

ITEM 1

**Town of Kittery
 Planning Board Meeting
 August 25, 2022**

ITEM 3 – 41 Route 236 – Preliminary Site Plan Review

Action: accept plan as complete; set site walk; set public hearing; continue, approve, or deny plan. Pursuant to 16.4 *Land Use Regulations*, 16.4.20 *Special Exception Use Request*, 16.5.32 *Marijuana Business*, and 16.7 *Site Plan Review* of the Town of Kittery Land Use and Development Code, owner LaPierre Properties, LLC and applicant Well Field 44, LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf Marijuana Business with appurtenant infrastructure and a wetland alteration of 1,367-sf, located on real property with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Accepted May 26, 2022	N/A
YES	Site Visit		TBD
YES	Preliminary Plan Review Completeness/Acceptance	TBD Aug 25, 2022	Pending
YES	Public Hearing		TBD
YES	Preliminary Plan Approval		TBD
YES	Final Plan Review and Decision		TBD

Project Introduction

41 Route 236 (“Project”) is situated in the Commercial-2 (C-2) and Residential-Suburban (R-S) zoning districts with the majority being in the C-2 zone. The 4.45-acre lot fronts Route 236 from the west and is abutted by vacant lots, single-family residential, and commercial uses. The natural characteristics in and around the site consist of wetlands and forested areas. The lot has significant wetlands (see Michael Cuomo’s letter to Brian Neilson, dated November 23, 2021), and a portion was filled to accommodate its current use as boat storage. The boat storage use received approval in 2009 from both the Town Code Enforcement Officer and Maine Department of Environmental Protection (“MDEP”). The MDEP approval was in the form of a ‘stormwater permit by rule’, as the applicant altered less than 4,300-sf of wetland and the Town approval was through the Business Use Change application process.

The submitted preliminary plan proposes to redevelop the current boat yard storage use to a Marijuana Business, specifically an adult use retail marijuana store. The proposed use is a special exception use, which requires the Board to consider additional review criteria as found 16.7.10.D *Review Process and Submission Requirements* and 16.2.12.F *Basis of decision*.

30 What has changed: The applicant is proposing to build a 1,034-sf retail store with now 13 on-site parking
 31 spaces, including one ADA-compliant space. The additional parking proposed on the adjoining property to
 32 the south has been dropped (pertinent material provided in the cover letter from Mike Sudak) because there
 33 are no parking spaces to spare at that location. Instead, a travel way wraps around the proposed building,
 34 providing full circulation with groups of four, or in one case five, parking spaces located on the east, west
 35 and north sides of the structure. The number of parking spaces required is 6 (1 space per 175 feet of floor
 36 space) so parking is over twice as much as is required.

37 A proposed stormwater detention pond lies immediately to the south of the proposed building. The existing
 38 gravel driveway now used for access will be abandoned, the fill removed and the area restored to the
 39 wetland’s original elevation and function. This new area of approximately 2,500 sf will be added to the
 40 10,500 sf to the west that the applicant has proposed for restoration on earlier plans, for a total of about
 41 13,000 sf of wetland restoration. A wetland restoration plan has been included in the submission. All access
 42 will be via the new curb cut proposed. In order to provide the new access, approximately 1,367 (instead of
 43 3,001-sf on the last plan) of wetlands are proposed to be altered (filled). The newest application also
 44 includes a lighting/photometric plan.

45 Updates on traffic: The applicant has engaged a traffic engineer to look at summer traffic volumes (the
 46 first traffic study was done in December and for a larger facility) to answer the Board’s questions about
 47 right and/or left-turning lanes on Rt 236. The Traffic Impact Analysis is included in this packet. It appears
 48 that trip generation and analysis for the retail store do not warrant right or left turning lanes. The
 49 application includes the applicant’s engineer’s email to the traffic engineer which also states that he has
 50 reached out to MaineDOT but hasn’t heard back as of that writing.

51 Updates on Wetland Filling: At the last Board meeting, the applicant was asked to provide a complete
 52 history of the wetland filling that has occurred at the site. The previous owner has supplied that history
 53 which is recounted in the cover letter to the Board. Pertinent documents are supplied in the application.

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§16.3 Definitions	
Term	Definition
Wetland	Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.
Wetland Alteration	Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude: A. An activity of installing a fence post or planting shrubs by hand; B. Alteration of an existing structure such as a bench or handrail; and C. The construction, repair or alteration of a structure with minimal impact such as a nesting box, pasture fence or staff gauge.

