

**TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
March 19, 1998**

FILE

AGENDA

7:45 Keith Moore-- Home Occupation Proposal - Discussion
8:00 Richard Cook--Light Industrial Park-- Site Plan Review -- Public Hearing
8:45 Charlotte Wall/Gary & Kathleen Tuck -- Willow Road Subdivision -- Public Hearing
9:00 Site Plan Review Amendments -- Continued Public Hearing

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson -- Vice Chairman, James Roby Day, Jr.- Ex-officio, Catherine George, Dr. Robert Marston, John L. Fillio -- Ex-officio and Alternates Beverly Fillio and Robert Nigrello.

Others attending: Sarah Campbell - RPC Circuit Rider, Becky Hanna - RCN Correspondent, Richard Cook, Alan Mazur, Dennis Quintal, Charles Marden, Richard Marston, Matt Powers, Deborah Kiesel, Adam Mazur, Leah & Larry Erickson, Jim & Mary Mower, Ed Cardone, Keith Moore, Atty. Monica Fraser, Robert Nichols, David Toothaker, Richard Friese, David Lewis, Alan & Lynne Dacey, Brett Smith, Laurie Carbonne, Kevin Murphy, Charlotte Wall, Gary & Kathleen Tuck, George Henshaw, and other members of the public who did not address their concerns.

Chairman Smith called to order this March 19th public planning board meeting at 7:37 p.m. with the roll call.

At this time, Mr. Day introduced East Kingston's newly elected Selectman John (Jack) Fillio, who will act as liaison to the Planning Board. Mr. Day stated that Mr. Fillio will bring much to the board.

Chairman Smith noted the following board members participating in any/voting matters before the board this evening: J. Roby Day (as ex-of ficio), Catherine George, Dr. Marston, Edward Johnson and Chairman Smith.

March 5, 1998 Planning Board Work Session Minutes: The Board reviewed the minutes dated 3/5/98 and noted corrections.

MOTION: Mr. Day motioned to accept the March 5, 1998 Planning Board minutes as corrected. Mrs. George second. The motion passed 5-0.

Chairman and Vice Chairman Nominations: The Board acknowledged that the one year terms for the positions of Chairman and Vice Chairman to the Planning Board expire March 1998.

MOTION: Mrs. George motioned to nominate Richard A. Smith, Sr. as Planning Board Chairman for a term of one year to expire March 1999. Dr. Marston second. The motion passed 4-0, (Chairman Smith abstaining).

MOTION: Dr. Marston motioned to nominate Edward C. Johnson as Planning Board Vice-chairman for a term of one year to expire March 1999. Mrs. George second. The motion passed 4-0, (Mr. Johnson abstaining).

Correspondence: Chairman Smith acknowledged correspondence from NHDES and the Office of State Planning.

Future Land Use Map: Mrs. Campbell informed the Board that the Future Land Use Map will be forwarded to Conservation Commission Chairman Larry Smith for the addition of recommended protection/preservation lands.

Keith Moore-- Home Occupation Proposal -- Discussion: Chairman Smith opened discussion for Keith Moore's home occupation proposal at 7:45 p.m.

Mr. Moore stated that he and his wife are currently considering purchasing a new home at 11 Ashlie Road and would like to operate the office portion of his pool installation company from the residence. He stated that all other items, i.e., equipment, supplies, would be stored at a business site in Salisbury, MA.

At several inquiries from Board members, he explained that the only business vehicle, registered as commercial and being a one-ton pick-up truck, would be kept at 11 Ashlie Road. He went on to say that he and his wife will work in the office, no other employees will be coming to and from the home.

Mr. Day stated that Mr. Moore met with the Board of Selectmen earlier that month to discuss Mr. Moore's business proposal. He stated that Mr. Moore had indicated to the Selectmen that he intended to move pool supplies into a detached garage at 11 Ashlie Road.

Mr. Moore responded that he has no such intentions and that the supplies discussed with the Selectmen were those of shovels and home maintenance items. He stated that the business itself would remain in Salisbury, he only wishes to conduct office activities from his residence.

He went on to say that no customers or delivery activity will take place at the home. He may consider a sign if the Board finds it acceptable, though one is not necessary. He stated that his company is insured at the Salisbury address and that all employees will continue to meet for work in Salisbury.

At further Board inquiries, Mr. Moore stated that about 1/10 of the floor area at the home would be used for the business, this being a 10 x 10 office. He also stated that he and his wife would be the only traffic of the business at 11 Ashlie Road.

