

CALL TO ORDER

Chair Grinnell called the meeting to order at 6:07 p.m.

ROLL CALL

Members Present: Robert Harris, Dutch Dunkelberger, Karen Kalmar, Ann Grinnell, Mark Alesse, Ronald Ledgett, Russell White

Staff Present: Kathy Connor, Interim Town Planner

PLEDGE OF ALLEGIANCE

AGENDA

REVIEW OF MINUTES - November 9, 2017

Vice Chair Kalmar moved to approve the November 9, 2017 Minutes.

Mr. Dunkelberger seconded the motion.

All in favor and the motion carried. 7-0-0.

PUBLIC COMMENT

The Chair opened the public comment. There being none, the Chair closed the public comment.

OLD BUSINESS

ITEM 1 – 74 State Road – Mixed Used Development – Site and Subdivision Preliminary Plan Review.

Action: Hold a public hearing, Approve or deny preliminary plan. Owner, PB ‘R’ US and applicant, Millwork City Internet Service, Corp. requests consideration of a mixed-use development for a 1.00 +/- acre parcel located on State Road (portion of Tax Map 8 Lot 41A) in the Business Local (B-L) zone. Agent is Christopher Baudo, Architect.

Christopher Baudo informed the Board that PB “R” US is no longer the owner of the property and the new owner is MWC Property Holdings, LLC. He listed the Board’s prior concerns and has submitted a copy of the preliminary easement and right of way on Village Green Drive. The Board informed Mr. Baudo that they have not received the copy. Mr. Baudo also informed the Board the property has been legally split from the lot and read the easement language.

Mr. Baudo gave a summary of the project and reviewed CMA’s comments for the front door requirement, the landscape planter strip plan and street side trees missing on the plan. Mr. Baudo stated he will have these issues addressed on his next proposal since the easement issue has been completed. He also informed the Board the Kittery Water District will be able to service the property and the size and material of the pipe will be determined once the design of the townhouses and street elevation information is completed. Mr. Baudo informed the Board a

stormwater engineer will be addressing the stormwater issues. He added the access across the right of way is addressed in the easement. The blasting plan has been submitted for the Board's review.

Chair Grinnell asked the applicant about the plans for the sprinkler system. Mr. Baudo responded he will address comments of the units having sprinkler systems with the Fire Marshall and Code Enforcement and will cite this on the plan. Chair Grinnell explained it is in the Board's purview to review all comments and notes and it is not a separate item to work out with the Fire Marshall. It needs to be incorporated into the plan. Mr. Dunkelberger suggested Mr. Baudo meet with Ms. Connor to go over what items are needed. Ms. Connor informed the Board she has had emails and a conversation with Mr. Baudo and she was clear the CMA review is important to advancing this project and written responses to the review were required.

Vice Chair Kalmar expressed one of her concerns of the blasting plan being determined inadequate and pointed out this is a public hearing without a complete plan. She suggested moving this when the packet is complete. After reviewing the Code, the Board determined they were unable to grant another 90-day extension.

Mr. Baudo explained his understanding from the last meeting was that the Board asked for a blasting plan and he did not remember agreeing to an extension. Vice Chair Kalmar pointed out the Board did not want only the blasting plan and CMA found the blasting plan was inadequate before the December 14th meeting. She regrets the December meeting was cancelled but pointed out other items were to be provided to the Board and they have not received these in the meantime. Mr. Baudo explained he had not received further comments from staff or any other communication after the recommendation of addressing CMA comments at the public hearing. Ms. Connor explained there were two outstanding pieces of information-the blasting plan and a clear indication of the applicant's standing. She also reiterated the CMA peer review responses need to come in written format. The applicant commented on the lack of communications from the time between the previous Town Planner and when Ms. Connor began. Chair Grinnell pointed out the letter from CMA is dated November 16th and the meeting was to take place on December 14th, but nothing was submitted in writing only verbally. Ms. Connor added the CMA review is four pages long and there are many things missing such as the stormwater plan, parking plan, signs, landscaping and lighting plan and more.

