

**Town of Kittery Maine  
Town Planning Board Meeting  
September 24 , 2020**

**ITEM 1 –Route 236 / MacKenzie Lane – Final Site Plan Review**

Action: Continue to a subsequent meeting; approve or deny plan Owner/applicant Robert T. Brennan, Jr. requests consideration of a final site plan for a 1,672 sf 1-story building proposed for a car wash on a 324,233 sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 289, Lot 25D) in the Commercial (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering, Inc.

**PROJECT TRACKING**

| REQ'D | ACTION                                   | COMMENTS                      | STATUS   |
|-------|--|-------------------------------|----------|
| NO    | Sketch Plan Review                       | None.                         | N/A      |
| YES   | Site Visit                               | July 7, 2020                  | HELD     |
| YES   | Determination of Completeness/Acceptance | June 25, 2020                 | ACCEPTED |
| YES   | Public Hearing                           | July 23, 2020; August 27,2020 | HELP     |
| YES   | Final Plan Review and Decision           | September 24, 2020            | PENDING  |

Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS. As per Section 16.4.4.L - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.**

**Background**

The Planning Board (“Board”) has accepted the preliminary plan as complete at their June 25, 2020 Meeting and now is charged to review the final plan submission. The proposed development is a 1,672 sf 24-hour two-bay car wash on an existing vacant lot located in the Commercial C-2 zone. The proposal includes four vacuum bays, one parking space for an employee who will service the business periodically and queuing space for 8-12 cars.

On June 25, 2020, the Board was first introduced to the plan. The questions and topics emanating from that meeting were as follows:

1. Installation of bathroom facilities and type of disposal system to be installed;
2. widening MacKenzie Lane to include a turn lane onto Route 236;
3. backlit signage and its permissibility;
4. extent and constitution of the wetland along MacKenzie Lane; and
5. the operation and maintenance of the business and site.

Subsequent to the June 25, 2020 meeting, the Board held a site walk to orient itself with the site elements. Major topics stemming from that site walk regarded the following:

1. The site’s traffic flow and circulation;
2. Location of, and proximity of utilities and natural features to the road;
3. Location and constitution of the wetland along MacKenzie;
4. Natural features to remain, removed and replaced on the site.

The Planning Board opened the public hearing at their July 23, 2020 meeting. The applicant, responding to Town staff comments from the June 25, 2020 meeting, designed a conceptual 'road expansion' depicting the widening of MacKenzie Lane to accommodate a right-hand turn lane onto Route 236. Before proceeding to an advance design, the applicant sought a preliminary endorsement from the Board to proceed with the road expansion without doing a comprehensive traffic study. The Board agreed with the condition that the remaining comments from the Department of Public Works enumerated in an email correspondent, dated July 23, 2020, be satisfactorily resolved. Other issues that were raised during the hearing regarded the soil composition and its ability to support the proposed building, appurtenant infrastructure as well as the stormwater design component and the permissibility of backlit signage and whether or not a bathroom is required by local and state code. Otherwise, the Board found the site plan to be in a satisfactory state. Due to the pandemic, the Board decided to continue the public hearing to the August 27, 2020 meeting so as to give the public more time to provide comments and the applicant adequate time to provide revise the plan.

At the August 27, 2020, meeting, the Board approved a preliminary site plan as they found the proposed plan resolved all the comments generated at the June 25, 2020 July 23, 2020 and site walk meetings with the exception of a few outstanding issues. To wit, the Board directed the applicant to dig further into the history of the site's usage and its soil characteristic to confirm: (1) the quality of the soils, and (2) the soil's ability to support the proposed infrastructure. Furthermore, the applicant was directed to submit a proposal for an alternative waste disposal system that would comply with state and local regulations, as a bathroom would be required for employees to use, and to confirm whether or not the drainage swale along MacKenzie Lane is considered a wetland.

### **Staff Review and Comments**

An updated plan set was submitted on September 3, 2020 that incorporated revisions as discussed at the August 27, 2020 meeting. The applicant is proposing to remove and most of the existing fill that the proposed structures will resided over with appropriate and clean material. CMA suggested that the applicant go further by removing more fill than proposed to ensure that all the soil the structures touch will be clean, which seems appropriate and reasonable given the goal is to make the site as less contaminated as possible.

