

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

**APPROVED  
July 26, 2018**

**CALL TO ORDER**

**ROLL CALL**

Present: Dutch Dunkelberger, Mark Alessi, Ronald Ledgett, Karen Kalmar, Ann Grinnell

Late arrival: Drew Fitch

Absent: Russell White

Staff: Jamie Steffen, Town Planner; Kathy Connor, Interim Town Planner; Adam Causey, Director of Planning and Development; Jessa Kellogg, Shoreland Resource Officer/Stormwater Coordinator

Advisory: Earledean Wells, Conservation Commission

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

**Site Walk - July 10, 2018**

Add Mr. Dunkelberger to those present.

**Vice Chair Kalmar moved to approve the July 10, 2018 site walk Minutes as amended.  
Mr. Dunkelberger seconded the motion.**

**The motion carried 5-0-0.**

**Board Minutes - July 12, 2018**

Line 5 - add Chair Grinnell

Line 26 – change “Vice Chair Kalmar” to “Chair Grinnell”

Line 185 - change to “enhanced”

Line 73 – edit to state “questioned if mowing will be allowed in the 50 ft buffer area as buffers are normally considered a no-cut, no-disturbance areas.” Delete “done since and exception listed stems that are one inch or less in size”.

**Mr. Dunkelberger moved to accept the Minutes of July 12, 2018 as amended.**

**Mr. Ledgett seconded the motion.**

**All were in favor and the motion carried 6-0-0.**

## **PUBLIC COMMENT**

Chair Grinnell opened the public comment segment of the meeting.

Judy Spiller, 4 Rosellen Drive, Kittery Point, explained she is Kittery's representative to the York River Study Committee who were at a Board meeting a few weeks ago to give a presentation of the build out plan. She added that on Tuesday evening, the Study Committee approved the Stewardship Plan and she or other committee members are willing to come back to answer any questions the Board may have. She explained the study is on the website at [www.yorkrivermaine.org](http://www.yorkrivermaine.org), which is the easiest way to read it. Printed copies will be made soon and will be distributed. She explained the next step is designation and added species of concern have been laying eggs in Libby Creek. Ms. Spiller explained the committee looked at the growth in the four towns and the watershed over the last ten years. The committee is recommending using the natural boundaries, not political boundaries, to manage the growth. Kittery is asking for Council resolutions for designation and the Stewardship Plan and Ms. Spiller requested a letter of support from the Planning Board for Council.

The Board was in consensus to add this item to the second meeting in October for discussion and would like a representative on the York River Study Committee be present. Ms. Spiller shared that all Board members will be getting a paper copy of the study likely in September.

Shaye Robbins, Haley Road, commented that that new Heron Point Subdivision's stormwater system was constructed nicely. She expressed her concern that the culverts are filling up with water already and may not be large enough. She added there are no new homes built at this time. Chair Grinnell requested Ms. Kellogg look at the culverts.

There being no further comment, the Chair closed the public segment.

## **INTRODUCTION NEW TOWN PLANNER**

The Board introduced and welcomed Jamie Steffen, the new Town Planner. Mr. Steffen gave a description of his background and work experience.

## **PUBLIC HEARING**

**ITEM 1 – Miller Road – Major Subdivision Preliminary Plan Review**

Action: Hold public hearing, Approve or deny plan. Owners Paul E. and Peter J. McCloud and Applicant Joseph Falzone request consideration of a 6-lot conventional subdivision on land along Miller Road (Tax Map 59 Lot 20) in the Residential/Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ken Wood, Attar Engineering.

**Vice Chair Kalmar recused herself.**

Michael Sudak, from Attar Engineering, gave an overview of the proposed plan and explained the road and the lots will have individual wells and septic systems. He also described the proposed stormwater drainage system.

The Chair opened the public hearing.

John Viele, 25 Miller Road, explained his property abuts the proposed subdivision. He has met with the owner, Mr. Falzone, and the process has been good. He expressed his concern with the detail and language for the no-cut buffers not being consistent between the plan and the Home Owner's Association (HOA) documents. He added the neighbors want the buffers to remain as natural as possible. Mr. Viele also requested there be a time restriction for ledge removal of 9:00 a.m. to 4:00 a.m.

Sheila Pilkington, 36 Miller Road, shared that she appreciates the Board's diligence and added it is important to maintain the look of the road. She agrees with Mr. Viele's points about the no-cut buffers and time restriction for ledge removal.

Michael Getty, 36 Miller Road, commented that the Board has been very diligent in addressing the issues. The developer and engineering firm have done a good job accommodating issues that have been brought up. He added he would like to be included at the meeting to determine the utility pole placement decision.

Earldean Wells pointed out the Conservation Commission expects to hear what the applicant is planning to do for Lot 4 that has one test pit for the septic system with no reserve in the no-cut, no-disturb buffer.

There being no further comments, the Chair closed the public hearing.

