



**PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE**

2003-2004:
James Roby Day, Jr., Chairman
Richard A. Smith, Sr., Vice Chairman

MINUTES
(Regular Meeting and Public Hearing of April 15, 2004)

AGENDA:

- 7:00PM – **Board Business**
7:15PM – **Continued Public Hearing** – for a proposed subdivision and lot line adjustment of Donald Kemp, MBL 7-3-2 (PB#04-01).
7:45 PM – **Continued Public Hearing** – for a proposed site of the United Methodist Church, MBL 9-6-3, involving a parking lot, an addition to the church and a single-family dwelling (PB#04-OA).
8:15 PM – **Public Hearing** – for a Home Occupation of Kevin J. and Maria Hennessey, MBL 4-2-2 at 140 Depot Road.
8:45 PM – **Public Hearing** – for a Home Occupation of Matthew L. Gallant, MBL 7-3-7 at 120 Sanborn Road.
9:30PM – **Adjournment**

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 Mr. RA Smith, Sr., Dr. RA Marston, DVM and Mr. MB Dworman, ex-officio
Alternate members present – Mr. JD Burton and Mr. EV Madej, Mr. J. Fillio
Advisers present – Ms. Maura S. Carriel, Rockingham Planning Commission (RPC) Senior Planner; Mr. LK Smith, Chairman, East Kingston Conservation Chairman; Fire Captain Andrew Conti, East Kingston Fire Department

Mr. Day stated that according to the Rules of Procedure, this is the month for the annual Planning Board elections.

MOTION: Mrs. Belcher **MOVED** to nominate Mr. Roby Day for Chairman. Dr. Marston seconded and the motion carried unanimously.

MOTION: Mr. Day nominated Mr. Richard Smith for Vice Chairman. Mrs. Belcher seconded and the motion carried unanimously.

Mr. Day stated that this last year has been edifying and that he has learned a lot. He added that he really appreciates the support and reinforcement and all the hard work and will always defer to the other members of the Board's opinions.

Mr. Day welcomed the newest Alternate Member, Mr. Jack Fillio.

Designated Voting member – Mr. Day noted that this month Mr. Madej is the designated voting member and next month it will be Mr. Fillio.

BOARD BUSINESS:

Minutes –

Ms. Carriel noted that there was a piece of information missing from the Minutes. In regards to the United Methodist Church hearing, Mr. Ray Donald had asked the Board to consider not sending the plan to the Town Engineer because of the cost. This will be added to the Minutes.

MOTION: Mr. Dworman **MOVED** that the Board accept the minutes of the March 18, 2004 meeting as amended. Mrs. Belcher seconded and the motion carried unanimously.

Notes & Asides –

Counsel charges: Mr. Day noted that the members of the Board have received a copy of Town Counsel's charges with regard to the United Methodist Church application. This amounts to over \$1,000. He added that the Church did not request the Board go to Town Counsel for advice. Mr. Day added that they were given good counsel. He asked who will pay the bill. It will either be paid by the Board or the Church. The Board has to ask was counsel acting for the Board or addressing a question about the application.

Mr. Burton asked what the relevant language in the statute was for the application process. Mr. Day answered that there was no specific language addressing this type of issue. Ms. Belcher read from Section III – Procedures, "...reasonable expenses and costs of special investigative studies and the review of document and other matters which may be required by particular applications."

Mr. Burton added that it is the cost of the application and they chose to do this in a complicated way. They could have done this in separate issues.

Mr. Day noted that the issue was if a church in East Kingston is a grandfathered use and not an improved use. Mr. Burton asked how does the Board distinguish this from any other application that has to go to Counsel.

Mr. R. Smith stated that he has been on the Board for a number of years and could not recall any time that the Board called on Town Counsel and charged the applicant. Dr. Marston agreed that he also could not recall any time this was done. Mr. Smith stated that they were always very quiet about how many times they called Town Counsel because it cost the Town money. Any time they called the Counsel, it was Town money and the Board wasn't going to spend it unless it was absolutely necessary.

Mr. Burton stated that the question here was whether this application should go to the Zoning Board of Adjustment and that question did not relate directly to the application. Mrs. Belcher said that her concern was that the attorney is also the Chairman of the Zoning Board of Adjustment and wouldn't the Board normally go to the Chairman of the Zoning Board with this type of question. Mr. Day agreed.

Mr. Burton stated that this question also brought up whether or not the whole project required ZBA approval.

Mr. Day explained that the Church project is three things in one and that is infinitely complicated, but the sticky point was the use of the property. It's in a residential zone and the Town's ordinances do not address churches or houses of worship. So, as a consequence, Counsel construed it to be a grandfathered use. If they had wanted to expand it, they would have to go to the ZBA. His personal opinion is that the Board went to Counsel to clarify its own ordinances and they would have had to do that in any event if they were going to address the house of worship question.

