

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

**APPROVED**  
April 8, 2010

Meeting called to order at 6:12 p.m.

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

Members absent: George Burke

Staff: Gerry Mylroie, Town Planner

Minutes: March 25, 2010 Planning Board Meeting

**Mr. Luekens moved** to accept the minutes as amended

**Mr. Carleton seconded**

**Motion carries with 4 in favor, with 2 abstentions**

Board members scheduled a Site Walk for the Dennett Road subdivision for 5:00 p.m. on Thursday, April 15, 2010

**PUBLIC COMMENT** – There was no public comment.

**ITEM 1-Shapleigh Middle School Addition – Site Plan Amendment – Final Plan Review/Decision (continued).** 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 Rural Residential – (R-R) and Suburban Residential – (S-R) 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.

**Mr. Mylroie** stated everything appeared to be in order with this application. The parking issue was addressed by the School Department in an event parking policy approved by the Town Manager and the School Superintendent. Currently, town ordinance prohibits on-street parking in the area under review. **Chairman White** re-opened the meeting for public comment. **Dave Linscott** thanked the Board and the town for taking the time to address the neighborhood concerns. His informal survey of parents indicated that participation in off-site shuttling for school events was not positive. Any sidewalks requiring easements and on-street parking of any kind were not well received by neighbors. Road condition and thru traffic problems continue to be of concern, and solutions need to be found.

**Chairman White** noted the follow-up review of the policy’s effectiveness after one year was not included in the policy. **Mr. Mylroie** stated this could be included in the official policy. In discussions with the Police Chief, local traffic only signs on Wilson Road, at Dana and on Route 236 could be posted upon Council approval. **Mr. Luekens** asked if the town had any formal agreement in 1993 regarding parking. **Mr. Mylroie** guessed there may have been something in the Findings or conditions from 1993. **Chairman White** recalled parking was very tight, but does not recall specific allowances for the on-street parking. **Mr. Linscott** stated there was substantial discussion in 1993 regarding parking, but does not recall a printed document regarding parking restrictions. **Mr. Wood** stated the identified parking on the plan, with granite curbing, would help alleviate parking in front of driveways and on front yards. **Mr. Luekens, Mr. Carleton and Chairman White** questioned whether the Board can approve a plan that represents parking in an area where it is not allowed. **Mr. Lassel** stated the parking policy has been emailed to all parents by the Principal, and the school has a sophisticated communication program set-up with teachers and parents whereby they could advise them of parking restrictions. **Mr. Wood** reminded the Board the shuttle and enforcement program in SAD 35 has been successful and believes the same program would work in Kittery. **Mr. Kelly** stated the Council needs to be involved with the parking problem and review future options. **Mr. Luekens** felt the parking issues continue to be of concern to him. **Chairman White** suggested the Board should require the parking policy be reviewed annually to determine its effectiveness and impact on the neighborhood. **Mr. Linscott** reminded the Board there is an opportunity for the town to purchase property now that may not be available in the future. **Mr. Wood**

noted there is no discussion by the town or the school department regarding the purchase of additional property at this time. **Mr. Lassell** stated there is sufficient parking to meet ordinance requirements. The policy requires the few events with more than 140 cars provide off-site parking. There are 170 spaces provided on the plan. **Chairman White** stated the prior plan met ordinance requirements as well, but did not work over the years. The Board is clear in approving the plan based on ordinance requirements alone. **Mr. Luekens** noted the off-site spaces included in the plan are not legal on Stevenson, and is uncomfortable approving a plan illustrating these spaces. **Mr. Lassell** explained without this plan and the policy the larger events, such as Special Olympics and voting, cannot be held at the school. Discussion followed regarding Council review, parking policy recommendation and annual review, enforcement, off-site improvement, and conditions of approval. **Maxine Zangari**, Stevenson Road, spoke regarding the impact parking has on personal property along Stevenson Road, traffic speed, lack of enforcement, increased traffic with buses and special events, and restriction of emergency vehicles due to illegal parking. **Chairman White** explained the Board would never have approved the existing intensification of use at the school without improvements, and this intensification has a detrimental impact on property values. Creating clearly defined parking spaces, along with curbing, would most likely improve the situation. **Mr. Wood** noted some events would be held elsewhere, such as the recreation department events at Frisbee school.

