

**Town of Kennebunk
Planning Board
Meeting Minutes
Monday, May 9, 2016**

Present: MacClinchy, Chris – Chair, Smith, Richard – Vice Chair, Smith, David – Secretary, Metcalf, Robert, Randall, Matthew, Vance, Janice – Alternate

Not Present: N/A

Also Attending: Bernstein, Judy – Town Planner

1. Open Meeting

C. MacClinchy opened the meeting at 7:04 pm. Today is Monday May 9, 2016

2. Approval of Minutes of Previous Meetings

Minutes for meeting held March 28, 2016 were reviewed and corrected.

D. Smith moved to approve as corrected.

R. Smith seconded the motion.

Vote was 5/0 in approval.

Minutes for meeting held April 11, 2016 were reviewed and corrected.

D. Smith moved to approve as corrected.

R. Smith seconded the motion.

Vote was 5/0 in approval.

3. Continued Workshop Discussion regarding Zoning Ordinance & Subdivision Review Standards Amendments needed

Keeping of Horses

J. Bernstein summarized the discussion that has been done so far. The suggested correction to the amendment is to remove the maximum number of horses allowed to be kept in the Rural zones. The ordinance, as it is written, allows for up to 4 horses maximum on a property. This was intended for Village and Suburban zones when it was written. Later, the rural zones were added, but no allowance was made to differentiate between them and those more populated zones. All other limitations, such as required net space per horse, would still be in effect. Ms. Bernstein stated that she doesn't see any reason not to include the Rural zones within the ordinance, but just not have a cap on it. At the last meeting, the Board didn't seem to have an issue with updating Article 10, section 18A.

J. Bernstein presented her draft corrections to this ordinance for review. Does the Board feel that this reads "right" and is easy to read?

J. Vance suggested splitting the sentence with a semi-colon or creating a second sentence to make it easier to read.

R. Metcalf stated that they should make sure that no limit within the Rural zones is still subject to the restriction of number of horses per acre of land.

The Board as a whole discussed the need for the structure of the sentence(s) be clear to make sure that all clauses are clearly defined with no confusion on which pieces of the ordinance apply to each zone.

C. MacClinchy suggested running the draft amendment past Natalie Burns, Town Attorney, for her take on the ordinance.

M. Randall suggested changing the order of the zones listed, so that the maximum limit of horses is at the end of the paragraph.

J. Bernstein stated that she would pass the draft past Ms. Burns for her thoughts.

Open Space Subdivision – Clarification of Sketch Plan Requirements

J. Bernstein summarized that this amendment is referring to the need for more definition on the sketch plans, and the need to show that the applicant can get the same number of Lots being proposed in the Open Space plan if it were a conventional plan as buildable lots; proving that the applicant is not using the open space standards to get more lots onto the site. Suggested amendment will state that if plan is for an Open

Space Subdivision, the Board may require flagging of both a conventional plan layout and the proposed Open Space plan layout. The current ordinance requires that the applicant submit 10 copies of a conventional plan that meets standards along with the proposed open space plan, to show that the proposed number of lots is justified. The conventional plan draft is intended to show buildable lots that are likely to have been approved by the Board.

M. Randall stated that it is important that the applicant be aware that just because the Board could approve a plan, doesn't mean that they would approve it.

J. Bernstein noted that the difficulty with this ordinance is that nearly every subdivision in Kennebunk will impact wetlands. The question becomes, how do we word the ordinance to indicate that the applicant will need to show what waivers are likely to be required, and have a discussion regarding the likelihood the Board would consider those waivers.

D. Smith suggested that when the applicant lays out the sketch plan, they can see most of the waivers that are likely to come.

C. MacClinchy asked if they would need to speak to the bonuses for density.

M. Randall asked if the Board is trying to address the density bonuses with this language.

J. Bernstein answered that her thought to the intention is to use this requirement as a tool to determine the basic number of allowed lots prior to getting the bonuses.

M. Randall suggested that if this is the intent, the language should list out some of the criteria needed to get to that base number.

