

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

**APPROVED**  
February 11, 2010

Meeting called to order at 6:07 p.m.

Board Members Present: Russell White, Scott Lincoln, David Kelly, Michael Luekens, Ernest Evancic, Joseph Carleton

Members absent: George Burke

Staff: Gerry Mylroie, Town Planner

Minutes: January 28, 2010 Planning Board Meeting

**Mr. Kelly moved** to accept the minutes as amended

**Mr. Evancic seconded**

**Motion carries by all members present**

**PUBLIC COMMENT** – There was no public comment.

**ITEM 1 - Sluiceway Condominiums - Minor Subdivision/Condominium Ownership – Preliminary Plan Review/Decision.** Tudor and James Austin, Owners, propose a four (4) unit condominium development on a 6.25 acre parcel located at 37 Pepperrell Road, situated on Map 18 Lot 22 in the Kittery Point Village (KPV) Zoning District. The owner's agent is Thomas Harmon, PE with Civil Consultants. *Discussion: Preliminary decisions on subdivision plan in light of condominium law and implications for plan delineations, and on building envelope setback from Sparhawk Lane and other issues.*

**Mr. Carleton** recused himself from review of this item.

**Mr. Mylroie** summarized the status of the application, including:

1. addition of a landscape buffer along Sparhawk Lane, and a maintenance provision in the homeowners' documents.
2. inclusion of a provision regarding construction review of residential units by the homeowners' association, within the code requirements of the district.

Discussion followed regarding the condominium documents and the Town Planner stated they were in order. The Findings of Fact have 13 conditions of approval, including two additional conditions:

1. No vehicular access will be permitted between the property and Sparhawk Lane, and
2. The landscape screen will be clearly identified on the plan, and is the maintenance responsibility of the limited common interest owner adjacent to it.

Discussion followed regarding limited common areas and owner maintenance responsibility. Existing vegetation will be supplemented by the proposed junipers and spruce.

**Bill Tredwell**, 9 Sparhawk Lane, referenced the proposal in the condominium documents that would allow the division of an existing unit (Section 5.2.A). **Mr. Mylroie** reminded the Board the applicant asked to reserve the right to develop an additional unit. The existing shoreland zone would control the eventual location. **Mr. Tredwell** stated the abutting property owners would prefer this allowance be removed from the approval and documents, requiring the applicant return to the Board for further review.

**Mr. Harmon** noted there is sufficient density to allow an additional unit, and the applicant needed to reserve this right in the condominium documents now, but would still be required to appear before the Board for approval. **Chairman White** stated the developer would have to retain the right, not an individual owner. **Mr. Tredwell** requested the Board not allow the right for any additional units.

**Cathy Conner**, 31 Pepperrell Road, asked about the sideline setback of Unit D and the Payne property.

**Mr. Harmon** stated the code sets the side setback. **Ms. Conner** requested the Conservation Commission review the landscape plan as requested in earlier meetings. She explained that blue spruces are not indigenous, existing trees will shade the spruce, and junipers are not suitable for wildlife. She asked why the application is not being reviewed as a subdivision instead of a condominium development. **Mr. Harmon** stated two proposals were brought to the Board, a conventional subdivision and a condo project. Following discussion with the Board, it was recommended the development proceed as a condominium project. He will meet with the Town Planner and the Conservation Commission to review the choice of materials for the landscape strip along Sparhawk Lane. **Chairman White** stated the Board reviewed a

