

**TOWN OF KITTERY
PLANNING BOARD MEETING
Council Chambers**

APPROVED
Thursday, October 22, 2009

Meeting called to order at 6:10 p.m.

Board Members Present: Russell White, Joseph Carleton, Ernest Evancic, Doug Muir, Michael Luekens, George Burke

Members absent:

Staff: Gerry Mylroie, Town Planner

Other: Earledean Wells, Kittery Conservation Commission

Minutes: October 8, 2009 Planning Board Meeting

Mr. Carleton moved to accept the minutes as amended

Mr. Luekens seconded

Motion carries unanimously

PUBLIC COMMENT

Earledeen Wells inquired about silt fences required in the ordinance, but there is no ordinance language recommending when the fencing should be removed. The Planner will look into this. There was no additional public comment.

ITEM 1 - Highpointe Circle – Acceptance of a Public Street Petition –Finding of Street Compliance with Town Standard for Town Council Owners, Goodhouse Construction Co, LLC, on behalf of the inhabitants of Kittery, Maine whose mailing address is Highpointe Circle, petition for Town Acceptance of a Public Street known as Highpointe Circle located off Norton Road in the Highpointe Circle subdivision approved by the Planning Board in December 2003. The owner's agent is Carl Beal, PE with Civil Consultants.

The **Town Planner** summarized the Board's review of this item, and provided a checklist of completed and incomplete requirements from the Public Works Department. **Chairman White** asked the Planner if the application is complete and if remaining work (loam and seed of bank areas) has or will be done. The Town Planner stated this had been done. **Mr. Muir** asked if there were sufficient funds available to complete the work remaining to be done. **Mr. White** recalled the approved plan included the cul-de-sac, but this is not represented on the request to accept it as a public street. If the Board did approve a cul-de-sac, why is it not on these plans? **Paul Flynn**, developer, stated the Board approved a hammerhead at the end of the right of way, not a cul-de-sac. **Mr. White** noted he did not recall the events leading to the design of a hammerhead. [Unidentified audience member] stated there was a cul-de-sac on the original plan, but this was changed to a hammerhead following Board review. The adjacent property, when developed, will tie into the hammerhead. **Linda Gasparo** stated she and a neighbor pay taxes on the right of way. **Chairman White** agreed, explaining the deed only states the right of way can be used by others. **Board members** discussed what is needed to forward the request to Council, the as-built plans approved by the Board, and confirmation of the approved plan design.

Matt McClusky [and others] asked the Board not to delay this item to another meeting because of possible snow removal.

Mr. Burke moved to forward this request to council subject to the following conditions: the Town Planner will confirm the current plan does not deviate from the approved plan; checklist item #6, loam and seed bank areas, be confirmed; and checklist item #15, clean out of the Toothacre ROW culvert, be completed.

Mr. Luekens seconded

Mr. Muir noted his concern there are too many open issues to forward this to Council. **Mr. White** stated he does not recall the Board's decision on the original plan 6 years ago, and confirmation will inform this decision. **Mr. Carleton** agreed, and the recommendation to Council will not be made if these items are not favorably resolved.

Motion carries - 5 in favor, 1 opposed, 0 abstentions

ITEM 2 – When Pigs Fly/Pizza Restaurant – Sketch Site Plan Review/ Site Walk Determination

Owners, Andrew and Ron Siegel, propose an approximately 2,000 square feet addition to an existing building with 1,000 square feet for a limited seating restaurant as an extension of the When Pigs Fly retail business. The proposed expansion is located on US Route 1, in the Mixed Use (MU) zone, and recorded as Map 60 Lot 22. The owner's agent is Thomas Harmon, PE with Civil Consultants.

The **Town Planner** summarized the Board's expansion request, asking if they would like a site walk at this property. The Board should also consider possible changes and re-location of curb cuts. **Tom Harmon** stated there will be only two uses at this property, retail and restaurant. An existing house will be removed to accommodate parking and vehicular circulation. **Mr. White** suggested this would be a perfect opportunity to use porous paving given this project's proximity to wetland areas. **Mr. Harmon** stated they would look into this as part of their BMPs, though he anticipated there won't be much change in the water runoff. **Mr. White** noted the Board will be looking for additional information such as lighting, location of dumpsters, snow management, outdoor machinery, hours of operation, etc. Parking needs, layout and circulation were briefly discussed. **Mr. Harmon** stated a green space and landscaping will be included to minimize the impact of headlights and parking lot lighting on the adjacent mobile home park. **Mr. White** asked if there are any plans for exterior eating areas. Applicants stated that a small area may be created. The **Town Planner** recommended the removal of one curb cut, and the creation of a pedestrian connection with the adjacent property. Board members agreed a site walk is not warranted, and recommended the applicant return for further review. **Mr. Luekens** also suggested the applicant and Board review the MU zone standards to assure compliance.

