



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2005-2006:
James Roby Day, Jr., Chairman
Richard A. Smith, Sr., Vice Chairman

MINUTES

(Regular Meeting and Public Hearings of 16 March 2006)

AGENDA:

7:00PM- **Board Business**

7:30PM- **Continued Public Hearing** for Deborah Osgood, 148 Haverhill Road (MBL 11-1-2), in regard to a 4-lot subdivision (PB#05-10)

8:00PM- **Public Hearing** for Julie Turner, 3 Marjorie Street, Newburyport, MA, in regard to a 2-lot subdivision of MBL 10-4-4 (PB#06-02)

8:30PM- **Design Review** for preliminary consultation with Glenn and Kathleen Clark (and *DeBross Builders, Inc.*), 21 Burnt Swamp Road (MBL 10-4-8), in regard to a 7-lot subdivision (PB#06-03)

9:15PM- **Discussion Only** with Richard Salmonson with regard to a home occupation on Powwow River Road.

9:45PM - **Adjournment**

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM, and noted he shall take notes from which to prepare minutes.

ROLL CALL: Mr. Day called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Dr. RA Marston, DVM, Mr. RF Morales, ex-officio, and Vice-Chairman RA Smith, Sr.

Alternate members present – Mr. EA Lloyd, Jr.

Advisors present – Jill Robinson, PhD, Senior Planner, Rockingham Planning Commission
Mr. LK Smith, Chairman, East Kingston Conservation Commission Chairman
Mr. RR Donald, East Kingston Building Inspector

Voting members - Mr. Day noted the entire Board is present. Mrs Belcher enquired as to what might be the reason for Mr. RA Smith's feistiness. Mr. Smith noted that today was his 60th wedding anniversary. The Board was duly impressed, offering congratulations to him and Eva.

BOARD BUSINESS:

Minutes-

MOTION: Mr. Morales **MOVED** the Planning Board approve the minutes of 6 February 2006 with minor corrections noted. Mrs. Belcher seconded, and the motion carried unanimously.

MOTION: Mr. Morales **MOVED** the Planning Board approve the minutes of 16 February 2006 with minor corrections noted. Dr. Marston seconded, and the motion carried unanimously.

Action/Information Items-

Recording Secretary resignation- Mrs. Belcher noted she had seen the position advertised on the Town website, and Mr. Day indicated that Mrs. Lonek had given two weeks notice, and had provided us with a computer floppy containing all the unapproved minutes. Mr. Day then acknowledged Mrs. Susan Porro of East Kingston who was in attendance, and who has applied for the position.

ZBA meeting and hearing- Mr. Day noted that Mrs. Belcher had once again acquitted herself nicely on that Board, and asked her to describe the hearing. Mrs. Belcher stated that this was the Board's first opportunity to employ the new accessory dwelling unit provision in ZO Article VIII – USES PERMITTED. She felt that the process had gone rather well, and noted that the Board had reminded the applicants that they still needed to obtain an assortment of permits from the Building Inspector.

Mr. Donald asked about the Board's decision in light of what he felt might be a conflict between the maximum living space allowed by the ordinance and the plans presented by the applicants (Brandon and Kelly Kobrenski). He noted that an interior staircase in the addition could, in effect, double the living space for the accessory unit. Discussion ensued, with the Board noting that interior access/egress was an ordinance requirement, and that the Building Inspector had license to ensure the building permit clearly delineated what constituted the accessory dwelling unit living space. Mrs. Belcher agreed that there might be some confusion if taken in the manner Mr. Donald suggested, and Mr. Day disagreed with Mr. Donald's interpretation of the ZBA minutes language. He offered that the matter could be dealt with in the Building Inspector's permitting process.

NH OEP Spring Conference- Mr. Day noted that he and Mr. Lloyd were signed up for the 1 April conference in Manchester, and it was not too late for others to register.

NH OEP Handbook for Planning Boards- Mr. Day presented a 2006 edition handbook from OEP which appeared to be very informative. He noted that it could be downloaded from the OEP website, but copies could be made in any event if members wished.

NNECAPA project grant application- Dr. Robinson was thanked for having filled out the application for the Board. If the grant is awarded to East Kingston, we shall have \$1000.00 to apply towards planning projects of our choosing.

Ordinance plans and revisions- Mr. Day briefly described the continuing work the Board has undertaken with the Master Plan and ordinances. He suggested we devote some time this evening to the Master Plan Goals and Vision chapter, and the Town Center District ordinance proposal, as well as two change proposals previously addressed by Mrs. Belcher and Mr. Morales.