Mrs. George inquired why the Board of Selectmen found Mr. Moore's proposal not exempt from the permitting procedures as it appears the proposed office business has no impact on the neighborhood.

Mr. Day responded that in any instance when one approaches the town for a home occupation permit, they are sent to the Planning Board to get a clear understanding of the home occupation ordinance. He also stated that questions were raised about the scope of the business.

Mrs. Campbell stated that because a commercial vehicle will be kept at the residence, it will have some impact on the visual aspect of the neighborhood. The "no impact" clause under the provisions of the home occupation ordinance was intended to residents who work on the internet home, or other "invisible" type businesses.

Chairman Smith then directed Mr. Moore to apply for a home occupation permit as outlined in Article 10.9 of the East Kingston Zoning Ordinance. He stated that this may be done by contacting the Planning Board Recording Secretary at the Selectmen's Office.

Richard Cook – Site Plan Review – Light Industrial Park – Public Hearing: Chairman Smith opened the public hearing for Richard Cook's site plan review proposal for the development of the light industrial park located on Havenhill Road at 8:00 p.m.

Mr. Cook informed the Board and public that this proposal is Phase I to develop the light industrial park on the Bowley property. He explained that after ten years with the property on the market, he was asked to look into its possible development. He also stated the property was zoned light industrial in 1989 and its development would be beneficial to the town.

He went on to say that the light industrial park is considered a tax break-even as it is well known that residences are a tax burden to the town, this was presented by the FLUAC at the March Town Meeting.

He further explained that this is the first official phase of development and that the types of light industry considered in this plan are one to two man carpentry shops, welding shops, used equipment dealers, warehousing, and the like. Absolutely no chemicals, no mixing paints, no pollution run-off, no oil contaminants or other toxic chemicals will be considered. He then briefly explained his own business experience in town.

He stated that there has been an expressed interest and need for businesses to lease small buildings in town. This will not lower taxes, but it will not raise them either. He continued to say that this proposal would increase employment on a small level. He stated that this is the only area in town that is zoned light industrial. Although other small commercial zones exist, they are limited by reason of the land itself. There may even be the possibility of reclaiming a gravel pit in the light industrial zone.

Mr. Cook went on to explain that this first proposed phase has the least amount of wetland impact and is the most feasibly economic. The drawback to this proposal is the close proximity of the abutting residential property lines. This project is beneficial to the vast majority of the town, as was the intent of the light industrial zoning back in 1989. He then stated that he would do everything possible to create as minimum impact as possible.

Atty. Monica Fraser stated that she represents abutting property owners on Ashlie Road residents: David and Donna Toothaker, Richard and Susan Friese, Lynne and Alan Dacey, Richard and Patricia Leith, David and Linda Lewis, and Brett and Leslie Smith. She then went on to say that her clients oppose this project and submitted a letter of opposition dated March 19, 1998 from Marshall Law Office to the Planning Board.

Mr. Robert Nichols of Havenhill Road stated that he opposes this project and the traffic it will create. He opposes the noise an industrial park will bring. He went on to say that he would like to see the light industrial zone left natural. He stated that he has no problems with the sawmill out in back of his property. His drinking water is fine now but worries pollutants from an industrial park will contaminate it. He stated that he would also get legal council and fight this proposal every step of the way.

Mr. David Toothaker of 10 Ashlie Road stated that just by looking at the plans, this is not considered minimal impact as stated by Mr. Cook. He stated that the abutting wells and residences are not shown on the plan and should be. He then explained that he had a market analysis of his property done and his realtor informed him that if this proposal goes through, his property value will decrease \$25,000 to \$50,000. He stated that this is a major impact to his property value.

Mr. Cook offered that a light industrial development in Newburyport and its residential abutters get along fine. The development is aesthetically pleasing.

Mr. Toothaker responded that this is East Kingston and not Newburyport. He further stated that people come to East Kingston for what it is like today. No one wants to look at an industrial park. He went on to say that the proposed gravel road will create noise and dust. He said he pays \$5,300 in property taxes and does not want to look at this development.

Mr. Cook stated that in developing the light industrial zone, they must start somewhere. The land has been zoned this way for ten years. At the inquiry of Mr. Toothaker, Mr. Cook explained that the land sat abandoned for ten years because no one was interested. Mr. Bowley had submitted plans for its development years ago, but did not complete them. He continued to say that he is willing to work with the state and town in regards to the wetlands and the many easements already existing on the property.