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56 What is not included:

- 57 • The wetland alteration application is not included in the submission although a restoration plan is.
- 58 • The photometric plan is difficult to read. There are what appears to be symbols for lighting on the
- 59 plan and the cutsheets for two types of lighting are included but it isn’t clear exactly which lighting
- 60 models are being proposed, particularly in the case of the McGraw-Edison luminaires. Pole-

61 mounted? And if so, how high will the poles be? Since the site appears to be below the highway,
62 the pole height may be an important detail. The Grading and Utilities plan also shows lighting
63 locations.

- 64 • Building elevation drawings were not included in this submission. Has anything changed with the
65 building since the site design changed?
- 66 • No landscaping plan was submitted. Since a sign is proposed

67 The Board heard the application as a preliminary plan on July 14 and continued it, following acceptance of
68 the sketch site plan at the May 26, 2022 meeting. The preliminary plan process serves to give the Board a
69 deeper-dive into the details of the proposed development, informed by the additional materials such as
70 traffic impact analyses. Most decision-making occurs during this phase and the Board can give the applicant
71 direct guidance and feedback.

72 **Staff Review**

73 *Plan Review Requirements:*

74 This preliminary plan submittal meets Preliminary Plan Review requirements (§16.7.10.C(4)), Land
75 Use Zone dimensional requirements (§16.4.20), parking requirements (§16.7.11.F), and the land-use
76 based marijuana business requirements (§16.5.32):

- 77 • Lot size exceeds the 20,000-sf required.
- 78 • Frontage meets the minimum requirement (150 ft).
- 79 • Setbacks are met for the C-2 zone (50 ft front, 30 feet side and rear).
- 80 • Parking meets the minimum on-site requirements (1 space per 175 sf gross floor area for retail),
81 providing 13 spaces (including 1 handicapped space) where approximately 6 are required (1034 sf
82 gross floor area / 175 = 5.9 spaces required). *ADDITIONAL PARKING ANALYSIS BELOW*
- 83 • The proposed building is set 100 feet back from the edge of the wetlands.
- 84 • Water and wastewater connections are shown.
- 85 • Stormwater infrastructure are shown on the plans but have yet to be reviewed by the Town's peer
86 review engineer.
- 87 • The proposed exterior wall of the building is greater than 1,000 feet from the daycare on Route
88 236.

89 *Traffic Analysis:*

90 The applicant has provided an updated traffic analysis from Sewall, a traffic engineering firm,
91 which reflects the proposed building's smaller size. Sewall shows that the trip generation of this
92 retail marijuana use, based on the building size, is even less than the first analysis showed when
93 the building was larger. The analysis shows that the level of traffic does not warrant either a right
94 or a left turning lane based on MaineDOT warrant charts. With the lessening of trip numbers,
95 Sewall is likely to contend that this project does not rise to the threshold required for a
96 traffic movement permit (TMP) from the Maine Department of Transportation (MaineDOT). The
97 applicant should be prepared to discuss the changes to the TIA based on Sewall's latest submission.

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100 *Wetland Alteration:*

101 The existing site contains wetlands on nearly all sides of the current boat yard use, which is itself
 102 situated on wetland fill. The wetlands were delineated by Michael Cuomo, Maine Soil Scientist, on
 103 November 22, 2021. The applicant proposed impacts to the existing wetlands in order to construct
 104 a new driveway entrance from Route 236. This would impact 1,367 square feet of wetlands
 105 (reduced from 3,001 sf of impact). The applicant will be required to gain DEP approval and pay
 106 wetland impact fees to the Town and State, if approved.

107 As the previous plan indicated, the applicant also proposes to remove 10,500 square feet of previous
 108 fill on the western edge of the property. This is the area that was previously filled for the boat yard
 109 use. Staff believes this is a positive action that could have benefits to abutting properties. In
 110 addition, as previously stated, the applicant also proposes to remove the fill and restore the 2,500
 111 square foot area where the currently existing driveway exists.

- 112 • A wetland restoration plan was submitted and contains information on fill removal, grading and
 113 replanting which the applicant proposes to insure the improved health of this wetland. Staff
 114 noted when discussing it with the applicant's engineer that a few more details may be needed
 115 (see *Additional Review Items* below).

116 In an earlier submission, the applicant included a letter from Maine DEP indicating no significant
 117 impacts to New England cottontail rabbits from this project. Staff provided the Beginning with
 118 Habitat map in that same packet for reference. In his letter also from an earlier submission, Mr.
 119 Cuomo – the soil scientist – suggested the applicant have the site investigated for vernal pools in
 120 the spring at two locations: one in the northern area of the lot and one along the southern boundary.
 121 Mr. Cuomo did return to investigate but not until June 7, 2022, which is outside the vernal pool
 122 evaluation season. The applicant has thus labeled these areas “potential vernal pools” on the plans.
 123 The applicant states that Maine DEP guidelines allow up to 25% disturbance within a 250-foot
 124 boundary of vernal pools of special significance and that the proposed project disturbs less than
 125 that threshold.

