

PLANNING BOARD

March 20, 1991

Members in attendance: Richard Smith, Sr., Chairman; Catherine George, Mel Keddy, William DiProfio, Raymond Donald

Others in attendance: Sarah Campbell, Rockingham Planning Commission, Larry Smith; Austin Carter, Fire Dept.

The meeting was called to order at 7:40pm by Mr. Smith.

Meeting Day Ms. Campbell stated she will post in the paper the meeting day change from the Third Wednesday to the Fourth Thursday of the month.

Ex-Officio change Mr. DiProfio announced that Raymond R. Donald will be sitting on this Board as Ex-Officio member from this date.

Mr. DiProfio motioned to nominate Mr. Richard Smith, Sr. as Chairman of the Planning Board for the year 1991-92.

Mrs. George second.

The motion passed unanimously.

Mr. DiProfio stated, for the record, that he thanked the Board members for a "fun" ten to twelve years. He stated that he has enjoyed the whole process, especially working with Richard Smith. He thanked the Board for their patience and "upbringing".

The Board accepted this departure, although perhaps temporary, with the wish for Mr. DiProfio's continued attention and interest.

Mr. DiProfio was an asset to the Board and will be missed.

Mr. Donald was welcomed aboard.

William Krooss The Public Hearing for KV Partnership was opened at 7:45pm. Mr. Krooss addressed the Board and explained he wants to move the existing lot lines, in order to comply with the Water Supply & Pollution Board's request not to cross a wetland. Inadvertently the line had remained on the lots 11 and 12. The driveway will not cross the wetlands. The crossing will now be in compliance with the Dredge & Fill permit.

Mr. Krooss noted that this has been cleared with Exeter & Hampton.

Bounds will be shown. All bounds will be set or drill holes will be placed as per regulation.

Ms. Campbell stated they may need to be shown on the plan.

Ms. Campbell asked if the drives would be changed from those previously shown.

Mr. Krooss stated they would not be.

Ms. Campbell noted this takes one acre out of Lot 11.

Mr. Krooss indicated that this was correct.

Ms. Campbell stated the plan as presented appeared okay, with a question about the bounds being shown on the plan.

Ms. Campbell requested that the island to be constructed in the middle of the cul-de-sac be shown on the plan.

Mr. Krooss pointed out that this notation has been included within the "Notes" section on the plan.

Ms. Campbell read the notation: "Bounds agreement as per Notes. 1. Permanent monuments to be set per Town Ordinance". She noted this would cover all bounds.

The plan for Lot Line Adjustment was approved by the Board. The mylar was signed.

The Public Hearing for KV Partnership was closed at 7:55pm.

FMR-James Rand The Public Hearing for Lot Line Adjustment for FMR, Inc. was opened at 8:00pm.

Mr. James Rand, Pembroke Land Survey representing FMR was present and addressed the Board. He explained that this Lot Line Adjustment was for the Cluster Subdivision on Brandy Wine Drive.

This adjustment was necessary to correct a topographical error on the plan which was discovered during construction for the fire pond. He explained that the fire pond was intended for the low spot. It could be kept at the spot on the plan as shown, however, this was not the intention. The intent was to utilize the low area for the fire pond. No new lots will be created and the cluster will remain the same as the approved plan.

Mr. Rand explained that better engineering practice would dictate increasing the height of the road one foot to bring elevation at the same as the circle. There is no change in the intent or the overall concept of the site. He noted they are correcting only the error of the placement of the pond. There are no calculation changes.

A copy of the letter from Exeter & Hampton was shown to Mr. Richard Smith.

Mr. Smith read this letter as he has not done so before.

Mr. Rand stated the detail sheet corrected the pond site to conditions that exist. There is no change in the function of the fire pond.

Mr. Rand stated that Mr. Frank Wilson has taken the plans to the Town Engineer.

Ms. Campbell stated they have not heard anything from them.

Larry Smith stated the Conservation Commission doesn't have any problem and said this is a paper mistake and there is no ground problem.

Mr. Keddy asked if the Fire Dept. had questions.

Mr. Carter said if the fire pond is moved 50 ft. more or less, he has no problem. He did request the use of PVC screens at the bottom of the pond rather than galvanized screening because of the corrosive qualities.

Mr. Rand agreed to use the PVC screens as requested.

Mr. Carter requested that the hydrant be placed in cement, with protective posts, ie, lally columns to protect the hydrant from direct hits should it be struck by vehicles. He requested they be placed four ft. from each side and two-three feet from the front of the hydrant. Lally column posts four in. diameter and three-four ft. in height would be sufficient.