Mr. Dunkelberger suggested they deny the preliminary plan which would give the applicant a chance to start over and would be fair to the public. He added the Board also needs a letter of authorization from the new ownership and a document from the previous owner as well.

**Mr. Dunkelberger moved to deny the preliminary plan application dated September 11, 2017 from owner at the time, PB 'R' US and applicant, Millwork City Internet Service, Corp., for 74 State Road (Tax Map 8 Lot 41A) in the Business Local Zone.
Mr. Ledgett seconded the motion.**

Mr. White advised the applicant that the interim planner would be a good source for him to use due to the project size and the amount of blasting that will occur in a prominent public area.

Mr. Dunkelberger commented the detail from CMA should give Mr. Baudo an idea of what is needed and what should be included on the plan. Mr. Baudo stated the easement language was submitted to the Town.

Mr. Harris commented the Board should give an extension on time because of the issues with the planning office and the Board just received the information packet for tonight's item. Mr. Dunkelberger explained the ordinance does not allow them to grant an extension.

The motion carried 6-1-0 (Mr. Harris - opposed).

NEW BUSINESS

ITEM 2 – Wood Island Life Saving Station – Shoreland Development Plan Review

Action: Accept or deny application; Approve or deny plan. Owner, Town of Kittery, and Applicant, Wood Island Life Saving Station Association (WILSA), requests consideration of the reconstruction of the existing historic building, marine seawalls and railway to be used as a museum located on Wood Island, Tax Map 51 Lot 14, in the Residential – Rural Conservation (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-250' / OZ-RP) zones. Agents is Sam Reid, WILSA and Tristan Donovan, Tighe & Bond.

Mr. Reid thanked the Planning Department and explained they were last here on September 28, 2017. He introduced a board member and the consultants that were present at the meeting. He stated the purpose of the project is to fully restore and reuse the historic building as a maritime museum. He added the Maine Army National Guard will be volunteering this spring to restore the seawall and the pier and WILSA is working to improve the quality of life for the area.

The following staff comments were addressed:

- Comment 3 - The living space will be called “Docent’s quarters” not a “dwelling unit”. He added the water source will be from reverse osmoses.
- Comment 7 - Mr. Reid described the plan for the walkway which will be ADA-compliant and will allow access to the museum and to the public restrooms. They are proposing arrivals enter through the south side to a recently installed main door which is ADA-compliant. He pointed out the location on the map of the stairs and explained the lines on the plan are underground utilities. Mr. Ledgett asked for clarification of the wording in the comments regarding a variance for the walkway and drill pole needing approval by the Board of Appeals. The applicant replied the Code Enforcement Officer has determined this is no longer necessary because the drill pole is not considered a structure because it is below 50-ft., which is stated in the Town Code. He added the walkway also had a ruling from the Code Enforcement Officer that they do not need to go to the Board of Appeals for ADA elements because of Federal regulations. Mr. Reid submitted the letter dated December 13, 2017 from the Code Enforcement Officer.
- Comment 11- The Board determined a parking plan was not required. The applicant pointed out access to the island will mainly be from boats from another community or people using their personal boats, which is recreational. The applicant has no plans to provide a boat or a shuttle service.

- Comment 9 - The septic system is designed for 50 visitors a day and for the dosen's quarters. Ms. Connor informed the Board she has had discussion with the Code Enforcement Officer and they came to a resolution, which will be a condition of approval, allowing him to monitor the inflow of the system. Another condition of approval will state a fire suppression system that meets the requirements of the Code Enforcement Officer, Fire Chief and the applicant will be added to the plan. Mr. Ledgett asked of the procedure if the septic is found overloaded. The applicant replied this will be addressed as a condition of approval to report any high-water alarms to the Code Enforcement Officer within 48 hours.