Mr. Fillio asked if fees are applicable in other cases and Mr. Day stated that this case is different in that the Board went to Counsel for an opinion regarding the Town's ordinances and how the Board was to understand these ordinances. Mr. Fillio stated that he thought it should then be the Town's responsibility. He added that someone has to pay these charges.

Mr. Dworman stated that he thought it was the Town's responsibility and asked if other applicants have been charged. Mr. Day stated that there were charges in the Cook and Sullivan subdivision site plan. The Board talked to Town Counsel in great length and Cook and Sullivan were charged for it.

MOTION: Mr. Dworman **MOVED** that the Town pay the charges to Town Counsel. Dr. Marston seconded. Mrs. Belcher and Mr. Madej abstained and the motion carried unanimously.

Mr. Dworman asked that if the Chairman of the ZBA was not the Town Counsel, he believes that the Board would probably ask his advice. He added that in the future, he suggested that the Board ask the Town Counsel to put on his ZBA hat if there are questions similar to this one. Mr. Day stated that the ZBA is charged only with looking at the ordinances.

Mr. Burton stated that there were Constitutional issues, federal law issues and that this was not something where you could just read the ordinance and know the answer. Mr. Dworman stated that he feels they should ask the ZBA for their interpretation. Mrs. Belcher added that she found it hard to justify charging the applicant. Mr. R. Smith brought up the point of NHMA attorney Judy Silva and there is no charge to the Town for her services. Mr. Day stated that they do not have the intimate knowledge of the Town ordinances. Mr. Burton stated that if there was ever a time the Town should get legal advise this was it because this was difficult with conflicting laws and this was extremely unusual.

Budget: Mr. Day stated that for the time being the Board is ahead \$2,300.

Apple Hill Adult Community: Mr. Day stated that the Board was given a copy of a letter from Mr. and Mrs. Allen from Lawrenceville, GA regarding the elderly housing project. He added that the Board was also given the first page of a suit and if they are interested in seeing the entire suit, it is available. He stated that there is correspondence from Town Counsel regarding the citizen's petition that is marked "Privileged and Confidential". It will not be maintained in any file. It is between the Board and Counsel.

Correspondence: Mr. Day noted that Mr. Smith gave him some correspondence entitled "Sustainable Communities 2004" in Burlington, VT, July 14-18. It is some kind of workshop on global community initiatives. Mr. Day will get this to the Board. He noted that the price is "Register by 4/14-- \$425" and it goes up from there. Mr. Burton asked if it includes room and board and Mr. Day stated that it is the registration fee.

CONTINUED PUBLIC HEARING--FOR A PROPOSED SUBDIVISION AND LOTLINE ADJUSTMENT OF DONALD KEMP, MBL 7-3-2 (PB#04-01)

Mr. Day opened the hearing.

For the applicant: Mr. Dennis G. Quintal stated that these are essentially the same plans as before and that he made prints with revisions on them. Mr. Day asked if there were any 11X17 to which Mr. Quintal answered no. He stated that there were just a few issues as a result of the last hearing and that he has made the changes. There was discussion about the driveway. He has put the State subdivision approval number on the plan. Per Ms. Carriel's comments, he put a note on the plat that the lot is not in a flood zone. There was also a discussion regarding a waiver for the cistern.

Mr. Day read from the waiver request:

"On behalf of the applicant... Will the East Kingston Planning Board grant a waiver from the Subdivision Regulation Section VII - S, requiring Fire Pond or Cistern to be constructed within 1200 feet of a newly created lot? In this case, the proposed subdivision would create only one non-buildable lot. I do not believe this Application falls under the intent of this Regulation."

Mr. Quintal stated that since the last hearing, he has met with the Town of Kingston and got their approval. It was fairly straightforward. He had made a couple of revisions and most of the discussion involved who would be handling the mylar. It does not matter to Kingston. He noted that there are two pages to be recorded and that both towns have to sign the mylar because of overlap in the plans.

Mr. Day stated the Waiver Request with regard to Section VII-S requiring a source of fire suppression water, he said that his reasoning is that they are not creating a new buildable lot. If this action were not being done, the Kemps could come in and request a building permit because this is a pre-existing building lot. The lot that will be built on is retaining the same number as the original lot. The fact that the remaining land will have a conservation easement and not developable can justify the reasoning that fire suppression is not required. Mr. Burton added that the easement is deeded as well. Mr. Day stated that if that is the reasoning that the Board accepts, then no waiver is needed. Mr. Burton suggested just accepting the waiver for something to fall back on.

Mr. Quintal stated that the ordinance states that all subdivision have to have it. This is a subdivision. The reality is that the lot that is being created is unbuildable. He suggested that it would be cleaner if the waiver is processed.

MOTION: Mrs. Belcher **MOVED** to grant a waiver from Subdivision Regulation Section VII-S based on the information that MBL 7-3-2 is a pre-existing lot and that Lot 7-3-68 would go into Conservation and that there can be no building on Conservation property. Mr. Dworman seconded and it carried unanimously.

