

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
November 13, 2014

Meeting called to order at 6:02 p.m.

Board Members Present: Karen Kalmar, Mark Alesse, Deborah Driscoll, Ann Grinnell, David Lincoln

Members absent: Tom Emerson

Staff: Chris DiMatteo, Interim Planner

In the absence of Chairman Emerson, Ann Grinnell took position of Chair.

Pledge of Allegiance

Agenda changes:

Ms. Grinnell moved to amend the agenda as follows: Item 9 moved to beginning of meeting and Item 8 moved behind Item 5.

Ms. Kalmar seconded

Motion carried unanimously

Minutes: October 23, 2014

Ms. Kalmar moved to approve the minutes as submitted

Ms. Grinnell seconded

Motion carried unanimously by all members present

Ms. Kalmar moved to approve the site walk minutes of September 24, 2014 for Betty Welch Road Cluster Subdivision as submitted

Mr. Alesse seconded

Motion carried unanimously by all members present

Ms. Kalmar moved to approve site walk minutes of October 20, 2014 for 70 Chauncey Creek as submitted

Ms. Grinnell seconded

Motion carried unanimously by all members present

Public Comment: No public comment.

ITEM 9 – Town of Kittery –Sewer - Wetland Alteration. Action: review and grant or deny plan approval. Owner and Applicant Kittery Wastewater Treatment Department is requesting consideration of their plans to temporarily impact wetlands as part of expanding public sewer through a CMP corridor located between Route 236 and I-95, Tax Map 12, Lot 03-1 and Map 21, Lot 18, in the Business Park Zone. Agent is Kleinfelder Engineers..

George Kathois, provided a brief history and status of the project:

1. Improvements under consideration since 1991 to provide sewer connections to the older parts of Kittery.
2. CIP completed in late 2012.
3. The Planning Board conceptually endorsed infrastructure improvements on January 10, 2013.
4. A June 2013 referendum approved by voters, funded by a Maine DEP loan.
5. The Planning Board conceptually endorsed the Sewer Expansion project on August 22, 2013.
6. Plant infrastructure improvements under construction, with completion spring 2015.
7. Sewer expansion bidding to begin December 5, 2014, with completion spring 2016.

Plan is to run the sewer pipes through a CMP corridor containing, mostly, man-made wetlands.

Ms. Kalmar: The information packet submitted was well-prepared and informative.

Ms. Driscoll: Will any of the proposed construction impact the large wetland area?

Mr. Kathois: No, only those small areas within the corridor will be impacted. The plan proposal has been approved by the ACOE and the MDEP.

Don Moore, Kittery Conservation Commission: Does Kleinfelder have wetland biologists, will the wetland alteration near the vernal pool be suspended during spring activity, and how is dewatering accomplished? Who makes determination that the vernal pool has been returned to its normal state?

Mark Thompson, Kleinfelder Engineers: Trenches will be de-watered and pumped to sedimentation basins to leach out. Construction plans to accomplish this are under review by MDEP. There are small areas not certified as vernal pools, but there will no construction within any suspected pool area. MDEP personnel and Kleinfelder Engineers will be on site during and after construction to assure areas are protected and restored.

Ken Markley: The Town has discussed using this same corridor to tie Dennett Road to Rt. 236. Has the depth of the sewer design considered this possibility without further damage in this corridor?

George Kathios: Land owners have been contacted but, because this is private property, constructing a road will be up to the property owners. Ditches and pipes, etc. will be designed and a gravel bed prepared to accommodate a road if that should occur in the future, but the actual road construction would be accomplished through property owners or a developer.

Ms. Kalmar moved to approve the wetland alteration plan for the sewer extension through a CMP corridor located between Route 236 and I-95, Tax Map 12, Lot 03-1 and Map 21, Lot 18, in the Business Park Zone.

