

**KENSINGTON PLANNING BOARD  
TOWN OF KENSINGTON, N.H.  
KENSINGTON ELEMENTARY SCHOOL LIBRARY  
TUESDAY, OCTOBER 16, 2012  
7:30 PM**

Approved-11/20/12

**In Attendance:** Kate Mignone, Chairman; Joan Whitney, Jim Thompson, Russell Perry, Selectmen's Representative ; Peter Merrill, Vice Chairman; Bob Solomon; Glenn Ritter; Dylan Smith, RPC Representative.

Present: 20 Abutters and property owners within the commercial district.

Kate opened the meeting at 7:30pm and gave a brief explanation of what the board is proposing to do. Due to many emails and phone calls about what the board was proposing, Kate prepared a brief explanation to the public about the Commercial District and some of the properties involved. The Farm Stand property (267 South Road) is under State Jurisdiction and it will not be discussed. The prior owner of the property was Katim and they had approached the board to produce a welding gas storage facility, and or to store hazardous materials. Katim never proposed a farm stand, so there should be no legal implications to the town in changing the use of the property from Commercial/ Residential/Agricultural to all Commercial. The board contacted property owners through postcards which included the definition for the district that is proposed. The Public Hearing is for the Commercial District definition and map only.

**Public Hearing**

The Kensington Planning Board will hold a Public Hearing to vote on the following modifications at the Kensington Elementary School Library at 7:30pm on Tuesday October 16, 2012 to:

1. Define and amend the official zoning map of Kensington by clearly delineating and describing the location of the commercial district in town.

**COMMERCIAL DISTRICT DEFINITION-**

The Commercial and Industrial use District (CI District) is outlined on the Official Town Zoning Map and are defined below using 2012 property tax map and parcel numbers. All properties not listed below, or depicted on the Official Zoning Map as part of the CI District shall be considered to be located within the Residential and Agricultural use District (RA District).

**A. Description**

The Commercial and Industrial District (CI District) is defined using 2012 Property Tax Map and Parcel numbers for each property located within this district. The following is a list of the properties located within said district: Tax Map 3 Lots 12,13, 13-1, 13-2, 15 16, 17, 17-1, 17-2, 18, 19, 21, 21-1, 22, 22-1, 22-2, 22-1-2, 23,23-1, 24, 25, 26, 27, 28, 30, and 34.

Joan indicated that she was happy to see so many people in attendance. Bruce Cilley the representative for KLCT Holdings LLC (267 South Road) indicated that every property owner was not notified and asked if they wanted to be all commercial or all agricultural. Dylan expressed that the legal notices were done in the papers and that was the only notification that the board legally has to do. Kate expressed that when the Board of Selectmen approved 267 South Road for an agricultural use in the June meeting, that indicated the use of the property. Mr. Cilley expressed that the owner was not notified or given the opportunity to discuss their property being zoned entirely commercial, or given notice of the tax implications. Peter asked when the notification went out to the lots that had the ability to change. Kathy indicated that prior to the postcard notifications sent out in September, the only property that was contacted, and asked what their preference was were the Palmer's at 286 South Road. Kate indicated that the parcels that had property within the commercial district and had residential houses on them would remain residential for tax purposes. Peter indicated that this has been discussed publically for the last six months. Peter asked if the whole lot becomes commercial what happens to the remaining 17 acres that is commercial, how that would be taxed. Dylan responded that they would be taxed on the use, not just solely commercially because they are in the district. He also explained that the properties that they included in the commercial district are the ones that are sent out yearly forms. These are provided by the state, and the property owners must sign and return to form to the town that indicates the use of the property being residential in a commercial zone. (State form PA-42; RSA 75:11) A resident asked what a commercial rate is and Kathy was unsure of the direct

commercial rate. Russell expressed to the board that the property owner's representative has indicated that they don't want to change the use, why can't the board just change the lines of the commercial district. Mr. Cilley expressed that the property owner is being forced to change the use, and after KLCT Holdings bought the land they discovered that the tax card and map were inaccurate. The town is working on correcting that with the information that was collected and the survey that was done. Bob expressed that this will not change the underlying use of the property, they could go back to commercial in the future. Kate expressed that they would be allowed to, but they would have to go through site plan review at that point. The board discussed that the agricultural use on the property allowed the property owner to be exempt from the site plan review. Mr. Cilley expressed that under the state guidelines that is what is allowed on the property and it was not to avoid steps. He asked if the town can change the use of the property without the property owner being notified. Dylan indicated that the town can legally change the use of the property to all commercial because of the legal notices in the Carriage Towne News, per the RSA's and the Public Hearing today.

