

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

**APPROVED  
September 14, 2017**

**CALL TO ORDER**

Chair Grinnell calls meeting to order at 6:03pm. Chair Grinnell takes roll call. Recorder is absent.

**ROLL CALL:**

Members present: Bob Harris, Marissa Day, Dutch Dunkelberger, Mark Alesse, Debbie Driscoll-Davis, Karen Kalmar (Vice Chair), Ann Grinnell (Chair)

**Staff Present:** Chris DiMatteo (Town Planner)

**PLEDGE OF ALLIEGANCE**

**AMENDMENT TO THE AGENDA**

None.

**REVIEW OF MINUTES-** August 24, 2017

Grinnell asks for Board consensus to postpone the review of the minutes until the next meeting. Jeff Clifford, agent for Huntington Run Subdivision, feels there was some discrepancy in the minutes and would like to review the 8/24/2017 meeting video. **The Board postpones review of August 24, 2017 minutes until September 28, 2017.**

**PUBLIC COMMENTS**

Chair opens public comment.

Resident Susan Johnson addresses the Board, asking the Town to plan for emergency situations like hurricanes, floods, earthquakes, etc. She explains her activism in Hurricane Katrina where she rescued animals. She urges Kittery to plan for animal safety and for protection of animal pharmaceuticals.

Ms. Johnson also mentions her concerns about the new Domino's pizza project and shares that she had asked the Board to protect the native and historic trees on the site. She says that Domino's did not preserve the historic trees, which could have been relocated. She expresses her opinion that businesses wanting to locate in Kittery should be mindful of native wildlife. She also urges the Board to consider vegan dietary restrictions when welcoming businesses. For her final comment, Ms. Johnson urges residents to speak to Board members about issues and concerns.

**NEW BUSINESS**

**ITEM 1- 117 Haley Road Right-of-Way- Sketch Plan Review**

Action: Accept or deny application. Approve or deny concept plan. Owner, Pauline Grover and applicant, Civil Consultants request considerations of two conceptual right-of-way sketch plans for a 3.92 +/- acre parcel located on Haley Road (Tax Map 48 Lot 8B) in the Residential Rural (R-RL). Agent is Chris Mende, PLS, Civil Consultants.

Chris Mende, Civil Consultants, introduces the project and explains Pauline Grover would need to have a right-of-way in order to convey part of her property. Ms. Grover would like to create 3 lots, and would be

using the Homestead Exemption in order to legally create the three lots without triggering subdivision under Maine State law. Mr. Mende has prepared two conceptual right-of-way plans.

**Concept 1:** There would be a buffer between the properties to Drake Ln and a nearby subdivision. The proposed right-of-way would connect to the drive way of the existing house, and the house would conform to setback requirements. All three lots would use the right-of-way to access Haley Rd. Re-grading would have to be done in order to achieve adequate sight distance.

**Concept 2:** The right-of-way is near a cemetery toward the top boundary of the property. A buffer of 25-ft from the cemetery would be maintained. Right-of way would cover less area. The sight distances would be easier to achieve, however, the middle lot proposed would be oddly shaped. The existing house would continue to use Haley Rd for access.

Mr. Dunkelberger asks about the sight distance from the existing driveway. Mr. Mende explains it is 250-ft going east on Haley Rd. Vice Chair Kalmar supports Concept 1, there would be fewer curb cuts.

Ms. Driscoll-Davis asks about the driveway to the house on Concept 1. Mr. Mende explains that current access to Haley Rd would be eliminated. The proposed right-of-way would be used access to Haley Rd. Ms. Driscoll-Davis shares concern about the driveway being very close to the start of the right-of-way.

Chair Grinnell asks about water department review and water line connection. Mr. Mende has not yet considered water lines, but suggests an on-sight pressure tank on site to help the existing home water supply. Mr. DiMatteo says the existing line could be located outside of the proposed pavement also.

Mr. Dunkelberger believes Concept 1 is most safe.

Mr. Mende brings up the possibility of a waiver request because the Concept 1 right-of-way does not meet the 90 degree angle requirement for the intersection. Mr. DiMatteo clarifies the intersection angle requirement is a range, therefore a waiver is not needed.

Mr. Mende asks if the project would require a public meeting and if the applicant could do a preliminary and final review simultaneously.