CONTINUED PUBLIC HEARING FOR DEBORAH OSGOOD, 148 HAVERHILL ROAD (MBL 11-1-2) IN REGARD TO A 4-LOT SUBDIVISION (PB#05-10).

Mr. Day opened the hearing, acknowledging Mr. Osgood and Mr. Quintal, engineer for the Osgoods. He described the application's history, noting that the Board had granted a conditional approval at its 19 January 2006 public hearing. It was also affirmed that the Board, at its February meeting, had agreed to a further continuance in view of the applicant's desire to make a small lot line revision to the conditionally approved plan.

For the applicant, Dennis G. Quintal, PE, CWS. Mr. Quintal stated the applicant wished to keep one lot for himself, and an adjustment to the lot lines would suit his intents. Referring to revised site plan and subdivision plan pages, Mr. Quintal described the minor adjustment which changed the acreage of the two center lots, but which did not affect any other dimensional requirements; nor were any of the subdivision requirements, such as fire protection, altered.

Mr. Quintal proceeded to itemize the 19 January 2006 conditions of approval, having provided the Board with copies of a NHDES subdivision approval, NHDOT driveway permit, NHDES wetlands and non-site specific permit, East Kingston Certificate of Monumentation, proposed deed language for shared driveways and fire pond access and maintenance, and NHDOT regulations regarding driveway limitations.

Mrs. Belcher waxed eloquent in describing Mr. Quintal's professionalism, noting that he always gave his best to this Board without trying to pull the wool over anyone's eyes. She thanked him for his superb work, and noted that we see all types of engineers come before us, and he, Mr. Quintal, is "at the top".

Mr. Quintal demurred, stating that he kept the Board's and clients' best interests in mind. He suggested it was time for him to quit after such an accolade. Mr. Quintal was advised not to let it go to his head.

On review of the present conditions of approval, the Board concluded that the only change necessary would be to change the language of item #6 to read:

“6. Final *revised* mylar for signature and recording together with full-sized plan set and 11x17 copies to be submitted to the Board for Chairman signature.”

Mr. Day opened the floor to abutter comment, of which there was none.

MOTION: Mr. Morales **MOVED** the Planning Board approve a change to the 19 January 2006 Conditions of Approval by revising item #6 to read:

“6. Final *revised* mylar for signature and recording together with full-sized plan set and 11x17 copies to be submitted to the Board for Chairman signature.”

Dr. Marston seconded, and the motion carried unanimously.

Mr. Quintal enquired as to when and how the mylar could be signed, and Mr. Day stated that he would have to confirm that all the conditions were met, including Town Counsel’s review of easement language. When asked whether Counsel has seen the language, Mr. Quintal said he has not, but that it was similar to that used for the Brandt 2-lot subdivision of some time ago. Mr. Day indicated that it has been Board practice to have Counsel review any proposed language, be it boilerplate or otherwise, before accepting it.

Mr. Day closed the hearing.

PUBLIC HEARING FOR MS. JULIE TURNER, 3 MARJORIE STREET, NEWBURYPORT, MA, IN REGARD TO A 2-LOT SUBDIVISION OF MBL 10-4-4 (PB#06-02).

Mr. Day opened the hearing.

For the applicant, James M. Lavelle, LLS. Mr. Lavelle introduced his client, Ms. Julie Turner, her “boyfriend”, and her father, Mr. Bill Turner. He presented the Board with a 4-page plan set that appeared to be revised, a waiver request regarding Subdivision Regulations Section VII. A., a NHDDES approval for subdivision dated 9 January 2006, and a NHDOT driveway permit dated 31 October 2005.

Mr. Lavelle described the proposed subdivision, noting that in earlier discussion with the Board, a shared driveway had been proposed, however, the NHDOT had since granted a driveway permit for the second lot. He noted the present location of Ms. Turner’s dwelling, proposed location of a drainage easement around a culvert that projects onto the property, and the terrain slopes depicted on page 4. He also observed that much of the property’s terrain is steep, but that the present dwelling is on fairly even land, as would be the second proposed dwelling. Mr. Lavelle acknowledged having received the RPC Senior Planner’s review today which prompted him to add page 4.

The waiver request was addressed, and Mr. Lavelle suggested that the original lot shape prompted him to lay out the new lot boundaries as he did.

