

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

**APPROVED
December 8, 2016**

CALL TO ORDER

Chair Grinnell called the meeting to order at 6:00 p.m.

Board Members Present: Robert Harris, Karen Kalmar, Ann Grinnell, Debbie Driscoll-Davis, Mark Alesse

Absent: Dutch Dunkelberger, Marissa Day

Staff Members Present: Chris Di Matteo, Planning Officer

APPROVAL OF MINUTES - NOVEMBER 17, 2016

Line 31 – second sentence did not add 15.

Lie 35 – change to read “the applicant agreed to a condition of approval that no drive through may be added”.

Line 154 – add before comma “more time to prepare”.

**Vice Chair Kalmar moved to accept the Minutes of November 17, 2016 as amended.
Ms. Driscoll-Davis seconded the motion.**

The motion carried 5-0-0.

The unapproved site walk Minutes of the November 3, 2016 Tax Map 67, Lot 4 was tabled until the next meeting.

The unapproved Minutes from the December 6, 2016 site walk were tabled until the next meeting.

ADDITIONS TO AGENDA

Election of Officers will be added to Item 4.

PUBLIC COMMENTS

The Chair opened the public hearing. There being no comments, the Chair closed the public hearing.

PUBLIC HEARING

ITEM 1 – 412 HALEY ROAD – CLUSTER SUBDIVISION PRELIMINARY PLAN REVIEW

Action: Hold a public hearing. Approve or deny preliminary plan. Owner Marilyn Mann & James Smith, and applicant, Green & Company, requests consideration of a 12-lot cluster subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones. Agent is Joseph Coronati, Jones and Beach Engineers, Inc.

The Chair explained to the public that there will be a short presentation and then a public hearing regarding this project.

Mr. Coronati stated Mark West, wetland consultant and Mr. Orso, attorney for the development are also present.

Mr. Coronati explained there have been two site walks. He described the proposed design for the road ways. They plan to create a level platform for entering and exiting the property. A waiver has been requested for the Class One road longer in length. One road will be gravel and will be widened to meet regulations. The 12 lots will have individual septic systems. The applicant is proposing to bring in water from Haley Road with an 8-inch water line into the site with hydrants. He further explained their plan for drainage. Chair Grinnell requested any future maps have distinct distinguishing colors.

The Chair opened public hearing.

Resident Greg Ulrich, 8 Barter's Creek Road, gave a definition of town homes. He finds this proposal inappropriate in this area and a town home is supported by a public sewer. This development is not. He explained the concern of identifying contaminated water. He also, explained the amount of pavement and the amount of runoff which will affect Spruce Creek. He stated here is strong opposition to the development and it is not supported in rural area of Haley Road. He also feels this will change the nature of the community and the reason is for financial return for the owner and precedence will be set if approved. (Chair Grinnell asked for a raise of hands that is in support of this testimony -20 in support; 5 opposed.)

Durward Parkinson, an attorney representing John and Shay Roberts and other residents, stated a letter was submitted to the Board on November 30th outlining his clients' objections. He reported many neighbors showed up at the recent site walk. One concern is the location of certain wetlands. Attorney Parkinson stated this is not a proper cluster and is really three mini clusters. The open space is not contiguous. There are concerns with the septic system and the applicant has not met the burden of proof. There are no back-up systems and a hydrological study should be request by the Board to show what impact the septic systems will have on the resources. He believes property owners have easements and the applicant needs to produce a letter from their attorney stating they are not violating the property owners' rights. He stated the road is a big concern and now an extra 20 ft. expansion is proposed. There are concerns with the wetlands not being fully flagged. Mr. Parkinson stated the applicants have the burden of proof.

Michael Cuomo, licensed soil scientists retained by a group of abutters, stated he submitted a letter included in the Board packet. He reviewed the following highlights:

1. Wetland size - Before the road was built, Mr. Cuomo believes the wetlands were connected and now are under an acre in size after the current road was built. A decision

by the Town needs to be made of what is the appropriate set back from those wetlands that were reduced in size due being filled. The Board needs to check if the fill was done legally along with the approval date.