Mr. Toothaker responded that this looks like a low budget project and he opposes it.

Mr. Cook rebutted that there are no figures to support Mr. Toothaker's statement.

Mr. David Lewis of 7 Ashlie Road questioned how the developers of this project are going to attract new businesses into an upscale industrial park when the businesses are just starting out. He then noted that the difference in the cost of building upscale buildings v. the rent that will be charged to tenants would be high.

Mr. Cook stated that he has researched the economics of the project and realizes that the developers will not get rich off it. It will benefit the town as a whole.

At the inquiry of others, Mr. Cook explained that the first phase would include five 2,400 square foot buildings, which can accommodate businesses of two to three employees. There is little noise that could be generated from these businesses. He stated that he has his own metal fabrication business on Haverhill Road and noise is not a problem.

Mr. Lewis stated that units 2 and 3 as noted on the plan are right on the property line. That's 90 feet and 50 feet from his house. He argued that there would be noise.

Mr. Brett Smith stated that he has figures to support "open space" pays and that it is more beneficial to the town.

Mrs. George stated that not everyone wants to keep their property "open space" and what right do you have to tell property owners they can't develop their land.

Mr. Smith responded that the property owner to this proposal should do something in a proper manner and not what is being proposed tonight.

For the record, Chairman Smith stated that the use of the land is not in question here. It is zoned light industrial and was done so at the majority vote of the registered voters in 1989.

Atty. Fraser inquired how this proposal could not affect the public health and safety of the abutting property owners. She listed other items of concern as: the potential problems with traffic and children; whether water studies have been done; if abutting wells were considered; pollution concerns; the fact that a 200-foot buffer is required between the two districts and only 50 feet is noted on the plan; and if a traffic count study was done.

Mr. Cook responded that he does not see how the public safety and health would be affected by this proposal. He went on to say that he is working with the state on wetland issues and he does not know what pollution would be created as there are no businesses in the park. He stated that a traffic count would not be conducted, as there is no other traffic to count except that which is going on now. The traffic impact is not even addressed in the site plan review regulations; that will be decided on by the Planning Board. He stated that as far as the neighboring wells are considered, as long as the setbacks for them are met, there wouldn't be a problem. This proposal is phase I of an idea.

At Atty. Fraser's inquiry, Mr. Cook explained that there were a couple of plans for this that were never approved. He stated that he looked at the old plans, with what records were available, and found no reason why the project was never approved.

Mrs. Deborah Kiesel asked whom Mr. Cook was representing and who has the power of attorney over the land. She also asked if the power of attorney will be requesting the variances needed.

Mr. Cook stated that the property is owned by MaryJane Bowley and the powers of attorney are David Sullivan and Peter Craig. Mr. Cook is their agent. He continued to say that there are no secrets in this project, this is just the first official step in the process of development.

At other inquiries, Mr. Cook stated that the access road would accommodate both entering and exiting traffic with a turn-around located at the far end. At Mrs. Kiesel's disagreement, he stated it is not necessary to have a separate entrance and exit.

Mr. Dennis Quintal, Profession Engineer for the project, presented a picture of the site and went on to explain why the development started where it did. He pointed out the Powwow River and the existing access road located across the street from the post office. He explained that the green area in the center of the land and along the river is wetlands. The land to the south of the project belongs to MSK Lumber and north are the abutter's on Ashlie Road. He noted that no buildings can be erected within the power line easements. He stated that the existing gas pipeline would be widened when its new construction takes place. He also pointed out the telephone easement.

He further explained that given these obstacles, there is not a lot of room to build. The current proposed plan was designed with these limitations in mind along with the concept that the most room to accommodate the wetland setbacks is at the northern section of the light industrial zone.

Mr. Quintal went on to say that the abutting wells and homes, and the project's entrance would be addressed at future meetings. He stated that the purpose of this meeting is to get all the questions out to see if this project is feasible for development. The details of the 200-foot setback will show that buildings cannot be built in the wetlands. The proposed 50-foot buffer could be built up with earth birm, fencing and trees, all to be worked out at a later date. If the Board finds the plans are unacceptable, then this proposal will not go any farther. He stated that issues from the police and fire departments regarding fire ponds, etc. will be forthcoming at future meetings. The well areas will get their setbacks. There are options to work with.

