafico does not believe it would. He did state at Kittery Port Authority meetings that this issue was going to the Planning Board and that the Planning Board would look at other issues, upland issues.

Chairman White says there was some discussion of use as to whether this is a marina or not. The Kittery Port Authority identified it as not a marina and said it was a community pier. Chairman White does not know how it floated forward from there.

Mr. Mangiafico says that it is not defined in the Kittery Port Authority rules and regulations and

it did not meet the regulations of a marina, so it was viewed as a residential pier.

Chairman White asks if Mr. Mangiafico feels that he will be capable of being impartial.

Mr. Mangiafico does not feel there will be a problem.

Chairman White is relying on Mr. Mangiafico's representation. That being said, Mr. Mangiafico will remain. This is a scheduling hearing, so we will determine if the packet is complete and will flag issues for the applicant as to what we will be looking for at the public hearing.

Mr. Mangiafico asks if there will be a presentation from the applicant.

Chairman White thinks the applicant can do a presentation and then we will go with questions.

Paul Hollis is here with Attorney John Bannon and Jim Nadeau from his office. He thinks he will have the same type of emotional outburst as the previous applicant if he ever gets this dock approved. He would like the Board to determine whether the application is complete and choose a public hearing date. He would like the Board to discuss what the Board is responsible for discussing and what cannot be discussed. He would like to know the jurisdiction of the Board for the application.

Chairman White asks for questions for completeness.

Planner Noel has some minor details. He has met with Mr. Nadeau and Mr. Livingston on this. They have provided a revision which is revision 2.a., which he noted on the memo to the Board includes a number of different issues. Note 1 states that the purpose of this plan is to show the proposed dock location along with driveway issues. He thinks that the Board is aware of the revision of the proposed driveway easement from his meeting with Mr. Hollis and Mr. Melende. Also, if the Board looks at the plan, Planner Noel believes it was Mr. Ledgett that asked that on the revised plan, the 100-foot setback from coastal wetland be noted, which moves the shoreland zone toward the cul de sac, which is shown. We can all see the meandering path provided. Getting back to the check list, he did not see a unique ID number for this plan. Perhaps Mr. Livingston could provide one. That is on plan sheet C.IV. On page 2, outdoor lighting and signs, Mr. Nadeau noted the dock and float plan and the cut of the proposed lights. Planner Noel thinks they are low voltage, but if anyone has any questions, they could pose them to Mr. Nadeau. Temporary markers, page 3. He did ask Mr. Nadeau to plant stakes on the property so that if the Board did take a site walk, there are stakes with green flags that indicate where the path would be as well as where the deck/dock portion on the land would be. The applicant does intend to provide water at the dock. That is the only place on here that they have advised the Board that they intend to provide water to the docking area. Beyond that, he finds the application substantially complete.

Chairman White asks if these would interfere with a finding of substantial completeness tonight and scheduling the matter for public hearing.

Planner Noel does not think so.

Planner Noel says that the water is probably seasonal to keep things fresh and clean. He does not know if the Board needs any more information.

Ms. Gagner would like to know if that is true of water and power.

Nadeau says that there is electricity available, but it will be similar to Shepard's Cove. The line would be run underground to the dock for safety. It is just for lighting.

Mr. Mangiafico says he knows it's a scheduling hearing, but should we look at the jurisdictional issue?

Chairman White says that we have previously been provided with a plan of the pier. We're not reviewing that aspect of it, but it's good to know what we are looking at. Does the application indicate that the applicant is looking for the revision of a driveway easement and access

easement and to locate the dock?

Planner Noel does not believe it does.

Chairman White asks if those easements have already been approved.

Planner Noel says no.

Chairman White says we are looking at three elements - two easement revisions and the location of a common dock.

Planner Noel says the Board may note that they have an amended/revised application. There is no mention of the driveway or utility easements.

Chairman White does not see those as major modifications, but thinks they need to be added and noticed for public hearing. We need to look at jurisdictional issues. We will rely on the opinion of the town attorney indicating that there was a specific agreement for Planning Board review and there is some support for this in the ordinance. We are not a court of law and will not go further on this. Second, what is this? It does not fit any definition we have in the ordinance. It is not a private pier serving a single home. The closest thing we approved was the Shepard's Cove dock for non-motorized private craft with nothing to be stored there or tied on the dock. The lighting system there is low voltage and no water is provided. It's a low impact use. This would have the capacity for nine watercraft up to 24' long including the engine. They are not the largest, but they are not kayaks and canoes either. He does not recall what we did at Shepard's Cove regarding the use issue and does not recall it being a large debate. That was a single dock that everyone could go out on. This would be deeded rights to perpetual use of a slip that would attach to rights within the subdivision. It is a fairly major impact. It needs to have a defined use. He does not feel we can just wing it. That's his opinion.

