



**PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire**

2020-2021
Joshua Bath, *Chairman*
Tim Allen, *Vice Chairman*

MINUTES

Zoom Meeting – December 17, 2020
7:00 pm

The Town of East Kingston Planning Board met remotely through a video conference (Zoom) meeting, Thursday, December 17, 2020 at 7:00 PM. Due to COVID-19, and pursuant with NH Emergency Orders, no public meeting location was utilized.

AGENDA:

Discussion with Geraldine Capobianco, 14 Powwow River Road, (MBL 10-03-09) re: change of tenant (The Fine Gardeners LLC) and expansion of Kidlogic at Geri's Place at Powwow Junction, East Kingston, NH (MBL 10-03-09)

Continued Public Hearing — Subdivision application for the Wayne R. Ewald Revocable Trust, 14 Tilton Lane (MBL 13-03-12) and Pamela A. Ewald, 2 North Road (MBL 14-03-07) for a 17-lot cluster subdivision (Tilton Village Estates, LLC) Barry Gier / Jones and Beach

Annual Growth Management Review

Review of Light Industrial Park Issues

Members Present: Chairman Joshua Bath, Vice Chairman Tim Allen, Dr. Robert Marston, Bill Caswell and Ex-Officio Bob Nigrello.

Advisors Present: RPC Senior Planner Julie LaBranche

Also present: Erin Watson; Mr. Capobianco; Mr. Barry Gier PE / Jones and Beach representing the Wayne R. Ewald Revocable Trust; applicant Sal Ragonese; Atty Josh Lanzetta; Dr. Stephen Pernaw, Professional Engineer; Town Engineer Dennis Quintal and various residents of the Town of East Kingston.

Chairman Bath made a statement regarding video bombing:

If tonight's meeting is interrupted by outside sources, this meeting will be immediately terminated and public hearings will be continued and rescheduled to another date and time to be announced and published. We ask for understanding and patience for any technical difficulties that may occur during the meeting.

Vice Chairman Allen noted if there are problems during the meeting connecting, to email him at timallenekplanningboard@gmail.com or call him at the cell number he is providing so he would be informed that someone could not connect and either provide guidance to connecting or terminate the meeting as it a requirement the meeting be available to the public.

CALL TO ORDER: This meeting of the East Kingston Planning Board was called to order at 7:00 pm by Chairman Bath.

Minutes:

Mr. Bath asked for a **MOTION** to approve the November 19 minutes.

Mr. Allen asked that Mr. Caswell be added to the members present for the November meeting.

Mr. Allen **MOVED** to approve the November minutes with the noted amendment; second by Mr. Bath.
Role call vote - Mr. Bath – aye, Mr. Allen – aye, Mr. Caswell, Dr. Marston - aye, Mr. Nigrello – aye.
Vote is unanimous.

Discussion with Geraldine Capobianco, 14 Powwow River Road, (MBL 10-03-09) re: change of tenant (The Fine Gardeners LLC) and expansion of Kidlogic at Geri's Place at Powwow Junction, East Kingston, NH (MBL 10-03-09)

Mr. Bath opened this discussion.

Kidlogic – Eric Watson

Mrs. Watson explained she was going to utilize Unit #3 in addition to Unit #2; she has previously received approval for Unit #2. The plan was to remove the door in between the units to have common space. They would not be increasing the number of children or staff, and therefore would not be increasing water or septic usage.

Mr. Nigrello asked if this expansion was due to Covid-19? Mrs. Watson said yes and no. They are licensed from the state with a license plus other certificates denoting they go above and beyond in their service. A large part of that is giving children extra space and allowing child to teacher ratios to be better. It will provide more gross motor area and also more space so they can socially distance.

Mr. Allen asked for confirmation that nothing regarding the business is changing except for the square footage that will be utilized to run the business. Mr. Watson answered that was correct; there would not be any more children or staff; it would remain the same as was for the previous approval for Unit #2.

Mr. Bath noted an annual inspection by the Fire Department will be one of the conditions and that all work would need to be done in accordance with the building inspector to make sure it meets all local and state building codes.

Mr. Caswell asked if the units were the same size; Mrs. Watson noted unit #3 was somewhat smaller than Unit #2, so the space would not be doubling.

Ms. LaBranche reminded the board that part of the approval of Ms. Watson moving into Unit #2 was that signs directing traffic for a one-way flow were to be installed, and it is noted that those signs have not yet been installed. Mr. Capobianco noted the original mandate those signs to be installed was for when the rear building was to be constructed, and that construction has not happened as of yet. He noted that traffic already flows in a one-way direction, but he will make sure to install the signs.

Ms. LaBranche asked if the children are dropped off in the back of the building. Ms. Watson acknowledged that was the case, but only to the back of Units #2 and #3. There is not room for cars to drop off at the rear of the stand-alone building.

Mr. Bath opened the floor to abutters; there being none he closed the floor.

Mr. Bath **MOVED** to approve the expansion for Kidlogic at Gerri's Place, 14 Powwow River Road, (MBL 10-03-09) to expand into Unit #3; second by Mr. Nigrello.

Roll call vote - Mr. Bath – aye, Mr. Allen – aye, Mr. Caswell, Dr. Marston - aye, Mr. Nigrello – aye.
Vote is unanimous.

The Fine Gardeners LLC - As the applicant was not in attendance, Mrs. White read the email she had received from Mr. Bateman and Mrs. Stone describing their business and their intent to rent the greenhouse at 14 Powwow River Road and utilize it as a second location for their business, The Fine Gardeners LLC. They are horticulturist/landscape designers and focus on maintenance of gardens and ornamental tree care, and hard-scaping and other property features. They are expanding into the northern region and are renting the greenhouse from Mrs. Capobianco. They will use the site as an alternate site to have an office, storage of plant material and sale products, as well as carrying items for year-round interest for the community.

The applicant arrived and apologized for being late. Mr. Bath asked him to give a brief overview of what their plans are.