As regards the ditch in questioned along MacKenzie Lane, it appears, based on its characteristics, that its essence indeed is a ditch and not a wetland, considering that it is 12 ft. in width and functions as a conveyance of water into the wetland north thereof. Turning to the waste disposal system, the applicant is proposing to install a incinerating toilet that will be used for employees only. Code Enforcement contacted the state to see if this type of system would be permissible in such a development and according to the state regulations, deference is given to the Local Plumbing Inspector in such cases. Conceptually, Code Enforcement agrees that this type of system may be permitted and more detail will need to be provided at the time a building permit is applied for. As for the water from the bathroom sink, Planning staff inquired and confirmed with the Local Plumbing Inspector that the water would be permitted to flow into the proposed holding tank storing the effluent from the car wash and an addition holding tank is unnecessary.

### **Recommendations**

This application appears to be complete and equipped for final site plan approval as planning staff and CMA agree that most of the characteristics of the site's design is satisfactory to move forward. The Board should present any remaining inquiries it may have for the applicant and discuss any additional conditions to be added if a vote to approve is considered. If the Board decides to vote for approval, the following conditions, in addition to the normally applied conditions, are recommend to be appended to the vote:

1. Prior to the issuance of a building permit, the applicant shall execute and record at the York County Registry of Deeds an easement with the Town of Kittery to widen the easement for Mackenzie Lane.

2. Prior to the issuance of a building permit, the applicant shall submit a revised site plan, to be reviewed and approved by the Town's consultant engineer, that depicts and directs the excavation and removal of the existing soils between the foundation walls under the building and the volume of material between the bottom of the wash water tanks and native soils, and replaced with clean granular soils, as described in a review letter by CMA Engineers Inc., dated September 16, 2020.
3. Prior to the issuance of a building permit, the applicant will provide writing confirmation from Maine Inland Fisheries and Wildlife that no animal life of special designation will be impacted by the proposed development.

### **Recommended motions**

Below are recommended motions based on how the Board would like to proceed. Again, procedurally, the Board needs to vote to continue, approve, approve with conditions, or deny.

#### ***Vote to continue***

*Move to continue the final site plan application dated March 5, 2020 and last revised on September 3, 2020 from owner/applicant Robert T. Brennan, Jr., for a 1,672 sf 1-story building proposed for a car wash on a 324,233 sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 289, Lot 25D) in the Commercial (C-2) Zone with the conditions as enumerated in 'Recommendations section of the Planner's Review Notes, dated September 24, 2020.*

#### ***Vote to approve***

*Move to approve the final site plan application dated March 5, 2020 and last revised on September 3, 2020 from owner/applicant Robert T. Brennan, Jr., for a 1,672 sf 1-story building proposed for a car wash on a 324,233 sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 289, Lot 25D) in the Commercial (C-2) Zone with the conditions as enumerated in 'Recommendations section of the Planner's Review Notes, dated September 24, 2020.*

#### ***Vote to deny***

*Move to deny the final site plan application dated March 5, 2020 and last revised on September 3, 2020 from owner/applicant Robert T. Brennan, Jr., for a 1,672 sf 1-story building proposed for a car wash on a 324,233 sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 289, Lot 25D) in the Commercial (C-2) Zone.*

Final Site Plan Review

**KITTERY PLANNING BOARD  
FINDINGS OF FACT  
for  
Route 236 / MacKenzie Lane  
Site Plan Review**

**UNAPPROVED  
M28 L25D**

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 Robert T. Brennan, Jr. requests consideration of a final site plan for a 1,672 sf 1-story building proposed for a car wash on a 324,233 sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 289, Lot 25D) in the Commercial (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering, Inc.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated \_\_\_\_\_;

| REQ'D | ACTION                                   | COMMENTS                       | STATUS   |
|-------|--|--------------------------------|----------|
| NO    | Sketch Plan Review                       | None.                          | N/A      |
| YES   | Site Visit                               | July 7, 2020                   | HELD     |
| YES   | Determination of Completeness/Acceptance | June 25, 2020                  | ACCEPTED |
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| YES   | Final Plan Review and Decision           | September 24, 2020             | PENDING  |

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (Hereinafter the "Plan").

