



**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 Hearing of March 17, 2005)

AGENDA:

7:00PM– **Call to Order and Board Business**
7:15PM – **Public Hearing**– for a proposed change in tenancy of a light industrial enterprise (PB #05-OA) of Paul Masone, 213 Haverhill Road, MBL 11-2-17 (PB#04-OB)
7:45PM – **Continued Public Hearing**-- for a proposed 22-lot subdivision of Bowley Real Estate, LLC, involving MBLs 1-1-1 and 2-2-3 (PB# 05-01)
8:45PM – **Continued Public Hearing** – for a proposed 18-lot residential cluster development of Glenn and Kathleen Clark, 21 Burnt Swamp Road (PB# 05-03)
9:30PM– **Public Hearing**– for Mr. David Baker, Apple Hill Golf Club, East Road, MBL 14-3-9, involving the expansion of the club house (PB #04-OE)
10:00PM– **Adjournment**

CALL TO ORDER AND BOARD BUSINESS

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM.

ROLL CALL: Helen Lonek called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Vice Chairman RA Smith; Dr. RA Marston, DVM, Mr. R Morales, ex-officio
Alternate members present – Mr. EV Madej, Mr. JD Burton; Mr. J. Fillio
Advisers present –Mr. Dennis Quintal, East Kingston Conservation Commission; Fire Chief Alan Mazur, East Kingston Fire Department

Designated Voting member – Mr. Day noted that this month Mr. Fillio is the designated voting member.

BOARD BUSINESS:

Minutes–

MOTION: Mr. Morales **MOVED** that the Board accept the minutes of the February 17, 2005 meeting as amended. Mrs. Belcher seconded and the motion carried unanimously.

Action/Information Items –

March East Kingston Newsletter – Mr. Burton wrote an article for the newsletter detailing what happened at Town Meeting.

Polling Results -- Mr. Day referred to his handout on the polling results. He stated that the Planning Board recommendations were all accepted and the citizens' petitions fared relatively poorly. He noted the resounding 5:1 vote against changing the 55+ age restriction in elderly housing. Mr. Day stated that at the last RPC meeting he attended, it was noted that the Town of Salem had an elderly housing ordinance originally tailored after the federal and state statutes, ie., 80% elderly and 20% everything else, and within that 80%, the only firm requirement was having one of the residents at least 55. He added that it did not work in Salem, and now they have what East Kingston has.

RPC Circuit Rider Update – Mr. Day stated that there is still no circuit rider, but the Board has Mr. Glenn Greenwood, Assistant Director and Dr. Jill Robinson.

Master Plan Goals & Visioning chapter plan – Mr. Day stated that the RPC has been paid \$800 to do the goals and visioning chapter and Mr. Glenn Greenwood is going to do it himself, since he has experience in this area. He added that Mr. Greenwood did Brentwood some time ago and he just finished Rye. Mr. Day stated that this has to be done by the end of June so a hearing can be held. Discussion ensued as to how many sessions to hold. Mr. Day stated that they are considering two Saturday morning sessions; one in April and one in May.

UNH Estuaries survey mail-in – Mr. Day stated that they have requested feedback from the Board.

OEP Conference – April 9 Radisson Hotel, Manchester – Mr. Day stated that the deadline to register is April 1.

REDC strategic planning in Rockingham County – Pease – Mr. Morales stated that he would be going to the March 23 session.

Mr. Day noted that Mr. Dennis Quintal was sitting in for the Conservation Commission.

PUBLIC HEARING—FOR A PROPOSED CHANGE IN TENANCY OF A LIGHT INDUSTRIAL ENTERPRISE(PB #05-OA) OF PAUL MASONE, 213 HAVERHILL ROAD, MBL 11-2-17 (PB #04-OB)

Mr. Day opened the public hearing.

Mr. Day stated that Mr. Masone informed him that the new prospective tenant could not make the hearing and asked if it could be postponed to next month.

MOTION: Mr. Morales **MOVED** that the Board continue the public hearing to April 21 at 7:15PM. Mr. Smith seconded and the motion carried unanimously.

Mr. Day closed the public hearing.