Mr. Bateman explained that he and his wife Sharon own and operate the Fine Gardeners LLC, a garden company in Watertown, MA and are renting the greenhouse at 14 Powwow River Road. For this season, they are going to use the space as storage of houseplants, orchids, and start-ups for the spring for their gardens. They have a 3-year lease and next year their goal is to have retail or small wholesale sales from the site.

Mr. Bath asked what their proposed hours of operation would be, explaining the board usually recommends applicants to ask for the most hours they would need, and work anywhere between the approved hours. That way they would not need to come before the board again for a change to their conditions. The Batemans ascertained they were not really a retail business, so it would be their own business but they may be retail in the future. After some discussion, they ascertained that hours of 7:00 am to 7:00 pm would meet their needs.

Mr. Bath asked several questions; Any additional exterior lighting – *no*; adding signage – *nothing other than what will be on the main marquee*; what will be stored outside of the greenhouse – *plants and perhaps 3-5 pallets of rock and some bagged soil. Their goal when they move to retail would be for it to be a total small garden center available to the public for small items they would need that are not available at larger store*; any equipment or machinery to be stored outside– *no*; number of employees – *this year just themselves, hopefully next year one additional employee*; will you be renting an office space in the main building – *no*; what about restroom facilities and water usage – *the main building has a heated public restroom*; any mulch, stone or sand – *no, there is no room. The motif is clean and they want to keep it that way. Excess materials are stored at their other site*; any hazardous materials to be stored there – i.e., pesticides etc. – *no, all organic*.

Mr. Bateman asked if it would be possible to set up a 2/7 nightcrawler service for the community for fishing? People could pick up worms and drop off a couple of \$. The board agreed that would be fine.

Mr. Bath explained one of the conditions of approval will be an annual inspection from the Fire Chief.

Mr. Bath **MOVED** to approve the change of tenant for the greenhouse to The Fine Gardeners LLC, 14 Powwow River Road with the following conditions: Hours 7:00 am to 7:00 pm 7 days a week, no additional signage or exterior lighting, no outside equipment storage, no storage of hazardous materials, outside storage of plants and 3-5 pallets of hardscaping materials in the greenhouse area, two (2) owners and one (1) employee, 2/7 nightcrawler service, and an annual fire inspection; second by Mr. Allen.

Roll call vote - Mr. Bath – aye, Mr. Allen – aye, Mr. Caswell, Dr. Marston - aye, Mr. Nigrello – aye.
Vote is unanimous.

Mr. Bateman and Ms. Stone thanked the board for their time.

Ms. LaBranche noted the bio-retention area on the left corner of the property appears to have some issues and needs to be maintained to make sure it is working properly. Mr. Allen asked what the status was of that area. Mr. Capobianco has gotten in touch with the landscaper and the bio-retention area will be increased in size and cleaned up in the spring and maintained on a regular basis.

Mr. Bath closed the 14 Powwow River Road discussion.

Continued Public Hearing for Subdivision application for the Wayne R. Ewald Revocable Trust, 14 Tilton Lane (MBL 14-03-12) and Pamela A. Ewald, 2 North Road (MBL 14-03-07) for a 17-lot cluster subdivision (Tilton Village Estates, LLC) - Barry Gier / Jones and Beach

Mr. Bath opened this public hearing.

Mr. Bath turned the meeting over to Mr. Gier who was representing the applicant. Mr. Gier noted the applicant Sal Ragonese was in attendance, as well as Atty. Joshua Lanzetta and Stephen Pernaw, who conducted the additional traffic study for the applicant.

After hearing from the town's traffic engineer and the board at last month's meeting, and discussing the potential revisions discussed in the TEPP traffic review and the DOT, they have submitted updated plans to the board depicting safety improvements at the proposed Tilton Lane/Rt. 107 intersection.

Mr. Gier shared the updated plan on the screen. Improvements include revising the intersection to a right-in, right-out only intersection. The entrance is only coming west on Rt 107, and can only exit Tilton Lane going west on Rt. 107. These improvements are in line with the recommendations provided by TEPP and have been reviewed with DOT. The improvements eliminate left turn in or out of Tilton Lane which will eliminate potential safety issues at the intersection due to left-turning traffic. The widening of the intersection and a larger radius will also allow right turning vehicles to exit Rt. 107 more quickly, therefore reducing the safety issues. A larger radius will also allow vehicles entering Rt 107 from Tilton lane to get up to speed more quickly, therefore reducing the perceived safety concerns associated with that movement.

As stated, the applicant has been working in conjunction with the DOT throughout this process. they met and walked the site with DOT, who determined the safest location for the intersection prior to the start of any design. They designed the original intersection based upon the DOT requirements and DOT has verbally approved the originally design. They designed the latest intersection based upon DOT recommendation, along with Mr. Pernaw's recommendations, and have taken into account the recommendations of the towns' traffic engineer.

Mr. Gier noted they have received email agreement from DOT as to the revised design of the intersection and they are on board with the current design. This project is for an 18-lot subdivision over 44 acres, provides nearly twice the required upland (1/2 of the property will remain as open space); they have requested no waivers and no variances, the project has no wetland buffer impacts, and they have sought no bonuses.

Mr. Bath noted the application they have been speaking to is a 17-lot SD and not 18 lots. Ms. LaBranche clarified there are 17 lots for the Tilton Village subdivision; the 18th lot is at the corner lot on the corner of Rt 107 and Rt 108.

Mr. Bath thanked Mr. Gier for the updated drawings. He opined the right turn only going west and the exit only right-hand turn definitely seems to be an improvement over the previous in-and-out intersection. From his perspective, he thought from his conversation with Atty. Lanzetta all recommendations from Dr.

Hazarvartian would be taken into account for this revision. He noted there was not a widening of shoulders or a deceleration lane for cars coming into the subdivision for the right-hand turn only. The widening of the shoulders was one of the recommendations by Dr. Hazarvartian that may have contributed to an increased safety in that location.