At the Board's inquiry, Mr. Quintal explained that the proposed access road is 800 feet long and there is a small area of wetlands to cross to get to the buildable land. They have already applied for a dredge and fill permit from the state. He stated that no HISS mapping has been done yet, however NH Soils has flagged the property and there is both Hydric A and B soils. The proposed well on the plan can also be moved.

He went on to say that the 200-foot buffer zone requirement can not be met and they hope to get a waiver from it. The intent of the buffer zone is met with what is set up on the plan.

Mrs. George offered that a tall thick barrier fence like what is used along the highway could be used. This would cut down on any noise generated from the project.

Mr. Quintal agreed and stated that they are looking for initial acceptance first and that all other details can be worked out later.

Chairman Smith advised that the Planning Board has the authority to waive requirements in the site plan review and subdivision regulations, but all zoning issues must go before the Zoning Board of Adjustment.

Mr. Quintal stated that they are looking to the Planning Board first, then they will go to the ZBA.

Mrs. Lynne Dacey of 5 Ashlie Road stated that one of the requirements for a variance is that the proposed project does not have a detrimental impact on the abutting properties. She stated that this project does.

Mr. Toothaker stated that considering the existing grade of his property above the abutting industrial zone, a fence would have to be 50 to 60 feet high to work. This would be something ugly.

Mr. Richard Leith of 13 Ashlie Road stated that the run-off from the earth birm along the buffer zone would end up in his back yard. He stated that even if the 200 foot buffer requirement were met, it would still affect his property.

Mr. Kevin Murphy of H a v e n Road stated that he lives in front of MSK Lumber. He stated that he was not notified of the light industrial zoning back in 1989. He also stated that the gravel road that is proposed should be paved as soon as possible because of the dust and dirt it will generate.

He went on to say that the businesses being conducted behind his house in that section of the light industrial zone are very noisy and that loud eighteen wheelers go in and out at all hours during the day and night. He stated that Mr. Cook cannot guarantee anything about how much noise will be generated from the project.

He stated that he has put in a complaint with the Board of Selectmen two weeks ago regarding the noise and he is still waiting to hear from them. Meeting noise requirements isn't an issue if they won't be enforced. He reiterated to have the driveway paved right away.

Mrs. George stated that the zoning of the light industrial zone was done through town meeting. The statutes do not require certified notification to affected property owners when it comes to rezoning.

Mrs. Laurie Carbonne of Haverhill Road stated that she too is woken up during the night because of the trucks entering and exiting MSK Lumber across the street. Restrictions must be given that trucks should only be able to enter and exit during certain times of the day.

Mr. Adam Mazur of 11 Depot Road inquired if anyone from Ashlie Road saw or heard any of his trucks entering or exiting the road to the light industrial park. When Mr. Toothaker stated he saw one of his trucks on Tuesday, Mr. Mazur agreed and further stated that he was in and out of that area on Tuesday, Wednesday and Thursday with two 10-wheelers. There will be little traffic impact than what is already going on there now. Mr. Murphy countered that 10-wheelers are very different from 18-wheelers.

Mr. Matt Powers of Stratham, stated that although he is not a resident of East Kingston he would like to offer the following. He and his wife looked into purchasing a house on Ashlie Road three weeks ago. When they were informed of the development of the light industrial park, they decided not to put an offer on the house.

He went on to say that this proposal does effect the value of the home. Noise pollution will be eminent, maybe it will be tolerable pollution, but it will be pollution just the same. He stated that the developers are trying to fit a square peg into a round hole. The State of NH has criteria that must be met, the telephone, gas line, and power line companies all have criteria to be met. In his opinion, this property shouldn't be developed at all.

The Board discussed what the next step in the application before them should be.

MOTION: Pursuant to RSA 676:4, Mrs. George motioned to accept jurisdiction on the application of Richard Cook to develop the light industrial zone located on Haverhill Road, MBL# 11-2-11. Mr. Day second. With no further discussion, the motion passed 5-0.

Chairman Smith ended discussion on this proposal until the next meeting. Mrs. Campbell explained to the public that invoking jurisdiction is a procedural requirement so that the Board will have the authority to act on any and all aspects of the proposal before them. Invoking jurisdiction also indicates the application is complete.

Chairman Smith stated that the verbal request for waivers will be addressed by the Planning Board only after 1) they are submitted in writing to the Board and 2) a variance is granted by the ZBA in relation to Article XII.7 of the East Kingston Zoning Ordinance.