1. Site Plan Review Application and supplemental materials, March 5, 2020 and last revised on September 3, 2020
2. Site Plan Kittery Car Wash Route 236 Kittery ME, Tide Water Engineering & Surveying , March 5, 2020 and last revised on September 3, 2020.
3. Wetland Delineation Tax Map 28, - Lot 25D, Route 236, Kittery Maine, Joseph W. Noel, March 2, 2020
4. CMA Engineering Inc., peer review letter dated, August 18, 2020 and September 16, 2020
5. Applicant Agent Response letters, Ryan McCarthy, P.E., P.L.S, dated May 6, 2020, July 31, 2020 and September 3, 2020

**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 and conclusions:

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| <b><u>FINDINGS OF FACT</u></b>   |
| 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:   |
| <b>A. Development Conforms to Local Ordinances.</b>  |
| <b>Standard:</b> <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> |
| <b>Finding:</b> The site plan application for a car wash development with associated utilities conforms to applicable Title 16 standards with the waivers and conditions of approval included herein.  |
| <b>Conclusion:</b> This standard appears to be met.  |
| Vote of __ in favor __ against __ abstaining   |
| <b>B. Freshwater Wetlands Identified.</b>  |
| <b>Standard:</b> <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>   |
| <b>Finding:</b> All wetlands have been identified and no impacts are proposed.   |
| <b>Conclusion:</b> This standard appears to be met.  |
| Vote of __ in favor __ against __ abstaining   |
| <b>C. River, Stream or Brook Identified.</b>   |
| <b>Standard:</b> <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>  |
| <b>Finding:</b> No rivers, streams, or brooks have been identified on site.  |
| <b>Conclusion:</b> This standard is not applicable.  |
| Vote of __ in favor __ against __ abstaining   |
| <b>D. Water Supply Sufficient. {and}</b>   |
| <b>Standard:</b> <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>   |
| <b>E. Municipal Water Supply Available.</b>  |
| <b>Standard:</b> <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>  |

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| <p><b>Finding:</b> The proposed development will not adversely impact the municipal water supply as indicated in a letter, dated March 3, 2020 from the Kittery water district.</p> <p><b>Conclusion:</b> This standards appears to be met.</p>   |
| <b>Vote of __ in favor__ against __ abstaining</b>  |
| <p><b>F. Sewage Disposal Adequate.</b></p>  |
| <p><b>Standard:</b> <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></p>   |
| <p><b>Finding:</b> The proposed car wash will use an alternative waste disposal system that does not require a septic system, leach field nor any associated subsurface infrastructure.</p>   |
| <p><b>Conclusion:</b> This standard appears to be met.</p>  |
| <b>Vote of __ in favor__ against __ abstaining</b>  |
| <p><b>G. Municipal Solid Waste Disposal Available.</b></p>  |
| <p><b>Standard:</b> <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></p>  |
| <p><b>Finding:</b> The proposed car wash is not connecting into the Town's sewer system.</p>  |
| <p><b>Conclusion:</b> This standard is not applicable.</p>  |
| <b>Vote of __ in favor__ against __ abstaining</b>  |
| <p><b>H. Water Body Quality and Shoreline Protected.</b></p>  |
| <p><b>Standard:</b> <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></p>                       |
| <p><b>Finding:</b> The proposed car wash is not located in the Shoreland or Resource Protection Overlay Zones.</p>  |
| <p><b>Conclusion:</b> This standard is not applicable.</p>  |
| <b>Vote of __ in favor__ against __ abstaining</b>  |
| <p><b>I. Groundwater Protected.</b></p>   |
| <p><b>Standard:</b> <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i></p>  |
| <p><b>Finding:</b> The proposed car wash will not adversely affect groundwater as the gray water from the wash station will be collected, held and pump from a holding tank, and the non-point source runoff from the parking lot will be collected and treated by stormwater infrastructure.</p> |
| <p><b>Conclusion:</b> This standard appears to be met.</p>  |
| <b>Vote of __ in favor__ against __ abstaining</b>  |
| <p><b>J. Flood Areas Identified and Development Conditioned.</b></p>  |
| <p><b>Standard:</b> <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</i></p>  |

*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.*

**Finding:** There are no flood-prone areas present.

**Conclusion:** This standard is not applicable.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**K. Stormwater Managed.**

**Standard:** *Stormwater Managed. The proposed development will provide for adequate stormwater management*

**Finding:** The proposed car wash is located on a 7.44-acre lot with a designed stormwater collection and treatment infrastructure that will provide for adequate stormwater management.