Mr. Gier noted they did look at that option and discussed it with DOT. DOT's opinion was because it would end up being owned by the state, it's not warranted by the calculations or other specifics. They were not opposed to the right-in right-out intersection even though there is no warrant or justification for it, but they were not willing to accept the turning lane when there are no warrants for it as it would be additional maintenance for DOT

Mr. Gier noted they did increase the radius and the width of the turning lane which practically acts as a turning lane in. It will allow cars to get off Rt 107 more quickly and out of the way and acts in a similar manner as a decel lane would.

Mr. Bath asked for board questions on the revised proposal for the intersection.

Dr. Marston inquired about the alternative discussed at the last meeting to bring the subdivision out onto Rt 108 instead of Rt 107 or the loop road back onto Tilton Lane. *Mr. Gier stated they looked at those options in earlier discussions and as a wetland impact would be required for access onto Rt. 108 and is prohibitive, the applicant is not seeking that option.* Mr. Bath noted that option does not coincide with the applicant's design for the subdivision and they are not moving forward with the board's recommendation for those options.

Ms. LaBranche noted her understanding is that Mr. Gier is making an assumption the DES would not permit such a wetland crossing. She asked if DES had been approached about a crossing there if it were in the interest of protecting public health and safety and eliminating a potentially dangerous intersection? *Mr. Gier stated they have not approached DES regarding the wetlands crossing. They have a project in front of the board now; they discussed options months ago. The current access onto Rt 107 requires no wetlands or buffer impacts. The access you are suggesting is unwarranted and would probably be unpermittable because it is unwarranted. Their main goal is minimization and avoidance and this in no way either minimizes or avoids any wetland impact.* Ms. LaBranche wanted to clarify for Dr. Marson that they took that option off the table for the reasons he just described, with no formal conversation with DES to eliminate it as a potential option.

Atty Lanzetta stated regarding all other alternatives, the plan-set before the board tonight is the final proposal. After the last meeting and circling back looking at the traffic reports, this alternative provides the least impact to this particular piece of property. As such, they do not want to discuss alternative plans. The plan before the board this evening is the plan they would ask the board to vote on tonight. Ms. LaBranche noted she was not suggesting they discuss alterative plans, but noted them for clarification.

Mr. Caswell asked for clarification on the revised plan for the intersection onto Rt 107. He asked what the triangular structure in the center of the entrance was. *Mr. Gier explained it was a raised concrete directional island which reduces the likelihood people entering from the left or exiting to the left.* Mr. Caswell noted that is an additional mitigation from the previous proposal. He asked if the left-hand turn is more dangerous or does it pose more risk? *Mr. Gier answered it was.*

Mr. Caswell agreed but noted he had not seen it in any of the traffic reviews. They are now assessing risk in a way that indicates a left-hand turn is more dangerous which had never been discussed before. He understands where you are coming from in that you are presenting a fully-compliant plan and not asking for any restrictions to be waived. But he noted there is a difference between having a fully-compliant plan and one the board feels is optimal; one the board feels is in the best interest of the town. This proposal is safer than the previous intersection proposal, but may not be optimal yet.

Mr. Bath noted there are also do not enter road signs proposed on either side of Rt 107. And there is a stop bar so cars will stop before they enter onto Rt 107 and a marker denoting there is a raised structure (the island). *Mr. Gier noted there are also signs in both directions on Rt 107 indicating traffic is approaching a turn and/or that there is entering traffic.*

Mr. Allen noted testimony last month from Dr. Hazarvartian's safety analysis was primarily predicated on the special road geometry of this particular section of road. The board heard that Mr. Pernaw's analysis was primarily based upon data sets and engineering models that did not take into account turn lanes, and NHCRP 457 does not take road geometry into account. Prior to this set of plans, DOT had tentatively approved this intersection based on what is primarily a sight-line distance analysis. Mr. Gier mentioned the DOT had come out; is this intersection still tentatively approved or has it been approved? Is this new approval we have before us from the DOT based on anything other than sight-line distance? Does it take into account specifically any of these latest changes? *Mr. Gier answered they spoke to DOT today and they said what they are showing is approvable. They were waiting, but will approve this design. They look at more factors than just the sight distance. They drive and walk the roads to see what the condition is and find the safest location for the intersection. Mr. Pernaw also didn't just complete the calculations from the numbers to ensure it is safe, but also drove and walked this stretch of road.*

Mr. Pernaw asked for a point of clarification, was district 6 was ready to approve the full access design? *Mr. Gier answered they were. They had the permit written up and ready to send, but they were asked to wait as the applicant was looking to make the changes you see tonight. Because of that they said they would hold onto that letter until they got the new plans.* Mr. Pernaw noted when you reduce turning movements and restrict access, they won't complain.

Mr. Nigrello stated as he understands it, the changes to meet the TEPP review is the request is to allow cars existing Tilton Lane to make a right turn onto Rt 107 west. In looking at the TEPP study he noted it stated "if the intersection is created the town may wish to consider - #3 prohibiting movements out of the Tilton Lane extension." *Mr. Gier agreed that was one of the recommendations. They did not take that recommendation. Mr. Pernaw noted they were prohibiting left turn departures because of TEPPs #3 recommendation.* For clarification Mr. Nigrello said the recommendation stated "prohibiting movements out of the Tilton Lane extension", it does not say prohibiting left or rights, but states prohibiting. The current proposal is to allow right turns. Mr. Gier answered yes but movements out of Tilton lane are restricted; only left-hand turns are prohibited.

Ms. LaBranche asked if Mr. Nigrello was on the board when the discussions started for this application. He noted he was not; he joined in April. Ms. LaBranche noted when they contracted with Dr. Hazarvartian it was not to redesign the project or design an intersection for the applicant, but to give guidance in general terms about what would make any intersection safe from a public safety standpoint. They did not ask him to offer specific design alternatives, and that is why there are several options for the town to consider in the section you referred to. He gave broad guidance so the applicant could make their own choice on how to design the safety issues. He was not asked to offer detained recommendations. Choosing a few suggestions from the TEPP review is not a comprehensive approach to designing this intersection.