Mr. Mangiafico says it is a pier, with docking facilities. We do not define any of those in our code. He is looking at page 312. (#17 on the table at 16.32.490.)

Mr. Mangiafico moves to extend the Kittery Planning Board meeting to 10:30 pm.

Mr. Evancic seconds.

4 in favor, Mr. Muir opposed.

Mr. Mangiafico is looking at 17a and 17b.

Chairman White says that an applicant can build a pier as part of a marina or for a waterfront, single family residence.

Mr. Mangiafico says that a pier is a land use. He thought that we had a definition in here but we don't.

Chairman White is concerned that we are creating riparian rights for non-waterfront lots and thinks that we should not do that.

Mr. Mangiafico would argue that we have to go by what the code says. It says a pier is allowed. Review it as a pier.

Chairman White says that we review the use also. Is it a commercial use, marina, or single family use? None of the above. If the Board were inclined to say this is not an existing use and we can't review it because of that, that would be a denial of the application and would say that it cannot happen. The other solution to the problem would be ... we have not done this zone yet, have we? Do we want to add that type of definition to the ordinance?

Mr. Muir says it's in UR and the shoreland overlay.

Attorney Bannon says that section 16.08.010 says that with an undefined term, one is to use the customary dictionary meaning, which is how the Supreme Court has always ruled. He reads from the definition of wharf. It fits that definition. He reads from the definition of pier. He reads from the definition of dock. Under Maine law, if a use does fall within the customary

dictionary definition, it would be permitted, even if it does not fall within a special definition. He cites a case in which the City of Portland refused to allow a mobile home park, but had a definition of dwelling which mobile homes met. The Supreme Court said that the City had to allow it. The ordinance contains within it a reservoir of definitions, those that are in the dictionary. He says the Board can ask the Town Council about that.

Chairman White says that we have had that debate this year while revising the ordinance. It's really the contemplated use that is the question, not the structure itself.

Attorney Bannon says that where the ordinance language is broad enough to meet the use, then it is permitted if the applicant receives the necessary approvals. He believes that Attorney McEachern's opinion made some reference to it being permitted.

Mr. Mangiafico says that the assumption is that it is a permitted use. Are you saying it is an accessory use?

Attorney Bannon says that the ordinance tells specifically what is allowed. All you have to look at is the table.

Mr. Mangiafico says that if you look at marinas in that table, in that case, it would not work.

Attorney Bannon says that may be a problem with the ordinance, but that is fortunately not before the Board today. He thinks that the Board already has his opinion that it is an accessory use if the Board has to go that far.

Mr. Muir would agree with Chairman White that this is a significant issue. This does create a use that is different from an individual homeowner using a pier. He would say this is not a pier.

Attorney Bannon says the problem is that there is no limitation on the definition. It says piers. It does not say residential piers. All that 16.32.490 refers to is piers, wharfs, docks, and bridges. It does not say what kind or how they are used. If the Board thinks that the definition should be tightened up, that is in the Board's discretion. However, with the application before the Board, it cannot decline to accept it when the use already fits. For example, structures are defined specifically. When the Town wants distinctions, it knows how to do it. Right now, that does not apply.

Chairman White asks Attorney McEachern for his thoughts.

Attorney Bannon believes that Attorney McEachern's opinion does speak to this in his letter.

Mr. Mangiafico asks if he is referencing the June 26 letter.

Attorney Bannon says the August letter. He quotes from footnote 5 - piers are permitted uses within the district subject to relevant approval. Although there certainly are some differences, the similarities between this and Shepard's Cove are greater than the differences. That was a community of over 100 units. In terms of land use characteristics, the Board has already regarded as a pier a structure with ten times as many people as here.

Mr. Mangiafico asks Attorney McEachern if he is saying that because this is not mentioned in the zone, but is allowed in the shoreland overlay, that a pier and dock are allowed in all zones?

Attorney McEachern says that with a marina, you are getting into commercial activity.

Mr. Mangiafico asks if it is also permitted.

Attorney McEachern says that if the Board starts to say that if it has not seen it, then it is not permitted, then it will get into trouble. Let's forget about what you would like the ordinance to say. The Board's job is to try to figure out what you have. If piers are allowed in the zone, then if it has a slip to it, it is difficult to say that is not an allowable use. We have piers around town with slips and the Kittery Port Authority allows that. Look at whether the use is permitted. If it is a marina, and he does not define it as such, it is a pier with slips on it that service other lot owners in that area.

