

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
January 21, 1999

FILE

AGENDA

- 7:30 La Noria Development/Thomas Gage – Powwow River Road Subdivision – Public Hearing
- 8:00 Thomas Brandolini – 17 Rowell Road Home Occupation – Rehearing (Public Hearing)
- 8:30 Zoning Amendment – Septic System Design and Review Fees – Public Hearing

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, John L. Fillio – Ex-officio, Dr. Robert Marston, and Alternates Beverly A. Fillio, Peter A. Riley (7:14) and Robert Nigrello (7:40).

Others attending: Sarah Campbell– RPC, Lawrence K. Smith – Conservation Commission Chairman, Glenn P. Clark – Building Inspector, James Roby Day, Andrew L.T. Berridge, Kenneth Kuster, Veda Paoletta, Steve Wilson, Thomas Gage, Gerry Miller – LLS, Thomas Brandolini, Atty. Dan Jones, Atty. Patty Weathersby, Wayne Couture, Louise Castonguay, Cheryl & Mark Durkee and Susan Debus.

Chairman Smith called to order this January 21, 1999 public planning board meeting at 7:13 p.m. with the roll call. He then designated Alternate Beverly Fillio to participate in voting matters before the board.

January 14, 1999 Planning Board Minutes: The Board reviewed the minutes dated 1/14/99.

MOTION: Mrs. Fillio motioned to accept the January 14, 1999 Planning Board minutes as presented. Mr. Fillio second. With no further discussion, the motion passed 4-0 (Mr. Johnson, Dr. Marston, and Mr. Nigrello abstaining).

Work Session: It was noted that a work session was not needed at this time.

Incoming Correspondence: Chairman Smith stated that he has not received any incoming correspondence. He informed the Board that he did attend a Local Access Management (LAM) workshop in Kingston on January 20, 1999. He submitted a LAM manual for members to review.

Planning Board Vacancy: Noting that the full member position of the Planning Board had not yet been filled, members again agreed that all the alternates should be given consideration prior to the appointment. Both Mr. Riley and Mrs. Fillio have expressed an interest in filling the position. This issue will be tabled until discussion has been taken up with alternate member Robert Nigrello.

Recording Procedure: The recording secretary informed the Board of a recent problem regarding the recording of a mylar. Two attempts to record this plan have been made without success. Registry staff rejected the plans for a number of reasons. The recording secretary inquired about the recording procedure when a plan is rejected.

After much discussion, the Board directed that all rejected mylars be retained by the Planning Board until the next scheduled Planning Board meeting. A letter stating the reasons for the recording denial shall be forward to the applicant. Members also expressed their recommendation that repeated trips to the registry to record a mylar should be compensated by the applicant. They requested that the recording fee schedule be submitted to the Board for revision discussion.

LaNoria Development Corp./Thomas Gage –PowwowRiver Road Subdivision –Continued Public Hearing: Chairman Smith opened the public hearing at 7:32 PM for La Noria Development Corporation, owned by Thomas Gage. Both Mr. Gage and Plan Designer Gerry Miller presented a new plan reflecting the creation of 6 new lots (instead of 7), cul-de-sac length of 1,000 ft (instead of 1,300 ft.) and new road access location (as directed by the NHDOT).

Mr. Miller stated that except for the last two lots, the lot size calculations are the same as on the previously presented plan. He stated that the fire pond easement has not been completely delineated because the dredge and fill permit has not been completed. They only received the final grade calculations for the driveway this morning.

Noted wetland crossings were: two crossings for the back two lots (driveways), one access road crossing and one fire easement crossing. Mr. Miller stated that they don't have the total footage of the wetlands crossing calculated yet. Pit test data was also reviewed. At Mr. Ken Kuster's inquiry, Mr. Miller stated that the grade at the beginning of the access road is designed to keep water away.

For the record, it was noted that this application to subdivide is at the 60-day mark. Members continued to review the plan noting the driveway locations, well and septic locations, and wetland crossings. Mr. Miller stated that the banking on the town line will be graded at the direction of the state. He also stated that the cul-de-sac has been shortened to 1,000 feet and that it begins 300 feet farther down the road, thus the impact to the wetlands at the cul-de-sac's end is much less than previously proposed.

After reviewing the access road's design, members made recommendation that it be straightened out. As was presented, the road's entrance is almost a U-turn entrance. Members stated that they are willing to allow more wetland impact to accommodate a safer road. They directed the applicants to verify this modification with the Conservation Commission.

Mr. Miller pointed out the breakdown shoulder (deceleration lane) for vehicles entering the road from the south. This was designed at the state's direction.

Chairman Smith opened the meeting to comments from the abutters. Mr. Steve Wilson stated that he still has concerns about the access road's design. Ms. Veda Paoletta reviewed the plans and offered no comment.

Members requested that the fire pond capacity be approved by the fire chief. They noted the increase of the cistern capacity and advised that a fire pond meet the newest recommended capacity standards.