D. Smith urged that the Board recall when wording this that "would" is getting into whether or not the Board is likely to grant those waivers; and "could" is more about what the applicant might get away with.

J. Bernstein suggested language that states, "Prior to calculating any of the bonus units, the Board shall determine that the permitted number of Lots does not exceed the number of lots that would be allowed in a conventional plan."

J. Vance stated that she likes the language in this preface because it explains how it impacts the applicant and why the Board is asking them to figure out both plans.

C. MacClinchy redirected back to discussion about what flagging [is needed] for both conventional and open space plans. He suggested adding some language that the

Board may request an additional site walk. It could get confusing to have all the flags during a single site walk. He suggested that the language state the Board can require flagging for both plans, or could request a second site walk with separate flagging.

M. Randall asked if the Board would like them to flag other features as well. Wetlands are a good one, but would it also be helpful to flag additional important features, such as steep slopes.

J. Bernstein reminded the Board that the purpose of the site walk is to identify the important features. If they read the submission packets, it will include the topography and significant site features, such as land to be set aside as open space.

M. Randall suggested that if the Board requires applicants to note significant features in the sketch plan, then it may be a good idea to start flagging those items as well.

R. Metcalf noted that the topography in the application isn't always accurate, as the applicants sometimes use the USGS maps.

M. Randall stated that it would put the onus on the applicants to note the significant features on the site, rather than on the Board to figure out what would be significant while they are viewing the land.

J. Bernstein stated that she feared getting too many flags out there. It starts to get confusing when trying to walk the site and need to figure out which flags indicate what.

M. Randall commented that if the rest of the Board is not interested in the additional flags, he won't push as it has been working for the Board so far.

J. Vance stated that while reading through the standards for sketch plan review, she had a suggestion for the language change. She would like to use the words "best possible" rather than "more acceptable" in section C.

C. MacClinchy stated that's more subjective. The intent is that the applicant show the Board their plan and what they think might get accepted, so that they don't have to come back 5 or more times to rework the application. Having them come for approval at sketch plan was never intended for them to have items [in their plans] engineered. It's more to get an idea of what the Board will allow and what they won't consider before the applicant puts in the money to engineer a lot of details.

J. Bernstein agreed that at sketch plan, the applicant frequently doesn't know what they are going to be able to do. They are filing their best possible plan for the Board to review.

J. Vance stated that she thinks that this is a great process, rather than making them bring a final plan at the onset. She just wants to make sure that they take some pride in the submission.

M. Randall agreed that this is referring to what might be accepted by the Board as a plan.

R. Metcalf spoke to the history of this process. The sketch plan process was developed as previously there had been just a verbal discussion and no real plans were developed until preliminary. Then, an applicant submitted their preliminary plan, which the Board did not like. This applicant was very upset that they had spent the money for engineering and doing what they thought the Board was directing them to do. The process was updated so that applicants can now bring in just enough of a plan that the Board can consider if they may approve it, without adding all the costs of engineering.

R. Smith stated that what he believes the Board is asking the Town Planner to do is ask the applicant to create a reasonable conventional plan, and then use that to develop the open space plan.

J. Bernstein cautioned that there is always the risk of getting lost in the updating process for the ordinance.

M. Randall asked if the Board thought that a sketch plan should show the ability to support sub-surface waste water.

R. Metcalf stated that he was not sure if the Board is clear on what they are editing at this time. This discussion was begun due to an applicant who submitted their plan [apparently] based on maps rather than ever [really] looking at the actual property, and so no testing of the soils had ever happened.

C. MacClinchy stated that this requirement is being put in place so that the applicant knows they need to justify their plan to the Board. Does the Board need to make a formal determination of what details are required?

J. Bernstein noted that in order to make a determination, the Board may need to have the applicant show a valid septic site with passing soils.

R. Metcalf agreed. The applicant will need to show that there are passable soils, but won't need to design an entire septic system for the lots.