Vice Chair Kalmar requested the applicant not add rockfill to replace existing vegetation and the applicant agreed.

A poll was taken, and the Board determined no public hearing was necessary.

Vice Chair Kalmar moved to approve with conditions the Shoreland Development Plan dated September 7, 2017 with revisions dated November 20, 2017 from owner Town of Kittery and applicant Wood Island Life Saving Station Association for Wood Island (Tax Map 51 Lot 14) in the Residential-Rural Conservation and Resource Protection and Shoreland Overlay Zones, upon the review and voting in the affirmative on the Findings of Fact.

Mr. Alesse seconded the motion.

M51 L14

Kittery Planning Board

APPROVED

Findings of Fact

For Wood Island

Shoreland Development Plan Review

WHEREAS: Owner, Town of Kittery, and Applicant, Wood Island Life Saving Station Association, requests consideration of the reconstruction of the existing historic building marine seawalls and railway to be used as a museum located on Wood Island, Tax Map 51 Lot 14 in the Residential-Rural Conservation and Shoreland and Resource Protection Overlay Zones, hereinafter the "Development" and Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the plan review notes prepared for 1/11/2018.

Shoreland Development Plan Review	12/14/2017	HELD
Site Walk	10/18/2017	HELD
Public Hearing		VOTED NOT TO HOLD

Shoreland Development Plan Approval	01/11/2018	APPROVED
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And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Development Plan Application, dated 11/9/17
2. Shoreland Development Plan, Tighe & Bond, 9/7/17, revised 11/20/2017.
3. Site Plan, Tighe & Bond, 9/7/2017
4. Concession Agreement, Town of Kittery and WILSSA, dated 7/26/2016.

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone
<i>1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...</i>
<u>Findings</u> : This property is an island with previously existing structures. There are no parking lots.
<u>Conclusion</u> : The requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances
<i>A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i>

Finding: No non-conforming condition is proposed as the docent quarters is an accessory use to the Life Saving Station.

Conclusion The requirement appears to be met.:

Vote: 7 in favor 0 against 0 abstaining

16.7.3.3.2 Nonconforming Structure Repair and/or Expansion

E. In addition to the standards in the above subsections 16.7.3.3.2.A-D, the expansion of nonconforming structures located in the Shoreland or Resource Protection Overlay Zone must meet the following:

1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming structure the structure and new foundation must be placed such that setback requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Title 16.7.3.3.1.B, Nonconforming Structure Relocation.

2. Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited.

3. Notwithstanding Title 16.7.3.3.2.E.2 above, if a legally existing nonconforming principal structure is entirely located less than 25-feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows,

a. the maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.

4. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or coastal or freshwater wetland setback requirement. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered as follows:

a. For structures located less than 100 feet from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet,

or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet, or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.

b. For structures that are located within the Resource Protection Overlay Zone, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet, or 30% larger than the footprint that existed at the time the Resource Protection Overlay Zone was established, whichever is greater. The maximum height of any structure may not be greater than 25 feet, or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 100 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland must meet the footprint, roof pitch and height limits in 16.7.3.3.2.E.4.a, above.

Finding: No non-conforming structures are being expanded as the shed previously existed but requires rebuilding.

Conclusion: The requirement appears to be met.:

Vote: 7 in favor 0 against 0 abstaining

16.7.3.3.3 Nonconforming structure reconstruction

A. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in Section 16.7.3.3.1,B Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

B. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and removed, damaged or destroyed by any cause by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer within twelve (12) months of the established date of damage or destruction.

C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or

reconstructed in-place if a permit is obtained from the Code Enforcement Officer within eighteen (18) months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure.

D. Nothing in this section prevents the demolition of the remains of any structure damaged or destroyed. Application for a demolition permit for any structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.

E. In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. If the reconstructed or replacement structure is less than the required setback, it may not be any larger than the original structure, except as allowed in Title 16.7.3.3.2, Nonconforming Structure Repair and Expansion.

F. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.3.1.C, Nonconforming Structure Relocation.

G. Except where expressly permitted in this code, in no case may a structure be reconstructed or replaced so as to increase its non-conformity.

Finding: The shed is being reconstructed on its original footprint.

Conclusion: The requirement appears to be met.:

Vote: 7 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Finding: The proposed development as represented in the plans and application does not appear to have an adverse impact.

<u>Conclusion:</u> This requirement appears to be met
Vote: _7_ in favor _0_ against _0_ abstaining
<i>2. Not result in water pollution, erosion or sedimentation to surface waters;</i> <u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters. An existing eroded slope will be revegetated. <u>Conclusion:</u> This requirement appears to be met
Vote: _7_ in favor _0_ against _0_ abstaining
<i>3. Adequately provide for the disposal of all wastewater;</i> <u>Finding:</u> The proposed development includes a wastewater disposal system designed to handle visitors plus docent's quarters. <u>Conclusion:</u> This requirement appears to be met.
Vote: _7_ in favor _0_ against _0_ abstaining
<i>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.
Vote: _7_ in favor _0_ against _0_ abstaining
<i>5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i> <u>Finding:</u> Shore cover is not adversely impacted <u>Conclusion:</u> This requirement appears to be met.

Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining)
<i>6. Protect archaeological and historic resources;</i> <u>Finding:</u> The island's structures are considered historic and are being preserved. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i> <u>Finding:</u> The proposed development does not adversely impact existing commercial fishing or maritime activities. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>8. Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The property is designated Zone C by FEMA Flood Zone standards and is defined as an area of minimal flood hazard. The proposed development does not appear to have an impact on a floodplain or flood-prone area. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>9. Is in conformance with the provisions of this code;</i> <u>Finding:</u> The proposed development complies with the applicable standards of Title 16. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>10. Be recorded with the York county Registry of Deeds.</i> <u>Finding:</u> A plan suitable for recording will be prepared. <u>Conclusion:</u> As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds within 90 days of approval prior to the issuance of a building permit.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant

detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: None

Conditions of Approval (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. With the exception of the vegetation identified on the plan for removal, no vegetation will be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing vegetation must be in place prior to grading or construction. The rock fill shall not replace existing vegetation.
4. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all onsite work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.
5. The applicant shall provide a report on gallons per day input into the wastewater management system to the Code Enforcement Officer in a manner and frequency as determined by the Code Enforcement Officer. Any “high water” alarms shall be reported to the Code Enforcement Officer within 48 hours of occurrence.
6. The applicant shall provide a fire-suppression system that satisfies the requirements of the Kittery Fire Department and the Code Enforcement Officer.
7. All Notices to Applicant contained herein (Findings of Fact dated 01/11/2018).

Conditions of Approval (not to be depicted on final plan):

8. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: 7 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON 1/11/2018

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

The motion carried 7-0-0.

ITEM 3 – Seward Farm Lane – Major Subdivision Final Plan Review

Action: Accept or deny application; Approve or deny final plan. Owner/Applicant Gary Seward, Gregg Seward and Patti Parsons request consideration of a 14-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Stephen Haight, Civilworks New England.

Mr. Haight, representing the applicants, stated he had met the assistant planner before she left and went through all the CMA and staff comments and the responses have been placed on the plan. He added they were waiting to get the stormwater plan approval from the State of Maine and have received an approval letter but not the permit. The letter was added to the packet. Mr. Haight believes all comments have been addressed.

Ms. Connor explained she did not have the resolution for two outstanding items - the gravel test pit and road elevations. Mr. Haight explained he did provide an email to Ms. Connor from Bill Straub at CMA approving the cross-section plan for the proposed road. The gravel information was provided to CMA of the reference of gravels to Maine DOT specifications. Mr. Haight has also consulted with JTC who informed him they do meet the Maine DOT specifications and will send a letter verifying this. Mr. Haight added the applicant is willing to relocate a culvert if necessary as requested by the Department of Public Works.