The Board recommended the following items be addressed prior to conditional approval:

1. Show Kuster's house on the plan (approximate location);
2. Fire pond easement;
3. Dredge & Fill permit;
4. State Subdivision approval;
5. NHDOT approval on the access road; and
6. Redesign the horizontal alignment on the second curve in the road.

Chairman Smith then announced that this public hearing for La Noria Development Corporation will be continued to February 18, 1999 at 8:00 PM at the East Kingston Town Hall. This announcement will serve as notification to the abutters. He then called a recess, which began at 8:16 PM and ended at 8:25 PM.

**Thomas J. Brandolini—17 Rowell Road Home Occupation—Public Hearing (Rehearing):** Chairman Smith opened the public hearing at 8:26 PM for Thomas J. Brandolini, which is a rehearing regarding the grandfathered claims for an auto repair business located at 17 Rowell Road.

Atty. Dan Jones stated that he is here with Mr. Brandolini so that the Planning Board can make a factual determination of this case, different from the nature of the last meeting. He stated that this rehearing is at the request of the Board of Selectmen. He further stated that Mr. Brandolini will address the questions of the Selectmen regarding the business' existence on Rowell Road in 1988, the continuation of this business throughout the years, and the scope of the business. He then requested that any Board member present now that was not present at the September hearing, read the previous meeting's minutes to acquaint themselves with the evidence that was presented then. He noted the testimony of both Jack Mahoney (parts supplier) and Wayne Couture (abutter) as well as the numerous parts invoices submitted into the record.

He reiterated that this meeting was a factual determination and that any Board member who has held any discussion with any of the abutters and taken a biased position, to disqualify himself from deciding this hearing. He further stated that Mr. Brandolini has many documents of his business record, but does not want them taken from him. He stated that he (Brandolini) would make copies at the Town Offices at the Planning Board's request.

Mr. Brandolini stated that he wants to be on the same page as the Planning Board and to prove that the business was established before 1989 and has continued in the same scope since then. He went on to say that the first thing he wanted to address was the statement he made back in 1994 about the business' establishment being in 1991. He stated that he said the business began in East Kingston in 1991 and that this was not true. He stated that he said this out of ignorance of the law and fear, as his tax returns all reflected the business' address as 380 Main Street in Haverhill. He admitted that he was a good mechanic, but a bad accountant. He stated that back then he thought you could only write off office space, not actual business space and that is why he kept the 380 Main Street address (up until 1990).

He then submitted photos of triple-decker building identified by himself as 380 Main Street, Haverhill, MA (see attached). He stated that this building consists of a realty office and barbershop. He stated that there is no garage at the premises and never has been. He also had an apartment on the second floor.

He continued to explain that prior to purchasing the property on Rowell Road, he rented garage space at 769 Amesbury Road in Haverhill. He then purchased the house (17 Rowell Road) along with his brother in 1986 and in 1987 he stopped renting the space at 769 Amesbury Road. He stated that he bought the house for a good price as the previous owner was in a financial bind. He stated that the previous owner operated a small machine shop from the garage, so it was easy for him to conclude that he could run his auto repair business from there as well. He said that this was his first house purchase and now he would have his own repair space, thus there would be no overhead. He stated that he began working out of his garage in 1986.

Mr. Brandolini went on to say that little has changed since 1987. He no longer uses the office in Haverhill. He has a post office box in Haverhill, he has had it since 1984 and he still has the Haverhill phone number. He submitted for the record the 1998-1999 Haverhill, Plaistow Area (Bell Atlantic) phone book. He pointed to page 16 of the white pages which gives a telephone listing of "Brandolini Thos J 380 Main Haverhill.....373-4777" He stated that this Haverhill phone line is forwarded to his home and has been forwarded since 1987. The service is named "Call Forwarding" and is reflected in a Bell Atlantic telephone bill in the name of Thos J Brandolini, Flr 2, Suit 2 Front, PO Box 1115, Haverhill MA 01831-1415, dated December 6 – January 5, 1999 also submitted (see attached).

Mrs. Fillio asked Mr. Brandolini if he paid his taxes and from what address is the business listed on the tax return.

Mr. Brandolini responded that he has paid his taxes and the tax return address says 380 Main Street, Haverhill.

Mrs. Fillio inquired if he had an insurance policy for his business in 1987 and he replied that he had and still has no insurance policy on the business. He stated he couldn't afford it.

At Mr. Fillio's inquiry, Mr. Brandolini explained that call forwarding intercepts the call in Haverhill and forwards it to East Kingston. He stated that there is no physical phone at 380 Main Street, just a line for that number, which has been cut off at the basement level. He stated that he could hook up a phone to that line and it would ring there, but at this time there is no phone, all calls to that number go to 17 Rowell Road.

Mrs. Fillio asked if Mr. Brandolini had insurance at 380 Main Street for the business.