2. Calculation of the net residential area. Items he believes the applicants have failed to account for in this area are documented.
3. Septic systems proposed do not meet the Town ordinance of a community system. There are no reserve areas and some are shown over unsuitable soils.
4. The applicant is proposing spreading nitrates, which they claim is better for the environment. A cluster ordinance requires community septic. The applicant has provided no study to back this claim. Mr. Cuomo encourages the Planning Board to acquire from the applicant a hydrogeological study to show no threat to the drinking water.
5. Number of areas seemed very wet and were not flagged as wetlands. He requested the Planning Board to ask applicants to review those areas.

Resident Shaye Robbins, 402 Haley Road, stated she feels the project does not meet zoning or respects legal property rights. Ms. Robbins stated her concerns with the road. If roadway is not following the center line, she requested the Board to find out why. She requested the Planning Board view the center line all the way to the end of the road. Ms. Robbins also requested the Board look at traffic engineers report and asked the Town Planner to describe in his note that the road leads to a home with an accessory dwelling unit.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Laney McCartney, 404 Haley Road, stated she is against the development. The right of way plan with notes were given to her by her real estate broker when the home was purchased. The notes stated the road will not become a Town road and will be a right of way as approved on 12/13/2001. Ms. McCartney questioned why three Planning Boards arrived at the same decision. She believes their property would be devalued. Her concerns also include noise and light from 11 new homes. Fertilizers will runoff to the creek. The wetlands are marked inaccurately. Ms. McCartney explained they will lose the quiet and black of night and the abundance of wildlife.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 4 opposed.)

Resident Cheri Wilkins, 398 Haley Road, stated her home abuts the proposed development. She explained she has lived in Kittery for 30 years and feels this development will not maintain the rural character of the neighborhood. She stated there are too many homes for the five acres.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 4 opposed.)

Resident Jane Schill, 424 Haley Road, stated she is opposed to the development. She explained she has been a resident of Haley for 20 years. She stated there is a wetland at the rear of their lot and every year there is standing water on the property. Nine homes will be behind her property and she is concerned with noise and traffic. The proposed buffering is minimal and if this passes the rural view will be gone forever.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Resident David McCartney, 404 Haley Road, stated his concern of the excessive burden of the wet pond on the neighborhood. He read the plan for the wet pond which stated inspections are required and there are warnings it needs to be maintained. The proposed pond will be located 75 ft. from Spruce Creek. He gave the Board a handout from the DEP which explained the requirement of a 300 ft. set back from a drinking water well. Mr. McCartney explained this pond will be close to his well and his drinking water. He is against this development.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Resident Ray Grenier, 428 Haley Road, is against this development and state he was told only two more home would be allowed to be built. He has planted approximately 200 trees or more over the time he has lived on Haley Road and explained the wildlife that is present. He pointed out an area on the property he is concerned with but the applicants have not addressed it. He further explained that 12 homes on this limited land would have an impact on the environment. (Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Resident John Robbins, 402 Haley Road, stated he is an abutter to the property and is in opposition of it. The open space zone does not adhere to the ordinance of open zones. Wildlife is active. This area supports nesting, birthing and feeding for animals. There are also many mature trees that will be cut down. He further stated the plan disregards plants and wildlife habitats. These issues have been addressed, he believes there is no open space on the plan and disagrees with planner's suggestion of connecting three areas of open space. He expressed his concern that the wet pond is in the center of the open space and questioned whether it is allowed. He encouraged the Board to vote against the plan.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Mr. Orso stated they are addressing the residents' concerns listed in the letter and he suggested continuing with the residents' comments and they will address what they can. The Board was in consensus to continue.

Resident Carolyn Rose lives off 63 Woodlawn Avenue and is not an abutter. She lives on Spruce Creek and is concern with the quality of the water if this development is built.

(Chair Grinnell asked for a raise of hands who is in support of this testimony -20 in support; 5 opposed.)