Discussion ensued regarding the site walk on the Bowley Road Real Estate property that was scheduled for March 19. Mrs. Belcher stated that the site walk is needed to make a determination as to whether Lots 1 and 2 are viable. Since it is too wet at this time, it will be postponed to April 16. Mr. Day stated that the revised plans were not received in time to do a proper review, so the Board cannot take jurisdiction of the cluster plan at this meeting.

Discussion ensued regarding a way to make the Agenda more efficient. There was a suggestion of putting everyone on for 7:15 and have an order in which applicants will be heard, and everyone waits their turn. Mr. Quintal stated that a downfall to this is that the applicant would have to wait until their turn, which could be at the very end. He suggested tightening up the schedule by giving each applicant a shorter amount of time. He also noted that the applicants would have to pay their engineers for the whole evening instead of an hour. Mr. R Smith suggested starting the hearings right at 7:00PM.

CONTINUED PUBLIC HEARING—FOR A PROPOSED 22-LOT SUBDIVISION OF BOWLEY REAL ESTATE, LLC, INVOLVING MBLs 1-1-1 AND 2-2-3(PB #05-01)

Mr. Day opened the public hearing.

Mr. Mike Black, Bowley Real Estate, LLC appeared before the Board. Mr. Day stated that the Board would not be able to take jurisdiction at this time because the plans were not received in time for a proper review.

Mr. Black explained the plan of the 111 acre property. He stated that a traffic study is being conducted. He added that the study will be submitted prior to the next meeting. He stated that they are providing 56 acres (or 50%) of open space and the upland open space is 16.6 acres. He noted that the yield plan has been approved for 21 lots plus the Bean house. He stated that under the bonus system of the cluster plan, he felt they met the requirement for approval of one additional lot. He stated that the name “Bowley Road” will be changed as there is an existing

Bowley Road. Mr. Black stated that they have provided a 100-foot landscape buffer around the whole property. He stated that they are setting up a meeting with the Conservation Commission to discuss the open space and wetlands. He added that Civil Consultants has the plan set and drainage reports; and Dr. Robinson has a plan set that was not received in time.

Mr. Black stated that it is his understanding that under the open space ordinance, there is a shared driveway allowed for three lots and he pointed out this on the plan. Mr. Black stated that they have met with the gas company many times regarding crossing the gas lines and they have set up a temporary crossing with the gas company so they could do the test pits. He added that they have another meeting set with both gas companies next Thursday at the engineer's office. Mr. Black stated that Bowley Road is 990 feet and Winslow Drive is 866 feet in length.

Mr. Black explained why they decided to have individual wells instead of a community well. He stated that it is quite a project to put in a community well. Mr. Day directed Mr. Black to send the traffic study to the Town Engineer as soon as it is completed. He stated that he hoped the traffic study would look at the traffic from the industrial park traffic, something more sophisticated than a car count out of a residential area. Mr. R Smith suggested that the industrial park driveway be shown more clearly on the plans. Mr. Quintal told Mr. Black to make sure the well radiuses stay on the property and do not go over the property line.

Mr. Day stated that the site walk scheduled for March 19 will be postponed to April 16 at 10:00AM, meet at Betty Bean's house.

Mr. Black stated that he believed there will be one association for both cul-de-sacs.

Mr. Fillio made an administrative note that the letter from the Fire Department should be a signed copy.

Mr. Day opened the floor to abutters.

Bill McAvoy, 134 North Main Street, Newton. Mr. McAvoy was concerned that topography maps that are being used are from the late 1980's. He recalls an earthquake that occurred on January 10, 1999, with after shocks. He added that the earthquake was centered in Amesbury. He stated that there was another earthquake on January 14 of that year. He stated that his concern is that the land has been changed by the earthquakes with regard to the underground water. Mr. McAvoy stated that he has copies of a study done by the New England Seismic Network.

Mr. Black stated that all the test pits that were conducted within the last two months so all the information from the test pits would address any concerns regarding changed caused by the earthquake. Mr. Day stated that he would put this question to the Rockingham Planning Commission.

Tara Paige, 208 Haverhill Road. Ms. Paige stated that she was very happy with this plan and would encourage this type of development.