Mr. Alesse seconded

Findings of Fact

WETLAND ALTERATION FINDINGS OF FACT:
<i>16.9.3.7 Wetlands Alteration Approval Criteria</i>
<i>A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.</i>
Conclusion: The proposed impact is limited to temporary disturbance and there is no cumulative effect associated with similar future uses.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.</i>
Conclusion: The applicant appears to have provided clear and convincing evidence that the proposed use meets the purpose of the Town Code including standards in Chapter 9, Article 3.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.</i>
Conclusion: It does not appear that in addition information prepared to date that expert advisory opinion in is warranted.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>D. ...practicable mitigation plan,...</i>
Conclusion: It does not appear that the proposed development warrants more than the planned measures to protect existing vegetation through the use of crane mats and to salvage and replant vegetation where trenching is required to be considered a “reasonable and practicable mitigation plan.”
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

<i>E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.</i>
Conclusion: The applicant appears to have demonstrated there is no practicable alternative to the proposed alteration of the wetland
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>F. Objectives of 16.9.3.7.F</i>
Conclusion: The applicant appears to have demonstrated that the objectives outlined in 16.9.3.7.F can be met
Vote of <u>5</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 grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: none

Conditions and instructions/notice to Applicant per the November 13, 2014 Findings of Fact

Vote of 5 in favor 0 against 0 abstaining

PUBLIC HEARINGS

ITEM 1 – 84 Pepperrell LLC -- Shoreland Development Plan Review - Action: Hold public hearing, review, and approve or deny plan approval. Owner 84 Pepperrell LLC and applicant Jonathan MacDougal are requesting approval of their plans to reconstruct expand an existing non-conforming building located at 84 Pepperrell Rd., Tax Map 27, Lot 51, in the Kittery Point Village and Shoreland Overlay zones.

The Public Hearing opened and closed at 6:30. There was no public testimony.

Mr. MacDougal noted there are no changes to the proposed plan since the prior meeting.

Mr. DiMatteo: The applicant is aware there are some amendments to the final plan that need to be made prior to signature, but the plan is ready for approval.

Ms. Kalmar moved to approve with conditions the Shoreland Development Plan at 84 Pepperrell Road.

Ms. Driscoll seconded

Findings of Fact

16.3.2.17. D Shoreland Overlay Zone - Standards. <i>1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:</i>
<u>Conclusion</u> : This standard appears to have been met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances. <i>A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.</i>
<u>Conclusion</u> : The requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones have been met.

<u>Conclusion:</u> This standard appears to have been met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
III. Procedures for Administering Permits For Shoreland Development Review 16.10.10.2 D. <i>An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:</i>
1. <i>Maintain safe and healthful conditions;</i>
Finding/Conclusion: The proposed development does not appear to have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>
The proposed development does not appear to have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>
This standard is not applicable.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>
The proposed addition of a 72 sf patio does not appear to have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of 84 Pepperrell LLC, owner, and Jonathan MacDougall, applicant, to add a patio to an existing accessory building at 84 Pepperrell Road subject to any conditions and/or waivers, as follows:

ApplicationWaivers: None

Conditions of Approval and Notices to Applicant contained in the Findings of Fact dated 11/13/14.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 5 in favor 0 against 0 abstaining

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.

ITEM 2 – 62 Pepperrell Cove LLC – Shoreland Development Plan Review - Action: Hold public hearing, review, and approve or deny plan approval. Owner Pepperrell Cove LLC and Applicant Michael McCuddy is requesting approval of their plans to expand an existing non-conforming building located at 62 Pepperrell Rd., Tax Map 18, Lot 46, in the Kittery Point Village and Shoreland Overlay zones.

The Public Hearing opened and closed at 6:38 p.m.. There was no public testimony.

Michael McCuddy: There are changes to the volume and impervious surface to be certified by the engineer and included on the final plan.

Ken Markley, Easterly Survey: The impervious area is 18.1% because a portion of the roadway owned by the applicant was not included in the previous calculations. The area and volume calculations have been verified, and will be certified on the plan as well.

David Lincoln: Will the profile of building be changed? Will additional bathrooms be added?

Michael McCuddy: The garage will be raised 5 feet, 1 foot higher than the main house. There will be additional bedrooms and bathroom changes. The existing septic system is to be replaced, outside of 100-foot setback. There has been no abutter response.

Ms. Kalmar moved to approve with conditions the Shoreland Development Plan for 62 Pepperrell Road, Tax Map 18 Lot 46.

Mr. Alesse seconded

Findings of Fact

16.3.2.17. D Shoreland Overlay Zone - Standards.

1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

Findings: The proposal does not increase existing devegetated areas. Total devegetated area is 18.1%.

Conclusion: This standard has been met.

Vote: 5 in favor 0 against 0 abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.

A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.

Conclusion: The proposal is within allowable percent increase (<30%) within the shoreland zone.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones have been met.