Mr. Mangiafico says that we thought we were permitting a pier as an accessory use. It sounds like piers are permitted uses in the shoreland zone and in any zone.

Attorney McEachern agrees. A marina gets into the commercial use of a structure. When you get into this particular situation, as the Board had in Shepard's Cove, there was a community-type pier to service any resident in that development, which could be up to a couple hundred. The boat could be motorized. They are limited as to the amount of canoes or kayaks that they could store adjacent to the pier. What this does point out is that the definitions could use some work. If the town does not want to allow this type of a pier, then that should be addressed. You have to go with what you have here.

Mr. Mangiafico says that because it is permitted in the shoreland zone and not excluded in any particular district, it is an allowable use.

Attorney McEachern does not think it is a hard question as to whether a pier is allowed in that zone. Start with the pier.

Mr. Mangiafico says that if you go the accessory structure route, you can parse it out - accessory to what? He thinks that the attorney is saying that we are getting there through the table.

Attorney McEachern says that if you look at the table, it's there.

Chairman White asks if this design that is proposed fits here.

Mr. Mangiafico thinks that it is pretty broad.

Chairman White says it is pretty broad. It's wide open. A pier is just a pier.

Mr. Mangiafico says the Kittery Port Authority is looking at coming up with a definition for a community pier.

Mr. Muir says that table 16.32.490, 17A is talking of those uses being approved by the Kittery Port Authority. He thought that was an approval of the structure as opposed to the land use.

Mr. Mangiafico says that structure is land use. If we don't define the use, we go to the dictionary.

Mr. Muir says the Kittery Port Authority is responsible for deciding whether something may be built. Isn't there a separate issue as to what will be conducted on that?

Mr. Mangiafico says that it is talking about a land use.

Chairman White does not know if we should chase our tail on this anymore. The applicant certainly got a flavor of what we are looking at.

Attorney Bannon says that if possible, he would like the Board to render a decision on this issue. If the Board will decide that it is not a permitted use, then the applicant needs to know because there would be no need of a public hearing. The Board has had the advice of the Town Attorney.

Chairman White says that this is not what we are here to do tonight. This is a practice discussion. He thinks that Attorney Bannon's views are somewhat supported by those of the Town Attorney. He does not think we can make a decision tonight. The applicant could request in scheduling that we treat this as a threshold issue and make a determination on this issue at public hearing before we go forward with anything else. We have not noticed this and cannot make the decision without the abutters here.

Attorney Bannon respectfully disagrees. The CEO regularly makes these decisions.

Paul Hollis says that he has been waiting three years for this. The Town Attorney has said it is permitted. Mr. Hollis has gotten a lengthy opinion from his attorney and the Town Attorney has responded to that. His permit expires in January. He would like a decision made or would like to continue the hearing ASAP in some way.

Chairman White says his take on it is that at the scheduling hearing, if an application is found to be complete, then it is in order for scheduling a public hearing. The Board reviews issues with

the applicant, but never makes decisions like this without a public hearing.

Mr. Mangiafico says that if we thought it was a permitted use, we would still have to find the application substantially complete first.

Mr. Hollis is very frustrated.

Chairman White does not see why he would be frustrated, as things seemed to go well for him tonight.

Mr. Hollis says that the Town Attorney says that it is permitted.

Mr. Mangiafico moves, having reviewed the Comprehensive Plan, Land Use and Development Code, 16.36.070 and C1, that the Board find the application substantially complete for First Step Land Development's modification to an approved subdivision plan for Briers at Meade Farm, to revise the driveway easement and access easement and add a community pier, dock and float system, Map 17, Lot 43, plan dated 8/22/2005 drawn by Anderson Livingston Sheet 1 of 1, and that the Planner schedule the matter for public hearing at the next available public hearing date at his discretion.

Mr. Muir seconds.

All in favor.

Chairman White explains that ordinance requires that the public hearing be scheduled in 30 days. That's why we wanted to get this done. Chairman White thinks it went very well tonight for the applicant.

8. OLD BUSINESS - REVIEW PREVIOUS MEETING MINUTES

None.

9. PLANNER'S TIME

Planner Noel has the Board's packets for the next meeting. This is the agenda and public hearing for We Care. He has some information on the KAC. The Town has contracted with Aquarian Engineering Services on stormwater and Christie Rabaska will be here on the 22nd. She has spoken to Mr. Eyerman and Mr. Ledgett regarding what the town is required to adopt and what has been drafted and she can perhaps shed some light on that at the meeting as well.

10. ADJOURNMENT

Meeting ends at 10:30 pm.