Mr. Sudak explained they ordered additional test pits for Lots 1, 2 and 4 which were performed on Tuesday and those results will be shared with the board at the next meeting.

Mr. Ledgett requested Ms. Kellogg clarify the Town's standard regarding no-cut buffers. Ms. Kellogg commented it is up to what the Board wants for this project. She explained generally no-cut, no-disturb buffers allow the duff layer to remain, which is a natural, organic compost layer. If the Board would like this treated as Shoreland Zone buffers, trees would not be counted as points if they are less than two inches in diameter. She added, in the Shoreland Zone, selective removal of trees and the understory in certain areas may be permitted, though a no-cut, no disturb buffer would be more restrictive than the shoreland zoning regulations. Mr. Sudak reviewed the language on the original plan regarding clearing and added the applicant agrees to match the language in the HOA documents but does not want the language stricken from the plans regarding clearing for utility requirements.

After further discussion, the Board decided a permit be required for removal of vegetation and that should be noted on the plans and the HOA documents. The applicant agreed to change Note 10 on the plan to be consistent with the language in the HOA documents.

The Town's noise ordinance would allow drilling for ledge removal to begin at 7:00 a.m. Mr. Falzone explained they will try to avoid blasting and will use a hammer when possible. He added his preference for ledge removal is 8:00 a.m. to 4:00 p.m. He also added that as hard as they have worked with the abutters, the street will not look the same as it did before.

In response to Mr. Falzone's question, Ms. Connor explained CMA will be providing a peer review and, if there are no issues, the applicant may be before the Board one more time for final plan approval. Chair Grinnell added that if CMA has concerns, the applicant will need to come before the Board twice.

The Board was in consensus that the ledge removal be restricted to the hours of 8:00 a.m. – 4:00 p.m. and will be reflected in the Findings of Fact.

**Mr. Dunkelberger moved to approve a special exception for a conventional subdivision plan for the preliminary subdivision application dated May 23, 2018 with revisions dated June 20, 2018 from owners Paul E. and Peter J. McCloud and applicant Joseph Falzone for a 6-lot subdivision on land along Miller Road (Tax Map 59 Lot 20) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones.**

**Mr. Ledgett seconded the motion.**

**The motion carried 5-0-0.**

**Mr. Dunkelberger moved to approve the waiver request from Section 16.10.5.2.b(2) to allow the scale to be 1"=50' instead of 1"=30' for the preliminary subdivision application**

dated May 23, 2018 with revisions dated June 20, 2018 from owners Paul E. and Peter J. McCloud and applicant Joseph Falzone for a 6-lot subdivision on land along Miller Road (Tax Map 59 Lot 20) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones.

Mr. Ledgett seconded the motion.

The motion carried 5-0-0.

Mr. Dunkelberger moved to approve the waiver request from Section 16.8, Table 1C - Sidewalk/Pedestrian Way to not require the construction of a sidewalk along the proposed private street for the proposed subdivision plan dated May 23, 2018 with revisions dated June 20, 2018 from owners Paul E. and Peter J. McCloud and applicant Joseph Falzone for a 6-lot subdivision on land along Miller Road (Tax Map 59 Lot 20) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones.

Mr. Ledgett seconded the motion.

The motion carried 5-0-0.

Mr. Dunkelberger moved to approve the preliminary subdivision application plan dated May 23, 2018 with revisions dated June 20, 2018 from owners Paul E. and Peter J. McCloud and applicant Joseph Falzone for a 6-lot subdivision on land along Miller Road (Tax Map 59 Lot 20) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones with the condition that the CMA comments must be addressed and impervious surface calculations be added and the HOA documents be updated to reflect the no-cut, no-disturb buffer requirement which includes that any cutting of dead, dying or hazardous trees, while allowed, must receive a permit through the Town's Shoreland Resource Officer.

Mr. Ledgett seconded the motion.

The applicant agrees to address the language in Note 10 of the plan to be the same as the HOA documents.

The motion carried 5-0-0.

## OLD BUSINESS

**ITEM 2 – Potential expansion of the Neighborhood Mixed-Use Zone (MU-N) formerly Business Park Zone (B-PK) Discussion:** Follow-up to letter sent to property owners in March, map of zone boundaries for review.

The Chair shared the workshop with the Town Council was informative. She added that she would be in favor of the expansion proposal if the height limit of the buildings was reduced.

Mr. Dunkelberger explained why he is in agreement with the 70-ft. building height limit in the zone. Mr. Ledgett and Vice Chair Kalmar reminded the Board that they have previously approved the zone change recommendation to Town Council and the issue for discussion is the expansion of the boundary.

Mr. Fitch shared that he does not think the 70-ft. building height is appropriate that close to Route 236 and Chair Grinnell agreed.

Vice Chair Kalmar suggested scheduling a hearing to listen to the public's opinion before they have further discussion on recommending this proposal.