Conclusion: The criteria for expansion of non-conforming structures in the Shoreland Overlay zone appears to have been met. Findings regarding percent expansion will be submitted to the Assessor for inclusion in the tax records.

Vote: 5 in favor 0 against 0 abstaining

III. Procedures for Administering Permits For Shoreland Development Review

16.10.10.2 D. *An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:*

<i>1. Maintain safe and healthful conditions;</i>
Finding/Conclusion: The proposed development will not have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>2. Not result in water pollution, erosion or sedimentation to surface waters;</i>
Finding/Conclusion: The proposed development does not appear to have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>3. Adequately provide for the disposal of all wastewater;</i>
Finding/Conclusion: This standard is not applicable for the proposed development.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Finding/Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
Finding/Conclusion: The proposed development will not have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>6. Protect archaeological and historic resources;</i>
Finding/Conclusion: The proposed development will not have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Finding/Conclusion: The proposed development will not have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>8. Avoid problems associated with floodplain development and use</i>
Portions of the property are located in VE flood management areas. The areas identified for square footage and volume increase do not appear to be located within the flood management area.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>9. Is in conformance with the provisions of this Code;</i>
Finding/Conclusion: The increase in area and volume are in conformance with the provisions of this Code.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>10. Be recorded with the York County Registry of Deeds.</i>
Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and therefore the Planning Board approves the Shoreland Development Plan Application of Pepperrell Cove LLC, owner, and Michael McCuddy, applicant to increase the volume and square footage at an existing home at 62 Pepperrell Road subject to any conditions and/or waivers, following:

Conditions of Approval/Notices to Applicant in the Findings of Fact dated November 13, 2014.

Vote: 5 in favor 0 against 0 abstaining

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.

ITEM 3 – Deuell Revocable Trust — Shoreland Development Plan Review - Action: Hold public hearing, review, and approve or deny plan approval Owner Deuell Revocable Trust and Applicant Peter Whitman are requesting approval of their plans to replace an existing non-conforming building located at 70 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones. The Public Hearing opened at 6:50 p.m.

Gaylen Beale, 63 Chauncey Creek Road, speaking for Martha Kowle, 62 Chauncey Creek Road:

I'm puzzled. If you compare my house to 70 Chauncey Creek Road most, if not all, observers would say that my house was bigger-even before the bedroom and deck were added on. I was curious after the last Planning Board how my numbers compared to 70 Chauncey Creek Road. Before my addition my living area was calculated at 1,341 sf, without including the basement. 70 Chauncey Creek Road is calculated at 1,872 sf, a 531 sf difference in living area, basements not included. 70 Chauncey Creek Road basement is 768 sf. Mine is only 699 sf. I'm assuming all these numbers were reported correctly. I don't begrudge Peter and Barb building a house. I just want it to fit in.

Rich Holzer, 72 Chauncey Creek Road: Explained how the proposed structure will alter his view from a deck to the side of the larger, proposed structure, noting there is very little area between the two structures. He suggesting the new structure could be moved three feet away from the property line to allow more privacy space on his side.

The Public Hearing closed at 6:56 p.m.

Peter Whitman: Regarding Ms. Kowal's concerns, he cannot confirm where her calculations came from. The calculations for the proposed structure were prepared by a certified architect and confirmed by staff. Regarding Mr. Holzer's concerns: This is a small house on a small lot, and will remain a small house. The CEO (Heather Ross) explained that they have the right to expand over the existing foundation. The proposed height increase is 8 feet and this increase does not change the neighborhood or area between the residences. To move the house would increase the nonconformities, which would not allowed.

Ms. Driscoll: Existing holding tank?

Mr. Whitman: The revised plan will replace the existing tank with a pre-treatment system before a Certificate of Occupancy is awarded. The design has been approved.

Ms. Kalmar: If the structure could be moved, would it affect the new septic system design?

Mr. Whitman: It would not, but a variance would not be granted for this proposed structure.

Mr. Alesse: Is a fence between properties? Would he consider adding vegetation.

Mr. Whitman: The fence is 5-6' tall, and you cannot see through the fence. There will not many windows on the side of house facing the Holzer property.

Mr. DiMatteo: The Architect will need to certify the calculations on the final plan, and include the Map and Lot on the plan's lower right corner, to be included on the Notices to Applicant.