**Mr. Carleton moved** to waive Section 16.32.390G and Section 16.32.470C, York County Soil and Water Conservation District endorsement.

**Mr. Kelly seconded**

**Motion carries unanimously by all members present**

**Mr. Mylroie** referenced Section 16.32.560.C, regarding trees in the 20-space parking area. **Chairman White** stated the ordinance requires 1 tree per 8 spaces, so the applicant needs to add another tree to the plan.

**Chairman White** read the Findings of Fact for the Shapleigh Middle School addition as follows:

Based on Section 16.36.070.C.1, action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify the development satisfies the following requirements:

a. Water and Air Pollution Minimized	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
b. Water Supply Sufficient	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
c. Municipal Water Supply Available	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
d. Erosion Controlled	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
e. Traffic Managed	Vote of <u>5</u> in favor <u>1</u> against <u>0</u> abstaining
f. Sewage Disposal Provided	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
g. Municipal Solid Waste Disposal Available	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
h. Aesthetic, Cultural and Natural Values Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
i. Local Ordinances and Plans Conformance	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
j. Developer Financially and Technically Capable	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
k. Water Body Quality and Shoreline Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
l. Groundwater Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
m. Flood Areas Identified and Development Conditioned	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
n. Freshwater Wetlands Identified	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
o. River, Stream or Brook Identified	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
p. Stormwater Managed	Vote of <u>6</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 votes to grant **Approval for the Development** at the above referenced property, with waivers granted as noted below and contingent upon the following conditions per Title 16.36.070.D., Conditions for Final Plan Approval and Conditions of Approval.

1. Prior to Final Approval of this project by the Planning Board, the Applicant must submit a copy of the approved Maine Department of Environmental Protection Permit By Rule (PBR) to the Town Planner.
2. Prior to the issuance of a Building Permit by the Town's Code Enforcement Officer, the Developer must submit to the Town Planner a Performance Guarantee and/or an escrow account to pay for any required field inspections or improvements.
3. This approval is conditioned on repeal of street parking restrictions that are inconsistent with the plan.
4. This approval is conditioned on independent Council approval of the parking policy as amended.
5. This approval is conditioned on the parking policy being amended to require an annual report from police, school and public safety departments to the Town Council with a copy to the Planning Board.
6. 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.
7. Prior to the issuance of a Building Permit by the Town's Code Enforcement Officer, the Developer must submit to the Town Planner a recorded copy of the Plan and all related legal documents that may be required.
8. 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 be completed.

Vote of 6 in favor 0 against 0 abstaining

**Accordingly**, the Planning Board hereby moves to:

1. approve the Findings of Fact in the Plan Review Notes – Findings of Fact,
2. acknowledge their reading,
3. incorporate them by reference into the meeting minutes,
4. record their unanimous approval by the Planning Board members present (unless otherwise noted), and
5. authorize the Planning Board Chairman to sign the final plan upon confirmation by the Town Planner of final plan compliance with final plan approval requirements and plan note conditions.

Vote of 5 in favor 1 against 0 abstaining

**ITEM 2 - Sluiceway Condominiums- Minor Subdivision/Condominium Ownership – Final Plan Review/Decision (continued)** – Tudor and James Austin, Owners, propose a four (4) unit condominium development on a 6.25 acre parcel located at 37 Pepperrell Road, situated on Map 18 Lot 22 in the Kittery Point Village (KPV) Zoning District. The owner's agent is Thomas Harmon, PE with Civil Consultants. **Mr. Carleton** recused himself.