Mr. Day went through the list of the Conditions for Approval.

1. State subdivision approval number is on the plan.
2. Confirmation of Monumentation by Building Inspector. Mr. Day asked if Kory Skalecki had gone out to the property site to confirm monumentation. Mr. Quintal stated that the monuments are already there and that they were part of the original plan. Mr. Day stated that Mr. Skalecki was to go out to look at them just to be sure. He stated that he would keep this condition for argument sake.
3. Date and methodology of wetland delineation note added to final plan. That has been done.
4. Town driveway permit. Mr. Day stated that it is a Town road and needs a driveway permit. Mr. Quintal stated that there are no plans to build at the moment and he did not know that a written permit was required. He added that the location is on the plan where a driveway could go and prior to getting a building permit, they would get the driveway permit.
5. Town Counsel review and approval of conservation easement language. Town Counsel has reviewed the easement language. Mr. Quintal stated that he would get a copy of the final easement language document to the Board prior to the mylar being signed.
6. Kingston Planning Board approval of plan with chairman signature attached thereto. Mr. Day stated that they would leave that as a condition.
7. Final plan to include note on the sheet(s) recorded indicating they are a part of "X" number of pages. Mr. Quintal stated that they are both going to be mylars and they are both going to be recorded.
8. Final mylar(s) to be submitted to the Board for chairman signature and recording.
9. All fees and charges due the Town in connection with the subdivision, including but not limited to reviews to Town Counsel, Town Engineer, RPC Senior Planner and Fire Department and administrative costs incurred by the Town on applicant's behalf be fully discharged.

Mr. Day said that there are four conditions. 1) Confirmation of monumentation; 2) Kingston Planning Board approval; 3) Final mylar; 4) All fees and charges, etc. Mr. Burton asked if the building inspector issue could be handled administratively. Mrs. Belcher stated that she feels Kory Skalecki should go out to the field to make sure that the monuments are there. Mr. Day stated that Mr. Skalecki said he would go out to make sure they are there. Mr. Dworman asked when it was last surveyed. Mr. Quintal answered September or October and he doesn't feel anything would have moved since then. Mr. Day stated that this is a standard requirement with a subdivision that the building inspector goes out to make sure they are set. Mr. Quintal stated that in this case they are all existing. Mr. Burton asked if the Board is asking the applicant to come back. Mr. Day said no.

MOTION: Mr. Dworman **MOVED** to grant a conditional approval with four conditions listed for the proposed subdivision and lot line adjustment of Donald Kemp, MBL 7-3-2 (PB#04-01). Dr. Marston seconded and the motion carried unanimously.

Mr. Day reminded Mr. Quintal that he would like 11X17 copies.

Mr. Day stated that he wanted to cover an administrative base. He asked if there were any ab utters present with any comments. There were none.

Mr. Day closed the public hearing.

CONTINUED PUBLIC HEARING—FOR A PROPOSED SITE PLAN OF THE UNITED METHODIST CHURCH, MBL 9-6-3, INVOLVING A PARKING LOT, AN ADDITION TO THE CHURCH AND A SINGLE-FAMILY DWELLING (PB#04-OA)

Mr. Day opened the hearing

For the applicant: Dennis G. Quintal. Mrs. Belcher recused herself from the hearing.

Mr. Quintal submitted 11X17s of the church addition elevation, which was one of the requirements.

Mr. Quintal submitted a waiver request. Mr. Day read from the letter “I evaluated the limiting factors for design, specifically, soil data, tank and leach area size, height above seasonal water table, nitrate setback and lot size maximum flow. This information shows that there is adequate area on the lot to permit the installation and operation of a waste disposal system.”

Mr. Day went through his list of outstanding questions:

1. Phasing note on plan for addition and parsonage. With regards to the phasing note on the plan, Mr. Quintal said it's a guess as to the timeframe. It could be modified as funds become available, which could happen fairly rapidly, but it gives an extended time frame. It would be above and beyond a three to four year time frame.
2. Landscaping adequacy. Mr. Day stated that landscaping adequacy came up as a question. It had to do with the number of trees and where they were placed. My Day stated that he thought the regulation called for a tree every 35 feet. Mr. Quintal stated that there would be a tree every 35 feet as part of the subdivision plan and the ones that he has on the plan are on the site plan. These would be in addition to a tree every 35 feet within the right-of-way. So there will be not only trees shown on this plan, but also along the right-of-way. He did not show Maplevale's trees. Mr. Day stated that Peter Lewis's development is not in question here, it's the Church's site plan. Each site plan is taken individually and the regulation requires a tree every 35 feet. That is the question for the Board. Mr. Day asked if the Board wanted to be flexible with that. Mr. Quintal stated that he was showing the minimum of trees. Mr. Day noted that they would not make a mountain out of a molehill.
3. Parking signs. Mr. Day mentioned that the parking signs had been talked about last time. He verified that they are not going to be large, gar ish and lit.
4. Water and sewer utilities locations/sizes. Mr. Quintal said he shows the locations on the plan. He stated that he has a letter from the water company. Mr. Day stated that the Board does have a letter regarding access from Maplevale Road. Mr. Quintal stated that Hampstead Area Water Company is putting in Peter Lewis's water system. Mr. Day read the letter wherein Mr. Lewis provides for connecting the Maplevale water system to the church property.