Mr. Brandolini reiterated that he does not now and didn't then have insurance. He stated that 380 Main Street was the mailing address for the business. The business's office was at one time located there. He then submitted for the record eleven (11) Schedule C forms of the Federal 1040 tax form, ranging from 1987 to 1997. He stated that these forms reflect the address of 380 Main Street up through 1990. In 1991 he filed the business taxes from 17 Rowell Road. The Board reviewed the forms.

Mr. Fillio stated that the form filed in 1989 reflects the address of 380 Main Street, Haverhill. He inquired where the work was done in 1989, 1988, and 1987.

Mr. Brandolini stated that the business was conducted from 17 Rowell Road, East Kingston. At Mrs. Fillio's inquiry, he stated that prior to 1987, he filed Massachusetts State tax. He did not file a Massachusetts State tax form in 1987.

Mrs. Fillio stated that the Schedule C form shows the business address in 1987 and 1988 as 380 Main Street, Haverhill. She asked why Massachusetts State taxes were not filed in those years. She stated the tax forms do not show a business address of 17 Rowell Road, East Kingston until 1991. She also asked if the State of Massachusetts would require the submission of a tax form for the years the business' address was in Haverhill, MA.

Mr. Brandolini responded that because of the amount of money he was generating, it being so little, his tax return would be zero, thus he didn't file. He stated that in 1987 the business was only part-time. He stated that the business is still only part-time.

At the Board's inquiry, he described the nature of the business as an auto repair, specializing in general repairs. He stated that he stays away from the heavy work as he has a ruptured disc (he underwent back surgery in 1995). He stated that most repairs are for brake jobs, oil changes and tune-ups. At further inquiry, he stated that most cars are driven to the garage, but there are a few that are towed in.

He stated that the business has not changed since 1989 and his tax returns reflect that, as the amounts filed are almost the same every year. He stated that he only works part-time and that even this is hard at his age of 45. He has done this for 12 years.

Mr. Fillio asked what the address on the 1040 Tax form sticker, that is sent from the IRS, says.

Mr. Brandolini stated that those stickers say 17 Rowell Road, East Kingston, but that he had no copies to support this claim. He said that he does have ledgers and receipts.

Mr. Riley asked why Mr. Brandolini filed his Schedule C form in 1991 as 380 Main Street, Haverhill if he was working out of 17 Rowell Road, East Kingston. Why send them from Haverhill and not East Kingston?

Mr. Brandolini responded that he was missing a piece of information then. He stated that now in 1999 it seems stupid, but back then it did not. He stated that he wasn't aware of the ability to write off the entire space of the business in East Kingston, he thought it could only be a home office write off. He continued to say that he has no problems with the tax issue now as all his taxes are paid.

Mr. Riley again stated that the 1990 address on his tax return says 380 Main Street, Haverhill.

Mr. Brandolini stated that there was only an office there and that he gave up that up in 1991.

Board members then question Mr. Brandolini about the hazardous waste fluid generated at his business. They asked for documentation to support the waste's proper disposal.

Mr. Brandolini stated that he generates very little hazardous waste, maybe a 5-gallon pail of waste oil a month. He stated that he brings this waste oil to a tire retreading factory on Locust Street in Haverhill for them to burn in their furnace. He admitted that he has no records to support this claim.

Mr. Riley asked if Mr. Brandolini could provide the board with any letterhead from the business dated 1989.

Mr. Brandolini stated that he could not, but that he did give over a hundred parts invoices at the September meeting. He didn't bring them now as they are already a part of the record. He stated that most of the business correspondence went to the Haverhill post office box.

Atty. Weathersby asked if Mr. Brandolini could produce any documentation of the business's 17 Rowell Road address dated prior to January 6, 1989.

Mr. Brandolini repeated that the parts invoices from Mahoney's Auto Parts reflected the business's address of 17 Rowell Road and that they are already a part of the record.

Mr. Fillio responded that those parts invoices reflect a delivery address, not necessarily the place where the business was being conducted.

Mr. Brandolini stated that in the auto repair business, customers demand fast service, even over and above the cost of repair. This demand could not be met if the repair parts were delivered elsewhere. He stated that repair parts are delivered to the site of the repair, that is how all auto repair businesses run. They need to get the parts to the car as soon as possible.

At Mr. Riley's inquiry, Mr. Brandolini stated that he would not have to pay sales tax if the parts were delivered to 17 Rowell Road.

Mr. Nigrello asked if Mr. Brandolini could produce any other documents, other than the parts invoices. Something to show that the actual repair work was done at 17 Rowell Road.