**Mr. Mylroie** noted receipt [March 10, 2010] of a letter from the Kittery Conservation Commission [letter was not entered into the record previously, though received by the Board members] as follows:

*The Kittery Conservation commission is writing this letter pertaining to the Sluiceway (sic) Project. Our concern is to protect the vegetation as consistent with the requirements of the Shoreland Overlay Zone with regards to any further development to be done this spring. Furthermore, given that the lower shrubs and brush along the water's edge have been previously cleared by the developer we would also like to see additional protections (such as planting native shrubs and a few large trees) along the shoreline to better mitigate the storm water effects from this property.*

*Respectfully,  
The Kittery Conservation Commission  
[signature not legible]*

**Chairman White** asked if there was any response to the Kittery Conservation Commission's letter. **Mr. Mylroie** stated there was not. **Chairman White** noted the Commission was looking for remedial plantings, and this had been discussed before. It was not dealt with at the last meeting due to a lack of quorum. Unfortunately, the letter is general and the Board has not been advised as to the extent of remediation requested. **Tom Harmon** noted the CEO has recorded no violation, and previous cutting was in accordance with the ordinance.

**Chairman White** read the Findings of Fact for the Sluiceway Condominiums as follows:

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 16.36.070.C.1. and as recorded below

a. Water and Air Pollution Minimized	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
b. Water Supply Sufficient	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
c. Municipal Water Supply Available	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
d. Erosion Controlled	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
e. Traffic Managed	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
f. Sewage Disposal Provided	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
g. Municipal Solid Waste Disposal Available	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
h. Aesthetic, Cultural and Natural Values Protected	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
i. Local Ordinances and Plans Conformance	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
j. Developer Financially and Technically Capable	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
k. Water Body Quality and Shoreline Protected	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
l. Groundwater Protected	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
m. Flood Areas Identified and Development Conditioned	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
n. Freshwater Wetlands Identified	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
o. River, Stream or Brook Identified	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
p. Stormwater Managed	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

The following issues were met prior to final plan approval:

1. The landscape plan shall be amended per sheet C4, received March 8, 2010;
2. Note #10, Conditions of Approval on Sheet C3, shall be amended to read: "No unit other than Unit A may have a pier", deleting "or rights to a riparian mooring".
3. *Article 5.2 - Phasing* of the condominium declaration shall be removed in its entirety.
4. Note #1, Conditions of Approval on Sheet C3 shall be amended to read: "No more than four dwelling units may be situated on this parcel", deleting all remaining language in this note.
5. Note #3, Development Restrictions on Sheet C3 referencing future division of the lots, shall be removed in its entirety.
6. Note #8, Development Restrictions #8 on Sheet C3, shall be amended to add limited common area B to the landscape maintenance provision.

**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 votes to grant Approval for the Development at the above referenced property, with waivers granted as noted below and contingent upon the following conditions per Title 16.36.070.D., Conditions of Approval.

Waivers Granted

1. Section 16.32.470.C. An endorsement of the stormwater management and erosion control plans by the York County Soil and Water Conservation District.
2. Section 16.26.060.B.2.a – Plan scale. The Applicant was granted a waiver of the scale of 1" = 30' in order to draw the plans at no less than 1" = 50'.
3. Section 16.32.490. N. 6. f. g. i, ii, iv providing a roadside drainage buffer strip.

Conditions of Approval

1. No more than four dwelling units may be situated on this parcel.
2. Prior to commencement of grading and/or construction within a unit envelope, as shown on the subdivision plan, sheet C3, the owner and/or developer must stake all corners of the unit envelope.
3. Prior to issuance of building permits by the town's Code Enforcement Officer (CEO), the developer must establish with the Town of Kittery an escrow account to pay for any required field inspections of improvements.
4. Prior to the issuance of building permits by the Town's CEO, the developer must submit to the Town CEO a recorded copy of the condominium documents.
5. Prior to the installation of sign structures and prior to the mounting of signs, the developer must submit an application for the signs and acquire approval for signs from the CEO.
6. This approval by the Planning Board constitutes an agreement between the town and the developer, incorporating as elements the project plans and reports and the Planning Board Findings of Fact, and any conditions imposed by the Planning Board.
7. Signing 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 be completed.
8. No building permits will be issued by the CEO until all conditions of this Findings of Fact are satisfied.
9. By vote of the Planning Board, the Chairman is authorized to sign the final plan and this Findings of Fact on behalf of the Planning Board.
10. No unit other than Unit A may have a pier.
11. Vegetation within the shoreland overlay zone will be managed in accordance with the Shoreland Overlay Zone requirements. The 100 foot shoreland setback shall be clearly signed with appropriate Town of Kittery placards.