Mr. Day asked Mr. Quintal when this would be happening since they are not planning to build the addition and parsonage for some years. He asked if this is a short term or medium term need. Mr. Quintal stated that they might extend the main to the property line and the curb box to the property line, but the tying into the building probably would not take place until the addition was developed.

Ray Donald interjected that he had met with Mr. Lewis and that the expectation is that while they are in the construction mode, they will punch a line under the existing road and put in shut-off valves and boxes so that the church can tie in when it becomes necessary. He added that that portion would be pretty simple.

5. Addition elevations. Mr. Day stated that he has them and they look good.
6. Drainage plan acceptable to the Conservation Commission. Mr. Day has confirmed with Mr. L.K. Smith that the drainage report has been examined and it is up to the Conservation Commission's standards and the Board might not have to send it to the Town Engineer.

Mr. Day opened the floor to abutters, of which there were none.

Mr. Day closed the floor to abutters.

Ms. Carriel stated that the area she would suggest discussing was the phasing and that she wanted to make sure everyone was comfortable with the phasing schedule. She added that unless all the pages are to be recorded, that the phasing schedule note be moved to the recorded sheet. She also stated 1) for the applicant's protection, the NH RSAs do allow for the Planning Board and the applicant to agree to specify on the level of construction that would be completed so the approval is vested, meaning that it is protected from any subsequent changes. Given that it is phased over a certain amount of time, she suggested that the notes clearly specify what is going to be phased and what constitutes substantial improvement.

Mr. Burton asked if the dates have to be accurate. Ms. Carriel answered that for substantial improvement you do have to specify a time frame but once some work is done, it is permanently vested. Mr. Quintal stated that what he did in other situations was to stretch it out for a number of years. If the work is done sooner than what was anticipated, there is no problem. He said that the problem is when you go beyond those start dates. In the case of gravel pits, for example, when they excavate certain sectors, if they don't sell the material quickly enough, then they come back with another proposal and extend it even further. If none of the work got done for four years, there wouldn't be anything vested and they would have to come back to the Board.

Ms. Carriel stated that you can do it based on a time frame. There can be a note or reference to the effect that the Board is approving this with completion within a certain time frame or with completion of the parking lot, the Board deems it to have done substantial development. Mr. Quintal said he would be more than happy to put some kind of wording on the plan as long as it's acceptable to the Board, but he is just not sure what the wording would be. It is his interpretation that they plan on starting work on the parking lot as soon as they can. Mr. Burton stated that it is not the Board's intention to have to look at this again in five years. Ms. Carriel said that like any site plan, if you approve everything, you approve the content of the plan, the building elevations, and there is never any change to the plan, then it doesn't ever have to come back.

Mr. Day said that it might be appropriate for Mr. Quintal and Ms. Carriel to get together to do the verbiage to be put on the plan and put it on one of the pages that will be recorded. He told Mr. Quintal that this insurance for him. Mr. Burton stated that it would be nice if the Church didn't have to come back again.

Mr. Day said that the Board has two waivers to address. Mr. Day reminded that Mrs. Belcher has stepped down and Mr. Madej is an abutter. Mr. Filio will vote on this.

The waiver requests are:

1. SPR Regulation VIII.F.4 Lighting maximum of 0.5 foot candles. Mr. Day stated that at some point the Board will get around to changing the subdivision regulations to correct this. This issue comes up any time an applicant wants to put in lighting.

Mr. Quintal stated that the foot candle requirement in the regulation says that there cannot be more than 0.5 foot candle of light. He stated that 0.5 foot candle is like a match and the requirement says that it cannot be any brighter than that on the whole site. Mr. Day stated that it is not very realistic. He does not recall how the Board came up with that number. Mr. Quintal stated that he had also changed the height of the lights. Mr. Day said that the waiver is from the very restrictive 0.5 foot candle requirement to a more realistic configuration.

MOTION: Mr. Dworman **MOVED** to accept the waiver request from SPR Regulation VIII.F.4. Dr. Marston seconded and the motion carried unanimously.

2. SPR Regulation VI.H NH WP&CC sewage disposal plan approval. Mr. Day stated that this refers to a requirement for a sewage disposal plan approval from the State before the plan is approved by the Board. They are requesting a waiver from that requirement.

MOTION: Dr. Marston **MOVED** to accept the waiver request from SPR Regulation VI.H. Mr. Dworman seconded and the motion carried unanimously.