The reason why the Planning Board is making this change is because the town doesn't have a defined commercial district in the zoning book. They have a picture that is undefined. Peter expressed that any land owner that has property in the commercial zone doesn't have a defined/surveyed line on their property. There is no legally defined line on the parcel for commercial or residential. Peter indicated that the property owner is able to voice their opinion. Russell questioned why 267 South Road has to be all commercial. The board expressed that the options would be to have it all residential/ agricultural or all commercial to keep the district parcel based. Donna Carter expressed that there are maybe three lots that might change. Where are the other lots? Joan expressed that there is an overlay that the board is looking at and that map has a number of different lots with slivers that are not clear. Dylan expressed that you can't base the lots on the overlay. In Mrs. Carter's opinion the town attorney did not answer the question that Mrs. Carter had on the lot. The point was that when he bought it, he thought that the whole lot was commercial. Now it looks like the town is changing it for the new owner, who doesn't even want it to change. Russell explained that the Town's Attorney was very clear that the town has done nothing wrong in regards to that property. Joan expressed that the board was in the process of this before the land even changed hands. The board asked Mr. Cilley what the choice would be for the property. Mr. Cilley expressed that the owners don't want to change it from what it is, but he can't make the decision for the property owner. He agrees that the district isn't clear. He is concerned about the abutters that will now abut a totally commercial property. Joan indicated that the definition still has to go before the town in the March election, once the board votes on it. Glenn indicated that the board would be willing to listen to what the property owners would like to do. Kate expressed that the board is under a time constraint to be able to have this on the March ballot. David Buxton expressed that the board should make it clear that the property owner is having say in whether it is commercial or agricultural/residential. It should be clearly stated in the minutes that the board asked if the representative wanted it to be commercial or residential/agricultural. He pointed out that the town was willing to accept that parcel as only agricultural/residential and that it would be a loss to the town to go to that use. There is no agenda for that lot being listed commercial by the town; it is for definition purposes only. There is no financial gain to anyone. Mr. Cilley would like something from the assessing company, Avitar, stating that the property value will not increase based on the commercial use. Kathy indicated that she has already contacted the assessing company and asked for something in writing that states the properties will be assessed on the use not solely because of the district that they are in. Mr. Cilley asked if one acre is commercial and the rest is in current use is it all taxable. Kathy indicated that it would not come out of Current Use, unless they were to build anything on the current use section, which would then trigger a change in use. The only thing that would change the tax on his property is that there is now a building there, where it was a vacant lot before. Peter asked if there were any other residents in the audience that had concerns for their property. Michael Dumaresq of 1 Hudson Drive directly abuts the 267 South Road and has concerns of that property being all commercial; he would like to see it all residential/agricultural.

Marina Kirsch addressed the board indicating her address of 5 Hudson Drive. She only abuts 267 South Road on the back corner of her property. She feels that zoning the entire parcel as commercial leaves it open for what can be done there in the future. She is concerned if the property is sold and the ramification of that to the surrounding properties and ecologically. There might be financial disadvantage to the town if it goes residential, but she would like to see it all residential/agricultural. Peter expressed the reason this is

taking place because the drawing that we have for the commercial zone does not have the line defined legally.

Edwin Ohlson; Map 3 Lot 29 at 217 Amesbury Road. He is concerned about 267 South Road becoming all commercial, but if it does, he would like his property to be included in the district as well.

Dylan expressed that the board can take 267 South Road out of the commercial district. It is a Planning Board decision and they can amend the proposal that will go before the voters. Mr. Cilley will ask the owners their preference.