Accordingly, the Planning Board hereby moves to approve the Findings of Fact in the Plan Review Notes – Findings of Fact, acknowledge their reading, hereby incorporate them into the meeting minutes by reference, record their unanimous approval by the Planning Board members present unless otherwise noted, approve the final plan with conditions as noted on the plan, and authorize the Planning Board Chairman to sign the final plan.

Vote of 5 in favor 0 against 0 abstaining

**Break - Mr. Carleton** returned to the Board.

**ITEM 3 - York Hospital – Final Site Plan/Review/Decision (continued).** - Stephen Pelletier, Owner, proposes to construct a 28,571 square foot building for York Hospital consisting of 8 medical offices and 4 dwellings units at 35 Walker Street, located on Map 4 Lot 168, situated in the Local Business 1 (**LB1**) and Kittery Foreside (KF) Zones, parcel area is ±2.5 acres. The owner's agent is Joseph Cheever, EIT, with Attar Engineering, Inc.

**Board members** discussed the Kittery Conservation Commission's review comments dated 4/8/10:

*Maintain proper vegetative buffer, between parking lot areas and wetland, for filtration. Concerned about stormwater flow from parking lot areas into wetlands. A.Borden, Vice-Chair, KCC*

**Mr. Carleton and Chairman White** noted they were reluctant to place conditions at this late date. **Mr. Wood**, Attar Engineering, commented the landscaping plan has addressed the concerns of the KCC, including the buffer area and two water quality ponds. The plan improves the stormwater flow over what currently exists, with a reduction in peak discharge and volume, and stormwater treatment plans.

**Chairman White** read the Findings of Fact for the York Hospital site plan as follows:

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 16.36.070.C.1. and as recorded below

- |   |  |
|---|--|
| a. Water and Air Pollution Minimized                  | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| b. Water Supply Sufficient                            | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| c. Municipal Water Supply Available                   | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| d. Erosion Controlled                                 | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| e. Traffic Managed                                    | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| f. Sewage Disposal Provided                           | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| g. Municipal Solid Waste Disposal Available           | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| h. Aesthetic, Cultural and Natural Values Protected   | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| i. Local Ordinances and Plans Conformance             | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| j. Developer Financially and Technically Capable      | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| k. Water Body Quality and Shoreline Protected         | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| l. Groundwater Protected                              | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| m. Flood Areas Identified and Development Conditioned | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| n. Freshwater Wetlands Identified                     | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| o. River, Stream or Brook Identified                  | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| p. Stormwater Managed                                 | Vote of <u>6</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 votes to grant Approval for the Development at the above referenced property, with waivers granted as noted below and contingent upon the following conditions per Title 16.36.070.D., Conditions of Approval.

Waivers Granted

1. Section 16.32.390.G and 16.32.470.C endorsement of the erosion control and stormwater management plans by York County Soil and Water District.
2. Section 16.12.101 – E.1.c.6 to provide street trees. Twenty-four trees are provided, of which ten are defined “Street Trees”. Designed layout meets the goals and objectives of the Kittery Design Handbook.