Mr. Rand agreed to do this as requested.

Mr. Smith noted that there is to be no construction under the Exeter & Hampton easement. He noted that everyone affected by the change should be notified of the error.

Ms. Campbell requested that the last two sentences from the Exeter & Hampton letter be placed within the "Notes" section on the plan.

Mr. Rand agreed to include these two sentences within the "Notes". This will become Note 9.

Richard Smith asked how much road surface there would be between the hydrant and the road.

Mr. Rand said they would place the hydrant five-six feet off the edge of the road.

Mr. Carter said he likes to get the fire apparatus off the road in order not to block any other vehicles from accessing property via the road surface if necessary.

Mr. Rand stated he could make the shoulder wider and place the hydrant back.

Mr. Rand suggested that Mr. Carter meet with him on the site at the time of construction and look at the situation during the construction.

Mr. Rand then suggested bringing the hydrant over to more solid ground and extending the accessing pipe by ten or more feet to the side of the pond.

Mr. Carter stated that would be ideal for his purposes.

Richard Smith asked if any other housing groups were changed.

Mr. Rand stated no, the only ones moved were in the immediate area of the pond and there is still the same number of lots.

Mr. Donald stated that there is a bill for legal fees of \$1023 outstanding from FMR. This day, March 20, the Town received another bill which they realize FMR has not received yet. He noted that FMR is incurring fees and they must be paid promptly and not passed-on to the Town.

Mr. Marshall Decker, FMR partner and owner, stated that they had received a call from the Town Office suggesting that in their best interest they should pay the outstanding statements which were in dispute before the meeting tonight. He noted that the minutes would show they have agreed to pay for the bylaws.

Mr. Decker said he has a copy of the Attorney's letter (Ann Thompson, East Kingston Town Counsel) stating to the Selectmen that if they are willing to pay, why not "sock it" to them for the whole thing.

Mr. Decker contends that they have paid every bill for consultant and engineering reviews and the only dispute is with the legal fee.

Mr. Donald stated that legal fees are associated with this subdivision. He noted that the Selectmen agreed with the error in the initial billing for legal fees and that after review at the Selectmen's request, Town Counsel did resubmit a corrected bill. He stated the corrected bill for attorney's review was sent to FMR and they have not paid it.

Mr. Decker stated that the legal fee for the review has nothing to do with this Lot Line Adjustment and only has to do with review of the bylaws.

Mr. Decker said that East Kingston required him to put in homes with 2 x 6 construction, when HUD codes say a different construction is approvable. They required him to use cement block foundations which cost extra money...enough is enough. Mr. Decker stated these additional charges are improper, it borders on extortion.

Mr. Decker suggested the Town submit to mediation or arbitration or go to Small Claims Court for recovery. He noted that his building permits expire at the end of 90 days, which is unique to East Kingston (in his opinion). He noted that they have backed off and accommodated the Town. He noted they have done what they said they would do...pay for the review of the bylaws. He said they have an agreement in writing for the payment of the review which he contends is exorbitant in view that he said it only took him two hours to draft the bylaws for the Association and the attorney asked for \$2000 originally to review them and the bill was amended to \$1000.

Mr. Donald rebutted that the fees billed by the attorney's second bill include only those to review the bylaws and associated legal fees directly for this subdivision.

There was much heated discussion regarding the challenge of this billing.

Mr. Donald stated that these were only opinions expressed by either party.

Ms. Campbell stated the fees for legal services were not connected with the construction of the homes.

Mr. Decker stated that if the plan was not approved he would "freely translate" the Town's position as if it were disapproved because he disagreed with the legal fees. He stated he would not submit to any such threat to disapprove the plan. He felt the fee of \$1000 (\$2000) was in error.

Mr. Donald requested the issue not be beaten into the ground, the bill stands.

Mr. Decker stated he wants to resolve this issue, he disagrees with the bill. He suggested the parties be bound if a third attorney agrees that the bill is not excessive regarding the work accomplished.

Mr. Decker stated it took him two hours to draft the bylaws and the cost for the review is excessive and referred again to the letter from the Town's Counsel stating if they were "sucker" enough to pay, charge them for all of it.

Mr. Donald stated he does not know what letter Mr. Decker referred to and doubts if one exists.

Mr. Decker stated they would pay any legitimate bill, they are not disputing the engineer's bill. He thinks the attorney's bill is an unfair bill.

Mr. Donald stated the Mr. Decker did not come to the Selectmen and respond to the second, corrected bill.

Mr. Decker said this should be \$400 and he has three letters about this.

Mr. Donald said the bill has not been acknowledged and FMR has denied the last bill sent.