Mr. Day stated that they would now look at the conditions for approval.

Ms. Carriel stated that if there is a conditional approval, whatever language she and Mr. Quintal work out regarding the phasing is out the Board's hands. Mr. Day stated that the Board would make a condition that the language be acceptable to Mr. Day or Mr. R. Smith. Ms. Carriel said that she would like to get the Board's preference for identifying what is a vested subdivision. She asked if they are interested in putting in a time frame. Mr. Quintal said that the first part of the construction would be the first section of the parking area, not the whole gravel area. If you are looking at an element of construction that would vest the project, it could be that that section of the parking lot be brought to grade and graveled or at any step after that. Ms. Carriel stated that the vesting is for four years and it is whatever the Board deems to be substantial development. Mr. Burton said that it is a way for them to show their intent to complete the project. Mr. Day stated that they have four years to do something. If they do something within four years, the plan is vested. If they do not do anything in four years, they have a problem. He added that this particular plan is really three plans in one. So just because they build a parking lot, someone might look askance at the Board vesting their addition and a parsonage which are very different from a parking lot. You do not have to have an addition to have a parking lot.

Mr. Quintal stated that it was their intent to present a master plan to the Board. Mr. Day stated that if they show reasonable and substantial development, then the plan is vested and becomes grandfathered. Mr. Quintal added that they just might not put the addition on within four years. Mr. Day said that they have to accept that if they put in a parking lot, it also means that they will put in an addition. Mr. Filio clarified that if the plan is in three phases, and we approve one, then the whole thing is vested once there is construction. Mr. Burton stated that if a developer comes with a phased plan and there is a trust that building a parking lot is substantial development and they say they want to build a third of the houses, they can build the rest anytime they want to. Mr. Day said that is true. Mr. Quintal added that they would have to work out a phasing scheme as well. Ms. Carriel stated that there is case law on that. What are considered improvements for subdivision are roads and drainage. Mr. Burton said that this would mean then than if someone only built 20% of the subdivision houses, it is vested as long as all the road and drainage are in.

Mr. Day stated that the development he lives in was strictly a subdivision development where the lots were created, the roads were built and electrical and utilities were put in place. There wasn't a single house built by the developer. They were all individually sold as lots and there is still one that hasn't been built on. But that lot is vested by virtue of the whole subdivision. Mr. Burton added that it is important to note that this is not going to be funded up front.

Mr. Day went through his list of conditions:

1. Note on final plan describing the expected phased construction for the parking lot, church building addition, and parsonage, with anticipated permit application requirements described. Mr. Day stated that this will be moved to one of the pages that will be recorded after Mr. Quintal and Ms. Carriel come up with the language which will insure that the project is properly vested. Mr. Day asked how many pages would be recorded. Mr. Quintal stated the existing conditions, site plan and grading and utilities pages would be recorded (E1, F1, G1). He added that landscaping and lighting are not that important. The condition will be "Note on final plan describing the expected phased construction as crafted by Senior Planner and the engineer and accepted by the Board." Mr. Day asked if the Board would accept his and Mr. R. Smith looking at it. They would be fine with that.

2. Directional arrow with measured distance from nearest lot corner to source of fire suppression water on final plan set. Mr. Day stated that that has typically been a request from the Fire Department that that information be put on. Mr. Day asked Mr. Quintal to put that on to satisfy the Fire Department. Mr. Quintal stated that there is a hydrant just down the street.
3. Fire Department approval of suppression system accessibility and adequacy. Mr. Day stated that that would be a note from Allen to the Board. Mr. Conti stated that he didn't feel this was necessary. They just have to prove the hydrant is within the 1200 foot distance. Mr. Day stated that this condition will be taken off.
4. Certificate of Monumentation signed by Building Inspector. Mr. Day stated that there is no new monumentation on this because that was a consequence of the lot line adjustment. He added that this will not be needed.
5. Town driveway permit. Mr. Quintal stated that it is not a town road at this time, but they have permission to access from their road. Mr. Dworman asked if the parsonage is being built years after the road becomes a town road, does there have to be a driveway access on the plan. Mr. Quintal stated that access will be through the parking lot. There will be no additional driveway.
6. Final plan to include note on the sheet(s) recorded indicating they are a part of "X" number of pages in the plan set on file with the Town. This will be done.
7. Final mylar(s) to be submitted to the Board for chairman signature and recording.
8. All fees and charges due the Town in connection with the site plan, including but not limited to reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town on applicant's behalf be fully discharged.

Mr. Day stated that there are five conditions. Mr. Quintal asked if the Board wanted a note about the waivers being approved. Mr. Day stated that this information will be in the minutes and the Notice of Decision. Mr. Day suggested putting a note on the site plan. Mr. Day added a sixth condition would be a note on the final plan addressing two waivers granted.