Conditions

1. Prior to issuance of a Building Permit, the Applicant must submit a copy of any other local, state and/or federal permits required to the Town Planner and Code Enforcement Officer.
2. Prior to the commencement of grading and/ or construction within a building envelope, the owner and/or developer must stake all corners of the building disturbance area. This temporary boundary 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.
3. Prior to the issuance of a Building Permit by the Town’s Code Enforcement Officer, the Developer must submit to the Town Planner a Performance Guarantee and/or an escrow account in an amount and form acceptable to the Town Manager to pay for any required improvements and/or field inspections.
4. Prior to the issuance of a Building Permit by the Town’s Code Enforcement Officer, the Developer must submit to the Town Planner a recorded copy of the Plan and all related legal documents that may be required including declarations and easements.
5. Prior to the issuance of building permits by the Code Enforcement Officer, the Developer must, per *Section 16.32.1020. Permit*, obtain a permit from the Kittery Fire Chief. Plans for the proposed new building must meet any or all of the requirements of Article XXII. Sprinkler Systems.
6. Prior to the commencement of work for the onsite sewer system, the Developer must obtain a sanitary sewer permit from the Code Enforcement Officer.
7. 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 be completed.

Vote of 6 in favor 0 against 0 abstaining

Accordingly, the Planning Board hereby moves to:

1. Approve the Findings of Fact in the Plan Review Notes/Findings of Fact dated April 8, 2010,
2. Acknowledge their reading,

3. Incorporate them into the meeting minutes by reference,
4. Record their unanimous approval by the Planning Board members present (or as may be individually voted upon by the Board),
5. Approve the final Plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final Plan upon confirmation by the Town Planner of final plan compliance with final plan approval requirements and plan note conditions.

Vote of 6 in favor 0 against 0 abstaining

**ITEM 4 - Marshall's Rental Center – Final Site Plan – Review/Decision (continued)** Richard Marshall, Owner, proposes to occupy the second floor of a renovated building in addition to the first floor with a total of 1440 SF retail/1690 SF warehouse and 3030 SF office space and re-construct an existing building with 1<sup>st</sup> floor retail 1,200 SF, second floor office 1,200 SF and 1<sup>st</sup> floor warehouse 3,760 SF. The development is located at 66 State Road in the Business – Local Zone and recorded as Map 8 Lot 43. The owner's agent is Ken Wood, PE with Attar Engineering.

**Mr. Mylroie** summarized the action the Board needs to take, including a waiver of the lighting plan. Other items pending approval by town departments have been resolved. The Board granted waivers for erosion control and stormwater management plans and a traffic impact analysis on March 25, 2010.

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 16.36.070.C.1. and as recorded below

a. Water and Air Pollution Minimized	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
b. Water Supply Sufficient	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
c. Municipal Water Supply Available	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
d. Erosion Controlled	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
e. Traffic Managed	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
f. Sewage Disposal Provided	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
g. Municipal Solid Waste Disposal Available	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
h. Aesthetic, Cultural and Natural Values Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
i. Local Ordinances and Plans Conformance	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
j. Developer Financially and Technically Capable	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
k. Water Body Quality and Shoreline Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
l. Groundwater Protected	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
m. Flood Areas Identified and Development Conditioned	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
n. Freshwater Wetlands Identified	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
o. River, Stream or Brook Identified	Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
p. Stormwater Managed	Vote of <u>6</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 votes to grant Approval for the Development at the above referenced property, with waivers granted as noted below and contingent upon any conditions per Title 16.36.070.D.

Waivers Granted

1. Section 16.32.390.G and 16.32.470.C endorsement of the erosion control and stormwater management plans by York County Soil and Water District.
2. Traffic impact analysis.

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 be completed. Accordingly, the Planning Board hereby moves to:

1. Approve the Findings of Fact in the Plan Review Notes/Findings of Fact dated April 8, 2010,
2. Acknowledge their reading,
3. Incorporate them into the meeting minutes by reference,

4. Record their unanimous approval by the Planning Board members present (or as may be individually voted upon by the Board),
5. Approve the final Plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final Plan upon confirmation by the Town Planner of final plan compliance with final plan approval requirements and plan note conditions.