The Board concurs that no site walk is required. Mr. DiMatteo explains that regardless of project size, all projects need necessary approvals including preliminary, final review, etc. He explains the need for drainage considerations. If the applicant wishes to have preliminary and final review in one night, all required information would need to be provided. The Board could determine if a public hearing is needed at the preliminary and/or final plan submittal, but the Board cannot determine a public hearing at present. The Applicant may decide to elicit comments from the abutters saying they have no objection to the proposed right-of way. Ms. Grinnell reminds Mr. Mende that Board only hears preliminary and final plans the first meeting of each month, which could be the first meeting of October or November.

Mr. Mende requests a waiver for sidewalks. Mr. DiMatteo says that sidewalks are not required for a Class I Road.

**Mr. Dunkelberger moves to accept the sketch plan application and approve Concept 1 dated August 15, 2017 From Pauline Grover, and applicant, Christopher Mende, for a right-of-way on Haley Road (Tax Map 48 Lot 8B) in the Residential Rural Zone.**

**Ms. Driscoll-Davis seconds the motion.**

**The motion carries 7-0-0.**

**ITEM 2- 412 Haley Road- Conventional Subdivision- Final Plan Review**

Action: Accept or deny final plan application. Approve or deny final plan. Owner Norwich Investments, LLC and applicant, Green & Company, requests consideration of an 8-lot conventional subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential- Rural (R-L) and Shoreland Overlay (SH-OZ-250') Zones. Agent is Joseph Coronati, Jones and Beach Engineers, Inc.

Board discusses the new materials provided to the Board, which are emails from abutters and the latest responses from the Applicant to the abutters. Chair Grinnell states that she does not wish to address the comments.

The following comments are made about the emails:

- Mr. Dunkelberger explains the information provided by the abutters could affect his decision to accept or deny the final plan. He asks to continue final plan until new information is review.
- Mr. DiMatteo explains that the information from the abutters does not change the completeness of the plan and suggests the Board review the comments with the Final Plan Checklist.
- Mr. DiMatteo says that the Board could accept the plan as complete and continue the plan, not to extend 90 days. To not accept the plan as complete means that the Applicant has not provided all the information required. The Applicant and the Board can mutually continue a plan for one 90-day time period.
- Mr. DiMatteo explains there is a not policy in place to address how additional information, not in packets, is to be provided to the Board but he wanted to provide the information which is from both the Applicant and the abutters.
- Vice Chair Kalmar explains that the abutters are at a disadvantage, only being able to provide comments after the materials are public information.
- Mr. DiMatteo explains that the Board has an opportunity to hold another public hearing within the 90 day period.

John Bosen, lawyer, suggests the Board address the waiver and special exception, which could be followed by a Public Hearing.

Ms. Driscoll-Davis suggests starting with the Street Name application. Joseph Coronati, Jones and Beach Engineers, explains the abutters had concern about the proposed street name, Milliken Cove Road. The new name would be Gunnison Shore Drive and the short road would be Milliken Point. The abutters haven't heard these suggestions, and it cannot be decided at this point. Mr. DiMatteo mentions "Point" might not be an approved suffix.

Mr. Coronati states that the submittal is complete based on final plan submittal requirements.

Mr. Dunkelberger expresses that if the Applicant does not have a street name the application is technically not complete. Mr. DiMatteo clarifies that a street naming application was provided, although they are modifying it. Vice Chair Kalmar supports that the application is substantially complete although she believes there are items that need to be discussed.

Mr. DiMatteo explains the trees need to be saved at the end of the cul-de-sac. Mr. Coronati explains they can save what is asked, although there could be invasive species included in the vegetation. Mr. DiMatteo explains that the applicant should locate what trees are in the area. The Applicant agrees to provide that information.

The Board discusses the conventional subdivision as a special exception in the Residential Rural Zone.

**Vice Chair Kalmar moves to approve the conventional subdivision at 412 Haley Road as a special exception use.**

**Ms. Driscoll-Davis seconds the motion.**

Discussion: Vice Chair Kalmar argues the subdivision is residential use in the residential zone. Ms. Driscoll explains that she is concerned with the water line, but agrees the subdivision should be approved as a special exception.

**The motion carries 7-0-0.**

The following comments are reviewed from the staff notes:

- Comment 2- include Shoreland Overlay Zone standards as a plan note on sheet to A-2; add devegetated area requirements to the deeds of lots 6 and 7. Applicant agrees to add suggested items.
- Comment 3- Applicant agrees to add stone monuments symbol to the legend on the plan.
- Comment 4- street naming application- Applicant has submitted application and is working with abutters to reach an agreement.
- Comment 5- street sign on the plan, applicant agrees to coordinate with the Public Works Commissioner and will add a plan note.
- Comment 6- narrative detailing each proposed impact of future use on each lot- Applicant agrees to supply the information but explains that they believe they have supplied the information. They agree to resupply and collate the information.