subdivision plan, but the concerns were odd shaped lots, buffering between existing homes, and the impact on the waterfront could be better managed with a condo development. **Jonathan Carter**, Sparhawk Lane, noted he believed the road frontage precluded development as a subdivision. **Mr. Harmon** responded that, in a meeting with the Planner (Jim Noel) and Mr. Carter, the road frontage was discussed and the Planner worked with the developer to include a right-of-way. When presented to the Board, it was then decided to proceed as a condo project. **Mr. Tredwell** voiced concern about the time-frame for project completion. **Mr. Harmon** explained the developer is directed by the code for capital improvements, but the timeframe for completion of the buildings only begins after the building permits are secured. **Mr. Mylroie** read section 16.36.050.E. *Plan Expiration*. **Mr. Luekens** inquired about the building dimensions required for condominium developments. **Mr. Harmon** stated each unit is identified on the plan by the impervious area allowed, which is 10,000 square feet. **Mr. Kelly** noted a discrepancy in the Findings and the plan, re: gravel turnaround. **Chairman White** asked if the request for a fifth unit reservation could be denied, in light of the Board's prior action on other developments where future build out was possible, and is concerned that no analysis has been made based on this request. **Mr. Mylroie** suggested Counsel could be consulted about this issue and asked how the newly adopted Accessory Dwelling Unit ordinance would impact this development. **Mr. Evancic** and **Mr. Luekens** voiced their concerns regarding the proposed plans and addition of the fifth unit. Discussion followed as to whether a 3-lot subdivision could have feasibly been done, versus the four-lot condo project before the Board, and that a right of way review was always required for the project, whether or not it was identified as a subdivision of land or a condo subdivision.

**Chairman White** suggested this item be moved to be continued in order to receive input from the Town attorney on the fifth unit issue, request analysis on the impact of a fifth unit, resolve the planting issues, and receive necessary revisions to the plan, condominium documents and findings of fact.

**So moved by Mr. Kelly**

**Mr. Lincoln seconded**

**Motion carries unanimously by all members present**

**Mr. Carleton returned to the Board**

**ITEM 2 - Spruce Creek Subdivision – Major Subdivision/Cluster Development - Preliminary Plan Review/Decision.** Terry Gagner, Owner, proposes to construct a 10-lot cluster residential development consisting of single-family dwelling units on ±15.2 acres, Tax Map 38 Lots 13 B through 13 F, situated in the Rural Residential (**RR**) zoning district. The owner's agent is Thomas Harmon, PE with Civil Consultants.

**Mr. Mylroie** summarized the status of the plan, referenced the draft findings of fact, waiver requests, access, and parking design options along the road to the cluster development. **Mr. Evancic** commented he felt closing an entrance to the Weathervane parking lot will increase traffic problems around the restaurant. **Mr. Harmon** explained he does not prefer the parallel and diagonal parking options illustrated by Mr. Mylroie because they require more driving and maneuvering in and out of the parking areas, and would prefer to leave the parking the way it is. The amount of increased traffic out of the development is only 2% and half will leave the development early in the morning before the restaurant opens. When it gets busier at night, around 5:00-6:00 p.m., there would be more traffic around the restaurant. **Terry Gagner**, owner, stated any entrance addition or consolidation would be brought before the Board for review. **Chairman White** asked if peer review addressed the traffic issues, or if there was any data to review. While he had no issue with the existing layout, if there are safety issues, he would be concerned. **Mr. Mylroie** stated there was not, and explained the issues are traffic movement, use of the public right of way, and creation of additional parking. **Mr. Carleton**, **Mr. Luekens**, and **Mr. Kelly** concurred the existing layout appears to work for the restaurant and the additional impact of the development is not significant. **Mr. Mylroie** took the Board through the staff note items and waiver requests.

**Mr. Carleton moved** to waive the requirements of Section 16.32.500.B, high intensity soil survey.

**Mr. Kelly seconded**

**Motion carries unanimously**

**Mr. Carleton moved** to waive the requirements of Section 16.32.390.A5.G and 16.32.470.C, YCSWCD review of stormwater and erosion control plans.