MOTION: Mr. Dworman **MOVED** to grant a conditional approval of the proposed site plan of the United Methodist Church, MBL 9-6-3, involving a parking lot, an addition to the church and a single-family dwelling (PB#04-OA) with the six conditions. Dr. Marston seconded and the motion carried unanimously.

Mr. Day closed the public hearing.

PUBLIC HEARING—FOR A HOME OCCUPATION OF KEVIN J. AND MARIA HENNESSEY, MBL 4-2-2 AT 140 DEPOT ROAD.

Mr. Day opened the public hearing.

Kevin and Maria Hennessey appeared before the Board.

Mr. Day stated that the Planning Board reviews the application, looks at the ordinance and tries to figure out what you do fits into the ordinance. Then the Board makes a recommendation to the Selectmen who, in turn, will make a decision to issue a home occupation permit. Therefore, the Planning Board is not the final say.

Mr. Day asked who owns the property. He added that as far as the Town is concerned, Mr. Young still owns the property and a home occupation permit is ostensibly intended for the resident of the property.

Mr. Hennessey stated that they currently lease the property from William Young. He stated that Mrs. Hennessey is a kitchen designer and they are looking to have a professional office in one of the rooms in the residence, which

would be about 600 sq. ft. (20X30 space) to occasionally meet with clients but basically to do her work and he said that he is requesting permission to hang a sign outside the residence. Mrs. Hennessey stated that this would be the living room used as a studio.

Mr. Day asked for a copy of the lease or rental agreement to establish that they are the residents. Mr. Hennessey showed Mr. Day a copy of the lease, and they will get a copy to Mr. Day. Mr. Hennessey explained that it is a one-year lease with a two-year option. Mr. Day noted that the lease expires March 15, 2005.

Mr. Day stated that a home occupation is a professional or service occupation or business carried out in the home that is clearly accessory and subordinate to the primary use of the house as a residence. He stated that on the application they are requesting to have a lit sign out front. Mr. Hennessey stated that his belief is that it was okay to illuminate from the ground with a small spot onto the sign. Mr. Day agreed. He added that it could not be lit from within. Mr. Hennessey said it would be a tasteful, probably mahogany, 2X2.

Mr. Day asked Mrs. Hennessey to describe her work. Mrs. Hennessey stated that most of her clientele is by appointment. She designs kitchens. She needs that space to sit with a client to interview to find out what their requirements are. She does CADD drafting. She added that it is much like an interior designer, she has samples of cabinetry, countertops. The space is mostly to have a nice environment to conduct an interview.

Mr. Day asked about parking. Mrs. Hennessey stated that it is not a high traffic business and there is plenty of parking behind the house. She and her husband only have two cars. She added that there is no parking on Route 107. Mrs. Belcher asked how many cars they could accommodate and Mrs. Hennessey answered there is room for 30 or more. She said that there is a garage in the back that belongs to Mr. Young.

Mr. Day asked if the big structure in the back is included in their lease. Mr. Hennessey stated that they use a two-stall small end of the building as a garage and they do not have access to the grey building in the back.

Mr. Day read the list of permitted home occupations.

Mrs. Hennessey stated that her business is most closely similar to an architect. Mr. Fillio asked if she had a lot of cabinetry stored, which she said that it was only a design studio and did not keep cabinets. She just uses samples. She has a built-in entertainment unit about 10 feet long and everything she needs can be displayed on that.

Mrs. Belcher asked what type of vehicles would be involved. Mrs. Hennessey stated that they had two personal vehicles. She added that Federal Express makes deliveries of about 2'X3' crates at the largest. Her clients are by appointment. The hours of operation will be 10-5, six days per week. She added that there will be no paints or chemicals stored on the premises.

Mrs. Belcher asked if the applicants would be willing to have an annual fire inspection and Mrs. Hennessey said it would not be a problem.

Mrs. Belcher stated that they need to get a sign permit from the Board of Selectmen and that it would be good to have a drawing or sketch.

Mr. Day verified that the square footage was 600 feet and remarked that this was rather a large area. Mr. Hennessey stated that the total square footage of the house is 3,500. Mr. Day stated that size was well within the ordinance regulations.

Mr. Burton suggested using the words "indirect lighting" rather than "spotlight".

Mr. Day opened the floor to abutters, of which there were none.

Mr. Day closed the floor to abutters.

Mr. Day asked for a motion with the conditions of a copy of the lease and an annual fire inspection.

Mr. Dworman asked if the applicants should get permission from the owner to put up a sign in front. Mr. Day answered that since they have a lease, it is their property for a year and they can put up a sign. It would be a civil matter between the owner and the applicants.

Mr. R. Smith made the point that sometimes people have a light on a sign and it can be blinding to drivers. They should make sure that this is not a hazard to drivers. He also stated that there cannot be any blinking lights.

MOTION: Mrs. Belcher **MOVED** to recommend to the Board of Selectmen that they grant approval of a home occupation of Kevin J. and Maria Hennessey (MBL 4-2-2) at 140 Depot Road with the conditions that a copy of the lease will be provided and there will be an annual fire inspection. Dr. Marston seconded and the motion carried unanimously.