Ms. Connor pointed out to the Board the notation on the plan stating the road must remain private. Mr. Ledgett commented on the Board's responsibility per 16.7.4.1.4.2 which allows them to modify the road standards if not needed for pedestrian and traffic safety. He expressed his concern of taking the sidewalk away for pedestrians. Mr. Ledgett also suggested conditions be added of no parking and adequate space provided for emergency vehicles. Mr. Ledgett referred to an aerial photo showing parked cars at the hammerhead, which is not its purpose. Mr. White commented residents can assume the risk in small subdivisions as a reason for giving waivers and have in the past. He commented there should be a condition of no parking in the hammerhead and a plowing requirement. Vice Chair Kalmar would like to have a condition of approval to have the Home Owner's documents reviewed by the Town's attorney.

Mr. Haight explained the road will be 20-ft with a 1-ft gravel shoulder on each side. After extensive discussion of the proposed road, Chair Grinnell requested to have written assurances from the Fire Department, the Police Department and Public Works Department. Stipulations will be added of how the road must be cleared and no parking at the hammerhead to the Home Owner's documents. A no parking sign will be added at the hammerhead and along on the road.

Mr. Dunkelberger moved to grant final approval, with conditions, of the subdivision plan dated 6/22/2017 with revisions on October 25, 2017 and November 15, 2017 and January 3, 2018 from owner and applicant, Gary Seward, Gregg Seward and Patti Parsons, for a 14-lot subdivision located along a previously approved private Right-of-Way, Seward Farm Lane, located off Picott Road (Tax Map 46 Lot 4) in the Residential-Rural and Shoreland Overlay Zones upon the reading and voting, in the affirmative, of the findings of fact. Vice Chair Kalmar seconded the motion.

Vice Chair Kalmar pointed out finding "G" needs to be reworded. A condition will also be added regarding the Town will remove a drainage pipe and the applicant will work with the Department of Public Works.

The motion carried 7-0-0.

**FINDINGS OF FACT -
for**

Seward Farm Lane

Mixed Use Development Site Plan

APPROVED

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner/Applicant Gary Seward, Gregg Seward and Patti Parsons request consideration of a 14-lot conventional subdivision located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural and Shoreland Overlay Zones.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 01/11/2018;

Sketch Plan Review	Held	2/23/2017
Site Visit	Held	4/12/2016
Preliminary Plan Completeness Review	Held, accepted	7/27/2017
Public Hearing	Held	8/10/2017
Preliminary Plan Approval	Granted (conditional)	8/10/2017
Final Plan Approval	Granted (conditional)	01/11/2018

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 01/11/2018 (Hereinafter the “Plan”).

1. Standard Boundary Survey & Existing Conditions Plan, North Easterly Surveying, dated 6/22/2017
2. Seward Farm Lane Subdivision Plan, North Easterly Surveying, dated 6/22/2017; revised 10/25/2017
3. Lot Plan, North Easterly Surveying, dated 6/22/2017; revised 10/25/2017
4. Soils Plan, North Easterly Surveying, dated 6/22/2017; revised 10/25/2017
5. Plan & Profile, North Easterly Surveying, dated 6/22/2017; revised 10/25/2017
6. Erosion Control Details, North Easterly Surveying, dated 6/22/2017; revised 10/25/2017

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section **16.10.8.3.4.** and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

<i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>
Finding:
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified.
<i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Finding: There are several wetlands identified on the property. Wetlands have been delineated by Joseph Noel and are depicted on the final plan.
Conclusion: This standard is appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified.
<i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
Finding: No rivers or streams have been identified on site. A brook is located along the southerly perimeter of the site. The centerline of the brook is depicted on the final plan.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient. {and}
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
Finding: The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

F. Sewage Disposal Adequate.
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
Finding: The proposed development will not connect with Town Sewer. The proposed development will use individual septic systems. Reserve areas have been identified, where necessary.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
Finding: The proposed development will not burden the Town Resource Recovery Facility.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
Finding: The proposed development is partially located within the Shoreland Overlay Zone. All proposed development in the regulated zone is outside of the required 100-foot setback and will not adversely affect the water quality of the regulated, tidal wetland.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: The proposed development will not adversely affect the quality or quantity of groundwater.
Conclusion: This standard appears to be met.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned.