Mr. Brandolini replied that a repair order dated August 18, 1988 shows the post office box in Haverhill, but also includes the East Kingston phone number. He submitted into the record ten (10) repair orders (see attached). The following is an account of the repair orders submitted: (Name of customer, date of invoice, invoice letterhead)

- (1) Susan Hazne – 1/11/88 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (2) Mahoney's Auto Parts – 8/10/88 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (3) Donna Corthex – 8/16/88 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (4) Brad Brooks – 8/18/88 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (5) Maureen McAnnery – 3/9/90 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (6) William & Trina Pillsbury – 3/27/90 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (7) John Shaw – 6/12/90 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)
- (8) Philip Antone 6/29/90 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)

- (9) Brad Brooks – 10/19/90 (Thomas J. Brandolini, PO Box 1115, Haverhill, MA. 01831-1415, (617) 373-4447)  
(10) A blank repair order – no date (Thomas J. Brandolini, PO Box 1115, Haverhill MA 01831-1415, (978)373-4777, (603) 642-4263)

*(Recording note: Although Mr. Brandolini states above that the invoice dated 8/18/88 has an East Kingston phone number on it, the invoice dated 8/18/88 he submitted into the record does not reflect this.)*

Mrs. Fillio asked if Mr. Brandolini had any photographs taken in 1986, 1987, or 1988 to prove the business was in operation on Rowell Road.

Mr. Brandolini stated that he did not.

Mr. Johnson noted that a letter dated November 23, 1998 was sent to Atty. Jones citing a list of twenty-five (25) items that could be submitted to the Planning Board to support Mr. Brandolini's grandfather claim. He asked if Mr. Brandolini brought any of the items with him.

Mr. Fillio reviewed the list and Mr. Brandolini answered as follows: (Brandolini's response in *italics*)

1. Federal, Massachusetts and New Hampshire income and other tax returns reflecting all taxes paid relating to the business. *Already gave Schedule C. There are no tax forms from New Hampshire and none from Massachusetts as his earnings were very low.*
2. Registrations with the Offices of the Secretary of State (NH and MA). *No, he did not register.*
3. Tradename registrations. *The business was in Haverhill, MA prior to 1989.*
4. Hazardous waste disposal records/manifests. *There are no records; he delivered his waste oil to a local factory to burn in their furnace.*
5. Registrations with the NH Dept of Environmental Services; MA Dept of Environmental Protection; US Environmental Protection Agency. *He did not register with any of the above mentioned agencies.*
6. Sworn affidavits of witnesses. *Testimony from abutter Wayne Couture and parts supplier Jack Mahoney was presented at the September 17, 1998 meeting in support of the business' existence on Rowell Road prior to January 6, 1989.*
7. Dated photographs. *He has none.*
8. Dated news reports. *Yes, he submitted a copy of the Haverhill Gazette dated August 11, 1988 showing an advertisement for Haverhill Tune-Up at 380 Main Street, Haverhill with a phone number of 373-4777 (see attached).*

Members noted that this ad does not support Mr. Brandolini's claim of the business' operation at 17 Rowell Road. Mrs. Fillio questioned how customers find his business if it is not located at 380 Main Street as it is listed in the newspaper.

Mr. Brandolini replied that customers used the phone number and it would be forwarded to East Kingston.

9. Listing in trade or other directories. *He has none.*
10. Home and business insurance policies. *He had none then and still does not have any insurance on the business.*
11. Business cards. *He has business cards yet they give the address PO Box 1115, Haverhill, MA. Same now as they did in 1987.*
12. Utility bills. *He has no bills separate from his residence utility bills.*
13. Business correspondence. *Any incoming correspondence was sent to PO Box 1115, Haverhill, MA. He still uses the post office box.*

14. Business letterhead. *His business letterhead shows the address of PO Box 1115, Haverhill, MA.*
15. Post office box rental records. *His business correspondence is received in Haverhill; his residential mail is received in East Kingston.*
16. Delivery records. *Parts delivery records were submitted at the September 17, 1998 meeting.*
17. Purchase orders. *Never used purchase orders.*
18. Telephone directory listings. *Telephone number is in Haverhill with call forwarding to East Kingston.*
19. Advertisements, signs. *He has none except the newspaper ad dated August 11, 1988 listing a Haverhill address and Haverhill phone number.*
20. Bank account records. *His bank account records don't support the business' address, but does support the continuity of the business' size by the account's balances being steadily the same throughout the years. The bank statements are sent to PO Box 1115, Haverhill, MA.*
21. Customer receipts. *Only the invoices presented at this meeting.*
22. Price lists for services provided by the business. *He has none.*
23. Building permits. *There are no building permits.*
24. Other business records.
25. Other documents evidencing the existence, or lack of existence, of the business. *He has cancelled checks and check registers. They reflect the PO Box 1115 in Haverhill. If he had known he would have needed the business to reflect 17 Rowell Road back in 1988 in anticipation of this meeting, he would have changed it (address).*

Mr. Fillio stated that the only items in this list of twenty-five that Mr. Brandolini submitted are Schedule C tax forms, which do not support his claim; parts delivery invoices, which only show the parts were delivered there; and the testimony of one abutter and the parts supplier.

Mr. Johnson agreed that out of the list of twenty-five possible items to support the claim of grandfather status, none of the evidence submitted clearly shows the business being located on Rowell Road.