Mr. Bath asked the Town Engineer Dennis Quintal to offer his review of the latest plan.

Mr. Quintal noted he had received the latest design and went over his report to the board. He had received sections of the plan, a response letter from Jones & Beach, a construction cost estimate and bond reduction worksheet for the reconstruction of the existing Tilton Lane, and a Drainage Analysis, and an Erosion and Sediment Control Plan.

He reviewed the documents, the plan set and the stormwater calculations. Many of his previous comments have been addressed; others may have been discussed but he is not sure they have been satisfied.

Mr. Quintal reviewed his latest notations with the board. Mr. Quintal's comments in italics.

#14 – concerns for existing conditions of Tilton Lane. *He has no objection to the Bond Estimate submitted, but noted it should be conditioned that this Bond be in place prior to Construction of the road.*

#16 – Sheet P2 - A Highway Access Plan – *The design has changed to right turn only in and out. He fails to see how this will improve the existing hazardous conditions of the steep sloping sharp curve.*

40 - Sheet H1 re: line of sight - *There will be days during winter where snow banks will be higher than the 2-foot height shown on the plan and during that time there can be bare pavement. Traffic will then travel at or above normal speed limit. During those conditions all season sight distance cannot be maintained.*

#51. Mr. Quintal's recommendation this sheet be reviewed by the Fire Department or an engineer who specializes in Fire Codes and requirements. *He has spoken recently with Fire Chief Warren who has not yet reviewed the proposed cistern design. Mr. Quintal recommends that the design should be reviewed by the Fire Department. He also suggested that Buoyancy Calculations be provided to assure that the tanks will not float when empty.*

#52. All required stamps (surveyor, engineer, soil/wetland scientist) should be on final plans. *To be done.*

#53. All permits listed on Title Sheet CS must be obtained prior to final approval by the Board. *To be done.*

#55. The Stormwater Management Operation and Maintenance Manual should be recorded with the Final Plans. *To be done.*

#60. Review of the Traffic Report by Stephen G. Pernaw, P.E. Applicant defers to the expertise of Mr. Pernaw and his summary on page 1 of his report regarding the proposed intersection. *Mr. Quintal fails to see how this will improve the existing hazardous conditions of the steep sloping sharp curve. During winter conditions with limited sight distance (see Comment 40) how will highway vehicles be able to plow this intersection? Will they need to travel miles into Kensington to turn around safely in order to approach from the east? This seems excessive. With this design I believe traffic heading east on Route 107 going up the hill will still turn left into the project. I also believe traffic exiting onto Route 107 from the project will still make a left turn if they want to head east. This design is still hazardous.*

#62. At the last meeting it was suggested that the proposed driveway culverts for the driveways be sized and labeled appropriately. *This has been reviewed by the Design Engineer. After my review I would recommend that a minimum 15" culvert be used for driveways on Lots 5, 6, and 11.*

Additional Comments:

In review of the revised Drainage Analysis, I find a couple of changes needed. On the outlet structure for Pond 5P, device #4 should be 8" according to the Calculations not 5.5" shown on the plan Sheet D2. On the outlet structure for Pond 7P, device #3 should be 12.5" according to the Calculations not 11.7" shown on the plan Sheet D3. These are graphical changes and could be a condition.

Ms. LaBranche asked, given some of the points the Town Engineer raised in his comment letter regarding sight distances, if anyone on the applicant's team went to the site today to see what the snow bank conditions were like and the line of sight? *Mr. Allen noted he drove that road home this evening one hour prior to the meeting. The conditions the board has been concerned about from the very beginning, one of which is that turning in bad weather when the off-sloping camber to the left as you would try to make a righthand turn. He noted that intersection would be very difficult to make. This evening the road was covered with snow. It is an anecdotal piece of information but it enforces the reason the board has been so concerned about the intersection.*

Ms. LaBranche had a follow up question for Mr. Pernaw. It appears for the right turn enter only would need to stop fairly quickly to enter the Tilton Lane extension. In your professional opinion what would be the speed a car would need to be traveling in that lane to make the turn? *Mr. Pernaw answered a west bound right hand movement into Tilton Lane is not required to stop.*

Ms. LaBranche clarified she was asking what speed they would need be going in the travel lane to make the turn safety? *Mr. Pernaw answered for a normal intersection with a smaller radius, it would be 10-15 MPH.*

With the design being proposed tonight with a radius of 50', it would be on the high side of that range. Ms. LaBranche asked about in snowy conditions? Mr. Pernaw stated that was in general conditions. In snowy conditions hopefully the vehicle would be going a lot slower. Obviously, a right-hand turn in snowy conditions would be done slower in comparison to dry pavement. Ms. LaBranche asked if someone was traveling westbound around the corner coming upon a vehicle in the travel lane going slow, how much travel distance is for their line of sight coming around the corner before they get to the turning vehicle in the travel lane? Mr. Pernaw noted Sheet H1 shows 400' of sight distance; he would say in excess of 400'.

Mr. Caswell opined that Ms. LaBranche knows someone is not required to stop there, but it may be prudent someone might want to stop in the case of pedestrians, etc. at that intersection. There needs to be allowances for someone to be able to stop. Unobstructed he can see you can come around the corner and hopefully people are wise enough to slow down when its snowing out. We still need to have a safety margin; some allowance for worst case conditions. That is one of the points the board keeps making – line of sight; drifting snow banks, etc. The issue is there is no contingency; as a commentary, if this intersection goes in its going to be “wait and see what happens”. There may be conditions that are outside the ordinary, but not so extra-ordinary that we shouldn't talk about them. Risk assessment as opposed to straight safety compliance or non-compliance.