Earldean Wells, Chair of the Conservation Commission, stated during the site walk and she noticed the wetland along one edge appears to be inaccurate on the plan. She stated the area is not marked as wide and as long as it should be on the applicant's plan. She would like further inspection of this area and has asked in the past for the wetland to be delineated in its entirety along with the three ponds in the area shown and a stream. Ms. Wells stated the Conservation Commission has concerns with the wet pond and how the Association will maintain it. The Commission is also concerned with construction in the Shoreland Zone. The spillway is too close to Spruce Creek. The last site walk had several mature trees proposed to be taken down and were not marked. She also believes there are more trees to be cut down than what is pointed out. The Conservation Commission wants to know which trees and how many.

Mr. Di Matteo pointed out the two emails that were sent to Planning Board and a petition from 16 residents which he read along with David McCartney's letter.

The Board discussed continuing the public hearing to February 8th.

Vice Chair Kalmar moved to continue the public hearing for Owner Marilyn Mann & James Smith, and applicant, Green & Company, located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones until February 9, 2016. Ms. Driscoll-Davis seconded the motion.

The motion carried 5-0-0.

Mr. Orso broke down parts of the abutters' letter. He stated the applicants want to address the concerns but they want to be protected by the ordinance. Chair Grinnell stated any concerns addressed need to be done in public meetings.

Mr. Coronati stated the homes are not town houses and are single-family homes. He explained the right of way center line of the road will change due to the proposed expansion from the existing 40 ft. to 60 ft. He explained there is a smaller wetland to one side and that's why the center was moved. The change in size of the gravel road does not meet requirements of the Town. The Board requested to see what the right of way is now what it will be in the future. This should be done in color.

Discussion of the possibility of wetland being bisected by a road as described by Mr. Cuomo. Mark West, from West Environmental explained the tests he has performed on the property and what he is proposing for tests in the future. He would include testing to find out if and

when there are disconnections of the wetland. Meet mitigation rules. He is planning to create a preliminary map of habitats and their importance.

Vice Chair Kalmar stated the Board has concerns about the net residential acreage calculation and asked them to be listed a specific way. If not applicable, it should be stated.

The Board was in consensus to have a consultation with the Town's attorney what the Board's burden is regarding the estoppel issue.

Vice Chair Kalmar stated her concern with the wet pond and pointed out in the ordinance on Page 176 which states the need to have buffer strips to filter water that is created.

Chair Grinnell stated the wet pond has a lot of maintenance criteria and she is concerned it will not be taken care of by the group. She also has concerns of resident comment about deeded right of way to water and where wet pond is proposed to be located. The Chair asked how they plan to have open space as contiguous. Mr. Coronati stated it is a challenge because of the requirement of maintaining frontage on both roads.

Other requirements and questions the Board requested are:

- Need to see reserves for the septic
- Fire hydrant private or town
- Applicant needs to demonstrate, in a concrete way, that a shared septic system is not viable and do a study that the separate septic does not affect the area
- Need to ensure wet pond is outside the setback of Spruce Creek
- The Staff comments will need to be addressed.
- Applicant will write up a response how it will not change nature of neighborhood
- How this is a cluster not three mini clusters?
- Show a concept or sketch what to do with a conventional subdivision, to see what intensity is, etc.
- Stormwater drainage from new road and paved surfaces must have a plan
- Buffering, mitigation and noise
- Open space needs to be addressed and how to preserve wildlife habitat
- What trees will be removed
- Pedestrian access easement
- See all the accesses to the water
- Right of way and how it will affect net residential acreage
- House at end of road units that exist there legal accessory dwelling unit
- How the well will not be effected by wet pond

Vice Chair Kalmar move to continue the preliminary site plan application dated October 27, 2016 from owner, Marilyn Mann and James Smith, and applicant, Green and Company for

412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones to February 9, 2016

Ms. Driscoll-Davis seconded the motion.

The motion carried 5-0-0.