Mr. Brandolini stated that it is important to understand the scope of this business. It is a part-time business with one employee (himself). He stated that he originally started the business in Haverhill, but moved it to East Kingston in 1987, kept the office in Haverhill until 1990 and still keeps the post office box. He went on to say that the interfacing with the customer, repairs, and auto parts deliveries were made at 17 Rowell Road.

Mr. Riley stated that there is no evidence to support this claim.

Mr. Johnson stated that there is no business listing for 17 Rowell Road, no tax record for 17 Rowell Road, and no phone number for the business at 17 Rowell Road. He said that it is hard to be persuaded by Mr. Brandolini when he cannot submit any evidence to support his claim.

Mr. Brandolini responded that the Board must understand the scope of the business. It grosses about \$27,000 to \$30,000 per year. It is a part-time garage with only one employee. He stated that there are a lot of things that do not exist for this small business. He said that there is no record of him leasing or renting a garage elsewhere after 1987 because he operated the business at home. He stated that he operated the business from 1980 to 1986 at 769 Amesbury Road in Haverhill, and from 1987 to present in East Kingston.

At Mr. Fillio's inquiry, Mr. Brandolini stated that most customers paid by check, Master Card or Visa. He has been accepting credit cards since 1979. When asked what address the contract for Master Card/Visa was given for the business, Mr. Brandolini explained that the contract reflects the business address of 380 Main Street, Haverhill.

Chairman Smith opened discussion up for abutters.

Mrs. Cheryl Durkee, of 7 Rowell Road, submitted a letter to be included in Mr. Brandolini's file (see attached). She stated that this letter states that she and her husband, direct abutters to Mr. Brandolini, did not observe an auto repair business at 17 Rowell Road until 1994. She stated that Mr. Brandolini testified in 1994 that his business had only been in operation in East Kingston for three years, thus making its establishment in town in 1991.

Mrs. Fillio asked if Mrs. Durkee recalled seeing the business in operation back in 1989.

Mrs. Durkee replied that she did not and that this is confirmed by Mr. Brandolini's own admission. At Mrs. Fillio's question of whether or not she could recall if the business was in operation back in 1991, Mrs. Durkee also replied no.

Mr. Brandolini stated that his repair orders dated 1987 reflect no sales tax, thus the work was conducted in New Hampshire.

Mrs. Fillio responded that Mr. Brandolini has no tax records for either New Hampshire or Massachusetts making this a moot point.

Atty. Jones argued that none of Brandolini's customers paid a sales tax.

Atty. Weathersby asked if Mr. Brandolini had any customer invoices prior to 1987 that do include a Massachusetts sales tax.

He responded that he does but that he does not have any with him.

Mr. Wayne Couture, also an abutter, stated that he moved into town in 1988 and can testify that he has observed Mr. Brandolini working on cars from the time he moved in until the present. He stated he didn't know if he (Brandolini) was operating a business, but that auto repair activity did occur there.

He further stated that in 1988 his car broke down and Mr. Brandolini repaired it. He stated that all the neighbors know this business has been going on since then. He added that there have been times that there have been too many cars at his residence, but that the business has been going on since 1988 and he will swear to it. Most cars are from Massachusetts and that these customers are willing to come here to have Mr. Brandolini repair their vehicles. He said that Mr. Brandolini was a good mechanic.

Mr. Couture continued to say that he too has done some auto repair work from his own home as a hobby. He stated that how Mr. Brandolini proves his paperwork is his business, but that the repair work is being done at 17 Rowell Road. He then stated that another home owner on Ashley Road was given permission to run his pool service business office from his home, but that the business itself is located in Amesbury. He said that the pool supplies will be delivered to Amesbury, where the work is conducted, but all the paperwork will be sent to and filed in East Kingston. Mr. Brandolini's case is the same. The office and paperwork are filed in Haverhill, but the work is conducted in East Kingston. He again stated that he swears the business has been in operation at 17 Rowell Road since 1988.

Mrs. Louise Castonguay, another abutter, stated that she has been present for all of the meetings regarding this issue. She stated she couldn't address the dates, but that she has followed this issue closely. She stated that Mr. Brandolini has had several meetings with the town and that she is unsure of the dates.

Mr. Brandolini asked if Mrs. Castonguay was opposed to the operation of the business. She refused to answer.

Mrs. Fillio asked if Mr. Brandolini had any other evidence to show where the actual work was being conducted prior to 1991.

Mr. Brandolini replied that he didn't think he could provide documentation to show he was operating the business there last week. He stated that he has no business license and no inspections.

Ms. Susan Debus, Mr. Brandolini's wife, stated that she could easily understand why this issue is so confusing. She stated that Mr. Brandolini is a creature of habit and that he works long hard hours. He continues to keep his paperwork separate from the business. She stated that although she is not always thrilled with all the cars in the yard, the business has been in operation in East Kingston since 1987. She stated that he (Brandolini) has invoices and two sworn affidavits. She said to look at the evidence presented. She stated that it is not the quantity of the evidence, but the significance of it.

