

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

APPROVED
January 14, 2010

Meeting called to order at 6:08 p.m.

Board Members Present: Russell White, Michael Luekens, Ernest Evancic, George Burke, Scott Lincoln, David Kelly, Joseph Carleton

Members absent: 0

Staff: Gerry Mylroie, Town Planner; Mike Asciola, Assistant Planner

Chairman White presented a certificate of appreciation to former Planning Board member, Scott Mangiafico.

Minutes: December 17, 2009 Planning Board Meeting

Mr. Luekens moved to accept the minutes as amended

Mr. Evancic seconded

Motion carries

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Amendments to Title 16 Land Use and Development Code – Shoreland, and Related Zoning Provisions – Public Hearing and Recommendation to Town Council for Adoption –

The mandatory Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt shoreland/resource protection zoning law consistent with, or no less stringent than, the minimum requirements in the Act and guidelines. A proposed amendment to Kittery's Title 16 Land Use Development Code including the Zoning Map incorporates the requirements into the Kittery Municipal Code. The amendment must reviewed by the Planning Board and recommended to the Town Council for adoption. In working with the Town Council's Ordinance Review Committee to improve administrative efficiency, clarity and eliminate redundancy, re-formatting of the Planning Board's recommended amendments is proposed. Additionally some substantive changes are recommended to improve the working relationship between the Planning Board and Zoning Board of Appeals. Finally the Zoning Map must be amended consistent with the Planning Board's recommendation to the Council. Overall, incorporating State recommendations for the Shoreland Zoning includes:

- Amendment to Chapter 16.04 – General;
- Amendment to Section 16.08.20 – Definitions;
- Amendment to Section 16.12.010 – Purpose
- Amendment to Section 16.12.020 – Establishment of Zones
- Amendment to Section 16.12.090 – Conservation Zone
- Amendment to Section 16.12.160 - Shoreland Overlay Zone,
- Amendment to Section 16.12.170 - Commercial Fisheries/Maritime Uses Overlay Zone
- Amendment to Section 16.12.180 - Resources Protection Overlay Zone;
- Amendment to Chapter 16.16 – Administration and Enforcement;
- Amendment to Chapter 16.24 – Appeals, Special Exceptions and Variances;
- Amendment to Chapter 16.32 – Design and Performance Standards;
- Amendment to Chapter 16.28 – General Development Requirements;
- Delete Section 16.32.490 – Shoreland Zoning; and
- Amend previously recommended Chapter 16.34 – Shoreland Zoning.
- Amendment to Chapter 16.37 – Marine Related Development

Chairman White noted Public Hearings for Item 1 and Item 2 will be held concurrently, and read each item. **The Public Hearing opened at 6:17 p.m.**

Mr. Mylroie explained Item 2 is embedded within the language of Item 1, but needs to be reviewed and acted upon separately to meet State guidelines.

Milton Hall pointed out areas within the proposed ordinance under Chapter 16.37, *Marine-Related Development*. Mr. Hall noted the following:

1. Section 16.37.10.A. – KPA approval extends from *navigational tidal waters*, not water body as stated.
2. Section 16.37.020.A. – Applications for floats should not be included as part of the Town Planner's review authority.
3. Same section – The KPA historically received the original application so they were aware of what applications were under review for completeness by the Town Planner. This process has been removed from the new ordinance language.
4. Section 16.37.020.A. – A permit from the *Maine Historical Preservation Commission* is also required, and has been omitted in the new ordinance language.
5. Section 16.37.020.C. – Request this section be amended to as #3, above.
6. There is a section within the ordinance referencing *Spring Tide* (could not locate). There is no definition for Spring Tide, so this should be removed.
7. Section 16.24.030.A.& B. – Appeals of Planning Board and ZBA decisions to Superior Court must be made within 45 days. Port Authority decisions require appeals within 30 days.

Scott Mangiafico, asked about Section 16.37.020.D.10. *A residential lot with an accessory use pier, ramp and float system with a float system area exceeding two hundred (200) square feet must have one off-street parking space for each one hundred (100) square feet of float area.* Does this mean *in addition* to the 200 square feet of float area, or if there's a float area of 201 square feet and a residence, how many parking spaces would be required? The KPA has recommended this language be removed. A typical float is 10 x 20, but some are 400 square feet. **Mr. Mangiafico** added parking on Badgers Island is an issue, and strict application could make this unfeasible, also creating asphalt parking areas and subsequent runoff. Board members discussed this item, and felt review and application could be discretionary, perhaps by recommendation from the Town Planner to the Port Authority.