Laurie Carbone, 212 Haverhill Road. Ms. Carbone asked Mr. Black to point out who is sharing the driveway. Mr. Black stated that it will be shared by three new lots that will be developed, not existing houses. She stated that she is concerned about the gas line. Mr. Black assured her that the gas company is working with Bowley Real Estate to work out any problems.

Mr. Black stated that the roads are being built to Town standards and once they are complete, the Town will accept the roads. Mr. Black stated that the association fees will cover the landscaped entrances and the cul-de-sac landscaping as well as lighting. Mr. Day explained that the intent of having an association is to cover the costs of upkeep on the common land.

Mr. Day closed the floor to abutters.

Mr. R Smith noted that the plans do not show the 100-foot buffer around the property. Mr. Black stated that there is a 100-foot buffer around the property and that he would make sure the buffer is shown on the revised plans.

Mr. Day advised Mr. Black check on the changes that were voted on at Town Meeting and make sure they are incorporated into the new plans. Mr. Day reminded that the site walk is April 16 at 10:00AM at Betty Beane's. Mr. Day stated that the Board cannot take jurisdiction at this time, but the hearing can be continued to the next month.

MOTION: Mr. Smith **MOVED** that the Board continue this public hearing to April 21 at 7:30PM. Mr. Morales seconded and the motion carried unanimously.

Mr. Day closed the public hearing.

PUBLIC HEARING – FOR PROPOSED 18-LOT RESIDENTIAL CLUSTER DEVELOPMENT OF GLENN AND KATHLEEN CLARK, 21 BURNT SWAMP ROAD(PB# 05-03)

Mr. Day opened the public hearing.

Mr. Ken Berry, co-owner Beals Associates, Exeter, NH appeared for the applicant, Mr. Bruce Nadeau. Mr. Berry introduced his associate Mr. Scott Cole who is available to answer technical questions, Attorney Ned Lucas of Cronin & Bisson, PC, Manchester and Mr. Bruce Nadeau, owner of DeBross Builders, Inc. Mr. Berry stated that new test pits have been completed and requested to withdraw the previous waiver request for test pits. He stated that there are now two test pits for each of the lots. He stated that the environmental team was at the site and performed a wetlands delineation. Mr. Berry stated that the High Intensity Soil Survey was included in the plan set and he explained how to read the plans to see how the slopes are. He stated that the soil scientist will be updating his soil survey to conform with the East Kingston regulations and will be published at the beginning of the following week. Mr. Day pointed out that in future revisions it would be necessary to show exactly where the demarcations for the slopes are on the plan. Mr. Berry stated that they will submit a custom plan. Mrs. Belcher stated that the plan needs to show the slopes in conjunction with the proposed layout on one sheet.

Mr. Day stated that at the last hearing the Board could not take jurisdiction because of a questions raised by the Conservation Commission with regard to the use of land with slopes of 15% or greater and 25% and greater. Mr. Day noted that the natural resources chapter of the Master Plan addresses land with slopes over 25% and 15-25% in which it states, "It is strongly recommended that local land use regulations discourage development on slopes in excess of 15% and also discourages the construction of roadways whose gradient exceeds 10%." He stated that the Master Plan is not law or regulation, it is advisory. He stated that before the Town can have an ordinance or a regulation, it must have a Master Plan, it is supposed to be the guiding document to construct the regulations. Mr. Day noted the Subdivision Regulations on Section III – Purpose and Intent, Paragraph C, "Subdivision and development shall be harmonious with the Town and its environs. Development must contribute to a rational and safe transportation system, provision of appropriate recreational opportunities, and must not be inconsistent with the recommendations of the East Kingston Master Plan." Mr. Day stated that this was the point of contention raised by the Conservation Commission, and the Planning Board felt that it could not go forward without resolving it because it is clearly a matter for legal opinion.

Mr. Day stated that legal counsel has advised the Board that they are on firm ground with regard to the interpretation of the Subdivision Regulation which would preclude the development of land of greater than 15% slope. He added that that land can be used for density calculations. Mr. Day noted the Cluster Housing Development Ordinance states that land of 25% slope or greater cannot be used at all and it cannot be used for density calculations. He added that it is land that is open space. Mr. Day stated that the Board is standing fast on both of these.