Mr. Conti of 3 New Boston Road. Mr. Conti expressed that his lot is residential, but wanted to know how it is going to be taxed. Dylan expressed that they are in the commercial district but the use is residential, so that is how they will be taxed. Kathy informed Mr. Conti that he will still need to sign and return the yearly form stating that they are residential in a commercial zone. (PA-42) He asked if the zone included the shooting range. That property is owned by the Town of Seabrook. Dylan expressed that there is an RSA that a Municipal owner is exempt from town ordinances.

Joan asked that Mr. Cilley get a legal notice from the owner's attorney to their preference. Could we continue this meeting to next month? Bob indicated that the board was under the impression that everyone that were part of the overlay slivers were notified and asked if they wanted to be commercial or residential. If we have not spoken to all the lots we should not go forward. Jim thought the same thing. Dylan indicated that the board was going to notify only the lots partially included. Kathy thought that the only parcel that needed to be notified was the Palmers, because their lot was on the outside of the district. Kate indicated that we do not want to notify parcel by parcel, the district should be continuous. Bob asked if other tax lots break it up for residential and commercial based on the overlay. Kathy informed the board that is not the map that the town assessing company goes by. The process is that once the board approves the definition and map it will go before the Selectmen to be put on the warrant. Peter expressed that notification did not go out to the extent that was thought, the board will invite the land owners to come in and express their opinions. Kate expressed that all lots are not going to be notified.

***Joan moves to continue the Public Hearing to the next meeting on November 20, 2012; Jim seconded. All in favor.***

***Peter made a motion that all lot owners that are impacted by the commercial definition now be notified by certified letter and they are invited to attend the November 20, 2012 planning board meeting. Joan seconded, all in favor.***

The abutters should be informed again through post card notification. Kathy questioned what map to use. The board indicated the map to use to notify parcels would be the overlay titled ***Kensington Zoning Study; Proposed Changes Using Parcel Boundaries***. Kathy will send out notifications to the properties in the overlay indicated by the board before the next meeting through the certified mail process.

### **New Business:**

#### **Driveway Permit-** application review

David Buxton started the conversation with the explanation that the process used to be that the applicant would obtain the driveway permit before the building permit would be granted. There have been issues where the homes have been built without a driveway permit. Dylan expressed it is easier when the driveway permit and the building permit come from the same place instead of having the applicant go before two separate boards. David expressed that part of the problem is that the Selectmen should approve the building permit pending the driveway approval. If the Planning Board denies the driveway permit they will have to wait a month until the next meeting and resubmit the application. Dylan expressed that the Planning Board could name a designee for issuing the driveway permits. It could be the Selectmen, Road Manager or the Building Inspector. Peter asked how the Selectmen would know something is missing from the permit. Dylan explained that it would be a recommendation from the Road Manager, the same process that the board uses now. Russell responded that it would be trial and error, since the board has never handled them before. Dylan explained that it is better for the applicant to see one board for both. Russell explained that the driveway permit could indicate that. It currently does not. David asked the board if they wanted to continue approving the driveway permits. Jim indicated that he would not be in favor of the designee at this time. Kate suggested enhancing the driveway permit to entail soil types, and Bob doesn't think that the Selectmen want to get into soil types. Dylan indicated that Kensington is one of the only towns in the Seacoast where the Planning Board reviews the driveway permits. A designee is the way that

the town should consider. Glenn agrees that it would be a long process for a builder, and would like to see the process faster. Joan agrees that the sequencing needs to be changed now.

***The Board makes the recommendation to the Selectmen that on the building permit it states that no building permit for new construction will be issued until the driveway permit is approved.***

Russell will bring the board's recommendation to the Selectmen.

#### **Submission of Information Requirements for Driveways-**

Dylan handed out information to the board on submission requirements to be added to the current Article 2.3 Submission of Information. Number 4 is added and states that:

***4) All driveway permit applications shall show the exact location of the driveway and the presents of wetlands per the town's wetland ordinance and or regulations.***

This will need to have a public hearing. The soils book is plus or minus 500 feet sometimes so it is not recommended to use that as a reference.