Mr. Fillio stated that it is important to keep in mind that in 1994 Mr. Brandolini told the Board one thing, and now in 1998-99, he is telling another. He stated that the Board is reluctant to believe Mr. Brandolini's presentation of "lie the first time, but telling the truth the second time". He stated that this Board needs something concrete.

Mr. Brandolini responded that he thinks the Board has got something concrete: over 100 parts invoices and two sworn affidavits. He stated that you can't ask for anymore from a business this size. He stated that he has no rent receipts, as he was not paying himself to rent his own garage. He stated that the Board is welcome to view his records.

Members questioned the legal definition of a business. It was noted that there is no specific size qualifications to define a business but that of the activity of an enterprise for profit.

Mr. Brandolini stated that an activity that accepts Master Card and checks is more likely to be viewed as a business.

Mr. Riley stated that in 1994 Mr. Brandolini stated his business was only in existence in East Kingston for three years. This is still two years more than the grandfather clause allows.

Mr. Brandolini stated that he regrets that he was not telling the truth back then. He said he was afraid of the IRS.

Mrs. Fillo stated that in the June 1994 minutes Mrs. George stated that she went down to see Mr. Brandolini's house and that she would not say it was a business if she were driving by.

Mr. Brandolini responded that it does not look like a business, just a lot of cars.

Mr. Mark Durkee, 7 Rowell Road, stated that he wants the Board to be aware of the type of activity being conducted on his road and that there are children up and down this road. This type of business has safety concerns not suitable for this neighborhood.

Atty. Weathersby stated that although the safety issues are important, they should be addressed at the enforcement level. This hearing is to address the grandfather issue only.

Chairman Smith stated that in 1994 Mr. Brandolini claimed that from 1986 to 1991, he performed his work on the road and that the business did not begin at 17 Rowell Road until 1991.

Mr. Brandolini replied that part of that statement is in error. He stated that he said that because he couldn't show he had the garage in Haverhill. He wasn't working in Haverhill then, he was working in East Kingston.

At Mrs. Fillo's question, Mr. Brandolini stated that it wasn't that he was afraid of the Planning Board, he did not want to make the fact that he was working in East Kingston before 1991 public record.

Mr. Fillo noted that the June 1994 Planning Board minutes reflect Mr. Brandolini's statement that his business generated small amounts of antifreeze and that he is registered with the EPA in Haverhill.

Mr. Brandolini stated that he was registered with the EPA for waste oil pick up, but found it too expensive. He recalled the cost to have a barrel picked up to be around \$55, so he decided to take his waste oil to the factory instead.

Mrs. Fillo stated that Mr. Brandolini has an obligation to properly dispose of his hazardous waste products.

Mr. Brandolini agreed that he should have filed, but given the small scope of his business he didn't. As far as antifreeze, he stated he generates very little of that and when he does he disposes it at hazardous waste day. He generates about six (6) to seven (7) gallons of antifreeze per year.

Atty. Jones stated that no one changes antifreeze anymore.

Mr. Brandolini then stated that in his opinion, this decision should not be placed in the Planning Board's hands, but in a quasi-judicial forum. He stated that he was advised by the Board of Selectmen that this was the proper procedure. He further stated that he would not want to be in the Planning Board's shoes.

Chairman Smith ended discussion at this time, but then allowed abutter Wayne Couture to present his final comments.

Mr. Couture stated that this case is very similar to a case brought before the town before. He stated that Ed Warren also claimed to have been running an auto repair business prior to January 1989 and the only evidence he presented to support his claim was an abutter's testimony. He stated that Mr. Warren had no paperwork or receipts either, yet he was allowed to continue.



Mr. Fillio asked Mr. Couture that if mistakes were made in the past, does that mean the town is obligated to continue to make them again?

**MOTION:** Mr. Fillio motioned that the Planning Board recommend the Board of Selectmen deny this application for a grandfathered business, based on the lack of sufficient proof of the existence of the business prior to January 6, 1989. Mr. Johnson second. With no further discussion the motion passed 5-0.

Chairman Smith polled the board. The results of the members voting in favor of the motion were: Mr. Fillio, Mrs. Fillio, Chairman Smith, Mr. Johnson, and Dr. Marston. Those opposed to the motion: none.

Members explained that the next step to this procedure would be to go to the Selectmen, who would make the final decision based on the recommendation of the Planning Board.

Mrs. Durkee inquired as to when the business would be forced to stop.

Members explained that the Selectmen will review the evidence and should they conclude the same as the Planning Board, Mr. Brandolini will have an opportunity to appeal their (selectmen's) decision to the Zoning Board of Adjustment.

Atty. Weathersby stated that the business can run until the decision of the appeal is made. If it is granted then the business may continue, if the appeal is denied, enforcement procedures will begin.

Chairman Smith closed the public hearing for Thomas J. Brandolini at 9:55 PM.