J. Bernstein added they should also determine if the lots can handle a well along with the septic.

J. Vance agreed that this is a detail that the Board could ask for.

M. Randall added that he would like to see the well and septic flagged for the site walk.

J. Bernstein asked if he would like to see both flagged at sketch plan.

R. Metcalf stated that for the most part, developers know what will be available even at sketch plan.

M. Randall asked to clarify that the Board is asking for the applicant to be as close to Preliminary as they can get, and then backing up to the sketch plan. With cluster subdivisions they need a lot of the information that comes from a conventional plan, so they will bring that close to Preliminary and then back down. He stated that he had understood that Sketch plan was just supposed to be a quick plan to get the discussion started.

J. Bernstein noted that the Board can always ask for an additional sketch plan meeting if they see something for which they need more details.

R. Metcalf noted that they can have as many sketch plan meetings as the Board wants. They are trying to clarify so that applicants are better prepared and able to have fewer meetings. This whole discussion stems from one applicant who didn't do their homework.

D. Smith summarized that what the Board is trying to do is ask for the applicant to provide 2 sketch plans, this is different than what they have done in the past. The Board is asking the applicant to do a sketch plan for a conventional plan, and then do a sketch plan for an open space plan.

R. Metcalf stated the applicant can do both at the same time. They can present both at the same time. They just can't have both plans flagged for the site walk, the Board will need to have 2 site walks if they want to see both plans flagged.

J. Bernstein clarified that if the Board requires a second site walk it will be to view the Cluster Plan as opposed to the Conventional Plan.

R. Metcalf asked if Lidar topography is available.

C. MacClinchy answered yes, it is available.

R. Metcalf suggested that they drop the USGS and for clarity request the Lidar topography or greater survey for sketch plan. In essence, the sketch plan needs to be strong enough to let the Board make a determination. It needs to have enough detail to demonstrate the plan without detailing the design of the roads.

J. Vance had a question regarding significant features. The Board has asked applicants to show wetlands that extend into abutting properties. Do we want those shown right from the beginning?

J. Bernstein answered that the Board cannot require them to go onto the abutting property.

C. MacClinchy noted that a proximity map will show some of these features, within reason.

C. MacClinchy asked if J. Bernstein had enough information to move forward on this amendment, or did she have any additional questions for the Board.

J. Bernstein answered that she will try to redraft the amendment again.

C. MacClinchy add that the ordinance must explain to the applicant that they need to prove their conventional layout will pass muster with the Board. Not sure what wording to use, but need to talk about base units versus total number of lots, and that it doesn't talk to the density bonuses.

J. Bernstein suggested the following: "Prior to determining any density bonus, the number of lots shall not exceed the number of lots that would be allowable within a conventional plan.

Definitions – Accessory use

J. Bernstein stated that she did forward the prior questions and comments from the Board to Natalie Burns, Town Attorney, regarding concerns about how to define accessory use. Restaurants will be the issue and when a drive-thru is the accessory use to the property. She stated that she has forwarded Ms. Burns' response to the Board.

C. MacClinchy stated that Ms. Burns does make a good point that trying to regulate through accessory use may not be the Board's best options. He suggested that instead, the Board could create a separate standard for drive-thrus, similar to Falmouth.

M. Randall noted that he liked how Ogunquit added clarification to the definitions portion of their standards, rather than updating by Zone. It seemed to be clearer from a usability standpoint.

R. Metcalf asked if Ms. Burns had anything to do with the language in the other Towns' ordinances.

J. Bernstein answered no, she had not.

M. Randall asked if the Board is trying to regulate restaurants or drive-thrus.

C. MacClinchy answered drive-thrus. The issue being that they did not want a stand-alone drive-thru facility. Now, Kennebunk has one. This discussion of accessory use doesn't really have a way to regulate away any new stand-alone drive-thrus.

J. Bernstein noted that she doesn't know if this amendment will change anything. The Town has decided to allow a drive-thru on Portland Rd. She went on to further state that she doesn't know why they would need to change the definition of accessory use if the Board decided to make drive-thru a separate use.

R. Metcalf stated that it doesn't change anything. The Board's concern was trying to keep a drive-thru from becoming a primary use.