Mr. Decker asked if the plan would be held up until the bill is paid.

Mr. Donald stated he feels Mr. Decker must be responsible for all bills incurred for this subdivision. He stated that the Town must not be responsible to pay for legal and engineering reviews associated with this subdivision.

Mr. Decker stated this review has nothing to do with this Lot Line Adjustment approval.

Mr. Smith asked for input from other Board members.

Mr. Decker stated he agreed to pay for the review of the bylaws.

Mr. Keddy asked what Mr. Decker felt was fair to him.

Mr. Decker stated it should have taken two hours maximum, at \$100 per hour, doubling this fee to \$400 might be possible. However, he again stated the original bill was \$2000 and now it has been reduced to \$1000, plus or minus.

Mr. Keddy stated he has not seen what was reviewed.

It was noted that the billing includes the review of the Articles of Association in addition to other questions/matters that the Board requested their attorney to review.

Mr. Decker stated he had no correspondence with the Town.

Mr. Donald explained the initial bill did mistakenly contain billing for work done for another subdivision application. Upon request of the Selectmen, Town Counsel double checked the bill, found the error and itemized the charges for the FMR proposal, thus reducing the bill to approximately \$1000.

Mr. Decker stated with a cost of \$1000, this is better than one whole day to review six pages, of which a majority was boilerplate. The bill is excessive.

Ms. Campbell stated Town Counsel did review more than the bylaws, there were other issues that she reviewed.

Ms. Campbell read Section IV (m) from the Subdivision Regulations: "all engineering and legal fees associated with subdivision will be paid by the developer if the Planning Board or the Board of Selectmen so deem such advise necessary to protect the interest of the Town."

Mr. Decker inquired when this was adopted.

Ms. Campbell did not have the exact date, however, assured Mr. Decker is was prior to 1986.

Mr. Decker stated that in this case, there was no reason for him to agree to pay, it is already in the regulations.

Mr. Rand offered his opinion to resolve this situation. Have the Town itemize the bill and let Mr. Decker review the details.

Mr. Decker stated he has an agreement with the Town and he is willing to abide by it. He does not know what the rest of the bill is for.

Mr. Decker stated he doesn't want to pay an unjust bill. He stated he would do some research. He stated he has an agreement to pay for a special service and if the Town's regulation was in effect at the time of the review and the Town's request is allowed by law, he will pay the bill.

Mr. Donald stated the last bill was for services associated with FMR subdivision. The billing is \$1023 and any billing issued prior to the last one is immaterial.

Ms. Campbell asked Mr. Decker for an explanation of his "agreement" with the Town. She referred to the letter from Richard Smith of November 22 informing Mr. Decker that one of the outstanding items in the subdivision process was the review of the Articles of Association by Town Counsel.

Ms. Campbell then referred to a letter from Mr. Decker stating that he would pay reasonable fees for review of the documents. Ms. Campbell questioned where and when any two party "agreement" was executed.

Mr. Donald stated he will contact Town Counsel tomorrow morning for the breakdown of the bill.

Mr. Decker said if the Town regulations were legal and valid at the time, he would pay the whole bill.

Mr. Decker continued to argue the point that it was the "principal" not the "amount of money". He further argued that the call to him by the Town Office personnel to "pay or else" is not the way to do business. He stated he will pay the whole bill if the Town regulations are legal according to State RSA. He wants to look at the regulations and the State RSA enabling towns to charge applicants for professional review costs.

Mr. Rand asked the two parties to exchange paperwork.

Mr. Decker stated this is only a minor Lot Line Adjustment which does not require a Public Hearing.

Mr. Keddy asked if the reference to the letter of agreement was a document, signed by both parties. He stated he understood it was a letter exchange and there were no agreements signed by both parties.



Ms. Campbell noted there are still outstanding items regarding the Lot Line Adjustment:

1. Town Engineer input on additional fill
2. Addition of note for Exeter & Hampton easement and restriction.
3. Approval of fire pond..ie: location, construction
4. Payment schedule

Mr. Decker requested the following statement be placed into the record:

"Petitioner respectfully protests any consideration of a disputed bill regarding legal fees as being a proper or germane matter for this Board to consider with respect to the approval of this amended plan."

Mr. Donald Clark stated that the name Benjamin Henshaw should be George Henshaw noted on the plan.

Mr. Donald stated the Selectmen will get a breakdown from Town Counsel and it will be sent to Mr. Decker. If a breakdown is not available, he will be notified of it also. Mr. Decker did agree that if the Town's regulation was in existence and the RSA so enables the Board to bill for related legal reviews and other services, he will pay the bill.