<i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>	
Finding: A portion of the property is located within a flood zone. There is no proposed construction within a flood prone area.	
Conclusion: This standard appears to be met.	
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining	
K. Stormwater Managed.	
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>	
CMA, town peer-review engineer, reports that the applicant has prepared a complete stormwater design and associated analysis and the proposed development meets the requirements of the LUDC. The design was prepared by Civil Consultants and reviewed by CMA Engineers.	
Finding: The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management.	
Conclusion: This standard appears to be met.	
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining	
L. Erosion Controlled.	
<i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i>	
The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2).	
Finding: The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site.	
Conclusion: This standard appears to be met.	
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining	
M. Traffic Managed.	

<p><i>The proposed development will:</i></p> <ol style="list-style-type: none"> <i>1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i> <i>2. Provide adequate traffic circulation, both on-site and off-site.</i>
<p>The proposed development does not require a traffic movement permit as it does not create an additional 100 vehicle trips during peak traffic hours. CMA engineers have reviewed the on-site traffic circulation and found it to be adequate.</p>
<p>Finding: With consideration of the waivers granted below, the proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation.</p> <p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>N. Water and Air Pollution Minimized.</p>
<p><i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"> <i>1. Elevation of the land above sea level and its relation to the floodplains;</i> <i>2. Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> <i>3. Slope of the land and its effect on effluents;</i> <i>4. Availability of streams for disposal of effluents;</i> <i>5. Applicable state and local health and water resource rules and regulations; and</i> <i>6. Safe transportation, disposal and storage of hazardous materials.</i>
<ol style="list-style-type: none"> 1. The development is located outside of a Flood Hazard Area. 2 thru 6. Not applicable to the proposed development.
<p>Finding: It does not appear the proposed development will result in undue water or air pollution</p> <p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Finding: Picott Road has been identified as a scenic road – view shed buffer is provided.

Conclusion: This standard appears to be met.

Vote of 7 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

Finding: The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.

Conclusion: This standard appears to be met.

Vote of 7 in favor 0 against 0 abstaining

Chapter 16.6 DECISION APPEAL, VARIANCE and OTHER REQUESTS

16.6.4.4 Special Exception Use Request.

B. The Planning Board will review, decide and may approve an applicant's Special Exception Use request where the proposed project requires Planning Board review as defined in Section 16.10.3.2 or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 and 16.6.6.

Finding:

The proposed use of the Development as a conventional residential major subdivision located in the Residential- Rural zone appears to have no adverse impact with consideration of the conditions and factors outlined in 16.6.6, including:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;

3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and

4. Use will be in harmony with and promote the general purposes and intent of this Code.

Conclusion: The requirement appears to be met

Vote of 7 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

1) Width of Road: the applicant proposes a 20-foot wide paved way with 1-foot gravel shoulders.

2) Radial cul-de-sac standard: the applicant proposes a hammerhead instead as dimensioned on the plan.

3) Sidewalks: the applicant proposes no sidewalks on Seward Farm Lane since there no sidewalks on Picott Road to connect them to.

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. Seward Farm Lane shall be and must remain a private road, with the property owners, HOA or other such entity bearing all responsibility for maintenance including but not limited to, snowplowing, paving and stormwater system operation and repair.

5. A “No Parking” sign shall be installed at the terminus of the hammerhead.
6. The Applicant and the Town shall coordinate the Town’s removal of the drainage pipe prior to the paving of the proposed road.
7. All Notices to Applicant contained in the Findings of Fact (dated: 01/11/2018).