J. Bernstein commented that she isn't sure why the Board is working to add limiting language to accessory use. The defining language already states that accessory use cannot generate more traffic than primary use.

M. Randall suggested that the Board define out drive-thru restaurants and define out high-risk use, and then they can tag them as [something like] Special Exception applications, which would go through an additional review process.

J. Bernstein asked what additional standards the Board would change.

C. MacClinchy noted that the Town's CEO determines what the primary and secondary use is with a business.

J. Bernstein stated that the issue is whether the restaurant is the primary, or is the drive-thru primary.

M. Randall suggested that the Board create a different definition of restaurants and break out the drive-thrus.

J. Bernstein stated that the intent of this discussion is to have a clear standard. Ms. Burns had stated that she doesn't believe requiring a business plan would work to accomplish the Board's goal. Measuring Traffic Generation could be a marker. The principle use must generate twice as much traffic as the accessory use. Ms. Bernstein continued that she doesn't know how the Board could create a standard that they can review and mark one use as the primary and the other as the accessory. Unless the Board wishes to say they must have a certain number of seats, and the drive-thru cannot have more than a certain measurement of traffic.

M. Randall noted that Kennebunkport doesn't allow chain restaurants at all.

J. Bernstein stated that is illegal to put into the ordinance.

M. Randall continued that somehow, Kennebunkport has the ability to determine on a site-by-site basis if the proposed restaurant is a chain or not. And then they use their best judgement without crossing any legal barriers. He asked if this Board can add language that they be afforded the ability to judge high-risk applicants.

R. Metcalf stated that the ordinance cannot exclude franchises, but it can limit where they go in Town. He continued that Kennebunkport has likely not been challenged on their ordinance, but he is certain that Kennebunk would be challenged.

J. Bernstein noted that the most the Board can do is prohibit restaurants or limit the size.

R. Metcalf stated that the short of it, is that the Town should never have changed the zoning which lead to this issue in the first place.

R. Smith added he wishes they had thought of it at the time.

R. Metcalf admitted that R. Smith had thought of the potential issue.

R. Smith stated that the Town will have a difficult time trying to regulate the drive-thrus as a way to regulate the safety and the look of the Town's gateway on Route 1. This is exactly what the Board wanted to avoid. He continued that when you read what the Town Attorney wrote, it basically states that the Board is going to have a hell of a time trying to regulate accessory use. He is not sure where to go from here to get what the Board wants for a look and safety on Route 1.

J. Bernstein said she will work further with N. Burns to draft this.

C. MacClinchy stated that he thinks it will work to regulate that accessory use cannot generate more than 45% of the traffic for a business. He understands that most businesses would use ITE standards, which do not fit with every property use. (I.e. Dunkin Donuts has a very different standard for their traffic than ITE states. However, they have a great deal of data regarding their traffic impact.) He suggested contacting a Traffic Engineer for guidance.

J. Bernstein noted that if the Board wants to regulate and limit the amount of traffic for drive-thrus, [they] must be aware that the ones that are already in town may exceed the standard. She continued that she is not sure if this will limit other restaurants coming into Town or not.

C. MacClinchy stated that it could limit stand-alone drive-thrus, such as ATMs, Coffee that only serves cars, etc. And the Board can regulate the safety of the location near intersections, etc.

J. Bernstein mentioned that the Board may need to amend the minimum requirement so that it's clear that if the commercial use doesn't generate much traffic, it can be closer to intersections.

M. Randall asked if it would make sense to outlaw drive-thrus and have them by waiver only.

J. Bernstein answered that the Town cannot legally do that.

R. Metcalf noted that C. MacClinchy was right in that using the ITE standards for measuring traffic impact doesn't always fit. The Board would need to give themselves a way to challenge it.

M. Randall replied that is why it would be important to use a traffic engineer to help with the calculations.

R. Metcalf added that even traffic engineers have to use standards, and those don't always follow logic.

M. Randall asked if the Board should redefine street frontage for intersections.

J. Bernstein stated that she believes the main issue is the proximity use to the intersection. Perhaps the Board could look at the waiver provisions to certain standards within the ordinance.