**Mr. Kelly seconded**

**Motion carries unanimously**

**Mr. Mylroie** reviewed the staff notes and noted he and the applicant will resolve the roadway and sidewalk location and details for final plan review; noted a traffic study is not required; the required street frontage is provided via the right-of-way to Route 1; the applicant's subdivision/cluster development comparisons are adequate; public open space is not required by the ordinance, and there is no dedicated open space for the public in the development; the wetland delineation was done 15 years ago and the floodplain information supersedes the land use requirements for the delineation of a wetland. **Mr. Harmon** stated the wetland edge was flagged in 1989, and explained the edge was noted at the site walk [however, he spoke from the audience and most of what he said was not audible on the audio tape]. **Mr. Carleton** asked if a plan that old is current enough. **Chairman White** noted cluster standards require permanent dedication of open space where there will be no further development as a trade-off for higher density. Therefore, note 7 on the plan should track the ordinance language (16.32.690.B.1) which states, "The common open space must not be used for future building lots". **Mr. Mylroie** then read each condition in the Findings of Fact, noting:

1. The non-disturbed areas will be identified on-site where building may not take place.
2. "A recorded copy of the Subdivision Plan" should be "a copy of the recorded subdivision plan", and "condominium declarations" should be singular, "condominium declaration".
3. Easement language will be revised to reflect the need for site plan review and approval if there is a change in the Route 1 access or in parking.
4. Landscape and lighting plans are outstanding.

Board members concurred that standard conditions are needed, and the removal of numerous conditions is preferable. **Chairman White** requested adding, "documents and plan notes should be prepared and submitted per 16.32.690" and the addition of language regarding undisturbed areas.

**ITEM 3 - Mitchell Elementary School Addition – Site Plan Amendment – Completeness Review/Acceptance/Schedule Public Hearing.** Owners, Town of Kittery School Board propose an approximately 9,800 square feet gross floor area addition to the existing school building. The proposed expansion is located on School Lane in the Residential - Kittery Point Village (R-KPV) Zone, and recorded as Map 27 Lot 20 and Map 36 Lot 5. The owner's agent is Ken Wood, PE, with Attar Engineering and Mike Lassel, AIA, with Lassel Architects.

**Mr. Carleton moved** to find the application substantially complete and to schedule a public hearing

**Mr. Kelly seconded**

**Motion carries unanimously**

The Town Planner will include this item as a public hearing on the February 25, 2010 meeting agenda.

**ITEM 4 - Shapleigh Middle School Addition – Site Plan Amendment – Completeness Review/Acceptance/Schedule Public Hearing.**

Owners, Town of Kittery School Board propose an approximately 10,200 square feet gross floor area addition to the existing school building. The proposed expansion is located on Stevenson Road and Manson Road in the Residential – Rural (R-R) and Residential – Suburban (R-S) Zones, and recorded as Map 37 Lot 3. The owner's agent is Ken Wood, PE with Attar Engineering and Mike Lassel, AIA with Lassel Associates.

**Mr. Carleton moved** to find the application substantially complete and to schedule a public hearing.  
**Mr. Lincoln seconded**  
**Motion carries unanimously**

The Town Planner will include this item as a public hearing on the February 25, 2010 meeting agenda. Chairman White noted the loss of trees adjacent to the residences and wanted to be sure the landscape standards are adhered to, and there is compensation for removed vegetation. **Mr. Kelly** voiced concern over the asphalt parking abutting the playground area. **Mr. Lassel** agreed to address the concerns of the Board members.

**ITEM 5 - Planning Board Business Plan 2010 – Goals and Implementation.**

**Mr. Mylroie** updated the Board regarding the Comprehensive Plan and Council action. Councilor Beers is initiating the program called “Growth Management Plan” with an outline for Planning Board, Council and other committee members.

A draft of the Shoreland and Resource Protection ordinance amendments are with the state and Council’s Ordinance Review Committee, and it is anticipated a hearing will be scheduled for March 8, 2010 and reviewed for adoption on March 22, 2010.

The codification of Kittery’s Land Use Ordinance will take approximately one year from submittal, which will be sometime in March.

**Mr. Luekens motioned** to adjourn  
**Mr. Kelly seconded**  
**Motion carries unanimously**

The Planning Board meeting of February 11, 2010 adjourned at 8:32 p.m.

Submitted by Jan Fisk, Recorder – February 16, 2010