Conditions of Approval (Not to be included as notes on the final plan):

8. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation of final Mylar.
 - a. One such recommendation is to include the waivers granted on the final Mylar.
9. The Home Owners Association (HOA) document must be reviewed and found satisfactory by the Town Attorney.
10. Provide the additional documents and/or responses to all CMA comments prior to presentation of final Mylar.
11. Provide the CMP Easement/letter granting permission for the water line easement.

Notices to Applicant: (not to be included on the final plan)

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 7 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON January 11, 2018

Ann Grinnell, Planning Board Chair

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 4 – 21 Bond Road – Shoreland Development Plan Review

Action: Accept or deny application, Approve or deny plan. Owner/Applicant, Victor Messier requests consideration of the reconstruction of a “bait shed” located on Bond Road (Tax Map 25, Lot 8) in the Residential – Kittery Point Village (R-KPV) and the Shoreland Overlay (OZ-SL) Zones. Agent is Brian Rodonets, Coastal Architects.

Brian Rodonets, representing the applicant, explained the lot is 1/3 of an acre. In the past, the building was used as a bait shed and built in the 1970’s. In 2004, it was permitted and was rebuilt. Last year, a tree fell on the building and the applicant needs a permit to rebuild it. Mr. Rodonets added the applicant uses it for oars, paddles and life jackets. The building is within 100 feet of the water and in the Shoreland Overlay Zone. He reviewed the setbacks and claims there is no other area to rebuild on the property. He asked the Board to consider that the applicant has done the right thing in the past and today.

Mr. Ledgett stated the Board doesn’t have the flexibility because of the State code. Vice Chair Kalmar suggested asking the applicant to relocate it back. Mr. Ledgett added the building needs to be off the water dependent structure or is under the Kittery Port Authority. Mr. Rodonets will return to the applicant and give him the Board’s suggestions and will let the Planning Department know of a date for a site walk.

ITEM 5 – 495 U.S. Route 1 – Site and Subdivision Preliminary Plan Completeness Review

Action: Accept or deny application, Owner/Applicant, DSS Land Holdings LLC, request consideration of a mixed-use development for a 20-+/- acre site located on U.S. Route 1 (Tax Map 60, Lot 24) in the Mixed-Use (MU) and Rural Residential (R-RL) Zones. Agent is Ken Wood, Attar Engineering.

Ken Wood, representing the applicant, introduced Brian Neilson who will be working with him. Mr. Wood explained the application is complete and the applicant would like to schedule a public hearing. He added the plan has not changed since the sketch plan approval other than one building that was to be commercial and retail use will be a clubhouse and commercial use.

Ms. Connor said there is a list in the planner's notes of missing preliminary plan submission requirements under 16.10.4.2.2:

- Scale of project plan;
- No surveyor stamp on the survey plan;
- Calculated acreage plan does not have the amount of ROW and the amount of land to be disturbed;
- Abutters in the 6-lot subdivisions to the north are not identified and have been sold and developed;
- No clarity of how wide the ROW/travel ways;
- Aerial map provided is very dark;
- Water District approval is not included;
- No letter of endorsement for erosion/sedimentation control plan from the Town's review engineer;
- Traffic report shows peak hour traffic chosen by the applicant not ADT;
- Traffic impact analysis has not been submitted; and
- There is no letter from the Sewer Department.

In addition, letters of evaluation must be received by the Chief of Police, the Fire Chief, the Commissioner of Public Works and, due to the residential component (the apartments), the superintendent of schools.

Mr. Wood explained the drawing is scaled down to show the entire parcel on one sheet. He also explained they are not proposing a dedicated right of way because the access will be the same as Mr. Bingham's other project, Landmark Hill, which was approved. The road is an access to the development and not for the purpose to be turned over to the public. Ms. Connor pointed out it is within the Board's purview to waive submission requirements. Mr. Wood added there are about four acres of impervious surface and the amount of land to be disturbed is eleven acres which is on their stormwater management plan.