- 126 • Does the applicant contend there is no further need for Natural Resources Protection Act
 127 (NRPA) permitting?
- 128 • Staff would like information on how much disturbed area is within the 250-foot buffer of each
 129 “potential” vernal pool as a plan note, and should be prepared to discuss this with the Planning
 130 Board.

131 *Additional Review Items:*

132 Planning Department staff held a Technical Review Committee (TRC) meeting with Town
 133 department heads several weeks ago and discussed the issues raised with the applicant's engineer.
 134 The notable TRC comments were:

- 135 • The Fire Chief wants an additional hydrant located more proximate to the property as the nearest
 136 one is on the corner of Martin and Fernald Roads (Note #11 on Sheet 1). The applicant's
 137 engineer agreed and will place the hydrant in the next iteration of the plans.
- 138 • The RCP (reinforced concrete pipe) shown on Sheets 2 and 3, is the pipe that allows wetland
 139 flowage from west to east underneath Route 236. There was a concern that the pipe could be
 140 affected by the development. The TRC was looking at the earlier plans with the second driveway
 141 used for off-site parking access but staff remained concerned that the pipe could be affected by

142 the cut and removal of fill in the effort to restore that area back to wetlands. The applicant's
143 engineer agreed that more details would clarify but the pipe will remain viable (not left "high
144 and dry" above the actual restored elevation).

- 145 • The Fire Chief and DPW were not satisfied with the location of the proposed entrance/exit
146 (looking again at the earlier plans with the southern driveway being used to access additional
147 parking) but no alternate location was proposed. The applicant's engineer and staff discussed
148 this and agreed that the updated TIA and plans may provide some assurance about the curb cut
149 location.

150 The TRC will review the revised plans – either this iteration, or if there are substantive changes
151 after discussion at this August 25th Planning Board meeting, the next submission.

152 Similarly, Planning staff will send the plans for review by CMA, either this set or the next
153 submission, whichever seems most suitable.

154 **Next Steps**

155 The Board voted to accept the sketch plan at the May 26, 2022 meeting. The applicant submitted plans for
156 Preliminary Site Plan Review along with a Wetland Alteration Application for the July 14th meeting which
157 the Board continued.

158 The Board will want to consider the following items:

- 159 • Whether the preliminary plan appears to be complete enough to accept, which consideration
160 includes that the plan generally meets the Title 16 standards, and that questions have been answered
161 or will be answered during subsequent reviews or meetings.
- 162 • If the Board is satisfied with the above item, the Board may wish to vote to accept the application
163 and plans.
- 164 • If both items above are greenlighted, the Board should also decide whether or not a site walk will
165 take place or when a public hearing is to be scheduled. A Major Site Plan requires a public hearing
166 to be held after a preliminary plan is accepted, so the Planning Board will need to determine when
167 that is scheduled.

168 **Recommended Motions**

169 *Motion to accept the preliminary plan:*

170 Move to accept the preliminary plan application by owner LaPierre Properties, LLC and applicant Well
171 Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana Business
172 with appurtenant infrastructure and a wetland alteration of 1,367-sf, located on real property with the
173 address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

174 *Motion to accept the preliminary plan with conditions:*

175 Move to accept the preliminary plan application by owner LaPierre Properties, LLC and applicant Well
176 Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana Business
177 with appurtenant infrastructure and a wetland alteration of 1,367-sf, located on real property with the
178 address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district with the condition(s)
179 [conditions to follow].

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181 *Motion to continue the sketch plan:*

182 Move to continue the preliminary plan application by owner LaPierre Properties, LLC and applicant
183 Well Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana
184 Business with appurtenant infrastructure and a wetland alteration of 1,367-sf, located on real property with
185 the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district

186 *Motion to schedule site walk:*

187 Move to schedule a site walk on (insert date) at (insert time) on real property
188 with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district
189 in regards to the Marijuana Business and wetland alteration application submitted by owner
190 LaPierre Properties, LLC and applicant Well Field 44, LLC.

191 *Motion to schedule a public hearing:*

192 Move to schedule a public hearing at the _____, 2022 Planning Board meeting for
193 owner LaPierre Properties and applicant Well Field 44, LLC, requesting for approval for a special
194 exception use to construct a 1,034-sf Marijuana Business with appurtenant infrastructure and a
195 wetland alteration of 1,367-sf, located on real property with the address of 41 Route 236, Tax Map
196 29, Lot 1, in the Commercial 2 (C-2) zoning district.

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