

**KENSINGTON PLANNING BOARD  
TOWN OF KENSINGTON, N.H.  
KENSINGTON ELEMENTARY SCHOOL LIBRARY  
TUESDAY, September 16, 2014  
Approved 10/21/2014**

**In Attendance: Jim Thompson; Kate Mignone; Michael Schwotzer; Peter Merrill; Joan Whitney; David Buxton, Road Manager; Glenn Ritter; Bob Solomon; Theresa Walker, Rockingham Planning Commission.**

Peter called the meeting to order at 7:33pm.

Peter informed the board that at the Selectmen's meeting on September 15, 2014 he accepted the position as interim selectmen until March of 2015. Peter resigned effective immediately, as a member of the planning board and will act as the Selectmen's Representative on the board. Joan will stay in the co-chairman position until a chairman is elected in April of 2015. The board will discuss if there is interest from the other members for the chairman position.

**Kimball Road Driveway Permit-** (Map 16 Lot 3-4) Isagani Kimball applicant:

David approached the board about the Kimball driveway permit located at Map 16 Lot 3-4. Kathy showed the board the property tax file that contained the septic approval. Joan asked if this was the lot that was carved out of the easement, the board believes so. The board looked over the septic plan and discussed if a culvert would be needed. The driveway proposed on the plan is approximately 120' or more. The board discussed concern about the wetlands in the area and if the driveway would be close to them. Kathy showed Joan where the lot was located on the town maps.

**Jim made a motion to approve the driveway permit for Map 16 Lot 3-4, Mike Seconded, all in favor.**

**114 Drinkwater Road-** (Map 18 Lot 31) Unutil to ball field access:

Dave explained that the land is owned by Unutil. The driveway is to access the ball field outback and parking will be on the grass area, not an actual parking lot. On the permit submitted there is a circle if it is indicating the telephone pole then the site distance would be a problem pulling out onto the street. If the circle is the recently installed monument sign then the site distance would not be a problem and he would suggest the board approve the permit. Joan would like to see some measurements on the parking and driveway, and to know exactly where the driveway will be with a more detailed drawing. Kathy showed the board an old site plan that was located in the property file. This driveway will not be used for pond access for ice skating.

This application is continued until next month's meeting, which is October 21, 2014 at 7:30pm.

**New Business:**

**Scott David- 21 Amesbury Road-** questions on definitions

Michael Schwotzer made a motion to have the board indefinitely post pone Mr. David's request for a discussion with the board. Kate seconded. Michael then explained to the board how Mr. David and the town are in litigation, and there is an appeal for a rehearing in regards to an administrative decision of the town and this case is going in front of the Zoning Board of Adjustments tomorrow, September 17, 2014 at 7:30pm, he does not feel that discussion with this board, specifically in regards to definitions would be to the advantage of the town, and it could jeopardize the hearing tomorrow. If the board decides to go ahead and hear Mr. David's request Michael will recuse himself and leave. He does not believe that the planning board has the jurisdiction to do this. There are procedures to do a consultation within the subdivision regulations approval and Mr. David has not filed for a subdivision so therefore he does not believe that the board has reasons to hear Mr. David's questions on definitions. Jim indicated that it is up to the selectmen to interpret the definitions. Joan asked who was in favor of not discussing this tonight. Glenn opposed because he is unsure of what they are talking about and would like to hear more. Bob would like hear Mr. David explain what he is asking for from the board. Mike recused himself and exited the library at 7:53pm,

for the duration of the following discussion, based on the fact that he is a sitting member of the Zoning Board of Adjustments.

The board indicated that they might not comment, but would listen to find out what he is requesting of the board.