Discussion ensued about fire protection provisions, Mr. Lavelle noting that Mr. Turner had spoken to the Fire Chief. Mr. Turner stated that, some time ago, the Chief had led him to believe that provision for fire protection was leaning toward fire ponds or sprinklered dwellings. He suggested that he could install a cistern if that were the requirement. Mr. Day described the regulation’s provisions for cisterns and fire ponds, and the Board’s having entertained a plan for sprinklered dwellings to solve a particular problem, and Mrs. Belcher clarified that, in that instance, the plan involved a community well where maintenance and water pressures would not be problems.

Mr. Morales enquired about the location of test pits and slopes on the property. Mr. Lavelle referred to the test pit locations on the plan, and observed that the second dwelling would be built on slopes of less than 15%. However, Mr. Morales established that, in order to get to the dwelling, terrain of significantly greater than 15% would have to be negotiated, and that would conflict with the provisions of the Master Plan and the direction of the Subdivision Regulations. Mr. Lavelle suggested that a driveway of less than 15% could be engineered, but that it would involve switchbacks.

Mr. Day stated that the Board was presently still considering the plan as to its completeness, that a great deal of material was submitted at this first public hearing, and that he was disinclined to suggest the Board take jurisdiction until it had sufficient time to review the information. Mrs. Belcher expressed her concerns about drainage, given the terrain and the effect of development, suggesting a drainage report is in order. Mr. Lavelle stated that he could provide engineering drawings for erosion control and drainage, as well as the driveway grade. Conservation Commission Chairman Smith agreed that a drainage report is very much in order to establish where and how run-off would be controlled. Mr. Day further noted that the Board has not favorably considered any development on slopes of greater than 15%, including switchback driveways. He added that the Board should examine very closely the terrain slope question before considering taking jurisdiction of the plan. Dr. Robinson agreed with the Board's concerns, stating that the Board should consider the proposed development impact on the existing terrain and environment.

Mr. Day catalogued questions arising from the plan submission as compared to the subdivision application checklist:

- 1- An "Existing Conditions" page is required.
- 2- The originally proposed shared driveway was replaced by a second driveway, although its location on a steep slope may be problematic.
- 3- The waiver submitted regarding minimum lot-width might be resolved by simply re-configuring the lot shapes to obtain the minimum of 125 feet for any dimension. However, the minimum lot size must be preserved in so doing.
- 4- Slope depiction. Given the dramatic steepness of the property's terrain, a clearly delineated depiction of slopes, say, in 5% increments and starting with 15%, is necessary to address a very serious question which must be answered.
- 5- Proper Map Block & Lot numbers is an administrative matter that should be resolved with the East Kingston Administrative Assistant.
- 6- Fire protection. If a water source is within 1200 feet of a subdivision proposal, that information in the form of a directional arrow with a distance is to be shown on the plan.
- 7- A drainage report is necessary in view of this property's terrain.

Mr. LK Smith spoke to the question of development on slopes of greater than 15%, noting that the Board has had to deal with the question on other plans where proposals conflicted with the Master Plan and regulation provisions which, together, discourage and preclude development on such slopes. Mr. Day observed that, for those reasons, a clear and unambiguous slope depiction is critical to whether or not we move forward with this proposed subdivision.

Mr. Lavelle stated that building on slopes of greater than 15% is not uncommon in New Hampshire, attributing our concern, perhaps, to our being flat-landers, away from the mountains, but he acknowledged that construction on slopes of greater than 35% does cause problems. He acknowledged that he would have to provide the information and engineering proposals which will satisfy the Board, and shall try to do so.

Acknowledging that the Board has yet to take jurisdiction, Mr. Day opened the floor to abutter comment.

Mr. Bill Turner, father of Julie Turner. Mr. Turner suggested that the original shared driveway might avoid the slope question. Mr. Day responded by noting that if Mr. Lavelle's revisions show slopes to be a problem for the proposed second driveway, then the Board might very well entertain a shared driveway solution.

Mr. Day closed the floor to abutter comment.

Mr. Lavelle asked whether he should first submit a drainage report to the Conservation Commission, and Mr. Day noted that the Board needs five copies of any report for Board and advisor review. Mr. Day also stated that plans need to be received three weeks before a hearing to ensure a proper review.

Mr. Morales pointed out that we are, in fact, in the Town of East Kingston. He noted that Dr. Marston had spotted a reference to a proposed drainage easement to the Town of Kingston. Mr. Lavelle indicated he would correct the error.

Mr. Lavelle requested the Board consider continuing the hearing, and Mr. Day assured him that, with a more complete application, the plan would be heard at the next meeting.