The Board reviews the letter from the Kittery Conversation Commission: The commission writes that the wetland at 412 Haley Road has been severely impacted and will continue to be impacted. And, it would appear that lot 8 would be inaccessible, due to the wetland, from the proposed road. The lot may be accessible from Goose Point.

Mr. Coronati explains that lot 8 does not have frontage on Goose Point, and hence cannot be accessed on Goose Point, but agrees to review the driveway alternatives.

Mark West, wetland scientist, reviews the wetland impact and agrees to supply the supporting documentation. Proposed lot 8 has the greatest of the wetland impacts, but Mr. West explains that safety

is a concern for driveway options #A & #B. Option #B is a driveway from Haley, Option #A is a driveway outside the wetland which would be 38 feet from the intersection of the right-of-way to Haley Road, which would also interrupt the buffer to the wetland. Retaining walls are planned. Option #C2, a bridge, is not practical. The proposed driveway (option #C1) would access the buildable area of the land and have the least amount of impact.

Mr. DiMatteo asks Applicant to provide the impact calculations for the bridge for comparison to the other methods to cross the wetland as a calculation hadn't been provided. Applicants agree to provide calculations.

Bill Straub, CMA Engineering, supports the Applicant's driveway proposal and mentions that retaining walls are commonly used to reduce wetland impacts.

Earldeane Wells, Conservation Commission chair, asks the Board when a lot is considered inaccessible, she believes lot 8 is inaccessible. Also, she mentions that according to current code the Board must make a decision when a limit has been reached, when there should be no further impact to a wetland. She asks the Board for criteria to make the determination. Vice Chair Kalmar asks Ms. Wells to supply to code she references.

Mr. Alesse asks about the snow storage plan. Mr. Coronati asks if a decision could be made on lot 8 driveway. Vice Chair Kalmar explains that the code calls for wetland impact mitigation on adjacent lots. The Applicant agrees to provide the information to the plan.

**Mr. Harris moves to approve driveway plan C2 for lot 8.  
Vice Chair Kalmar seconds the motion.**

Ms. Driscoll-Davis suggests a condition of approval for C2 provided there is not too much wetland impact on the property already. Chair Grinnell discourages a condition.

The planning board reviews 16.9.3.7.A & 16.9.3.7.E wetland alteration application criteria. Mr. DiMatteo suggests asking Mr. West, wetland scientist, to provide information.

There is continued discussion on the wetlands affected by the conventional subdivision. The following comments are made:

- Mr. Alesse asks about the existing driveways' impact on the wetland and if the proposed driveway would make the wetland nonfunctional.
- Mr. West explains there is no evidence to support that the wetland is nonfunctional. The wetland continues to function. Mr. West supports that the driveway would not make the wetland nonfunctional.
- Ms. Wells urges the Board to consider the past wetland impacts from Haley Road.
- Mr. Coronati explains the Applicants will preserve 97% of the wetland on lot 8.
- Mr. Coronati answers Chair Grinnell's question, there is more than one wetland near lot 8.
- Mr. West used a 1985 aerial photograph, showing wetlands, to overlay and determine the location of the proposed road.

- Mr. West has prepared a drawing illustrating the transition from the original to manmade wetlands. Chair Grinnell says the drawing can be provided later.
- Chair Grinnell asks for clarification on Ms. Wells' wetland concerns. Ms. Wells clarifies she urges consideration for all impacts, past and future.
- Chair asks Applicant to supply a narrative of the cumulative effects on the wetland impact over time.

**Chair Grinnell calls for a vote.**

**The motion carries 4-3-0.**

**Yes: Mr. Harris, Mr. Dunkleberger, Mr. Alesse, Vice Chair Kalmar. No: Ms. Day, Ms. Driscoll-Davis, Chair Grinnell.**

Wetland discussion continues:

- Applicant agrees to provide the mitigation plan for the impact of lot 8.
- Applicant agrees to provide a plan of all mitigation areas beside impact areas. Plan will be colored to help the Board distinguish the areas.

The following comments are reviewed from the staff notes:

- Comment 7- Waivers for sidewalk/pedestrian way, centerline, paved shoulder and gravel shoulder.

**Vice Chair moves to approve the sidewalk (and pedestrian way) waiver.**

**Mr. Dunkelberger seconds the motion.**

Discussion: Vice Chair mentions she is reluctant to add more pavement to the project.