It was discussed that the town should let applicants know that they will need an engineer to do the driveway permit submission. Russell expressed that if someone came in with a driveway permit, does the resident have to indicate where the wetlands are. He indicated that it is a lot to ask of the resident, and is this more than what other towns are doing? He is asking the board to think this through. Joan indicated that this is because of the issues with the driveway on North Road. Dylan expressed that some of the other towns allow them through a conditional use permit, and the Code enforcement officers in other towns typically define if residents are within wetlands. Dylan expressed that in the wetlands ordinance a special exception can be issued for driveways. The town can give recommendations to the residents on who could do the engineering for the driveways.

***On the driveway permit the box should be eliminated and ask the resident to please attach the sketch.***

David needs a day or two to go out and inspect the driveway. Peter expressed that it should state that on the permit, and that it should be handed in a week before the Planning Board meeting.

***Joan made a motion to put this before a public hearing with the following added:***

***4) All driveway permit applications shall show the exact location of the driveway and the presents of wetlands per the town's wetland ordinance and or regulations.***

***5) All permits to be submitted to the town seven or more days before the next scheduled Planning Board meeting.***

***Peter seconded; all in favor.***

#### **North Road:**

Joan indicated that the town is able to get North Road back from the State. She explained that it is something that the town should consider. Russell expressed that the town has had a lot of issues with the North Road driveway permits this year. David expressed that the condition of North Road is very bad, and the town should suggest the state reconstruct it before the town takes it over.

#### **Review of Town Applications and examples from other towns-skipped**

#### **Regulations for Selectmen to have more jurisdictions over violations-**

Dylan passed out the information to the board on conflicts and penalties. He would recommend that the board review and have the public hearing in December. Kate expressed that should would like the Board of Selectmen read this before it goes to public hearing. Russell will discuss it with the Selectmen at their next meeting.

#### **Capital Improvement Program- 2006-2012- discussion**

The Capital Improvement Plan (CIP) was originally created so that the town could implement impact fees, you couldn't do them without a Capital Improvement Program. The impact fees were never implemented. Bob expressed that the last time this was done it was difficult to get the information from the various departments. Peter and Kate reviewed the current one and indicated that it would be a lot of updating to the current tables. Kathy will send out electronic copies to the department heads. Discussion will continue.



**Budget- submission to Selectmen for 2013**

The board discussed what was needed for next year, and they will need to add \$5-\$6k dollars. Russell expressed that if the board needs to add money they should write something up and come to the next meeting and let the Selectmen know in person what it is for, and why they will need the extra. Kate will work on writing something up to the board and plan to attend a Board of Selectmen meeting to discuss the Planning Board's needs.

**OLD BUSINESS:**

**Draft letter review for yearly approvals by Zoning and Planning Boards-skip**

**OTHER BUSINESS:*****Approval of September, 2012 meeting minutes-***

The board reviewed the legal response to the 25%, and it was relayed to them that it would be on the original square footage of the home. If someone was to come in for a building permit to expand a home with a Special Exception the building permit process would trigger the applicant to come before the Planning Board again with the intent. The Selectmen are working on a way to track the Special Exceptions through the assessing records so that if you have one it will be on the tax card.

Definition of a boarding house- Kate read the attorneys definition. The board discussed that they might want to redefine the current definition of boarding houses.

***Jim made a motion to approve the meeting minutes; seconded by Peter; all in favor.***

Joan added the comment that with the National Flood Insurance Program the board does understand that there will be a financial impact to the residents and that is why they are looking into it more before making any decisions. Dylan did bring the maps with the overlay to see what residents will be impacted and they will be sent electronically to Kathy, for her to make a list of impacted properties for the board.

**Next Meeting –Public Hearing on November 20, 2012- Commercial District/Driveway Permit Submission of Information.**

***Peter made a motion to adjourn at 9:50pm; Bob seconded all in favor***

Respectfully submitted,

Kathleen T Felch, Planning Board Clerk