Mr. Pernaw referred to sheet H1 showing sight line of 400'. There is a safety factor built in to that. For a design speed of 40mph which is higher than anything on page 7, on the speed survey, the required distance to come to a full stop is 305'. That number is for a level road. Making a small adjustment based on the grade, so it might be a little more than 305'. DOT is looking for the 400'. Our analysis pointed out there was an area around station 1+40 where the 400' sight distance could be limited marginally due to snow banks. If this situation were to occur, a driver exiting from the subdivision could easily adjust their stopped position on the minor approach to be safe. Mr. Gier is showing an eyeball location on that approach. In real life, day to day operations, snowy weather or good weather, as you are approaching or existing from the subdivision, you as the driver will decide when you come to a stop and where you where you look left; people use their own judgement. If there's a snowbank they are going to stop a little further back. He feels the board is making a mountain out of a mole hill because of contingencies and safety factors. Drivers are going to stop when they get to the best vantage point.

Mr. Caswell noted we have predictive data here stating .2 accidents; there is no confidence level around that. However, we have actual log reports from the Police Chief that there have been 27 accidents over a period of time. Mr. Caswell understands what Mr. Pernaw is presenting comes forward as being compliant, being conscientious of safety and doing what is necessary, but there are other considerations. Twenty-seven accidents have occurred on that stretch of road, which is twice the average across the state of NH. What is happening on that particular stretch of road has to do with the compound nature of the road which we have already discussed; both the turn and an inclination change. We want to keep trying to work with you and keep talking about the nature of that roadway. And it is not being factored in as a worst-case part of the prediction. There's evidence that that road is dangerous and risky.

Mr. Pernaw understands accepting the Police Chiefs' personal history of accidents. The Chief has basically determined a crash rate per vehicle mile traveled. His crash rate is over a segment and did not specify how long. That does not change for this proposal. The hill is still the hill, the curves are still the curves, and snow will continue to fall. He expects that a number of accidents will continue to happen. The reason he put in the crash rate prediction, qualifying it comes from the highway safety manual, it is based on default values. It is a simple formula with minimal inputs (“T” intersection, number of lanes, etc.) This gives Mr. Pernaw a number of .2.

This is his way of saying no intersection is perfect and 100% safe. When you create an intersection, you are now creating turning movements that do not exist now. He cannot say things are going to improve. He is showing that this is not going to be a high crash location because the number of vehicles coming in and out is small. As a result of the concession of the applicant in restricting movements, there will be even less vehicles coming out of the intersection and there are proper sight distances.

This is a mole hill and not a mountain. Mr. Pernaw understands and appreciates the concerns. Things will not dramatically change as a result of this proposed development. There will be a slight increase in crashes; there is no such thing as a safe intersection. There is plenty of safety built into this intersection. In taking Dr. Hazarvartian's suggestions and limiting the entry and exit, it makes the intersection safer.

Mr. Caswell opined he is looking at this as a point. The road or the road geometry is not changing nor the fact there is weather in New England. What is happening is a different traffic pattern is being created, with more interactions of people coming and going. He does not think the model is including this. It may be only 5 per day, but it could be 10 per day, or multiple people may all be coming at the wrong time. We can't prevent all accidents. Just to say that intersection alone is what's being looked at in terms of risk isn't quite where he is coming from. He doesn't agree in giving the intersection a value and saying it stands alone.

Mr. Pernaw explained from a traffic engineering standpoint, a generic "T" intersection has 9 conflict points; that is where vehicles cross, diverge or merge. When you restrict access and change it to the right-in right-out intersection as proposed tonight, it brings it to 2 conflict points instead of 9.

Mr. Allen asked Mr. Pernaw a question for clarification. This iteration of the plan has implemented some of Dr. Hazarvartian's recommendations. The board has to weigh both professional safety engineers' opinions. Paraphrasing what Dr. Hazarvartian said at the last meeting "even if you implement all of my recommendations it may only be marginally safer, if at all." What he came up with would perhaps make it safer. There is a good point in clarifying implementing each one of these recommendations would not create some sort of ratchet in safety; it may make it safer but that is an unknown commodity. Mr. Allen's takeaway is there is a dangerous section of road, with sight lines in the off season which are dependent on low snow banks and a driver's skill level going forward. We have a particular section of road that although it is making a simple "T" intersection, it is with quite possibly one of the most bizarre road geometries around. One engineer says it may make it only marginally worse; the other says it is indeed unsafe and adding to it will make it more unsafe.

Mr. Gier stated we have heard multiple time from DOT it is safe. If we are looking at a tie, we have a tie breaker. Mr. Allen stated the board has made it quite clear that the DOT does not get to be the tie breaker. The DOT has their criteria they need to meet for the safest location on this particular piece of property, but that does not mean that the intersection is indeed safe because they select it.

Mr. Pernaw asked how do you define a safe intersection? Mr. Allen answered that there is technically no intersection that is safe when you have conflicting traffic going in different directions. However, this board's point from day one has not been the fact that you are putting the intersection on Rt 107. The board's main concern has been that an intersection on Rt 107, on this particular piece of road, with its special geometry is insane in comparison to your average road, that is the tripping point.

Atty. Lanzetta noted he wanted to bring the board's attention to the legal fact that where the analysis has to lie is within reasonableness. The legal standard in the state is reasonableness. The applicant has brought forth a plan which meets the minimum requirements. Their task is to bring an appropriate and proper application to this board. They have met all the requirements, have not requested any variances or waivers, and are in compliance with the state DOT regulations.

We do have two traffic experts that disagree; one expert is saying the intersection is no big deal and the other is saying it's unsafe. To clarify, the applicant is adopting the parts of the study that DOT thinks work at this location. When you are looking at this with two experts in disagreement, where this comes down to now is

reasonableness. He suggests the board to look at if the application was brought forth properly and completely. He believes the answer is yes. Then look at this intersection; the reason there is not an approval in your email is because we were going to have the full intersection approved by the DOT for this evening. We chose not to do that, trying to add this option and limiting the turning which Mr. Pernaw stated would reduce the impact from 9 points to 2 points.