Chairman White stated Board members will further discuss changes to Items 1 and 2 following review of other agenda items, and **closed the Public Hearing on items 1 and 2 at 6:34 p.m.**

[Board discussion of Items 1 & 2 following Planner's Time]

Mr. Mylroie explained the problems with the existing ordinance, including redundancies, location and placement of definitions and sections (subdivisions), consolidation of like sections, review processes, design and performance standards, etc. **Chairman White** stated he was concerned about how these revisions have developed, and would not be able to say he fully understood them all, but were developed by the Planner and the ORC. **Mr. Carleton** concurred, noting the ordinance badly needed reorganization, but this reorganization required so many changes it is difficult to comprehend them all in the format under review. Even following this process, there will certainly be additional modifications on the final product. **Chairman White** suggested it is time to move it along to Council, though he could not claim to be an expert on the final product. **Mr. Kelly** concurred with other members and the recommendation to forward this draft to Council. **Mr. Carleton** asked the Planner if there were substantial changes to this document that had not been previously discussed. **Mr. Mylroie** said there were not, it is primarily organization and re-ordering of sections. **Chairman White** said they must place their faith in the work of the Planner and staff, and will adjust to the changes as time moves along. **Mr. Burke** indicated a concern with elimination of a separate permitting process for wetlands alteration as required by the state. **Mr. Mylroie** stated that he thought the state would allow flexibility in this area due to the existing town wetland review requirements that would not be eliminated.

Mr. White moved to forward Part 2 of 2 of this ordinance with the discussed changes to subdivision definitions, Findings of Fact requirements, development review thresholds, etc. to the Kittery Town Council for review and adoption.

Mr. Kelly seconded

Motion carries unanimously

Mr. Carleton moved to forward the Amendments to Title 16, Shoreland and Related Zoning Provisions (Part 1 of 2), to the Kittery Town Council, noting the recommendations of Milton Hall for consideration, recommending its adoption.

Mr. Kelly seconded

Motion carries unanimously

[**Mr. Burke left the meeting at 9:15 p.m.**]

ITEM 2 - Amendment to Kittery Title 16 Land Use and Development Code – Resource Protection Overlay Zone – Public Hearing and Recommendation to Town Council for Adoption –

The mandatory Maine Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt resource protection zoning law consistent with, or no less stringent than, the minimum requirements in the Act and in the guidelines. A proposed amendment to Kittery's Title 16 Land Use Development Code including the Zoning Map incorporates the requirements into Kittery's Municipal Code. The amendment must be reviewed by the Planning Board and recommended to the Town Council for adoption.

Mr. Carleton moved to forward the Amendment to Title 16, Resource Protection Overlay Zone, embodied in the text of Part 1 and Part 2 of the Shoreland and Related Zoning Provisions, including the Official Zoning Map, to the Kittery Town Council, recommending their adoption.

Mr. Lincoln seconded

Motion carries unanimously by all members present

ITEM 3 - When Pigs Fly/Pizza Restaurant – Site Plan Review – Public Hearing and Plan Review.

Owners, Andrew and Ron Siegel, propose an approximately 2,000 square feet addition to an existing building with 1,000 square feet for a limited seating restaurant as an extension of the When Pigs Fly retail business. The proposed expansion is located on US Route 1, in the Mixed Use (MU) zone, and recorded as Map 60 Lot 22. The owner's agent is Thomas Harmon, PE with Civil Consultants.

The Public Hearing opened at 6:35 p.m.

Mr. Mylroie summarized Board activity to date, summarized the site plan proposal, and advised the Board of actions necessary. Draft Findings of Fact were distributed to the Board members.

There were no public comments on this item. **The Public Hearing closed at 6:44 p.m.**

Mr. Carleton moved to grant waivers from Section 16.32.390.G Stormwater Drainage, and Section 16.32.470.C. Erosion Prevention.

Mr. Burke seconded

Motion carries unanimously

Mr. Luekens asked about the letter from Public Works regarding traffic. Because of the transition in Public Works, the letter has not been received, but the Town Planner will retrieve the necessary documentation. **Mr. Burke** asked about lighting on the property and its impact on the adjacent mobile home park. **Mr. Mylroie** stated the lighting plan is in compliance with the ordinance. **Chairman White** asked if the landscape plan was in compliance with the ordinance and parking requirements for buffering. **Mr. Mylroie** stated review was done by CMA and the plan is in compliance.