**Planning Board Vacancy:** With all the alternate members present, the Board discussed the regular member position made vacant by the recent passing of Cathy George. Each alternate was given the opportunity to express their interest in acquiring the position. Mr. Nigrello stated that he has no interest in filling the position at this time. He stated that his schedule has since intensified since his joining the board as an alternate. He stated that he would continue on as an alternate as long as his schedule permits.

Mrs. Fillio stated that she is interested in filling the position and that she has invested a lot of time into the Planning Board. She stated that Mr. Riley is already a member of the Zoning Board of Adjustment and that she thinks dual membership could pose a problem.

Mr. Riley agreed that since Mrs. Fillio has been on the Planning Board longer, she should be offered the position before him. He then withdrew his interest.

**MOTION:** Mr. Johnson motioned the Planning Board recommend that the Board of Selectman appoint Mrs. Fillio to fill the vacant regular member position. Dr. Marston second. With no further discussion, the motion passed 4-0 (Mrs. Fillio abstaining).

**Charlie Marden:** Members discussed the recent correspondence between the Planning Board and Mr. Marden, the Selectmen and Mr. Marden, and Mr. Marden's attorney and the Selectmen. It was noted that on several occasions, Mr. Marden admits to the operation of a trucking terminal on his property, but that such authorization for this activity has never been given or presented to the Planning Board, via the site plan review process.

It was agreed that since the letter dated October 9, 1998 from the Planning Board to Mr. Marden regarding his need to apply for such approval has been ignored, this matter now becomes an enforcement issue. Members agreed that the Planning Board has no jurisdiction to enforce such matters and made recommendation that the Board of Selectmen enforce Mr. Marden's land use into compliance.

**Zoning Amendment - Septic System Design and Review Fees - Public Hearing:** Chairman Smith opened the public hearing for a zoning amendment that would increase the septic system permit fees to \$50, (\$35 for plan review and \$15 for the permit). Members felt this increase was fair, given the fact that the Building Inspector has been reviewing the septic plans free of charge. It was also noted that other towns also charge for this review service.

*Any person reconstruction of constructing (for the first time) a sanitary system must obtain a permit from the Building Inspector. There is a fee of \$35 for the review of the septic plans and a fee of \$15 for the permit.*

**MOTION:** Mrs. Fillio motioned to place this zoning amendment to Article IX.A-5, to increase the septic system fees to \$50, as noted above, on the March ballot. Mr. Fillio second. With no further discussion, the motion passed 5-0.

With no other business before the Board,

***MOTION:*** Dr. Marston motioned to adjourn. Mr. Johnson second. The motion passed 5-0 and this January 21, 1999 public planning board meeting ended at 10:11 PM.

Catherine Belcher

Secretary

Minutes complete and on file January 25, 1999.

Minutes approved on 3/25/99

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
January 14, 1999

FILE

AGENDA

7:00 Zoning Amendments – Public Hearing  
7:30 Peter Riley– 47 North Road – Home Occupation Proposal - Discussion

**Members attending:** Richard A. Smith Sr. - Chairman, , John L. Fillio – Ex-officio, , and Alternates Beverly A. Fillio and Peter A. Riley

**Absent:** Edward C. Johnson – Vice Chairman, Dr. Robert Marston, Alternate Robert Nigrello and Glenn Clark – Building Inspector.

**Others attending:** Sarah Campbell – RPC, Lawrence K. Smith – Conservation Commission Chairman, and James Roby Day.

Chairman Smith called to order this January 14, 1999 public planning board meeting at 7:00 p.m. with the roll call. He then designated Alternates Beverly Fillio and Peter Riley to participate in voting matters before the board.

**Zoning Amendments:** Chairman Smith opened the public hearing on 1999 proposed zoning amendments at 7:03 PM. *AMEND ARTICLE IV.F and ADD A NEW IV.G (see attached).* Mrs. Campbell noted that the Planning Board already held a public hearing on these two amendments on June 18, 1998, thus they will be placed on the ballot.

*AMEND ARTICLE IV.F.1- Temporary Signs:* Members agreed at the January 7, 1999 Planning Board Work Session to remove any reference to temporary signs from the zoning ordinance, thus this amendment is withdrawn.

*AMEND ARTICLE IV.I – Temporary Manufactured Housing (see attached):* It was noted that this amendment would allow the Selectmen to authorize the temporary placement of a single manufacture housing unit on a parcel with bonding stipulations. There were no questions or comments from the board or the public.

**MOTION:** In accordance to RSA 675:3, Mr. Fillio motioned to place the amendment of Article IV.I – Temporary Manufactured Housing, as presented on the March 1999 ballot. Mrs. Fillio second. With no further discussion, the motion passed 4-0.

*ADD A NEW IV.J – Planning Board authorization to enter on to any land.. (see attached):* Chairman Smith noted that such documentation already exists in the zoning ordinance under Article IV.H, thus this amendment is withdrawn.