We are trying to show the board we are doing everything in our power to make this as safe as possible, while meeting all of the criteria at the state and local level for this application. You have an applicant in full compliance, now attempting to adopt the appropriate recommendations from the town's expert witness, a traffic engineer with a PHD, in order to make this the best intersection that we can. If that's not reasonable, I don't know what is. If we can frame it with that in mind, what's reasonable? If we end up in court that's exactly what the judge is going to look at. Is the application presented appropriately and correctly – yes. What's the evidence for the bench – two expert opinions. Did the applicant take advice from the town's expert and from their own expert – yes. Was this going to be approved by the DOT without the limitations that we are presenting this evening – yes.

Looking at it from a reasonableness standpoint I believe that this is as reasonable as it gets. We tried with other proposals and the issue about the waiver for the length of the road and the board not wanting to follow that. In looking at 674:36, we are complying with all the state subdivisions regulations that your subdivision regulations specifically reference, and are compliant with the zoning ordinances as well. Again, we are reasonably trying to modify this application to help allay the concerns. As we're moving forward tonight, it has been to a reasonable analysis because if this moves forward in any which way, that is the standard that we're going to have to meet.

Mr. Bath acknowledged the comments that have been made and explained he was going to poll the board and find out whether or not the proposal that is put before us today by the applicant and Mr. Gier reasonably addresses the safety concerns that the town has for this intersection for the Tilton Lane development.

Poll of the Board:

Mr. Bath – although he thinks it is an improvement over what has been shown in the past, he still has safety concerns based on the sheer fact that this stretch of road may not ever be suitable for an intersection that will address all of the safety concerns that the board has for future residents who live in the town of East Kingston or in this proposed development.

Mr. Allen – it is definitely an improvement, but he does not believe this intersection provides a reasonable safety level for the residents of East Kingston and /or people that come and go from the intersection.

Dr. Marston – considers the intersection unsafe.

Mr. Caswell – noted there has been good discussion tonight, and thinks this comes down to (the fact) we may be able to show compliance meeting requirements, but we don't have assurance. You cannot assure what the safety is going to be. We do not have a contingency to say what happens in a couple of years and it turns out to be more risky than what we might approve here. We are still in a grey zone, and safety concerns are still present.

Mr. Nigrello – for him this does come down to the fact that there are two professionals whose opinion are somewhat divergent. Safety is certainly a concern and one of our priorities. This new proposal hasn't demonstrated to him that the safety concerns have been mitigated.

Mr. Bath stated to Atty. Lanzetta that this is the proposal which is in front of us. Based on the testimony we have had up to this point, the review and testimony of both safety engineers, the town road agent, and the Police Chief, it does not seem the proposal in front of us has alleviated our safety concerns for the town of East Kingston with the subdivision onto Rt 107. As to the layout, the plans are totally reasonable. The unreasonable part of this equation is Rt 107 and the road geometry we have at this location for this intersection. Mr. Bath asked Atty. Lanzetta if they would like to the board to vote tonight.

Atty. Lanzetta asked if he could wrap up the applicant's presentation before the board proceeds with the abutter comments. Mr. Bath invited Atty. Lanzetta to complete the presentation.

Atty. Lanzetta stated they would like to ask the board to approve this application this evening as drafted. Their suggestion is that approval would be contingent upon an agreement with the town engineer regarding maintenance of the road. The applicant is willing to take reasonable maintenance and upkeep of the road throughout the construction process to make sure the road is not encumbered or destroyed in any way. They request the board take a vote this evening.

Ms. LaBranche wanted the fact recognized that most of the board did not receive the revised plan set until last Thursday or Friday and does not believe that all town departments have weighed in and reviewed those plans for the revised intersection. She believes the road agents' feedback will be important as pertaining to the plowing road with the right-turn in right-turn out entrance and exit. Mr. Bath noted he had sent the plan to the Fire Chief for his input the maneuverability of the intersection for safety equipment and has not heard back from him.

Mr. Bath opened the floor to abutters.

Mrs. Pamela Ewald, 2 North Road - abutter – Mrs. Ewald sent a letter to the board addressing Mr. Barss letter to the board from the last meeting. Mr. Bath acknowledged receipt of that letter and read the letter to the board.

Mr. Michael Jacques, 2 Tilton Lane – abutter – has not seen this last revision and has not had a chance to review it. He asked about the proposed ROW which connects to abutting property for future development and wants to know if it is still part of this revision. *Mr. Gier answered it was.* If the house on the corner is the 18th piece of the subdivision, is it no longer a full 2 acres? *Mr. Gier noted the layout for the subdivision has not changed since April; it is a 2-acre lot.*

Mr. Jacques still feels the lawyer was pressuring the board to make a decision or there would be judicial intervention.

It appears to him it is still based on economics to make sure there are 17 houses in the subdivision. The mitigation for safety and the future ROW look to be a conflict for safety with the potential for the volume of traffic increasing in the future. The board stated the development could be completed with less houses and make it safe. He is concerned with the safety as he lives on the road. He is concerned with the accident rate on the road. They want to keep the community safe and the essence of the town is important.

The truth and reality is it is an economic situation for the applicant. The builder has a vested interest, but will build and leave. He has a strong opinion that safety isn't their first concern; it is getting 17 houses in the subdivision. And maybe then to get another road and connect to the golf course property. The applicant put some factors in for a new proposal, but is still not looking at safety first.

Mr. Arron Barss, 14 Tilton Road – he thanked the planning board for clarifying the ordinance at the last meeting. His question is regarding Article XI Section B –Purpose. "... any such development must adhere, to the following: 1. To preserve the natural beauty of existing rural roads within the town, and 2. To provide adequate setback and buffering requirements to protect existing, proposed, and future residential property values." How does this extension meet these requirements that the ordinance clearly states must be followed? There have been some proposals tonight that the right-hand turning lane onto Rt 107 will restrict travel on that road, since everything will have to go out the existing Tilton Lane. It will increase the travel on Tilton Road. He did not hear any calculations on how much traffic would increase exiting out of Tilton Lane (onto Rt 108). His home and family on Tilton Lane are his biggest concern; family safety, natural environment and his property value. Increased traffic will increase the risk to his family and eliminating the dead-end road will affect his property value.