Mrs. Belcher asked whether a deed of the property had been submitted. She expressed interest in knowing when the original lot was created. Mr. Day reviewed the original application package, and found no deed. The applicant was asked to provide a copy of the deed, to which he agreed.

Mr. Day confirmed that the next meeting is on 20 April 2006, and charged Mr. Lavelle with providing all the application materials in time for a proper review.

Mr. Day closed the hearing.

DESIGN REVIEW FOR PRELIMINARY CONSULTATION WITH GLENN AND KATHLEEN CLARK (AND DEBROSS BUILDERS, INC.), 21 BURNT SWAMP ROAD (MBL 10-4-8), IN REGARD TO A 7-LOT SUBDIVISION (PB#06-03).

Mr. Day opened the hearing, and noted that the Board had received a letter from Mr. Kenneth A. Berry, LLS, of *Beals Associates, PLLC*, Exeter, wherein he requested the Board continue the public hearing to afford the applicant time to prepare revisions to the application. Mr. Berry suggested the postponement would be beneficial for both his client and the Board. Mr. Day strongly urged the Board to approve the request for a continuance.

MOTION: Mr. Morales **MOVED** the Planning Board continue the public hearing for Glenn and Kathleen Clark, with *DeBross Builders, Inc.*, in regard to a 7-lot subdivision of MBL 10-4-8 until 20 April 2006 at 7:30PM. Mrs. Belcher seconded, and the motion carried unanimously.

Observing Joann and Norman Brandt standing in the wings, Mr. Day informed them that they, as abutters, should know that the Clark hearing has been continued until the April meeting.

Mr. Day closed the hearing.

CONTINUED BOARD BUSINESS:

Property deed. Mrs. Belcher spoke to her request for a copy of the deed for the Julie Turner (former Christie) property. She observed that here is an instance of our having to deal with the question of development on slopes of 15% and greater. She observed that the present Turner house was built on a pre-existing, non-conforming lot of record on which septic, well, and structure setbacks could be met. Its non-conformance was based on slopes, but subdividing the property would require that any proposal meet current provisions and standards.

ZO Article XX – STRUCTURE OR LAND USE CONFORMANCE. The Board discussed a change recommendation to Article XX which would establish an unambiguous rule regarding the change of uses on pre-existing, non-conforming parcels. Mrs. Belcher briefed the Board on the change contents and intents, and Mr. Morales suggested the explanatory language in parentheses be included.

MOTION: Mr. Morales **MOVED** the Planning Board hold a public hearing on 20 April 2006 at 7:15PM to propose the following change to Zoning Ordinance Article XX – STRUCTURE OR LAND USE CONFORMANCE:

ADD a new Paragraph F. to read:

“F. Permitted to convert an accessory use to a principal use. Such a conversion would be considered a change of use, and would be required to adhere to all current zoning, subdivision, and site plan review regulations. (*Comment: Adopting a firm rule of clarification regarding the change of uses of pre-existing, non-conforming parcels will preclude inadvertent, or covert, transformation of those uses.*) (Adopted 3/07)”

Mrs. Belcher seconded, and the motion carried unanimously.

ZO Article XVI – HOME OCCUPATIONS. Mr. Morales and Mr. Donald described the problems the Town has had with residents using the residential trash pickup service to dispose of waste from home occupations, and perhaps even business activity elsewhere.

The Board discussed Mr. Lloyd's suggested language change so as to avoid the Town having to deliver waste, rather than pick it up, and agreed to add a new sub-paragraph 10. to Paragraph C. Standards as follows:

ADD new Paragraph C. Standards. 10. to read:

“10. Disposal of all solid waste generated by the business must be at the business owner's expense, and shall not be provided by the Town of East Kingston..”

Mr. LK Smith observed that once something is tied up in a black plastic bag, *Waste Management* is not going to be checking its contents. No one disagreed, and Mr. Morales suggested that where accidental discovery of such abuse is made, affirmative language such as this is useful for enforcement, particularly when waste that could be hazardous is the issue.

MOTION: Mrs. Belcher **MOVED** the Planning Board hold a public hearing on 20 April 2006 at 7:20PM to propose the following change to Zoning Ordinance **Article XVI – HOME OCCUPATIONS:**

ADD new Paragraph C. Standards. 10. to read:

“10. Disposal of all solid waste generated by the business must be at the business owner's expense, and shall not be provided by the Town of East Kingston..”

Mr. Morales seconded, and the motion carried unanimously.