J. Vance stated that she has dealt with this issue in CT. The biggest issue was with gas and convenience stores. The way they dealt with it was by proximity. They mandated that there had to be a certain distance between stores, and this seemed to work legally. It couldn't stop the issue completely, but it could hold it back.

J. Bernstein stated that the ordinance could say the Board can't grant a waiver of these standards, and would have to go for a true Variance. But that would require higher design standards.

R. Metcalf noted that the Board needs to look at the interpretation, so that Route 1 doesn't become a side yard. Route 1 always needs to be treated with all the same standards as a frontage road. With the new business, they listed Ross Road as their frontage, so they didn't meet the intended standard along Route 1.

C. MacClinchy suggested that the standard must declare that all businesses along Route 1 must treat Route 1 as their frontage.

J. Bernstein stated she will include a copy of the standards in their next meeting. She then asked the Board if they had drafted any of these standards to a level where they are ready for a hearing.

R. Smith noted that the standard for Keeping of Horses is the closest to ready.

D. Smith asked if the Board could visit the other end of the horse. He had mentioned in previous meetings that the Board must consider abutters and suggested that the Board create a standard for how much distance from a dwelling is allowable for the keeping of a manure pile.

R. Smith stated that the Board didn't change that standard.

M. Randall noted that the Board decided at the April 11, 2016 meeting that they were not going to deal with anything which wasn't broken.

J. Bernstein asked D. Smith if they thought that a 40' setback was not enough.

D. Smith suggested that they should add a 4a which states that no manure shall be stored within a certain number of feet of a dwelling or structure.

J. Bernstein noted that there were Shoreland Zoning ordinances as well, but clarified that this is not what D. Smith is referring to.

D. Smith stated that he believes this will be the next issue they will need to deal with in regards to the keeping of livestock.

M. Randall asked how many manure piles are there in town. He agreed with D. Smith that this could be an issue in the future, but he wasn't sure that it is an issue yet.

D. Smith reminded the Board that during the April 11, 2016 meeting, Judy had found an example of a standards which stated that manure cannot be stored within 200' of a neighbor.

R. Metcalf asked if the high-density zones would have enough space to maintain a 200' minimum.

J. Vance asked if the Board had ever received a complaint.

J. Bernstein answered that she cannot recall any complaint having been made.

D. Smith stated that yes, he has heard of a complaint.

C. MacClinchy stated that this could easily be fit into the ordinance, but asked what the Board thought the distance should be.

M. Randall answered that the applicant would also need to worry about public health in regards to private wells. Also, would need to consider environmental impact in regards to streams, etc. Without knowing for certain that there is an issue, he continued that he is hesitant to talk about this matter too deeply.

C. MacClinchy suggested that the Board just tweak what they have in regards to the keeping of horses and they can revisit the manure storage issue later if needed.

J. Bernstein stated that she will talk with Code Enforcement to find out if there have been any complaints in regards to manure.

D. Smith agree that he will be content if Code Enforcement is consulted about the matter.

4. Review of Draft Landscape Replacement Plan for Biddeford Savings Bank Site at 65 Portland Road

J. Bernstein informed the Board that included in their meeting packet is the plan from Bill Single in regards to the landscape plan for the Biddeford Savings Bank. Unfortunately this plan is still confusing. She is not sure if the trees he's proposing to replace are going to do what the Board wants. She did ask what the height of English Hawthorne is intended to be, and Mr. Single said they would be 10-12'.

R. Smith asked R. Metcalf to interpret the plan for the rest of the Board.

R. Metcalf stated that the Board is getting nothing with this plan. The issue was hiding the drive-thru for the bank, and this plan does nothing to do that whatsoever. The proposed plantings won't do anything to achieve the intended effect. This provides approximately 25% of the planting that was approved. He continued to state that what was originally approved was never fully implemented, so this plan has never been inspected and approved. This is an inspection problem.

R. Metcalf added that he feels what was approved is what needs to go back, in terms of density. He is OK with adding the Hawthorns.