He has been informed that the proposed development area was once used as a practice ground for revolutionary war soldiers. Has the state's historic preservation office been contacted regarding this?

Mr. Allen responded. In regard to the historical value of the land, he does not believe that has been explored. In regard to preserving the scenic values of our historic neighborhoods, one of the safeguards is the 100' buffer which will be created around the property line. The applicant was gracious in presenting their plans which include the 100' buffer. Maintaining the beauty of our roads and not destroying the property is of utmost concern. From the beginning the board has tried to maintain that as best as we can.

Mr. Bath noted, not minimizing the abutters, the fact of the matter is that the cul-de-sac at the end of Tilton Lane abuts developable land which someone is trying to do. Regardless of what happens it should have been clear that this could have been developed in the future by some entity, for single lots, a cluster subdivision or a regular subdivision. He appreciates the fact that change is possible and does not want to minimize the fact that change may happen for Mr. Barss. It is someone else's' land and they have the right to develop it if they can make it happen.

There being no more public comments, Mr. Bath closed the floor to abutters.

Ms. LaBranche had some follow-up questions. Mr. Jacques brought up the ROW which has never been fully explored. She asked the applicant if that was part of the open space and will it be owned by the homeowners' association? *Mr. Gier stated it would be held by the current developer until the homeowners' association is established.* Could he build a road through that if it takes him many years to build out the development and the homeowners' association is not established?

Atty. Lanzetta interjected they were talking about the application that is before the board today. If you point him to something in the regulations or the state regulations that prohibits Mr. Ragonese from holding that piece of property as presented here, the applicant would appreciate it. Ms. LaBranche advised the board to get legal counsel on that question. Atty. Lanzetta noted they were not talking about development of any future subdivision. It's a common practice in hundreds of applications for subdivisions in the state and a good planning practice that allows access to other areas; it is 100% legal. Ms. LaBranche noted the issue would arise if they were planning on adding another road into Tilton Lane; with an already questionable intersection, adding more traffic from another development would be a concern.

Atty. Lanzetta noted that is not what we are speaking about here this evening. They have presented a 100% in compliance intersection in two versions with this application. They are not talking about projected future roads into parcels of property that are not available for development at this time.

Ms. LaBranche stated that 673:36, which Atty. Lanzetta cited before, talks about premature development and layout of roads. Atty. Lanzetta stated there is no road layout in this application on that piece of property; it is a non-issue right now. This is a ROW held by the developer that owns this property.

Mr. Allen stated the ROW is a smaller issue than the Rt 107 intersection. Perhaps the applicant would be willing to modify the plan to show that that piece of property will never be developed into a road. If there is no intention to make it a road, he could state that on the plan and we can move past this item. It is a solution. The board has expressed from the beginning that piece of land is normally left as a ROW to another parcel that at some point could be utilized as a road. The board has already said the traffic coming out of the subdivision is of utmost safety concern. If the ROW is not going to be turned into a road at any point because of the safety concerns, let's just state that on the plan. Atty. Lanzetta stated premature development is not present in this application. Holding the ROW is a good planning tool and its legal; there is no reason to condition this application on any future use for that piece of property. Atty. Lanzetta asked why they are dealing with that when the larger issue is the access point.

Mr. Allen explained the two do have a connected relationship in being that ROW would be held as a possible access in the future and the biggest concern is traffic in and out of this particular subdivision. He agrees with Atty. Lanzetta the bigger issue is the Rt 107 intersection.

Mr. Gier asked if Mr. Allen was assuming Rt 107 or Tilton Lane will never be improved upon. Mr. Allen stated that was correct. We are talking about the current roads as they are now. Mr. Gier noted they don't currently have an application for anything besides what is in front of you. Anything in the future would need to take all that into consideration and the planning board at that time would have to approve utilizing the ROW as an access road.

Mr. Allen explained the point is the board has tremendous issues with the traffic that's going to be coming out of this intersection to begin with, so that ROW leads them to believe that at some point there might be more traffic. It's well within the realm of the board to say they are uncomfortable with that ROW. It's irrelevant to the board's decision tonight because we don't know if it will ever be a road. The reasonableness is that Rt 107 has been this way for hundreds of years and the thought that it's going to be changed is not reasonable. Atty. Lanzetta noted regardless if Rt 107 will change or not, we are not engaging on any premature development. Any applicant to come before the board would have to go through the entire zoning process again. It's a basic property right and it's a good planning habit to allow for subdivisions to have ROW for future ingress or egress.

Ms. LaBranche noted there are still loose ends that have not been discussed.

- Mr. Ragonese will own the road until it is time to petition the town to accept it as a public way. If he retains ownership of the ROW it has to have a name and it goes through the perimeter buffer of this project. Is it in conflict with the perimeter buffer requirements to put a potential ROW through it? There was never any conclusion about it.
- Has the applicant reached out to Mr. Ranz who is immediately next to Rt 107? There was a proposed line of trees to augment what is already there. Is he ok with what you have proposed? The buffer is perhaps 50' against his property for drainage as shown on plan page P2. Atty. Lanzetta noted he was not part of this project from the beginning, but the applicant would be happy to speak to Mr. Ranz about the buffer. *Mr. Gier noted they had spoken to him regarding the trees and he was fine with their proposal.*
- Has the applicant had any conversations with the state to find out if there is any historic relevance to the property? Atty. Lanzetta noted probably every property in the state of NH is historic in some way. They are not aware of any issue and it is not designated as such.
- All town departments have not had a chance to review and comment on the new plan as it's been less than a week since they received the plans. There are timeframes for submission of materials. She opined this plan was submitted for discussion tonight, and noted there is more to do and to talk about.

Mr. Allen asked if the board votes to approve the subdivision this evening, is it inappropriate to approve it contingent upon finalizing some of the details that have been brought up (i.e., Mr. Ranz' buffer, Mr. Quintal's recommendations, the maintenance and bond issues regarding damage to the road). Julie said no but they might be there for another 1 ½ hours discussing the conditions of approval.