Planner's Time

Ken Lemont & Sons, Map 50 Lot 8; 435 US Route 1, request to build a shed on property previously before the Board for site plan review in 1993. **Chairman White** stated if there is no change of use, no additional use or a more intensive use, this request could be reviewed by the Town Planner and the Code Enforcement Officer.

ITEM – Amendment to Title 16 Land Use and Development Code – Public Hearing, Authorize

Hearing Continuation and Discussion - The mandatory Shoreland Zoning Act (Act), 38 M.R.S.A. Section 435-449 and the guidelines for the Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines set forth in the Act and by the Board. This amendment to Title 16 incorporates the most current State shoreland zoning ordinances into the Kittery Municipal Code. In working with the Town Council's Ordinance Review Committee to improve administrative efficiency, clarity and eliminate redundancy, re-formatting of the Planning Board's recommended amendments is proposed. Additionally some substantive changes are recommended to improve the working relationship between the Planning Board and Zoning Board of Appeals. Finally the Zoning Map must be amended consistent with the Planning Board's recommendation to the Council. Overall, incorporating State recommendations for the Shoreland Zoning involves:

- Amendment to Chapter 16.04 – General;
- Amendment to Section 16.08.20 – Definitions;
- Amendment to Chapter 16.16 – Administration and Enforcement;
- Amendment to Chapter 16.24 – Special Exceptions and Variances;
- Amendment to Chapter 16.28 – General Development Requirements;
- Delete Section 16.32.490 – Shoreland Zoning; and
- Amend previously recommended Chapter 16.34 – Shoreland Zoning.

As there was no one from the public present in the audience, **Chairman White** opened and closed the Public Hearing portion of this item at 7:18 p.m. The Town Planner reviewed the October 8, 2009 Revision, with edits. He explained the ordinance review is on-going, and recent changes made by the Council's Ordinance Review Committee include changes affecting the Zoning Board of Appeals, including a name change to *Board of Appeals*. A list of modified base zone names and abbreviations to be included on the

Shoreland Zoning map was presented. **Mr. Muir** suggested the Business Park should be BP and MU-KPV should be corrected to R-KPV [Residential-Kittery Point Village]. **Mr. Luekens** and **Mr. Carleton** recommended that, as the Board reviews this ordinance, only those items that have been changed or expect to be changed, be reviewed to keep the process from bogging down. The following items were reviewed:

1. Powers and duties of the Planning Board.
2. Special exceptions - Council and Committee recommend Planning Board review to help eliminate the multiple review process currently in effect for special exceptions.
3. Definitions.
4. Resource protection and shoreland overlay zones.
5. Marine Related Development - Section on piers, docks, wharves, etc. will be revised and moved to a new, separate section (16.37) within the overlay zone.
6. Design and Performance Standards.
7. Shoreland Zoning map.
8. Conformance and nonconformance – whether the Town’s existing language and the State’s recommended language are consistent.

This item will continue as a public hearing item at the November 5, 2009 meeting.

Planner’s Time

1. The Town Planner reminded members the Port Authority requires a representative from the Planning Board. Members George Burke and Russell White proposed to share the seat on the Port Authority.
2. An up-to-date Ordinance was provided to the Board members in new 3-ring binders, including the Comprehensive Plan. Discussion followed regarding Comp Plan updating, and referencing the comprehensive plan alongside the ordinance during Board the review process.
3. Members discussed issues the Planning and Code staff must deal with that could be streamlined by ordinance amendment and, conversely, ordinance requirements that could be dealt with administratively, without Board review.
4. The Town Planner distributed Gulf of Maine Research Institute information regarding Arctic warming.

Chairman White presented a certificate of appreciation to Doug Muir, outgoing Board member, for his service to the Town of Kittery for 5 years, 11 months.

Mr. Muir motioned to adjourn the meeting

Mr. Luekens seconded

Motion carries unanimously

The Planning Board meeting of October 22, 2009 adjourned at 8:50 p.m.

Submitted by Jan Fisk, Recorder – October 26, 2009