Ms. Driscoll moved to approve the plan Owner Deuell Revocable Trust and Applicant Peter Whitman are requesting approval of their plans to replace an existing non-conforming building located at 70 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones.

Ms. Kalmar seconded

Findings of Fact

16.3.2.17. D Shoreland Overlay Zone - Standards.
<u>Conclusion:</u> The criteria limiting impervious surface coverage to 20% has been met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
II. Standards in the Shoreland Overlay Zone Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.
16.7.3.1 Prohibitions and Allowances.
<u>Conclusion:</u> The proposed structure location on a non-conforming lot will not be more non-conforming than the existing structure.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
16.7.3.6. 1 Expansion
<u>Conclusion:</u> The criteria for expansion of non-conforming structures in the Shoreland Overlay zone appears to have been met, and the location of the structure appears to be in compliance to the greatest practical extent (16.7.3.5.6), given the limited building envelope of the non-conforming lot.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
III. Procedures for Administering Permits For Shoreland Development Review 16.10.10.2 D. <i>An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:</i>
1. <i>Maintain safe and healthful conditions;</i>
Conclusion: This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>
Conclusion: This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>
Conclusion: This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Conclusion: The proposed development does not appear to have an adverse impact, and this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
Conclusion: The proposed development does not appear to have an adverse impact, and this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>
Conclusion: This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Conclusion: This standard is not applicable.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>

Conclusion: The use is an existing, nonconforming use in the Shoreland Overlay Zone. This standard appears to be met, with condition.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>9. Is in conformance with the provisions of this Code;</i>
Conclusion: The proposed development is in conformance with the Code.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>10. Be recorded with the York County Registry of Deeds.</i>
Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit, and include all waivers and conditions of approval if applicable.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and therefore the Planning Board approves the Shoreland Development Plan Application of Peter Whitman, Applicant and Deuell Revocable Trust, Owner, to construct a single family home on an existing foundation at 70 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones, subject to any conditions and/or waivers:

Waivers: None

Conditions of Approval/Notices to Applicant in the Findings of Fact, as amended, November 13, 2014.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 5 in favor 0 against 0 abstaining

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.

OLD BUSINESS

ITEM 4 – Betty Welch Road Cluster Subdivision - Sketch Plan Review - Action: Review, grant or deny concept approval. Landmark Properties, LTD., owner and Chinburg Builders, Inc., applicant, proposes to develop a 24-lot single family cluster subdivision on 86.5 +/- acres. The site is identified as Tax Map 22 Lots 2A & 8 in the Residential Rural and Shoreland Overlay Zones. Agent is Jeff Clifford, P.E., Altus Engineering.

Mr. Clifford: We are asking for a continuance and further direction from the Board. There was Board interest in a site walk continuance. They are concerned with pending Code amendments and their impact on this project's preliminary plan review.

Ms. Driscoll: Would like to schedule another site walk to view the leach bed area.

Ms. Kalmar: Amount of water in upland area is significant considering this was a dry summer; need to exercise caution as this projected is located at the headwaters of the York River; would the Board consider the Conservation Commission's request for independent soil data review.

Jim Gove, Gove Environmental Services: Mr. Logan identified areas in the larger portion of the parcel as somewhat poorly drained; the soil profiles are the same in the upland, leach bed, areas; third party reviews yield very little changes, and found the soil profiles were virtually the same as Mr. Logan's observations. The amount of water on the site appears to be attributable to skidder tracks that are so compacted there is no drainage to the water table; these conditions are not indicative of the entire site's soil profile; the ruts should be graded out to natural soil, and restored to allow infiltration; some wetland

areas were diverted by skidders, as well. In Maine; individual septic systems are allowed in seasonal highwater tables deeper than 7". From a practical perspective, it would be better to have these located in the proposed septic area where the seasonal highwater table is 30".

Mr. Lincoln: How will the effluent be moved from the housing units to the disposal area?

Mr. Clifford: Each home will have an advanced pre-treatment system comprised of a septic tank and aeration tank. The resultant wastewater will be pumped to 1 or 2 common force mains to distribution boxes, where the highly cleaned and virtually clear wastewater will be disposed.

Mr. Lincoln: Does the developer plan to start with a spec house before completing the remaining 23 houses? Are there other cluster developments in the area with wetland issues? Does the developer have an option on the property?

Mr. Clifford: This is possible, but is up to the developer. The other developments had wetlands, but the septic designs were different. The developer has not purchased the property as yet.