Mr. Day informed Mr. Donald that he could go home now. Mr. Donald described a situation at 89 Main Street, the location of *Carmen's Diner*, that would have one believe there is an illegal residence in a barn behind the house on the property. He noted that the owner, Mr. Julian Dunlop, has been sent a letter asking he provide access to the premises for an inspection regarding a possible code violation. Mr. Morales asked whether an inspection of the restaurant would be in order. Mr. Donald stated that he has been in the attic, which is empty, and the basement is used for storage. He also stated that he has not been in the house itself, but there was no present evidence of problems. The Board thanked Mr. Donald for the update, and wished him a good night.

Mr. Day noted the defeat of Mr. Dunlop's petitioned warrant article at Town Meeting (by a 2 to 1 margin), and referred the Board to its reasons for recommending against it. The re-zoning proposal was not a part of a comprehensive plan for growth and development, and Mr. Day suggested that our work with the proposed Town Center District should probably be balanced with lower density zoning elsewhere in Town to offset the potentially higher Town Center densities. Such a plan would be more broadly comprehensive. Mr. Day described Dr. Robinson's recent RPC presentation that discussed these very questions, with the transfer of density rights as one mechanism to ensure all landowners are treated equally.

DISCUSSION ONLY WITH RICHARD SALMONSON WITH REGARD TO A HOME OCCUPATION ON POWWOW RIVER ROAD.

Mr. Day recognized Mr. Salmonson, and clarified that the Board could not enter into discussion about an individual parcel of land without it being a public hearing, but it would be correct to discuss the Master Plan, the ordinance and regulations.

Mr. Salmonson indicated that he was looking to move to East Kingston from Newbury, MA, and conduct a sign-making business from his home. He has been in business for about 33 years, and has been looking at how and where to semi-retire. He asked whether such a business would be allowed.

Mr. Day stated that any business would have to fit within the ordinance's list of permitted uses, and Mr. Salmonson suggested that he considered his work to be a craft. Pictures of Mr. Salmonson's work were examined by the Board. Mr. Morales asked what sort of materials were used in the manufacture, and Mr. Salmonson said he worked mostly in wood.

Mrs. Belcher asked what exactly would be the home occupation done on the premises. Mr. Salmonson stated that much of his carved product is painted at an auto body shop, and he does the finishing at home. He stated also that he does most of his customers' work at their own sites. Mrs. Belcher asked whether his proposed location is restricted by covenants, and Mr. Salmonson said it was not.

Mr. Day addressed the Town's intentions regarding home occupations, and commercial activity in residential zones. He noted that the permitted commercial uses were chosen so as not to impact the residential nature of a neighborhood. Mrs. Belcher observed that, except for a small sign, any business must not look like a business. Mr. Morales established that there would be no silk-screening done on the premises, and paint booth work would be done off-site.

Mrs. Belcher recommended Mr. Salmonson obtain a copy of Article XVI – HOME OCCUPATIONS from the Town Office to satisfy himself that what he proposes would fit. If that proves to be the case, then he should fill out an application for a public hearing, so long as he has a formal interest in the property, e.g. a purchase and sales agreement, or rental/ownership. Mrs. Belcher expressed her opinion that, on the face of it, his proposal might be described as arts and crafts, and the issue may be the scope of the business. She instructed Mr. Salmonson to obtain a copy of the ordinance and application, and satisfy himself that his proposal fits before spending money on a public hearing, let alone a property he might not be able to use. Mr. Morales suggested a purchase and sale can be conditioned to include a home occupation approval.

Mr. Day agreed with Mrs. Belcher and Mr. Morales as to how to go about an application. He noted that the Board would need his application by 31 March to schedule a public hearing. Mr. Salmonson thanked the Board for its help before departing.

CONTINUED BOARD BUSINESS:

Work session. Mrs. Belcher suggested the Board meet to continue its Master Plan work, and a meeting was proposed for Thursday, 30 March at 7:00PM in the Conservation Commission conference room. Discussion ensued about Jill's choir singing and Larry's directorship of music at the church. It was agreed to meet to discuss the Master Plan Goals & Visioning chapter and the Town Center District proposal.

Mr. Morales asked whether citizen involvement in the Town Center District development would be productive. After some considerable discussion around the original Master Plan development, public hearings (or the lack of) for trash pick-up, and citizens who don't attend workshops or who are not interested, Mr. Morales agreed to be our sub-committee chairman for finding a body of interested citizens to examine our comprehensive plan.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Morales seconded, and the motion carried unanimously at 9:31PM.

Respectfully submitted,

James Roby Day, Jr.
Minutes approved 6 April 2006