

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
March 16, 2000

FILE

AGENDA

7:30 Joseph Giannino– 17 North Road Home Occupation - Discussion

**Members attending:** Richard A. Smith Sr. - Chairman, John L. Fillio - Ex-officio, Dr. Robert Marston, and Beverly A. Fillio.

**Absent:** Edward C. Johnson – Vice-Chairman and Alternates David Morse, Peter A. Riley and Robert Nigrello.

**Others attending:** Lawrence K. Smith – Conservation Commission Chairman, Sarah Campbell – RPC Planner, J. Roby Day, and Joseph Giannino.

Chairman Smith opened this March 16, 2000 public Planning Board meeting held at the East Kingston Town Hall at 7:06 p.m. with the roll call.

**Planning Board Minutes:** The board reviewed minutes dated January 20, 2000. Members eligible to vote on their acceptance were Chairman Smith, Mr. Johnson, Mr. Fillio, Dr. Marston, and Mr. Riley.

**MOTION:** Mr. Fillio motioned to approve the January 20, 2000 Planning Board minutes as presented. Dr. Marston seconded. With no further discussion, the motion carried 3-0. (Mrs. Fillio abstaining)

The board reviewed minutes dated February 7, 2000. Members eligible to vote on their acceptance were Chairman Smith, Mr. Fillio, and Mr. Riley. Noting the absence of Mr. Riley, Chairman Smith postponed the acceptance of these minutes until all three eligible members were present.

The board reviewed minutes dated February 17, 2000. Members eligible to vote on their acceptance were Chairman Smith, Mr. Fillio and Mrs. Fillio.

**MOTION:** Mrs. Fillio motioned to approve the February 17, 2000 Planning Board minutes as presented. Mr. Fillio seconded. With no further discussion, the motion carried 3-0. (Dr. Marston abstaining)

The board reviewed minutes dated March 7, 2000 (joint meeting with Kingston Planning Board). Members eligible to vote on their acceptance were Chairman Smith, Mr. Fillio, Dr. Marston, and Mr. Morse.

**MOTION:** Mr. Fillio motioned to approve the March 7, 2000 Planning Board minutes as presented. Dr. Marston seconded. With no further discussion, the motion carried 3-0. (Mrs. Fillio abstaining)

**Colanton Update:** At Mrs. Fillio's inquiry, Conservation Commission Chairman Larry Smith stated that the State has not yet taken any action on the Kingston Fairway's Golf Course wetland violations, although Dick Deseve of the Wetlands Bureau states they are in the process of administrative orders and fines. Mr. Smith went on to say that he is not sure if this case will eventually end up at the Attorney General's office where a \$10,000 per day of existing violation fines can be imposed. The Wetlands Bureau only imposes a \$2,000 fine.

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

1. Office of State Planning – Planning Listserve: Online communications for enhancing the flow of information between local land use boards. Cornerstone Survey: a survey to determine which features townspeople felt were important in defining their towns.
2. Office of State Planning – Annual Spring Conference to be held on Saturday, May 6<sup>th</sup>. Members must register with the recording secretary by April 11<sup>th</sup>.
3. NHMA Legislative Bulletin – HR 2327: a bill in the House Judiciary Committee that would allow landowners to raise constitutional issues in federal court before appealing a local decision in a state court.

Mr. Fillio stated that the Board of Selectmen has forwarded a letter to Congressman Sununu indicating their opposition to the passing of this bill.

**MOTION:** Mrs. Fillio motioned the Planning Board generate a similar letter indicating the board's opposition to the passing of this bill. Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

Chairman Smith directed the recording secretary to write the letter and collect the signatures of each board member. Regarding HB 1294, Conservation Commission Chairman Smith stated that this bill does not change the authority or powers of the Planning Commission; it just defines its role.

**Voting Results:** Members reviewed the March 14, 2000 Town Meeting voting results.

**Joseph Giannino – 17 North Road Home Occupation– Discussion:** Chairman Smith opened discussion with Joseph Giannino at 7:30 p.m. Mr. Giannino is proposing the operation of a plant wholesale business office at this residence.

Mr. Giannino stated that he operates a plant brokerage business and is a third generation plant wholesaler: his grandfather started the business. He said that he represents 35 national companies and sells to over 100 garden centers throughout New England. He basically sends out catalogues from his suppliers and orders are shipped directly to the customer. He is a full-time Revere firefighter.

He went on to say that he uses his car to visit greenhouses: he buys and sells from Newton Greenhouse and Carpenter's Greenhouse. Occasionally he will pick up a couple flats in his unmarked van, but this is not the normal practice. There are no signs and no commercial vehicles. He has been a plant broker for 16 years with the last 6 years on his own.