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**L. Erosion Controlled.**

**Standard:** *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.*

**Finding:** The contractor is following MDEP best management practices for erosion and sedimentation control with site work for the car wash

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**M. Traffic Managed.**

**Standard:** *The proposed development will:*

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*
2. *Provide adequate traffic circulation, both on-site and off-site.*

**Finding:** The increase in vehicular traffic generated by the car wash is mitigated by two elements: site design and the widening of MacKenzie Lane. Specifically, the site's layout is designed to allow for 11 cars to queue while waiting to use the car wash facility, and (2) the widening of MacKenzie Lane will permit an increase rate of access for right-hand turning traffic onto Route 236, thereby mitigating the queuing of the left-hand turning lane onto Route 236.

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**N. Water and Air Pollution Minimized.**

**Standard:** *The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:*

1. *Elevation of the land above sea level and its relation to the floodplains;*
2. *Nature of soils and sub-soils and their ability to adequately support waste disposal;*
3. *Slope of the land and its effect on effluents;*
4. *Availability of streams for disposal of effluents;*
5. *Applicable state and local health and water resource rules and regulations; and*
6. *Safe transportation, disposal and storage of hazardous materials.*

**Finding:**

1. All proposed development is located outside of a Flood Hazard Area.
2. Addressed in the previous standard on waste disposal.
- 3 thru 4. Not applicable to the proposed development.
- 5 thru 6. The applicant shall follow all state rules and regulations on removing gray water and any other hazardous byproducts from the site. In summary, the proposed car wash will not result in undue water or air pollution.

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**O. Aesthetic, Cultural and Natural Values Protected.**

**Standard:** *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:** During the initial investigation of the property, the applicant discovered there was a New England Cottontail Rabbit sighting on the property located on the northwest portion of the lot, far away from the proposed car wash location. Considering the proximity between the proposed development and the sighting location of the cotton tail, it appears the car wash will not have an adverse impact on the location of that sighting. The applicant has reached out to Maine Inland Fisheries and Wildlife and has yet to receive a response on the locations significance. The proposed car wash appears it will not impact any significant aesthetic, cultural or natural values that require protection.

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ abstaining

**P. Developer Financially and Technically Capable.**

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

**Finding:** The applicant has received financing to construct the proposed car wash.

**Conclusion:** This standard appears to be met.

Vote of \_\_ in favor \_\_ against \_\_ 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:**

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1. Section 16.8, Table 1c. 5ft. wide sidewalks not to be required along MacKenzie Lane.

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

4. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan unless conforming with the provision under §16.10.9.1.2, §16.10.9.2 and §16.10.9.3.
5. Prior to the issuance of a building permit, the applicant shall execute and record at the York County Registry of Deeds an easement with the Town of Kittery to widen the easement for Mackenzie Lane
6. Prior to the issuance of a building permit, the applicant shall submit a revised site plan, to be reviewed and approved by the Town's consultant engineer, that depicts and directs the excavation and removal of the existing soils between the foundation walls under the building and the volume of material between the bottom of the wash water tanks and native soils, and replaced with clean granular soils, as described in a review letter by CMA Engineers Inc., dated September 16, 2020.
7. Prior to the issuance of a building permit, the applicant will provide writing confirmation from Maine Inland Fisheries and Wildlife that no animal life of special designation will be impacted by the proposed development.
8. All Notices to Applicant contained in the Findings of Fact (dated: 9/24/2020).

**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. 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 \_\_ in favor \_\_ against \_\_ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON \_\_\_\_\_

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Dutch Dunkelberger, Planning Board Chair

**Appeal of Decision:**

1. 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.