Chairman White read the Findings of Fact as follows:

WHEREAS, Owners Andrew and Ron Siegel, propose an approximately 2,000 square feet addition to an existing building with 1,000 square feet for a limited seating restaurant as an extension of the When Pigs Fly retail business. The proposed expansion is located at 445 US Route 1, in the Mixed Use (MU) Zone, and recorded as Map 60 Lot 22. The Owner's agent is Thomas Harmon, PE with Civil Consultants.

NOW THEREFORE, based on the entire record before the Board and pursuant to the applicable standards set out in the Land Use and Development Code, the Board makes the following factual findings as required by Section **16.36.070.C.1**.

Findings of Fact

1. a. **Pollution.** The proposed development will not result in undue water or air pollution.
Vote of 7 in favor 0 against 0 abstaining
- b. **Sufficient Water Supply.** The proposed development has sufficient water available for the reasonably foreseeable needs of the development.
Vote of 7 in favor 0 against 0 abstaining
- c. **Municipal Water Supply.** The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.
Vote of 7 in favor 0 against 0 abstaining
- d. **Erosion.** 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.
Vote of 7 in favor 0 against 0 abstaining
- e. **Traffic.** The proposed development will 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. Furthermore, the proposed development will provide adequate traffic circulation, both on-site and off-site.
Vote of 7 in favor 0 against 0 abstaining
- f. **Sewage Disposal.** The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.
Vote of 7 in favor 0 against 0 abstaining
- g. **Municipal Solid Waste Disposal.** 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 utilized.
Vote of 7 in favor 0 against 0 abstaining
- h. **Aesthetic, Cultural and Natural Values.** 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.
Vote of 7 in favor 0 against 0 abstaining
- i. **Conformity with Local Ordinances and Plans.** The proposed development conforms to duly adopted subdivision regulations and ordinances, the comprehensive plan, and the land use and development codes. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
Vote of 7 in favor 0 against 0 abstaining
- j. **Financial and Technical Capacity.** The developer has adequate financial and technical capacity to meet the standards of this section.
Vote of 7 in favor 0 against 0 abstaining

- k. **Surface Waters** – Outstanding River Segments. Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in MRSA Title 38, Chapter 3, Subchapter I, Article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
Vote of 7 in favor 0 against 0 abstaining
- l. **Ground Water.** The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
Vote of 7 in favor 0 against 0 abstaining
- m. **Flood Areas.** 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.
Vote of 7 in favor 0 against 0 abstaining
- n. **Freshwater Wetlands.** 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. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;
Vote of 7 in favor 0 against 0 abstaining
- o. **River, Stream or Brook.** 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 MRSA Title 38, Section 480-B, Sub-section 9;
Vote of 7 in favor 0 against 0 abstaining
- p. **Stormwater.** The proposed development will provide for adequate stormwater management;
Vote of 7 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact as directed in Planning Board discussion and based on these Findings determines the proposed project will have no significant detrimental impact, and the Kittery Planning Board hereby votes to grant Final Approval for the "When Pigs Fly" Site Plan at the above referenced property, contingent upon the following conditions per **Title 16.36.070.D., Conditions of Approval.**

Conditions of Approval

1. Prior to the issuance of building permits for the proposed development, the Applicant must have met all conditions of this agreement, and must have submitted copies of the recorded documents and copies of the recorded mylar map to the Town Planner.
2. Prior to beginning of construction, the applicant, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of the right-of-way improvements and site erosion and stormwater stabilization.
3. The Applicant and Contractor(s) shall adhere to the Best Management Practices documented in the Stormwater Management and Site Plan for this site.
4. Prior to the beginning of construction, the Applicant shall establish an escrow account with the Town Manager and Planner in the amount of the estimated inspection and review fees and pay all applicable Planning Application fees.
5. This Approval by the Planning Board constitutes an agreement between the Town and the Applicant/Developer, incorporating as elements the Project Plans and Reports and the Planning Board Findings of Fact, and any Conditions of Approval imposed by the Planning Board.
6. The Applicant shall contract a private waste disposal service for the removal of solid waste.