**Motion carries 7-0-0.**

Centerline: Applicant proposes to move the road within the right-of-way, the private way. Mr. DiMatteo explains the HOA agreement includes the road as possibly being "public," and asks the Applicant to clarify that road is private in the agreement.

The following comments are made about the centerline waiver consideration:

- Applicant argues that if the Board does not accept the waiver, the Applicant cannot not move the road to avoid the wetland.
- Board agrees to consult Mr. McEachern about the abutters concerns that paving the road would interfere with their utility easement, particularly to access water lines.
- Mr. Bosen mentions that after reading the abutters deeds he determines all easements are general utility easements and do not pinpoint exact locations of easements or water lines. He argues that the abutters' rights for access are not being compromised.
- Mr. DiMatteo asks for clarification in the HOA agreement in relationship to the abutters' rights to maintain their own utilities.

**Vice Chair moves to approve the centerline waiver.  
Mr. Dunkelberger seconds the motion.**

**The motion carries 6 -1-0. Yes: Mr. Harris, Ms. Day, Mr. Dunkelberger, Vice Chair Kalmar, Chair Grinnell, Mr. Alesse. No: Ms. Driscoll-Davis.**

Waivers for paved and gravel shoulders.

Mr. Straub, CMA Engineers, explains that shoulders are to protect the travel way, Kittery often waives this for small roads to limit environmental impact. The curbing protects the pavement.

**Vice Chair Kalmar moves to waive the paved shoulder on plan P1.  
Mr. Dunkelberger seconds the motion.**

**The motion carries 7-0-0.**

**Vice Chair Kalmar moves to waive the gravel shoulder per plan P1.  
Mr. Dunkelberger seconds the motion.**

**The motion carries 7-0-0.**

The following comments are made on stormwater considerations:

- Vice Chair Kalmar asks applicant to provide an explanation about the reduction of stormwater runoff to pre-development levels to address an abutter's concerns.
- Mr. DiMatteo and Mr. Straub asks if Applicant can elevate the road to add another culvert on the other side to of the Schill's property, thereby eliminating proposed bump at the top of their driveway. The Applicant agrees. Applicant agrees to attempt to contact the Schills to discuss the options.

The following comments are reviewed from the staff notes:

- Comment 8e- Include NRA calculations on a plan that will be recorded- Applicants agree to address the NRA calculations, including CMA's concerns, and add them to the plan.
- Comment 8j- Applicant will provide planting plans and depict stand of trees in the area. Applicant will also address CMA list comment list dated 9/5/17.
- Mr. DiMatteo asks Applicant to remove the paper cul-de-sac on the right of way. Applicants will remove paper cul-de-sac. Applicants will address concerns about the water lines.
- Comment 9- Applicant agrees to make changes.
- Comment 11- Applicants agree and will not use ambiguous language.

**Mr. Alesse moves to accept the final plan application dated August 24, 2017 from owner, Norwich Investments, and applicant, Green and Company, for 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural and Shoreland Overlay Zones.  
Ms. Day seconds the motion.**

**The motion carries: 6-1-0.**

**Yes: Mr. Harris, Ms. Day, Vice Chair Kalmar, Chair Grinnell, Mr. Alesse, Mr. Dunkelberger. No: Ms. Driscoll-Davis.**

**Mr. Alesse moves to continue, and schedule a public hearing for the preliminary subdivision plan and wetland alteration applications dated August 24, 2017 from owner, Norwich Investments, and applicant, Green and Company, for 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural and Shoreland Overlay Zones, for no more than 90 days.**

**Vice Chair Kalmar seconds motion.**

**The motion carries: 5-2-0.**

**Yes: Ms. Day, Vice Chair Kalmar, Ms. Driscoll-Davis, Mr. Alesse, Chair Grinnell. No: Mr. Harris, Mr. Dunkelberger.**

Mr. Bosen requests the public hearing address only issues for the final plan acceptance and not issued that have been addressed and/or resolved. Chair Grinnell agrees.

Mr. Alesse asks to have the municipal impact statement reviewed. Applicants agree to provide this information.

### **ITEM 3- 459 U.S. Route One- Mixed-Use Development- Sketch Plan Review**

Action: Accept or deny application. Approve or deny concept plan. Owner, Landmark Properties LTD [Landmark Hill, LLC] and applicant Michael Brigham, request consideration of a mixed use development consisting of 36 elderly housing units and two buildings with two retail/commercial units and 24 apartments located in the 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed Use Zones. Agent is Ken Wood, Attar Engineering.