After discussion, the applicant agreed to have the stormwater management plan placed on the plan for acreage, a traffic impact analysis will be done with ADT recommendations and a peer review of the traffic analysis will be completed. The letter from the Sewer Department will be submitted as soon as the applicant receives it.

Mr. Dunkelberger asked for Board discussion regarding the staff comment on Page 3 regarding elderly housing stand-alone units meeting the allowed use with regard to the facility. Mr. White suggested the applicant add a narrative justifying this to the ordinance. After further discussion, the applicant agreed to add narrative regarding the elderly component to be discussed at the next meeting.

Ms. Connor recommend the traffic impact analysis be included before the application is found complete.

Mr. White moved to continue the application dated 12/20/2017 for Owner/Applicant, DSS Land Holdings LLC, request consideration of a mixed-use development for a 20-+/- acre site located on U.S. Route 1 (Tax Map 60, Lot 24) in the Mixed-Use (MU) and Rural Residential (R-RL) Zones. all were in favor.

Mr. Alesse seconded the motion.

The motion carried 7-0-0.

ITEM 6– 506 U.S. Route 1 (Estes Business Park) – Site and Subdivision Sketch Plan Review

Action: Accept or deny application, Accept or deny plan. Owner/Applicant, M&T Realty LLC, request consideration of a mixed-use development for a 28-+/- acre site located on U.S. Route 1 (Tax Map 67, Lot 4) in the Mixed-Use (MU), Shoreland Overlay (OZ-SL), Resource Protection (OZ-RP) and the Residential-Rural (R-RL) Zones. Agent is Ken Wood, Attar Engineering.

Mr. Wood explained the last time was they were before the Board was on December 8, 2016. The property is in the resource protection district and there was discussion as to where the resource protection district boundaries were. He added the resource protection district boundaries shown on the Town's map but does not agree with their boundaries and does not meet the ordinance's definition of being in a flood plain and wetland of significant interest and per section 16.3.2.1(9). He explained he sent the FEMA flood map to the former town planner who replied in an email on February 1, 2017 that he consulted with Maine Inland Fisheries and Wildlife and he agreed with the applicant. This email is in their packet. Ms. Connor read the email between the former planner and Inland Fisheries and Wildlife dated April 9, 2013, which discussed the wetland of special significance from an aerial photograph. Jessa Kellogg, Shoreland Resource Officer, stated an aerial photograph to determine a wetland of special significance is not adequate enough and there should be a physical inspection. She recommended a wetland scientist employed by Maine DEP inspect the area. The Board agreed to have confirmation by a wetland scientist.

ITEM 7 – BOARD MEMBER ITEMS / DISCUSSION

The next planning board meeting will be February 8th. On February 22nd the Planning Board is sponsoring a workshop at 6:00 p.m. on workforce housing and Matt Brock will be the moderator at the KCC.

A. Election of Officers

Karen Kalmar nominated Ann Grinnell for Chair of the Board.

The motion was seconded by Ronald Ledgett.

The motion carried 6-1-0 (Mr. Harris opposed)

Mark Alesse nominated Karen Kalmar for Vice Chair of the Board.

**Ann Grinnell seconded the motion.
The motion carried 6-1-0 (Mr. Harris opposed)**

**Ann Grinnell nominated Dutch Dunkelberger as secretary of the Board.
Ronald Ledgett seconded the motion.
The motion carried 6-1-0 (Mr. Harris opposed).**

ITEM 4 – TOWN PLANNER ITEMS

None.

ITEM 5 - ADJOURNMENT

**Mr. Alesse moved to adjourn the meeting.
Vice Chair Kalmar seconded the motion.**

The motion carried 7-0-0.

The Kittery Planning Board meeting of January 11, 2018 adjourned at 9:06 p.m.

Submitted by Mary Mancini, Minute Recorder, on January 30, 2018.

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>