MOTION: Mr. Day motioned that the Planning Board direct the applicant, Richard Cook, to apply for a variance from Article XII.7 of the East Kingston Zoning Ordinance in relation to the 200-foot setback between the residential and light industrial zones located on Haverhill Road, MBL# 11-2-11. Mrs. George second. With no further discussion, the motion passed 5-0.

MOTION: Mrs. George motioned to continue the public hearing for Richard Cook's proposal to develop the light industrial park located on Haverhill Road, MBL# 11-2-11 to Thursday, April 16, 1998 at 8:00 p.m. at the East Kingston Town Hall. Mr. Day second. With no further discussion, the motion passed 5-0.

Chairman Smith noted that this motion will serve as notification to all abutters that this hearing will be continued to April 16th.

Charlotte Wall/Gary & Kathleen Tuck – 128 Willow Road Subdivision – Public Hearing: Chairman Smith opened the public hearing for Charlotte Wall's subdivision proposal at 9:15 p.m.

Mrs. Wall stated that the Tuck's approached her about subdividing and selling 6.8 of her 8.8 acres. She has decided to do so and thus is here to present her proposal. She went on to say that the plans for this proposal were not yet available from Doucet Survey Co. as NH Soils has just finished flagging the land.

She explained that her proposal would allow frontage on both Willow Road and Forest Drive. It was also noted that an outstanding balance of \$17.50 was due as five abutters were added to the abutter's list submitted earlier. Mrs. Tuck submitted a check (#2885) for \$17.50.

The Board then reviewed a plan of an earlier subdivision concerning MBL# 7-3-3. This plan noted a boundary dispute between property owned by George and Lillian Henshaw and Mrs. Wall.

Mrs. Wall stated that she would advise her LLS that the 26 feet in question (boundary dispute) will be given to Mr. Henshaw. This will be reflected in the new plan.

Mr. Henshaw stated that if the 26 feet of land in question is applied to his boundary, then he has no objections to the proposed subdivision.

The Board noted the following items that must appear on the new plan.

1. HISS mapping on both lots (7-3-3 & 7-3-66);
2. Frontage of new lot must be shown (on both Willow Road and Forest Drive);
3. Existing well and septic on 7-3-3 must be shown;
4. Proposed well, septic and test pits for new lot must be shown;
5. Proposed house location must be shown;
6. New MBL # 7-3-66 must be shown;
7. Remove the disputed boundary line and convey the 26 feet to Mr. Henshaw.

Because the plans for the proposal have not been submitted the Board did not invoke jurisdiction on this proposal. Mrs. Wall requested the Board consider approval of the proposal prior to the next regularly scheduled meeting of April 16th.

MOTION: Mrs. George motioned to continue the public hearing for Charlotte Wall's subdivision proposal located at 128 Willow Road, MBL# 7-3-3 to Thursday, April 9, 1998 at 7:30 p.m. at the East Kingston Town Offices. Mr. Johnson second. The motion passed 5-0.

Work Session: The next Planning Board work session will be held on Thursday, April 9, 1998, 7:00 p.m. at the East Kingston Town Offices.

Site Plan Review Amendments – Continued Public Hearing: Chairman Smith opened the continued public hearing on the Site Plan Review amendments at 9:35 p.m.

Mrs. Campbell stated that there are two outstanding issues to address concerning the site plan review amendments. The first is lighting specifications, which Mr. Nigrello is working on; and the other is the inconsistencies in the zoning ordinance concerning what is being proposed and what is in the ordinance now.

She recommends the Board hold a public hearing in 1998 on the zoning changes for 1999, thus the amendment goes into effect at the time of the posting of the public hearing. This would allow for consistency as noted above, until it can be voted in at Town Meeting 1999.

The Board discussed the sign permit procedure, whom it should apply to (HO, SPR) and whether or not sign permits should be issued by the building inspector v. the selectmen.

It was noted that the waiver introduction would be added to page 9 of the Site Plan Review Regulations under Procedures.B.

With no other business before the Board,

MOTION: Dr. Marston motioned to adjourn. Mrs. George second. The motion passed 5-0 and this March 19, 1998 public planning board meeting ended at 9:50 p.m.

Respectfully submitted,

Catherine Beicher
Secretary

Minutes complete and on file March 23, 1998.