Ms. Kalmar: Will the slope of the area have an impact on the septic design?

Mr. Clifford: The surface is sloped and works well. The system has not been designed at this level of review.

Ms. Driscoll: There were so many ferns noticed on the sitewalk, indicating wet areas.

Mr. Gove: The timber harvesting opened the site and seeds were distributed all over. Many of the dominate ferns identified are upland ferns. Along the wetland edge the wetland ferns became dominate.

Don Moore, Kittery Conservation Commission: Asked about the highwater table associated with test pit locations [discussed with Mr. Gove]. Asked about mounding calculations for septic design.

Mr. Clifford: This in-depth level of review will be addressed as the project requires a SLDA review by the MDEP, including 25 sections of review. The septic design, most likely prepared by R.W. Gillespie, Geotechnical Engineers, will be reviewed by Maine Department of Health and Human Services.

Discussion followed regarding the proposed roadway located within the 100-foot no cut, no disturb buffer required between structures and wetlands in cluster development, vs. setback requirements from wetland areas.

Mr. DiMatteo: Asked the applicant to confirm the statute regarding timber harvesting.

Discussion followed regarding scheduling another site walk; timetable for project review; existing water lines on the property, spreading of invasive species due to timber harvesting; potential waivers;

Ms. Kalmar: Asked the Board to consider a third party soil review and for the applicant to illustrate how homes could be located on the parcel in a standard subdivision design.

Mr. Clifford: This is not required in the ordinance, as the cluster subdivision ordinance has replaced standard subdivision design.

Ms. Driscoll moved to continue the Betty Welch Road Cluster subdivision application 90 days from November 13, 2014.

Mr. Lincoln seconded

Motion carried unanimously by all members present

A site walk will be scheduled at the December meeting.

Break

ITEM 5 – Brave Boat Conservation at Sawyer Lane – Cluster Subdivision —Final Plan Review - Action: review and grant or deny final plan approval. Owner and Applicant Jonathon & Kathleen Watts are requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc.

Ken Markley: Disagrees with staff comments regarding an additional 20-foot no-cut no-disturb buffer in addition to the proposed fence and existing vegetation. This was not addressed previously by staff, and the buffer is substantial as it exists. These lots are the same size or larger than existing lots in the

neighborhood. The homes are almost 100 feet apart as designed. Discussion followed regarding the setbacks and buffers.

Ms. Driscoll: From a practical standpoint it is difficult to get home insurance when trees are located too close to a home.

Mr. DiMatteo: The standard regarding buffering applies to the entire development, and lot #2 is potentially visible from the roadway and the existing vegetation would be protected with a 40-foot buffer.

Mr. Watts: This was brought up by Ms. Burke in August and has been addressed.

Ms. Kalmar: Concerned about the remaining changes that need to be made to Homeowners Documents, regarding maintenance of open space, to receive final approval. Does not object to the plan.

Mr. DiMatteo: These changes can be finalized with the Town Attorney before the plans are signed. The applicant is in agreement with these needed changes to the documents.

Discussion followed regarding how the Homeowners Documents would be finalized prior to plan signing.

Ms. Driscoll: We did ask for setbacks and buffers that have been provided, and asking for additional changes at final review is not fair to the applicant.

Ms. Kalmar moved to approve with conditions the Brave Boat Conservation at Sawyer Lane Cluster Subdivision

Mr. Lincoln seconded

Findings

A. Development Conforms to Local Ordinances.	
Conclusion: This standard appears to be met.	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
B. Freshwater Wetlands Identified.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
C. River, Stream or Brook Identified.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
D. Water Supply Sufficient.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
E. Municipal Water Supply Available.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
F. Sewage Disposal Adequate.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
G. Municipal Solid Waste Disposal Available.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
H. Water Body Quality and Shoreline Protected.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
I. Groundwater Protected.	

Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
J. Flood Areas Identified and Development Conditioned.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
K. Stormwater Managed.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
L. Erosion Controlled.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
M. Traffic Managed.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
N. Water and Air Pollution Minimized.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
O. Aesthetic, Cultural and Natural Values Protected.	
Conclusion: The standard appears to be met	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
P. Developer Financially and Technically Capable.	
Conclusion: The standard appears to be met.	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
Title 16.8.3.1 - Street Naming Application The proposed street name, Sawyer Lane, has been accepted by Kittery Police, Fire, Assessing and Public Works departments.	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.	
These standards are not applicable to the proposed development	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining

III. Procedures for Administering Permits For Shoreland Development Review

1. <i>Maintain safe and healthful conditions;</i>	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>	
	Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>	

	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

The Planning Board finds the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 (Findings) Conditions of Approval / Notices to Applicant per Findings of Fact dated November 13, 2014

Vote of 5 in favor 0 against 0 abstaining

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.