Because of Board member schedules in August, the Board decided to hold a special meeting on August 21<sup>st</sup>.

**Mr. Dunkelberger proposed to hold a public hearing on the Neighborhood Mixed-Use Zone (MU-N) formerly Business Park Zone (B-PK) at a date of August 21, 2018 at a time to be determined and appropriately advertised.**

**Mr. Ledgett seconded the motion**

**The motion carried 6-0-0.**

### **ITEM 3 – Draft amendments to Shoreland Zoning**

Discussion: Changes proposed to 16.9 (Wetland Setback Table) and 16.7.3.3.2 (Nonconforming Structure Repair and/or Expansion).

Vice Chair Kalmar commented the staff did a good job clarifying the language in the ordinance.

Mr. Ledgett questioned if language should be added to Section F that no permit will be issued until this approval of the plan for expansion has been recorded. Ms. Kellogg explained the language was taken from the state's Chapter 1000 guidelines for municipal shoreland zoning ordinances and she added Code Staff do not issue building permits until the planning requirements are met and this will be one of the requirements. She added the amendments will be sent to DEP for review before the public hearing.

**Vice Chair Kalmar moved to hold a public hearing on the proposed amendments to 16.7.3.3.2 (Nonconforming Structure Repair and/or Expansion) for August 23, 2018. Mr. Dunkelberger seconded the motion.**

**The motion carried 6-0-0.**

**ITEM 4 – Update on Foreside Study**

Discussion: Director of Planning and Development will update the Board on the latest edits to the Study.

Mr. Causey explained the updated study is in the Board packet and changes were made based on earlier comments. The consultants updated the maps and they are more readable. He added they are still waiting for the electronic version of the study and he will continue to ask for it. He explained this study went through a public planning process along with several business partners in the area and a working group and any changes need to go through the public process. His Executive Memorandum includes an outline of what staff is working on. He informed the Board a survey will be going out to gather opinions from the public. Suggestions of alleviating some of the parking issues were addressed which includes a proposal to change the time limit for parking in certain areas. A map of proposed parking changes has been shared with the business group in the Foreside for feedback and he is working with the Town Manager to get this on the Council's agenda.

Mr. Dunkelberger reminded Mr. Causey that the Board had recommended appropriate warning lights at crosswalks similar to the system near Rite Aid and the post office. Mr. Causey added the plans for the Walker and Wentworth intersection has been submitted and the construction timeframe is estimated for 2020-2021.

Chair Grinnell suggested that the Planning Board add this as an agenda item, review the report and write a letter outlining what they believe is important to moving forward. Mr. Ledgett added a lot of effort was put into this report and he expressed his concern of it not being used and forgotten. Discussion ensued of the report fitting into the recodification process taking place in the fall. The Board also discussed the Shipyard Study for the Government and Walker Streets intersection and the need to find out what it encompasses for the Town.

The Board was in consensus to add this item to the agenda for the second meeting in October.

**ITEM 5– Board Member Items / Discussion**

a. Short Term Rental Information



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274 Intensive discussion ensued of issues with short term rentals located in residential areas.

275 The discussion included if there is a need to implement and support a fee structure and the  
276 need to impose regulations in residential areas. Mr. Ledgett stated that the Town of Kittery has  
277 received written concerns from residents in Kittery that homes in their neighborhood have been  
278 purchased by non-residents in the neighborhood for short term investments, commercializing  
279 their residential zones. Short term rentals decrease the availability and increase the cost for  
280 remaining year around Kittery rentals, as well as the cost of Kittery homes, impacting the  
281 availability of inclusionary housing. There are a lot of examples of other communities' efforts  
282 made by the Town of Kittery to regulate short term rentals to inform evaluation of short term  
283 rental regulation by Kittery.

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285 Mr. Alesse shared he is not sure it is the Board's job of stopping people who are making  
286 money on short term rentals. Chair Grinnell explained she has heard of problems and would  
287 prefer to be proactive.

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289 After further discussion, the Board agreed to get the Town Council's opinion. Mr. Causey will  
290 bring the Board's request to the Town Manager to find out the best way to get the Council's  
291 thoughts.

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293 b. Planning Board Action Item List

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295 Board members thanked the staff for updating the list.

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## 297 **ITEM 5 – Town Planner Items**

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299 Mr. Causey shared that an RFP for a consultant for the recodification process was sent out  
300 with no replies. He added he will be resubmitting it to a wider net area.

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## 302 **ITEM 6 - Adjournment**

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304 **Mr. Alesse moved to adjourn.**

305 **Mr. Dunkelberger seconded the motion.**

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307 **The motion carried 6-0-0.**

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309 The Planning Board meeting of July 26, 2018 adjourned at 7:55 p.m.

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311 Submitted by Mary Mancini, Minute Recorder, on August 1, 2018.

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