Mr. Day stated that the second concern raised by abutters was the existing gravel pit and its proper reclamation. He stated that he has been asked by the Selectmen to address the question of that issue. He noted RSA 155-E is very clear that land shall be reclaimed before it is used for anything and a reclamation plan is to be developed and submitted to the Planning Board. He stated that these two factors and shortcomings of this plan justify the Board not accepting the plan for jurisdiction until these questions are resolved.

Mr. Ned Lucas stated that in conversation with Town Counsel, they did not come to a mutual agreement. Mr. Lucas cited case law from 1986 regarding Master Plans that stated a Master Plan is to function as a guide to the land use planning process and not as a means in itself for regulating subdivisions.

Mr. Day stated that Mr. Clark's permit on the property lapsed. He added that the pit has to be reclaimed or some mechanism has to be in place which will insure that this will be done.

Mr. Berry proposed that a bond be placed as part of the construction because the proposed construction will go right through the gravel pit.

Mr. Lucas stated that the pit will be fully reclaimed, there is no sedimentation or erosion problem at this time. He referred back to his case law citation stating that New Hampshire law does not hold the legislators to adopt the Master Plan. He added that it only functions as a guideline. Mr. Lucas stated that there is a distinction between the Master Plan and subdivision regulations and there always has been in New Hampshire.

Mr. Berry stated that the recommendations in the Master Plan were never adopted into the ordinance and did not become a function of law. He stated that he vehemently disagrees that subdivisions should be governed by 15% slope. He added that as far as a 25% slope is concerned, they have factored out the area that is greater than 25% out of the open space calculations and are willing to work through with Civil Consultants and Dr. Robinson to make sure the open space calculation meet the ordinance.

Mr. Lucas stated that there is case law in other jurisdictions that says that the Master Plan is a tool and does not have the force of law.

Mr. Day stated that the Master Plan expresses the Town's intent and the subdivision site plan and ordinances flesh out the intent of the Master Plan.

Mr. Burton stated that he felt it was inappropriate to discuss points of law with non-lawyers. He suggested taking a vote to see if everyone believes the 15% requirement applies to this development or not and then move on.

Mr. Morales stated that a letter dated December 20 was sent to the applicant stating that they had to post a bond for the reclamation immediately and it has been three months. Mr. Day stated that the Board has seen no reclamation plan. He added that the Board needs to have a clear cut picture as to how the reclamation question is going to be answered because it is obvious to him that it was causal in some drainage problems for abutters as well as the roadway.

Mr. Day opened the floor to abutters.

Malcolm McLeod, 27 Burnt Swamp Road. Mr. McLeod stated the silt was mentioned to the owner two years ago and there was no response. He added that the majority of the front land is under water. He stated that the silt didn't start coming down every Spring until the pit was opened.

Glenn Clark, 21 Burnt Swamp Road, owner of the property. Mr. Clark stated that his father-in-law opened the pit in 1958, he acquired it in 1980. He stated that the only thing that has changed is his driveway and part of the silt is due to the slope of that driveway when it rains. He stated that they have done everything possible to fix the problem, i.e., silt fences, hay bales. He stated that this only happens when it rains very heavily. He added that up until last fall it was a working pit until he got an agreement to sell the property and some of the pit has been reclaimed. He noted that the State requires that the only part of the pit that doesn't have to be reclaimed is the working part of the pit and that is the only part that has not been reclaimed.

Mr. Day read from the regulation. 155-E:5-a "Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to RSA 155-E:2, III, shall prepare and submit for the regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site." He noted that the Planning Board is that regulating body.

Mr. Day closed the floor to abutters.

Mr. Bruce Nadeau, property developer, stated the gravel pit is in the middle of where development will be taking place. He stated that he didn't think the reclamation was the problem, it was the 15% slope.