Mr. Caswell asked if there was a difference between a court ruling and arbitration? Atty. Lanzetta noted they both would be binding. The applicant would need to file a complaint and undertake litigation and they could possibly agree to attempt to mediate the dispute. The court could ask them to do that in certain circumstances. He is not aware of a procedure that works actually to undertake some mediation without a vote or without an administrative appeal. If that still continues, they would still need to file in superior court.

Atty. Lanzetta noted Mr. Ragonese has been very flexible and wants to work with the town. Many of the items Mr. Quintal and Ms. LaBranche are concerned about and have discussed, and rightfully so, he believes they could come to consensus on how to deal with those issues moving forward with very minimal disagreement. What the board and the applicant are clearly disagreeing on is access on Rt 107; that is where this application seems to be hung up. A vote this evening makes the most sense so they can move forward

with a clearer direction. Making a decision with conditions would make sense and be a worthwhile endeavor.

Mr. Bath explained to the board they have been asked to render a vote based on the proposed application before the board currently.

Atty. Lanzetta asked if Mr. Bath could please ask the board members to state the reason for their approval or denial as he is requesting the vote. Ms. LaBranche noted the reason stated should be as specific as possible.

Mr. Bath asked for a **MOTION** on the application.

Mr. Allen **MOVED** the proposed application for the Subdivision application for the Wayne R. Ewald Revocable Trust, 14 Tilton Lane (MBL 13-03-12) and Pamela A. Ewald, 2 North Road (MBL 14-03-07) for a 17-lot cluster subdivision be **DENIED** due to the safety concerns expressed regarding the Rt 107 intersection that have not been satisfactorily addressed for the many reasons expressed over the last many meetings; Mr. Nigrello seconded.

Roll call vote - Mr. Bath - votes to deny the application for the reasons stated in the MOTION;

Mr. Allen - agrees with the motion for his previously stated comments; Mr. Caswell – votes to deny based on safety concerns; Dr. Marston – votes to deny due to the safety factors and lack of alternatives; Mr. Nigrello – votes to deny as the safety concerns have not been satisfied.

Vote is unanimous to **DENY** the application.

The applicant had no further comments. Mr. Bath expressed regret there was not a better outcome for the application.

Mr. Bath closed the continued subdivision application for the Wayne R. Ewald Revocable Trust, 14 Tilton Lane (MBL 13-03-12) and Pamela A. Ewald, 2 North Road (MBL 14-03-07) for a 17-lot cluster subdivision (Tilton Village Estates, LLC).

Other Board Business

Annual Growth Management – Mrs. White had distributed an updated Growth Management pages to the members and reported there had been no new houses built during the year, only replacement houses, so the number of total houses had not changed. Ms. LaBranche had supplied the updated school numbers.

Mr. Caswell asked if they were tracking accessory apartments; Mrs. White apologized she had not updated that section. The board consensus was that they would revisit this report next month when those numbers were added.

Review of Light Industrial Park Issues – Mr. Bath asked Mr. Quintal if there was any update from the light industrial park owner. Mr. Quintal noted the owner had acknowledged the fact he was trying to clean it up and recognized there was more that had to be done and would be working on that. Mr. Bath recommended setting timelines for the work to be completed as a goal for ensuring the work will be completed. He suggested the owner would have until next July to make all necessary clean-ups. He also suggested the owner should rally his tenants to keep their areas clean and do an annual clean-up of the environs around each of their businesses; this would make it a better-looking industrial park. Mr. Caswell referred to the previous checklist and noted timelines should be specific for certain issues.

Discussion also touched upon adding non-allowable items to the Ordinance via a warrant article; it was determined there was inadequate time for changes to be made and meet the deadlines for this year. The board will work toward that option for next years' warrant.

Mr. Quintal noted there is an approved site plan and the board would have the ability to give him a certain period of time to comply or revoke the site plan or update the site plan by a specific time. Mr. Allen asked if he is not in compliance with the site plan, do we have the ability to levy fines? Ms. LaBranche noted refuse and discarded materials fall within the descriptions of non-allowable conditions under the Light Industrial section of the ordinance. Mr. Allen noted there is also a section under Article XII.B.4 & 5 – Ordinance Violation Penalty – that at fine of not more than one hundred dollars (\$100.00) for each day such violation could be levied.

More discussion ensued and it was determined a detailed letter should be sent to the owner outlining specific timelines for completion, with the caveat that if the timelines are not met the town will begin to levy \$100/day fines. Ms. LaBranche suggested it be a joint letter from the Planning Board and the Selectmen. Mr. Allen asked if she could draft that letter for the Board; she agreed to draft the letter.

Ms. LaBranche asked of Mr. Quintal had heard anything from the Wetlands Bureau regard the remediation at the site; he had not and will touch base with them on the status.

Fee Schedule – Mrs. White referred to the present fee schedule and noted the fees have not been adjusted since 2010. She suggested increasing the \$200 fees for the following applications: Lot Line Adjustment; Site Plan and Subdivision. Her suggestion is to increase those fees to \$250 which will help cover the expense of increasing postage and noticing, and also the supplies used for the notifications, and implementing the change in fee amount starting in 2021.

Mr. Bath **MOVED** to increase the fees for the following applications: Lot Line Adjustment; Site Plan and Subdivision from \$200 to \$250; second by Mr. Allen.

Roll call vote - Mr. Bath – aye, Mr. Allen – aye, Mr. Caswell, Dr. Marston - aye, Mr. Nigrello – aye.
Vote is unanimous.

Adjournment

Dr. Marston motioned to adjourn; Mr. Allen seconded. Motion was unanimous.
The meeting was adjourned at 9:53 pm.

The next Planning Board meeting will be on January 21st, 2021.

Merry Christmas to all! And to all a good night!
Stay Safe

Respectfully submitted,

Barbara White

Planning Board Secretary

Joshua Bath

Chairman

Minutes approved 1/21/21