*PRIVATE USE LANDING AREAS (see attached):* Members took up discussion on the proposed language to regulate private use landing areas. It was noted that resident James Nupp was contacted to submit his comments and suggestions regarding this proposal. Board members reviewed Mr. Nupp's written comments and focused on comments regarding D.1 – limited use of the landing area. Mr. Nupp's comments indicated his disagreement with restricting the use of a private landing area to only the property owner and his immediate family.

Mr. Roby Day stated that as a former pilot himself, one must receive permission *prior* to landing on any private field. Given this, the restriction is unnecessary and redundant.

Mr. Fillio disagreed, he stated that the use should be limited to the landowner, that is why it is called a *private* landing area. He stated that if no regulations are adopted, then anything goes.

Members questioned whether or not they had enough information or knowledge of the subject to submit these private use landing area provisions to the town for vote.

**MOTION:** Mrs. Fillio motioned the Planning Board table this issue until more information is obtained regarding the spirit in which the ordinance was written as well as to take up discussion with Mr. Nupp to clarify his comments. Mr. Fillio second. With no further discussion, the motion passed 4-0.

At this time the Board took up discussion on a warrant article to be presented at Town Meeting regarding the adoption of RSA 41:9-a, which gives the Selectmen the authority to amend building permit fees via public hearing v. presenting fee modifications at Town Meeting, as currently required. Board members were receptive to this proposal and requested that an addendum be added to the zoning ordinance explaining this (should it pass).

**December 17, 1998 Planning Board Minutes:** The Board reviewed the minutes dated 12/17/98. Mr. Larry Smith requested that for the record it be known that when he presented the Board with videos at the December 17<sup>th</sup> meeting, he was acting as a Rockingham Planning Commissioner, not the East Kingston Conservation Commission Chairman.

**MOTION:** Mrs. Fillio motioned to accept the December 17, 1998 Planning Board minutes as presented. Mr. Fillio second. With no further discussion, the motion passed 3-0.

**January 7, 1999 Planning Board Work Session Minutes:** The Board reviewed the minutes dated 1/7/99. Members discussed the actual procedure of the Planning Board when approving a citizen's petition and indicating the Board's approval on the ballot.

**MOTION:** Mr. Fillio motioned to accept the January 7, 1999 Planning Board Work Session minutes as presented. Mr. Riley second. With no further discussion, the motion passed 3-0.

**Peter Riley – Home Occupation Proposal -Discussion:** Mr. Riley stated that he is currently receiving some mail at his home regarding his position as an attorney. Although he will not be running a law office out of his home, he does wish to feel comfortable working on cases at his residence. The scope of this will include the use of a personal computer, fax, telephone, and copy machine. There will strictly be no traffic or signage. The appearance of his residence will in no way indicate any business is being conducted there. He stated that he can not in good conscience sit on the Planning Board and make decisions, if he does not follow the ordinance himself. Board members reviewed the home occupation provisions and noted Article 10.6:

*Businesses whose owners can demonstrate that they do not create any traffic, visual, or other impacts on the neighborhood (above and beyond those impacts resulting from the residential use of the property) may be exempted by the Selectmen from these permitting procedures.*

Mr. Fillio stated that each home occupation whether invisible or not must be on record with the town so that the businesses can be followed for conformity.

Mrs. Fillio stated that after reviewing the home occupation worksheet submitted by Mr. Riley, she feels this type of business should be exempt from the permitting procedures. Other members agreed.

It was noted that the correct process for a resident to apply for a home occupation, or to inquire if a home occupation is exempt from the permit procedure, is to complete a Home Occupation Worksheet (available at the Selectmen's Office), hold a discussion with the Planning Board, who will make recommendation to the Selectmen whether or not the permitting procedures will be required or not.

Members stated that this procedure ensures a formal record of the home occupation proposal to be placed on file at the Selectmen's Office so that the Selectmen can verify that the conditions on the proposals have been met.

**MOTION:** Finding that the applicant falls under the provisions of Home Occupations Article 10.6, Mrs. Fillio motioned that the Planning Board recommend the Board of Selectmen exempt the home occupation application of Peter Riley to operate a home attorney's office as presented, from the permitting procedures. Mr. Fillio second. With no further discussion, the motion passed 3-0 (Mr. Riley abstaining).

**Incoming Correspondence:** Chairman Smith acknowledged the following incoming correspondence:

1. Town of East Kingston Budget Hearing – February 8, 1999 at 7PM at the Town Hall; and
2. Road Access Management Workshop – January 20, 1999 at 7PM at the Kingston Town Hall.

With no other business before the Board,

**MOTION:** Mrs. Fillio motioned to adjourn. Mr. Fillio second. The motion passed 4-0 and this January 14, 1999 public planning board meeting ended at 7:46 PM.

Respectfully submitted

Catherine Belcher  
Secretary

Minutes complete and on file January 18, 1999.

Minutes approved on 1/21/99