Mr. Day stated that he didn't want the applicant to think that the Board is against this development, they just want to do it right. He added, per counsel's advice, there is to be no development on land with slopes of greater than 15% and discounting the land with 25% slopes or greater. He stated that the Board is statutorily obligated to require a reclamation plan. He stated that the bonding issue is between the applicant and the Selectmen. For those reasons, Mr. Day stated he believes the plan is incomplete. Mr. Fillio stated that the reclamation plan can include the roadway.

Mr. Berry stated that the Board has had the plan set prior to the last meeting that shows the open space plan with the 25% slopes. He stated that he believed the Town's consultant recommended that the plan set was complete and ready for acceptance. Mr. Day noted that she did not consider the Board's concerns brought up at this and the last meeting and he suggested Mr. Berry talking to Dr. Robinson directly.

Mr. Nadeau stated that he cannot move forward with the plan until the Board takes jurisdiction over it.

Mr. Quintal, Conservation Commission, stated that the pit area is identified as #7 soil and the only concern the Commission would have is that a pit area like that where soil has been moved sometimes what is left is sort of a hard pan or ledge. He added that there can be a situation where soil conditions that are left are poorly drained soils. He added that if this is the case, some pits once they are reclaimed wind up being poorly drained soils. He added that he is not saying that it is definitely the case here, but maybe with the test pit information and having a soil scientist go out there to identify the disturbed area to make a determination. Mr. Berry stated that he will ask Mr. Schauer to look into that in a report with the Site Specific Soil Survey.

Mrs. Belcher stated that one of the hardships in this case is that there is no planning expert to advise the Board on technical matters. She stated that she felt bullied into making a determination on things that are not clear.

It was agreed that the plan was incomplete to take jurisdiction.

Mr. Berry stated that they will go back and address the reclamation plan. Mr. Berry asked that the Board continue the hearing to next month. Mr. Lucas asked the Board to provide a written letter explaining the reasons why the Board did not take jurisdiction at this time. Mr. Day stated that Mr. Lucas will receive a copy of the Minutes from February as well as a written letter spelling out the reasons.

MOTION: Mr. Morales **MOVED** the Board consider the plan incomplete for the following reasons: 1) the plan appears not to address the question of the use of land with slopes greater than 15%; 2) there is no reclamation plan for an existing gravel pit which appears to be affecting drainage onto abutters' properties. Mrs. Belcher seconded and the motion carried unanimously.

MOTION: Mr. Day **MOVED** that the Board continue this public hearing to April 21 at 8:00PM. Mr. Morales seconded and the motion carried unanimously.

Mr. Day closed the public hearing.

DISCUSSION ONLY –FOR MR. DAVID BAKER, APPLE HILL GOLF CLUB, EAST ROAD, MBL 14-3-9, INVOLVING THE EXPANSION OF THE CLUB HOUSE (PB #04-OE)

Mr. Day stated that the Board is a victim of a technicality in that abutters in Kensington were not notified of the hearing. He added that the Board cannot take jurisdiction at this time, but there can be discussion.

Mr. David Lundquist, Manager, appeared with Mr. Dennis Quintal. Mr. Day stated that Mr. Quintal submitted a waiver request from Site Plan Regulation Section IV, B11, requirements for Section X of the Subdivision Regulations, having to do with Site Specific Soil Survey. Mr. LK Smith stated that that would be okay.

Mr. Quintal presented the plan, which is a small addition to the pro shop (28ft X 38ft). He stated that most of the plan is existing conditions. He stated that a year or so ago he did a septic system design. He stated that a deck has recently been added.

Mr. Lundquist explained the floor plan. He stated that there will be a basement for storage of supplies and an ice machine.

Discussion ensued regarding fire exits. Fire Chief Alan Mazur stated that he will take a look at the plan to make sure it meets all the fire department requirements. Chief Mazur said he would submit a letter to the Board.

Mr. Lundquist stated that the utility building is used as a maintenance building for the mechanic to fix machinery. He pointed out where the chemical are stored at the end of the parking lot, which is State approved with a plastic floor.

Mr. Day stated that this will be scheduled for April 21 at 7:05PM.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Morales seconded, and the motion carried unanimously at 10:10PM.

Respectfully submitted,

Helen M. Lonek
Recording Secretary

Approved 4/21/05