OLD BUSINESS

ITEM 2 - ESTES BUSINESS PARK – SKETCH PLAN REVIEW

Action: Accept or deny application. Approve or deny sketch plan. Owner/applicant Michael Estes requests consideration of plans to develop a mixed use facility, consisting of business, storage and residential uses, located south of 506 US Route 1 (Tax Map 67 Lot 4) in the Mixed Use (MU), Residential – Rural (R-RL), Shoreland Overlay (SH-OZ-250') and Resource Protection Overlay (OZ-RP) Zones. Agent is Ken Wood, Attar Engineering, Inc.

Ben Brock, from Attar Engineering, Inc., went over the staff comments. He explained a mistake on the first sketch plan which was mislabeled and it adheres to the normal setback.

Ken Wood, from Attar Engineering, Inc. stated the project contains a resource protection area and an overlay. A 100-year flood plan determined the resource area. Mr. Wood explained why the stream is not a protected stream because it originates from the pond and was excavated. Mr. Di Matteo stated he needs to do more research to see if there is more regarding the protected area.

The applicant agreed to have the following added:

- A restriction on use

- To have no outside storage

- The applicant will add hazardous material restriction except for paint which is stored inside.

- On-site manager would be living 365 days out of the year

- At the next meeting, they will indicate how wide the travel areas are around the construction

- Will look at making that road way a one way

Mr. Estes stated the mini storage will be managed by his company. He will condo the contractor's space, which people can lease or buy. Mr. Di Matteo stated this needs to be clarified in the plan. Also, a determination of the amount of traffic they anticipate should be in a report.

Vice Chair Kalmar moved to continue the sketch plan application dated September 7, 2016, from owner/applicant Michael Estes for a mixed use development located at Tax Map 67, Lot 4, in the Mixed Use, Shoreland Overlay and Resource Protection Overlay Zone no more than 90 days.

Ms. Driscoll-Davis seconded the motion.

The motion carried 5-0-0.

ITEM 3 – 24 GOODWIN ROAD – SHORELAND DEVELOPMENT PLAN REVIEW

Action: Review application. Approve or deny plan. Owner/applicant Greg and Laurie Smith request consideration to demolish and reconstruct a nonconforming structure in an expanded footprint within the 100-foot setback located at 24 Goodwin Road (Tax Map 58 Lot 19) in the Shoreland Overlay (SH-OZ-250') and Residential – Rural Conservation (R-RLC) Zones. Agent is Tom Emerson, Studio B-E.

Mr. Emerson explained the proposed house has been moved off the existing building limit line. The carport has been removed and the shed enlarged. He made the changes to the plan as requested in the staff notes and added the dimension at end of driveway. He also stated the pine tree has not been removed.

Vice Chair Kalmar moved to approve with conditions the shoreland development plan for owner/applicant Gregory and Laurie Smith for 24 Goodwin Road (Tax Map 58, Lot 19) in the Residential Rural Conservation and Shoreland Overlay Zones, upon the review and voting, in the affirmative, on the Findings of Fact.

Ms. Driscoll-Davis seconded the motion.

The motion carried 5-0-0.

Findings of fact:

NEW BUSINESS

ITEM 4 – BOARD MEMBER ITEMS / DISCUSSION

Elections to the Board – the Board was in consensus to table this item until a full Board was present.

Vice Chair Kalmar moved to postpone Board elections until the January 12th meeting.

Mr. Harris seconded the motion.

The motion carried 5-0-0.

ITEM 5 – TOWN PLANNER ITEMS

Mr. Di Matteo recently sat down with Yankee Commons Mobile Home and the trucking company regarding the expansion. They will start in January.

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Council Chambers**

**APPROVED
December 8, 2016**

Next week consultants will be chosen for the RFP for the Foreside Study for traffic and land use. Ms. Driscoll-Davis requested residents have input not just the business owners.

The Comprehensive Plan joint meeting will be next Wednesday, December 14, 2016 at 5:30 p.m.

Mr. Alesse moved to adjourn the meeting.

Ms. Driscoll-Davis seconded the motion.

The motion carried 5-0-0.

The Kittery Planning Board meeting of December 8, 2016 adjourned at 8:56 p.m.

Submitted by Mary Mancini, Minute Recorder, on December 20, 2016.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>