Mr. Donald stated he will make every effort to have this information prior to the April meeting.

Ms. Campbell stated she will call the Town Engineer and get copies of his report to Mr. Rand.

Mr. Rand stated he will make corrections as requested to the plan and will get them to the Board in a week or ten days.

This Public Hearing was adjourned at 9:04pm and continued until April 18, 1991.

Home Occupation-Janet Morrill The Public Hearing for Home Occupation for Janet Morrill, Powwow River Road was opened at 9:08 pm.

Mrs. Morrill wishes to have a custom sewing and craft-related business from her home.

The Board reviewed each of the items on the application checklist with Mrs. Morrill responding verbally. A completed copy of the checklist is within her file and attached to these minutes.

Mr. Keddy motioned to recommend issuance of a permit by the Selectmen.

Mrs. George second.

The motion was passed 5-0.

Mrs. Morrill asked if she would be required to get a sign permit.

Mr. Donald explained the sign regulations. Mrs. Morrill understood.

Mrs. Morrill then asked about the fee for the permit.

It was calculated that under the new Ordinance fee structure she would owe \$47.90. She has paid the old fee of \$50.00. She indicated that she would not seek refund.

The Planning Board will recommend approval of her application.

This Public Hearing was closed at 9:16pm.

Scapicchio Mr. Ron Pica was present to represent Mr. Scapicchio who has acquired the property off Andrews Lane from Robert Mills.

Mr. Donald noted that Mr. Mills has an outstanding bill of \$1680.16 and \$210.80 (billed to the Town on this day) from Civil Consultants for engineering review.

Mr. Pica stated he doubted there would be any money from Mr. Mills. He requested these bills be forwarded to him to pass on to Dr. Scapicchio for payment.

Mr. Donald suggested he call the Town Office and get all outstanding bills for the Mills property.

Larry Smith stated there would be a bill coming from the Rockingham County Conservation District.

Mr. Pica noted that the fire pond was located in the wetlands. He said he has talked with Mr. Carter about the design to engineer for drought conditions. He noted this would only disturb more wetlands which would be unacceptable. The option agreed upon is to go with a 10,000 gallon tank at the intersection of Andrews Lane and Andrews Court.

Mr. Carter stated he would agree to a fiberglass tank, six inch dry hydrant with an eight inch pipe.

Mr. Pica stated he will get the specs on the tanks.

There was discussion about water needs for fire protection.

Mr. Carter stated the source must be 1200 feet to any house maximum.

Mr. Pica stated the location as noted would be okay for the nineteen units. He said he has talked with Mr. Frank Colanton regarding the use of the golf course pond. Mr. Colanton has agreed to the installation of a dry hydrant for the two houses at the top level of the cluster. He said there would be a dirt road on the site.

Mr. Donald said he knows where the pond is and questioned how that the Town would always have access to the pond.

Mr. Pica stated they will draw up a legal paper for an easement for access by the Town.

Mr. Donald stated he wants to assure the Town is protected against any change of mind.

Mr. Pica stated the nineteen units are protected by the tank and there are only two units relying on the pond.

Mr. Donald stated the same assurance of protection is required for the two units as for the nineteen.

Mr. Carter stated the Town would be looking for an easement.

The Town would require an easement.

Mr. Pica stated Mr. Colanton was amenable to the dry hydrant and he knows what Mr. Pica would use it for.

Mr. Pica stated it appears Mr. Colanton wanted a dry hydrant in the past and he is not against it, he seems to be for it.

Mr. Pica noted the pipe would be protected from 2 1/2 to 3 ft. of frost and they would subtract two ft. for pond drainage by the course.

Rails have been added to the roadside in two areas and filter fabric on the roadway has been added by request of the Town Engineer.

Ms. Campbell asked about the detention pond in the buffer.

Mr. Pica stated he wants to reduce the encroachment as much as possible.

Mr. Blaisdell questioned the drainage without the pond. Why was the pond necessary.

Mr. Pica explained the additional development will cause a run-off impact. He noted he will be working on the retention ponds this week.

Ms. Campbell noted the Ordinance prohibits disturbance within 100 ft. of the buffer except where a road connects to the abutting property.

Ms. Campbell said the developer would have to go to the ZBA for waiver of setback for the retention pond if it encroaches.

Mr. Pica asked if the swale would cause a problem also.

Ms. Campbell answered yes.

Mr. Pica stated he will make an effort to keep the pond away. He noted he is doing calculations for a 100 year storm in the upper wet area. He asked where the Town wants the retaining wall to go. He asked who would own the retaining wall. He noted he now has it at the edge of the ROW. He suggested the Town own the wall with an agreement that it be maintained by the Association.