J. Bernstein asked what was wrong with Summit Ash.

R. Metcalf answered that the issue was the trees were getting into the power lines. He continued that this won't be the case with the hawthorns. Also, the landscaper can put [set back] the trees back from the lines, and there won't be any significant issue.

M. Randall asked what the trees in front of the orthopedic place are.

R. Metcalf answered probably they are cherry. Hawthorn would be reasonable, it is also a flowering tree.

J. Bernstein summarized that the spacing of the original plan is what was approved, and any new plan needs to have similar density even if changing out some of the plantings.

R. Metcalf added that the whole purpose is screening.

R. Smith suggested that the Board ask Mr. Single to plant the original plan, and he can let the Board know if he would like to make any substitutions that achieve the same density.

C. MacClinchy added that they need to screen the headlights of cars in the drive-thru.

R. Metcalf agreed with R. Smith that the Board should tell Mr. Single to follow the original approved planting plans, although he can substitute plants of similar density and size. He can substitute the Hawthorne for the ash, etc.

5. Other Old/ New Business

Upcoming agendas:

J. Bernstein stated that the Board will need to work on the amendments more.

C. MacClinchy reminded the Board that there is the Public Hearing to be held at the 5/23/16 meeting.

J. Bernstein noted that she has a number of items which are waiting to be added to the agenda, most of which were submitted today at 4:00, so she hasn't had a time to review if they are complete. Waiting to be put on the agenda are:

- Howard Farm preliminary plan to address last list of issues.
- A Shoreland, Special Exception application for 49 Grade Hill Road. This is a brand new application to add two buildings/ homes on 1 lot. They also want to divide the lot into 2 and move the buildings.
- A sketch plan application for a 7-ot subdivision on Alewife Road. Kevin Malone's lot, which is located across from Thompson Road.
 - D. Smith asked if this subdivision abuts Ward Brook. J. Bernstein answered no it does not. There is a lot behind it.

- A subdivision plan revision for Carriage Lane. This was 1 lot and will create 2 lots. Also, the owners have added land to it so they are amending the subdivision plan.
- A Special Exception, Shoreland application for 3 Bayberry Ave. This is an existing lot that is totally in Resource Protections and totally within the 100' setback from the marsh. The applicants want to renovate the house and move the garage.

J. Bernstein stated she will put these on the agenda in order of what is the most complete. She could add them and then just let them know that if it gets to be 10:00 pm, the Board will not look at anything new.

R. Smith noted that the meetings never work that way. There are too many kind people on the Board who agree to continue for the applicants who have been waiting all this time.

J. Bernstein asked how many applications should be the limit for the agenda.

C. MacClinchy suggested no more than 5 in a meeting. He continued that whatever doesn't make it onto the agenda for 5/23/16 can be added to the agenda for 6/13/16. Plus the Board will have other work to do.

R. Metcalf updated the Board in regards to the Town's Survey. They haven't been having success in terms of responses, only about 380. He strongly encourages everyone to go online and complete the survey. It would be greatly appreciated by the committee working on this to have the public's responses.

M. Randall asked if the website still says that all responses must be completed by the 15th.

R. Metcalf answered that it was changed, and is now due at the end of the month, May 31st.

R. Metcalf also noted that this Wednesday's meeting (5/11/16) will include the superintendent of schools, who will be presenting. The meeting is Wednesday at 6:00 pm. This is an informational meeting, not necessarily open for questions from the public.

6. Adjournment

D. Smith moved to adjourn at 10:20 pm.

R. Smith seconded the motion.

Vote was 5/0 in approval.

Meeting was adjourned at 10:20 pm.

Respectfully submitted by Lynne Capitan.

Signature Page

<u>Jon C. chair</u>	<u>7/4/16</u>
<u>Rich Smith</u>	<u>7/11/16</u>
<u>Janice Unger</u>	<u>7/11/16</u>
<u>[Signature]</u>	<u>7/11/16</u>
<u>[Signature]</u>	

Signature

Date