Mr. Day stated that they now have to get the Board a copy of the lease and they have to get on the Board of Selectmen's Agenda. The Planning will inform the Board of Selectmen of its recommendation to approve. Mrs. Belcher added that it would be best if they were at the Selectmen's meeting.

Mr. Day closed the public hearing.

PUBLIC HEARING—FOR A HOME OCCUPATION OF MATTHEWL. GALLANT, MBL7-3-7 AT 120 SANBORN ROAD

Matthew and Amanda Gallant appeared before the Board.

Mr. Day asked the applicants to describe their type of business. Mr. Gallant stated that what they want is a permit to run an office out of the home for billing purposes and taking phone calls and maybe the occasional parking of the truck in the driveway.

Mr. Day asked if they park the truck there now and Mr. Gallant stated that sometimes he does when he comes home for lunch.

Mr. Smith recused himself because he is an abutter.

Mr. Day stated that Mr. Madej would vote.

Mr. Day noted that the company name is "Bob's Septic Service, LLC". Mr. Gallant corrected that the actual name is "Bob Rossi Septic Service". Mr. Day asked if Bob was passing the business over to Mr. Gallant and Mr. Gallant stated that he took ownership in April.

Mr. Burton asked if the truck would be parked overnight. Mr. Gallant stated that once in a while he might park it overnight. They have a garage located at 130 Sanborn, Rossi Construction.

Mr. Day asked what the square footage of the office. Mr. Gallant stated that they would be using a room in the house which is 260 sq. ft (13X13). The whole house is 2,600 square feet. Mr. Day stated that they would be well within the parameters of the ordinance.

Mr. Hennessey stated that this business would fall under the category of "Bookkeepers, Accountants, secretarial services".

Mr. Day stated that the ordinance Article XVI. C3: "Not more than one commercial vehicle may be kept overnight at the premises unless shielded from sight by garage, fencing, etc."

Mrs. Belcher asked if they would at any time have more than one commercial vehicle. Mr. Hennessey said that there would only be one.

Mr. Dworman noted that it was agreed that the business would fall into the secretarial category as opposed to a septic truck category. He stated that if they plan on parking the vehicle there all the time, then they would have to come back before the Board and it is a completely different issue.

Mr. Gallant asked if he did decide to park the truck there overnight all the time, it states that you can have only one commercial vehicle on the property.

Mr. Burton noted that the Board is not approving the operation of a septic business, it is approving a home office. The operation of a septic business is not covered under home occupation.

Mrs. Belcher stated that this gives the look of a commercial business. She stated that the Board has to protect everyone and she wants to make sure that this doesn't turn into a commercial business in a residential zone. It is supposed to be a home first.

Mr. Burton stated that it is zoned for residential. He asked what other physical operations are there. Mr. Gallant stated that the truck is the business and there is only one vehicle.

Mrs. Belcher suggested parking the truck in the garage.

Mrs. Belcher asked if they stored any septic chemicals on the site. Mr. Gallant said they did not. It was agreed that an annual fire inspection was not necessary since they do not have customers. She asked where the septic waste was deposited and Mr. Gallant said there were three different sites. Most of it goes to Biological Recycling in town. There is a plant in North Andover, MA. The rest of it goes to the Town of Epping Wastewater.

Mrs. Belcher asked what kind of odor or fumes are emitted when the truck is not pumping. Mr. Gallant stated that there was no odor when the pump is not running. He stated that it was just the two of them as employees of the company.

Mr. Dworman stressed that it is very important that the truck not be parked on site on a regular basis because, referring directly to a conversation two months ago when the Board was faced with another applicant, the applicant brought up that it was similar to the septic operations in town. And the applicant was told it was grandfathered.

Mr. Burton wanted to make it clear that the Board was not approving a septic business. He advised Mr. Gallant to continue the current business practice and not let it increase.

Mr. Day asked why they would park it there in the first place if they have a garage to park it in elsewhere. Mr. Gallant stated that sometimes he has an early morning call.

Mrs. Belcher asked if there was going to be any sign and the Gallants said they were not intending to do so.

Mr. Day opened the floor to abutters, and Mr. Smith saluted the Board. There was no abutter comment.

Mr. Day closed the floor to abutters.

Mr. Dworman brought up the fact that if he worked for a septic company and brought the truck home every night, he wouldn't be operating a business out of his house, but simply have access to a truck.

Mr. Day reminded that the Board is not approving a septic business, only a secretarial business.

Mr. Burton stated that whatever the Gallants are doing now, they can continue to do.

MOTION: Mr. Dworman **MOVED** to recommend to the Board of Selectmen that they approve the application for a home occupation of Matthew L. Gallant, MBL 7-3-7 at 120 Sanborn Road. Dr. Marston seconded and the motion carried unanimously.