Mr. Giannino continued to explain that he has one girl to process the paperwork 3 days a week from his residence. He has 3 phone lines, a fax machine, a couple desks and filing cabinets. Another girl, whose office is in Newburyport, does his accounting 2 days a week. There is a lot of work to this business, as he needs to stay a season ahead.

Again at member inquiry he stated there would be no signage, no customers to and from the residence, on occasion he would have a small delivery in his own unmarked van, catalogues are shipped UPS or FEDEX. He said that when he moved into town he went immediately to the Town Office to obtain the necessary paperwork to be a legitimate business in town. The paperwork has been sitting on his desk as his schedule is not compatible with the Town Office hours.

Mr. Fillio stated that the board should consider the invisible clause provisions when looking at this business. Dr. Marston stated that from what has been presented, he feels the business falls under those provisions.

Members then questioned whether the non-resident employees disqualify the business from being determined invisible.

Mr. Giannino replied that only one of the girls goes to his residence, the other performs her accounting duties out of her own office in Newburyport.

Members reviewed the permitted use list and noted the use could fit under Article 10.5.2 (Other professional offices, including lawyer, engineer, architect) or 10.5.10 (other occupations not listed above that are of a similar nature, and only if the Board of Selectmen finds that the occupation meets the provisions of this section).

Mr. Roby Day stated that he remembers the procedure to be that the Planning Board recommends to the Board of Selectmen with noted grounds in a formal public hearing: if the business is invisible, it must be decided so in a formal public hearing. The application is first submitted to the Selectmen who then give it to the Planning Board who would determine the process.

Mrs. Campbell read aloud Article 10.9:

*Procedure: Application shall be made to the Selectmen's office, with fees paid in accordance with the Town of East Kingston Subdivision Regulations. Abutters will be notified and the applicant will be scheduled for a public hearing with the Planning Board. After the public hearing, the Planning Board will make a recommendation to the Selectmen as to whether the Home Occupation Permit should be granted. The application will then be forwarded to the Selectmen who will issue their final decision.*

She then read an excerpt from Article 10.6:

*...Business owners who 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.*

She added that the intent of this paragraph is if the business is deemed invisible, then the applicant does not need a permit, but there still needs to be a paper trail. And, abutters should be informed if their neighbor is running a business.

At this time there was discussion on past home occupation applications where the determination of whether the business was invisible or not was done at the discussion level and not at a public hearing. Not all applicants were required to pay procedural fees to get the same determination.

Mrs. Fillio stated that the board does lack consistency. There needs to be some sort of plan of action where each board's role is clear with an itemized checklist.

Chairman Smith stated that if the board follows Article 10.9, then there would be a paper trail and the neighbors would be informed.

Mr. Giannino stated that he just wants to do the right thing and operate a legitimate business within the town. He would be willing to go through the entire process if needed. His only concern was his unaccommodating work schedule.

He was informed to obtain a formal home occupation application from the Selectmen's office and submit it with all fees paid within 21 days of the next regular Planning Board meeting. Mr. Giannino left the meeting at 7:52 P.M.

**Master Plan & Future Land Use Chapter:** Mrs. Campbell stated that she would mail the draft Future Land Use Chapter of the Master Plan to all members in time for the April 20<sup>th</sup> meeting.

Mr. Day inquired about the Capital Improvements Plan. He stated that the intent of it was to be a working document that would be updated each year. Not doing so could jeopardize the Growth Control Ordinance. He asked if the board has reviewed it and added another year to it.

Chairman Smith responded that the board has not done so to date, though the document is in its third year, the board has been very busy up until now. It would be added to the "backburner list". He then asked about the legitimacy of placing a parcel on the market before the actual subdivision of that property was recorded.

Members stated that as long as the mylar was recorded at the time of the sale of the property there would be no harm in it. Placing the property on the market before it's a legal parcel only gives the seller extra time to get it sold vs. having to wait until the plan was recorded to do so.

Chairman Smith then asked if any member were interested in joining the State-wide Zoning Committee Association. A convention is planned in New York. He then noted a couple other local meetings available to board members with costs ranging from \$75 to \$750. No member expressed their interest.

With no further business,

**MOTION: Dr. Marston motioned to adjourn. Mr. Fillio seconded. The motion passed 4-0 and this March 16, 2000 Planning Board meeting ended at 8:06 p.m.**

Respectfully submitted,

Catherine Belcher  
Secretary

Minutes completed and on file March 17, 2000.

Approved: \_\_\_\_\_

4/20/00