Ken Wood, Attar Engineering, explains the site had approval in 2008 to be mixed-use. The current proposal contains 36 elderly housing units, which be single family detached units. Mr. Wood reviews the parking requirements. He also explains the wetland has be surveyed and a high density soil survey has been taken. Developable land calculations were made as result of the soil survey.

Ms. Driscoll-Davis asks is the applicant would consider workforce instead of elderly housing.

Mr. Brigham says he is willing to make adjustments and open to the idea. He explains he needs to learn more about workforce housing and how the numbers would work. Vice Chair Kalmar asks if the apartment building would contain condos or rented apartments. Mr. Brigham admits he had not yet considered unit ownership.

The Board discusses Workforce housing and mixed use considerations. The following comments are made:

- Mr. DiMatteo suggests the Board and Applicant refer to the state definition of affordable housing.
- Vice Chair Kalmar asks applicant to increase the amount of mixed use development from 8%.
- Ms. Driscoll-Davis mentions the 2015-2025 Comprehensive Plan draft supporting workforce housing.

- Mr. Dunkelberger argues there is no definition of workforce in Town ordinance for the board to review.
- Vice Chair Kalmar asks if the elderly units need to be single family detached.

**Ms. Day moves to accept the sketch plan application dated August 9, 2017 from owner, Landmark Properties LTD [Landmark Hill, LLC], and applicant, Michael Brigham, Landmark Hill LLC, for 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed Use Zone.**

**Mr. Dunkelberger seconds the motion.**

**The motion carries 7-0-0.**

The Board decides not to schedule a site walk at this time.

Mr. DiMatteo suggests the Applicant come back to the Board with a different concept, addressing concerns brought forth by the Board.

The following comments are made in response:

- Mr. Brigham admits he does not wish to abandon the concept presented.
- Mr. Alesse brings forward that changing to affordable/ workforce housing could result in an age range difference from the proposed project.
- Vice Chair Kalmar asks from more commercial use.
- Mr. DiMatteo asks Applicant to come back with a narrative of responses brought forth all items.
- Applicant explains that elderly housing conforms to the standards based on 10% calculation.
- Mr. DiMatteo asks they review of the special exception use criteria.

The following comments are reviewed from the staff notes:

Comment 6- Retail use, limited to the 30% of the lot's developable land- The proposed mixed use development is approximately 8%. Ms. Day suggests 30% is more of the goal, although the maximum, in the Mixed Use. Ms. Driscoll-Davis explains the maximum 30% is a new change to the zone.

Comment 11- fire protection- Mr. Wood explains all units are sprinkled, including the elderly single family.

Comment 14- Sidewalks- Sidewalks are part of the plan between proposed units. Sidewalks have not been planned on U.S. Route 1, Mr. Wood explains sidewalks could be in the state right-of-way. Mr. DiMatteo encourages the Applicant to contact Maine DOT for requirements to determine if there is the possibility to use some of the wide ROW.

Comment 9- Parking for elderly units- Ms. Day asks about parking for elderly residents and their guests. Applicant responds, elderly would park in their garages or driveway. Guests park in their driveways or on street.

**Ms. Day moves to continue the sketch plan presented by applicant, Michael Brigham, Landmark Hill, LLC, for 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed Use Zone.**

**Ms. Driscoll-Davis seconds the motion.**

**Motion carries 7-0-0.**

**ITEM 4- Board Member Items/Discussion**

A. Kittery Foreside Land Use, Parking and Traffic Study B. Other

Planning Board has been provided updates to the ordinance including new definitions and the Mixed-Use zone where the sidewalks section on U.S. Route 1 was removed. The Mixed-Use zone amendment brought to Town Council has been approved. Mr. DiMatteo explains the Board can address sidewalks in the same manner they have been.

Ms. Day provides information on the Kittery Foreside Land Use, Parking and Traffic Study. Monday 10/2/17 is the working group meeting. Wednesday 10/26/2017 there will be a public meeting where the project's consultants will present draft recommendations.

Mr. DiMatteo explains that the Study could be put on the 10/26/2017 Planning Board agenda for discussion and information provided in the Planning Board packets. Information on the Study is available on the Town website under the projects page. There is a Facebook page for the project.

**ITEM 5- Town Planner Items**

A. Other. No discussion.

**Mr. Alesse moves to adjourn. Chair Grinnell closes the meeting at 9:14pm.**