Vote of 6 in favor 0 against 0 abstaining

**ITEM 6 - Pettigrew Road Right of Way Plan Amendment – Status Report/Review/Decision**

**(continued)** – Gary E. And Angela E. Hayward, owners of 16 Shade Tree Lane propose an extension of an existing right-of-way Pettigrew Road to enable the division of land into two lots. The right-of way is located off Wilson Lane in the Rural Residential Zone and recorded as Map 64.4A. The owner's agent is Ken Markley with Easterly Surveying.

**Mr. Mylroie** presented to the Board a memo from CEO, dated April 8, 2010:

*Table 16.12 requires a minimum 10 foot setback for roadways less than 18 feet in width to wetlands less than one acre in size. The traveled way appears to meet the ten foot setback as required per Table 1.12. The wet area is referred on the plan as [a] man-made wet area per Joe Noel, Soil Scientist. Therefore, it appears there is no violation on the property.*

He further explained the owner's action to date, that the owner was legally allowed to construct a driveway to the existing building envelope on the property. However, further Board review is needed to continue with the plan due to Fire and Public Works review recommendations. Board members questioned if they have the authority to waive the 10 foot wetland setback requirement. **Mr. Mylroie** stated he believed they could, as the Board is permitted to allow for wetland mitigation. **Chairman White** read:

*Section 16.28.180 Waiver Authorized. Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health...*

Members discussed whether a setback is a requirement improvement that can be waived, and road widths as required by the ordinance and requested by the Fire Chief, not to be less than 18 feet wide. **Mr. Luekens** suggested the Board should be able to waive the setback requirement if they can permit wetland crossings and alterations. A waiver would be preferable to removing the existing stone wall and vegetation. Discussion followed regarding road width, slopes and road shoulders, and runoff from the road into the wet area. **Mr. Mylroie** suggested a more detailed plan addressing drainage be provided and the approved waiver be rescinded. The re-location of a utility pole was also discussed.

**Mr. Lincoln moved** to rescind the waiver to Title 16.36.060.B.3.e, stormwater and drainage plan, granted on March 11, 2010.

**Mr. Kelly seconded**

**Motion carries 5 in favor, 1 abstention** (Chairman White)

**Chairman White** suggested the Board needs a legal opinion and further review of the road width. **Mr. Markley** illustrated a proposed road layout, allowing 18 feet of travel utilizing shoulder areas, 14 feet of pavement and 4 feet of shoulder on one side. **Mr. Luekens** stated there is still disturbance of wetlands, requiring a setback or a setback waiver. Discussion followed regarding the re-location of the utility pole. **Mr. Mylroie** stated the Board could consolidate preliminary and final approval and have the Findings of Fact ready for the next meeting.

**ITEM 6 - Street Design and Construction Standards Amendments to Title 16 Land Use and Development Code – Review/Decision (continued).** Consider amendments recommended by Public Safety officials.

**Mr. Mylroie** summarized the recommended amendments. Board discussion followed, including the lack of existing definitions in the ordinance for public streets and private roads, lanes or ways. It was suggested that all private roads be classified as private, with sub-classes to denote ADT and construction specifics.

**Mr. Kelly** summarized Chief O'Brien's request at the January 28, 2010, that water lines be installed by developers off-site to the development under review in anticipation of future municipal water service.

**Mr. Mylroie** stated the Board can now require these off-site inclusions, but application of these requirements needs to be consistent. **Mr. Luekens** suggested that, in hind-sight, this should have been done with the sidewalks along the Sluiceway development. **Chairman White** agreed, recognizing some applicants submit incremental information instead of presenting a full plan, making for a tricky review.

ITEM 7 - Planning Board Business Plan 2010 – Discussion.

**Mr. Mylroie** briefly discussed the American City Quality month as recognized by the Governor, in an effort to raise public awareness to improve planning, development, design, decision making and action.

**Mr. Kelly moved** to adjourn

**Mr. Luekens seconded**

**Motion carries unanimously by all members present**

**Mr. Luekens** notified the Board he will not be present at the April 22, 2010 meeting.

The Planning Board meeting of April 8, 2010 adjourned at 9:30 p.m.

Submitted by Jan Fisk, Recorder – April 13, 2010