7. A street “entrance only” sign shall be located at the northern entrance and a “no entrance” sign shall be located at the southern entrance.
8. An easement shall be recorded whereby the applicant grants reciprocal vehicular and pedestrian access to the adjoining property owner to the south, enable future vehicular right-of-way and single Route 1 entrance access and egress at the front of the site and reciprocal access and egress at the rear of the site’s southerly property lines, if and when the southerly property expands or changes its business use or constructs pedestrian ways. The purpose is to improve public safety, off street vehicular and pedestrian movement between adjacent land uses. All access ways shall be maintained by the property owner. Said easements shall provide for shared parking to meet reciprocal parking requirements. Said easements shall be reviewed and approved by Town Attorney and Town Planner prior to recording.
9. A six foot wide, concrete pedestrian walkway shall be installed and maintained upon development of an adjacent property’s walkway, or sooner at the owner's discretion.
10. The plant materials chart and buffer provisions on sheet L1 shall be updated and submitted to the Town Planner for review prior to the recording of the plans.
11. A fire lane must be marked on the plans adjacent to the west side of the building. Signage must be placed on the building, and asphalt markings painted to indicate no parking in the fire lane.
12. Signing of this instrument by the Planning Board constitutes approval. A period of one year is hereby set forth for the guaranty time within which required improvements must commence and within two years be completed.
13. A Department of Public Works approval letter to meet the requirements of ‘e’ above shall be obtained and included in the applicant’s file.

By vote of the Planning Board herein, the Chairman is authorized to sign the Final Plan and these Findings of Fact on behalf of the Planning Board.

Vote of 7 in favor 0 against 0 abstaining

ITEM 4 - Mitchell Elementary School Addition – Site Plan Amendment – Sketch Plan

Review. Owners, Town of Kittery School Board propose an approximately 9,800 square feet gross floor area addition to the existing school building. The proposed expansion is located on School Lane in the Residential - Kittery Point Village (R-KPV) Zone, and recorded as Map 27 Lot 20 and Map 36 Lot 5. The owner’s agent is Ken Wood, PE, with Attar Engineering and Mike Lassel, AIA, with Lassel Architects.

Mike Lassel explained, with the closure of Frisbee School, both Mitchell Elementary and Shapleigh Middle schools are expanding to meet the community’s needs. He described the expansion plans, parking areas, buffering and lighting issues. **Lew Chamberlain, Attar Engineering**, discussed stormwater control measures, a traffic study and additional parking. **Chairman White** suggested the parking be reviewed carefully to avoid excessive impervious surfaces, mentioning the vacant church parking area as a possible parking area. **Gerry Mylroie** explained the relationship between the adjacent fire station parcel and the need for a public safety antenna at the site, and how the Council may review such an arrangement. Chief **O’Brien** stated he felt the traffic area at the school should be left alone to prevent problems with fire fighting accessibility. A site walk was scheduled for February 18 at 4:30 p.m.

ITEM 5 - Shapleigh Middle School Addition – Site Plan Amendment – Sketch Plan Review.

Owners, Town of Kittery School Board propose an approximately 10,200 square feet gross floor area addition to the existing school building. The proposed expansion is located on Stevenson Road and Manson Road in the Residential – Rural (R-R) and Residential – Suburban (R-S) Zones, and recorded as

Map 37 Lot 3. The owner's agent is Ken Wood, PE with Attar Engineering and Mike Lassel, AIA with Lassel Associates.

Mike Lassel explained the proposed addition will be placed in an existing detention area, and will include a rain garden for water retention as well as class instruction. Lighting for the proposed parking area alongside an abutting residential parcel will be screened. **Joe Cheever, Attar Engineering**, addressed civil engineering issues including sewer, water, sidewalk additions, emergency access, additional parking and drop-off parking. **Chairman White** noted the area is residential and felt the location of the additional parking area is not a good one as vegetation would have to be removed. **Mr. Mylroie** suggested sidewalks or paths be considered. Board members noted school faculty park on grass throughout the parcel, and discussion followed regarding possible areas for new parking. A site walk was scheduled for Thursday February 4 at 4:00 p.m.

ITEM 6 - Planning Board Business Plan 2010 - Initial Discussion about Goals and Implementation.

On February 1, 2010 at 6:00 p.m., the Council will conduct a workshop on goal setting, including updating of the Comprehensive Plan.

Topics discussed for consideration:

1. Tourism
2. PNSY – How can the town and shipyard benefit one another?
3. Joint workshops with Council
4. Comp plan update
5. Staff feedback on Board approvals and conditions
6. Pedestrian and bike accessibility plan
7. Prioritize workshop topics
8. Connect Foreside and State Road to the traffic circle
9. Promote growth while retaining a family friendly community

PLANNER'S TIME –

1. Spruce Creek Subdivision – Discussion regarding access, ROW, parking, and circulation with applicant's agent, Tom Harmon.

The Planning Board meeting of January 14, 2010 adjourned by rule at 10:00 p.m.

Submitted by Jan Fisk, Recorder – January 20, 2010