NEW BUSINESS

ITEM 8 – Cheatham Shoreland Development Plan - Action: Accept or deny plan application; schedule site walk and/or public hearing. Linda Cheatham, owner/applicant; Holly Bowdoin and Art Feith, Pearson Traditional Design, agents request approval to remove an existing detached garage and construct a new garage with attached breezeway at 144 Pepperrell Road, Kittery Point, Tax Map 36, Lot 80, in the Residential-Kittery Point Village and Shoreland Overlay Zones.

Board members agreed a site walk is not needed.

Holly Bowdoin: The applicant has submitted letters of no-objection and has received another letter of no-objection.

Linda Cheatham: An email was received including multiple property owners with no-objection, including McCormick.

Ms. Kalmar moved to approve the application of Linda Cheatham to construct a new garage with attached breezeway at 144 Pepperrell Road, Kittery Point, Tax Map 36, Lot 80, in the Residential-Kittery Point Village and Shoreland Overlay Zones.

Ms. Driscoll seconded

Mr. Lincoln: What is the status of the nonconforming setback?

Mr. DiMatteo: This proposal is not more non-conforming than what exists, and actually decreases the nonconformity, from 3 feet to 10 feet.

Findings of Fact:

III. Procedures for Administering Permits For Shoreland Development Review

1. maintain safe and healthful conditions;
Vote of 5 in favor 0 against 0 abstaining
2. not result in water pollution, erosion or sedimentation to surface waters;
Vote of 5 in favor 0 against 0 abstaining
3. adequately provide for the disposal of all wastewater;
Vote of 5 in favor 0 against 0 abstaining
4. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
Vote of 5 in favor 0 against 0 abstaining
5. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
Vote of 5 in favor 0 against 0 abstaining
6. protect archaeological and historic resources;
Vote of 5 in favor 0 against 0 abstaining
7. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;
Vote of 5 in favor 0 against 0 abstaining
8. avoid problems associated with floodplain development and use;
Vote of 5 in favor 0 against 0 abstaining
9. is in conformance with the provisions of this Code;
Vote of 5 in favor 0 against 0 abstaining
10. recorded with the York County Registry of Deeds.
Vote of 5 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and approves the Shoreland Development Plan Application of Linda Cheatham, owner, to remove an existing garage and construct a new garage and attached breezeway at 144 Pepperrell Road, subject to any conditions and/or waivers, as follows:

Application Waivers: None

Conditions of Approval/Notices to Applicant from Findings of Fact dated: November 13, 2014.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 0 abstaining

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.

ITEM 6 – Board Member Items / Discussion

- Ms. Driscoll: The Comprehensive Plan Committee meeting will be held December 3, 2014
Mr. Lincoln: When will the plan be done?
Ms. Driscoll: The plan will be re-written, as it is too late for an update. Now looking at 2015 for completion.
- Ms. Grinnell: She is representing the Board on the Port Authority and was elected as Secretary/Treasurer.

ITEM 7 – Town Planner Items

1. Kittery Foreside Committee: In discussions with the Town Manager, the Board needs to determine wither the Board wants to continue with the Committee and provide additional information regarding the Committee's mandate. This will be included on the December 18 agenda for discussion.
2. KACTS Update: A consultant has been chosen and more information will be provided.

Mr. Lincoln: Will a detour map be provided for when the Sarah Long Bridge is closed? Town should be involved with the detour plans.

Mr. DiMatteo: MDOT will be involved with that, and he will provide further information.

Ms. Driscoll: Since the state is requesting Kittery take over Rt. 1 By-Pass maintenance, what is the status/condition of the pass-through under the roadway?

Mr. DiMatteo will follow-up.

Ms. Kalmar moved to adjourn

Mr. Lincoln seconded

Motion carried unanimously by all members present

The Kittery Planning Board meeting of November 13, 2014 adjourned at 9:00 p.m.

Submitted by Jan Fisk, Recorder, November 18, 2014