Mr. David explained that he is present to ask about the definitions that are listed in the zoning. He has been given a cease and desist order and informed the board that the ZBA reversed the order in his favor. He believes that the building inspector is continuing to misinterpret the definitions of the zoning ordinance. To his attorney and himself it is very specific what the definition means, but the interpretation of the building inspector now is outside of that definition. The selectmen are following the building inspector's interpretation and proceeding with more legal actions. Kate indicated that the planning board does not interpret the zoning regulations, that would be the selectmen's jurisdiction. The board does not believe that they have the jurisdiction to decide what the definitions mean; the selectmen are the enforcing body of the town. He is asking who in the town would tell him what the zoning definitions mean. Joan indicated that when he goes before the Zoning Board he could ask them, or the selectmen. Peter expressed that due to the circumstances it would be inappropriate for the board to comment. Mr. David expressed that the zoning board is saying that it is not a dwelling unit, but the building inspector says that it is. Joan indicated that the board does not control the building inspector that is the Selectmen's purview. He was hoping to get some clarification for the meeting tomorrow night. Bob explained that the definitions are subject to interpretation by the governing body. Mr. David found where the ZBA had interpreted it previously and they will be using it tomorrow night.

**Kate made a motion to not speak about the definitions with Mr. David tonight, Jim seconded, all in favor.**

The board called Michael back to the meeting at 8:03pm.

**Storm Water Ordinance:** reschedule date

The board decided to have Julie LaBranche come to the regular meeting of the board on October 21, 2014 to discuss the storm water ordinance. She apologized for the cancelation of the scheduled meeting on the 23<sup>rd</sup> of September.

**OLD BUSINESS:**

**Memorandum of Understanding with State of NH-**

Kevin Russell from the NHDOT got back to the town with suggestions on the proposed Memorandum between the NHDOT and the Town of Kensington. He would like to see the section in the memo on the town's driveway regulations removed, but at the least the section that states "Driveways shall pitch away from all town roads and private roads, for ten feet at a grade not less than 2%". The board discussed that the reasoning behind the MOU was for the State to look into the wetlands before issuing a permit on a state road within Kensington. The board was okay with removing Article IV, number 7 which stated the town driveway regulations. They discussed the next Article V number 4 and agreed that to remove only the portion of section 4 that states "Driveways shall pitch away from all town roads and private roads, for ten feet at a grade not less than 2%". Kathy will email Kevin Russell back with the proposed changes and let the Selectmen know the boards' responses.

**Jim made a motion to remove all of Article IV number 7, and the last lines of Article V number 4:3 which states "Driveways shall pitch away from all town roads and private roads, for ten feet at a grade not less than 2%". Kate seconded, all in favor.**

**Zoning Book Update:**

Mike explained that in the signs chapter there are specific definitions. You will have to reroute the pointers from the sign ordinance to the definitions section. He would recommend that all the things that deal with signs stay within the signs section. Kate asked if all this has to go to vote and Theresa indicated that if you are organizing the existing ordinances with the original wording it does not have to go to town vote. Kate asked if the engineer definition is doubled do we have to vote on that. Theresa informed the board that if you change the definition or select one or delete one you will have to have it go to town vote. Kate found that "Engineer" has two different meanings; both definitions have to go into the new zoning book.

Kathy will continue to work on the zoning ordinance for the next meeting. Theresa and Roxanne helped to finish the project that Dylan had started so that section should be complete.

#### **OTHER BUSINESS:**

##### **National Resource Inventory-**

Joan asked if the board could have a copy of the National Resources Inventory that was done with the Conservation Commission. Theresa will email it to Kathy tomorrow. Kate suggested that the board work on the Master Plan as well.