Mr. Donald stated the Town in no way wants the ownership of the retaining wall.

Mr. Pica stated it was on the edge of the ROW, and therefore they would need easements allowing the footings within the Town's ROW.

Richard Smith asked the thickness of the concrete wall.

Mr. Pica stated it would be 12 inches. The footings would be within the ROW.

Mr. Pica stated in this case the wall will be owned and maintained by the Association.

Richard Smith stated this was a dangerous road, a 20 MPH road. There is a steep grade.

Mr. Pica stated there will be stop signs erected at Rte. 107 and at the end of the cul-de-sac.

Ms. Campbell stated this will have to go back to the Town Engineer to specify the sign it required.

There was discussion about the 20 MPH speed limitation.

Mr. Pica stated he will move the well out of the leach bed protective zone further than shown now.

Mr. Pica said that the new surveyor has corrected the plan and will refile the corrected plan and install the property boundaries for the abutters.

Mr. Keddy questioned the status of ownership at this time.

Mr. Pica stated the Dr. Scapicchio has purchased land and all rights. The deed now reads: East Kingston Realty Trust and Dr. Scapicchio is the Trustee.

The road will be owned by the Town.

Mr. Pica questioned the bonding procedure.

It was determined that the entire road would have to be bonded.

Mr. Donald explained that as portions are completed and acceptable to the Town Engineer, there would be partial releases on the bond.

Mr. Donald stated the Board would require bonding for fire ponds, and for all external improvements to individual lots.

Mr. Pica asked if they could start at Rte. 107 with the two upper houses. They would like to start the project at this end and work into the 19 lots after these are sold.

Mr. Donald said he would like the Town Engineer to look into this. Bonding would be for the total road and they would then release on this portion of the cluster when completed.

Ms. Campbell stated that bonding in phases may be possible as in standard subdivisions. She explained the process and suggested that they could probably work out a phasing plan.

Richard Smith asked if they would be running the water up from the well for the two houses off Route 107.

Mr. Pica stated they would have to study this further. They may have to install one well to service the two houses.

Mr. Pica stated they would put together the plan showing the entire project. Four parcels will be created because of the road layout and the two separate lots.

Ms. Campbell stated the 90 day clock would expire this evening.

Mr. Pica submitted a letter requesting more time. He requested another 90 days.

The Board agreed to 90 days which will expire on June 20, 1991.

Mr. Pica requested to be on the agenda for the May 16, 1991 meeting.

Mr. Carter addressed the fire protection if the development begins at Rte. 107. He noted they would have to have the pond easement. He noted it would have to be there to protect the two houses.

It was noted the tank would have to be below frost level and placed in dry land.

Richard Smith asked about the gift of land adjacent to the school property.

Mr. Pica stated this was mentioned by Mr. Mills. He asked if they were to receive more land, would this allow more students. As this land is wet, he doubted that it would be beneficial.

Richard Smith stated that it doesn't need to be calculated for flow.

Mr. Pica agreed that his client would donate this to the school district if they desired.

Mr. Pica noted that he is installing a geo-mat to stabilize the ditches in the long through cut on the steep portion of the road.

This continuation was adjourned at 10:30.

Mr. Carter stated the hydrant has been installed in the KV Development and Mr. Krooss has agreed to cement around it and install the lally columns as requested.

Mr. Keddy asked if the Cotulli fire pond has been inspected.

Mr. Donald stated it has never been installed.

Mr. Keddy stated that Mr. Cotulli has left town.

Mr. Donald stated he still owns the property and he still has lots for sale. He stated perhaps the Board can refuse to issue building permits or issue liens on the property to cover installation of the fire pond.

Mr. Carter asked what the prospects of getting a fire pond down there.

Richard Smith stated there is no money left in the bond.

There was discussion about how to deal with the Cotulli property and the issue of no fire pond.

Richard Smith registered his disturbance about not knowing about the FMR billing problem prior to the meeting.

Mr. Donald apologized for the oversight.

Richard Smith signed the annual contract for Rockingham Planning Commission to provide Circuit Rider services. Ms. Campbell will be the representative serving East Kingston.

Ms. Campbell distributed copies of proposed bylaws to be reviewed by the Board and discussed at the April 18 meeting.

Mrs. George motioned to adjourn.

Mr. Donald second.

The motion passed 5-0.

The meeting was adjourned at 10:50pm.

Respectfully submitted,

---

Nancy J. Marden, Secretary

Typed: March 23, 1991