##### **Telecommunications discussion-**

Kathy informed the board that there have been numerous phone calls and emails in relation to the Rosencrantz "tower" at 184 South Road Map 2 Lot 2. It was also brought up at the Selectmen's meeting last night. It was stated at the Selectmen's meeting that AT&T is a vendor on the tower already. Robert Gustafson has been working with the state to add repeaters to the tower for emergency personnel's regional coverage. Theresa explained that there is an existing tower there and they want to add things to it. The property owner has not filed any applications, but Theresa encouraged the attorney that has called to come and meet with the board. Peter's concern is that when you put additional structures on top of an existing tower you change the wind load resistance and the foot pounds that the original design took into account. He is concerned with the proposed approval process of just being able to obtain a building permit to add to an existing structure. Kate indicated that it should be a NH licensed structural engineer that should inspect the tower, paid for by the applicant. The original Zoning Board application and approval for the tower was from 1982. Theresa was told that under the existing state ordinance that tower is so short is not even a cell tower, so it may not be subject to cell tower ordinances. These ordinances are covered under RSA 12-K. Peter indicated that his concern is the load. Kate asked if the town is involved with the repeater project, she wonders how much has already happened behind the scenes.

Kathy informed the board the Robert Gustafson is the Emergency Management Coordinator and he has been working on this project for some time. Glenn asked if we should contact the town attorney see if the owner has jurisdiction to put things up already. Kathy contacted LGC Legal advice and they indicated that: *RSA Chapter 12-K does not distinguish between something that is a receiving or a sending tower. The statute simply says that any existing tower may have attached to it a new, collocated device and the procedure that must be followed in set forth in RSA 12-K: 10. That statute makes clear that such a collocation application shall not be subject to zoning or land use requirements or require a public hearing. The application is only subject to applicable building code requirements, and only needs to obtain a building permit from your building inspector.*

Theresa indicated the same thing stating that Federal Communications Laws would trump town ordinances. Peter had a brief discussion with Phil Wilson from North Hampton and he conveyed to Peter that they had an almost identical situation in North Hampton and they did not allow it there. They had them put the repeaters on poles throughout the town. Theresa clarified that with the original approval in 1982 for the "tower" it was very specifically just for a receiving tower not sending. Now they are asking to be a receiving and sending tower, but now it does not matter according to the state if it is receiving or sending. Peter stated that they are just clarifying the proper procedure. Kathy asked the board what she is to instruct them to do. Joan indicated that she would like to send a quick note to the building inspector and state that the board is concerned with the integrity of the structure. She would also like him to request a NH licensed structural engineer review it as part of the building permit process, paid for by the applicant. Keeping in mind what they are planning to do not what they originally did. The board just wants to make sure that any tower goes through the proper review.

##### **Telecommunications Chapter:**

Peter would like to revisit the Telecommunications Chapter to solidify who is responsible for removing a tower once it is no longer in use. Glenn expressed that the care is stated in some of the contracts. Peter is concerned with this technology being obsolete in a few years and having unmaintained structures in town.

**Planning Board Budget-**

Kathy will call the Rockingham Planning Commission and see what the fees will be for the coming year. The board would like to keep the \$3000 in the budget for Grants in case RPC has a matching one. Kathy explained that if anything is added to the budget it should be in letter form, addressed to the selectmen stating what it is needed for.

**Chairman:**

Joan asked if there was anyone who wanted to take the chairman seat. With Peter resigning to be the Selectmen's Representative she would like to know the boards thoughts on anyone interested. In April there is an annual election. Joan would not like to be chairman for the next year. The board will discuss the chairman and vice chairman at the next meeting. Joan asked Kathy to have something posted on the Town website about an open positon on the Planning Board.

***Approval of August 19th, 2014 meeting minutes.***

Peter would like to amend the section under the 8 North Road discussion. *"Joan commented, if you are looking at reuse of a historical building and you put those regulations on them it would make it difficult for the owners to make use of the older homes"*.

**Jim made a motion to accept the meeting minutes as corrected, Kate seconded; 3 abstaining; all the rest in favor.**

Peter reminded the board to look out for the training events offered to the members through the NH Local Government Center and also the Office of Energy Planning.

**Next Meeting –October 21, 2014****Meeting with Julie LaBranche on the Storm Water Ordinance**

**Mike made a motion to adjourn at 9:06pm; Kate seconded, all in favor.**

Respectfully Submitted,

Kathleen T Felch, Planning Board Clerk