Mr. Day told the Gallants to get on the Selectmen's Agenda. He advised that these things come up before the Selectmen for a yearly renewal.

Mr. Day closed the public hearing.

More Board Business

Mr. Day stated that there is a meeting next week and notices will be posted. It does not have to be placed in the newspaper.

Mrs. Belcher's Warrant Article re: junk and stuff.

Mr. Day thanked Mrs. Belcher for it and said it would be on the May Agenda for a five minute public hearing at 8:00PM.

On May 15, there is only one public hearing so far, Mr. Tebo at 7:15. He will have gone to Kingston by that time. Kingston's meeting is Tuesday, April 20. The site walk on Tebo's property is Saturday, May 15 at 10:00AM. Notices for that will have to be posted because it is a meeting. That is the Saturday before the May meeting. Mr. Tebo will get 45 minutes at the hearing.

Mr. Dworman stated that at the last Selectmen's meeting the Board accepted Mr. Tebo's Intent to Cut so probably by the time of the site walk all of it will be cleared.

Mr. Day stated that he had received a phone call from a realtor who is interested in exploring Bob Bagshaw's property for a subdivision and a small horse farm. Mr. Bagshaw is throwing in the towel because it came down to the economics of taxation.

Housing Chapter

Ms. Carriel stated that there is a work session scheduled for May 22 at 7:00PM

Mr. Burton asked if there was any chance they could get the NROC people that might have experience with questions that the Board will be dealing with. He stated that he believes that there is so much that is parallel with these two projects.

Mr. Day stated that he wanted to deal with this first.

Ms. Carriel stated that she has spoken with the NROC people. The deadline for her RPC work on the housing chapter is June 30 and it cannot be extended. She said that a lot of issues that NROC is going to focus on are contained in the Smart Growth report. The draft that she put together has a lot of housing information, income information, housing costs, housing stock. It is intended to be an inventory of what the current situation is in town now. It also contains her review of the ordinance and subdivision regulations and how they affect housing. She took a look at the recommendations in the current Housing Chapter and there is one that is carried over that she changed the language a little bit since it had been a while since that was done. The other two are either non issues or they are addressed elsewhere.

Ms. Carriel added that a couple of significant things would be a review of the town's ordinances, regulations to see if they comply with the RSA's in terms of zoning and a review of how to address affordable housing.

Mr. Day stated that the legislature is wrestling with this as well.

Mrs. Belcher asked what percentage is the town expected to have as affordable housing in terms of the number of units.

Ms Carriel said that every Planning Commission in the State is required to do a regional housing needs assessment that is to be updated every five years. They have started on that, but the current regional housing needs assessment was done in 1996. This chapter references that information because it is the only document in place, but that does give a number, but it is based on 1990. If you were to ask anyone on the Planning Commission they would say nobody supports that methodology, and what is being done now is completely different. A number of united for the town really can't be pinpointed.

Mr. LK Smith said that is why the regional housing needs assessment has so many disclaimers.

Ms. Carriel stated she hesitated to put the assessment in there because there is nothing else adopted in place at the regional level to talk about affordable housing. Ms. Carriel encouraged the Board not to look at that number as anything valid. She thinks the important thing to look at is what the case law says. She included a copy of the Municipal Law Lecture Series, which gives a good explanation of case law in NH and what towns' obligations are for affordable housing. She added that affordable housing is not subsidized housing, meaning a variety of housing types. Multi-family dwellings are the issue that the Courts have looked at.

Mrs. Belcher mentioned manufactured housing. Ms. Carriel stated that EK has several things going for it. The multi-family is something that towns have been challenging. Mr. Day stated that the two-acre minimum lot residential zoning is very limiting if you want to do something creative. There is a cluster housing ordinance. Mrs. Belcher stated that the town has several lots that are undersized that have mobile homes on them now, which are grandfathered. For instance, Barton's trailer park, which is allowed 16 trailers.

Mr. Day stated that the present situation is that there are little pockets of housing arrangements which give the appearance that the town is accommodating affordable housing, but fundamental approach to housing is two-acre lots. He added that there is not room for innovative land use in East Kingston. In terms of the smart growth approach, he noted that maybe the Board should be talking about different types of residential zoning, but this would be a hard sell.

Mr. LK Smith noted what was talked about at the Planning Commission the village concept or the hamlet concept.

Mrs. Belcher stated that she just wants to use what the town already has as a very first resource and twist it to make it fit. She brought up the Barton property, and rezoned it to be exactly what it is currently allowed to be. She added that she would like to keep the newly created to a minimum, to use what is already there to fit that requirement.

Mr. Day stated that he does not feel that there will ever come a time when the town is told what to have. Mr. Burton stated that the town won't be confronted with it until someone comes to the Board with a direct proposal to do something. Mr. Burton added that zoning is telling people what to do on their land.

Mr. Day stated that zoning decision is at the municipal level, not the State level.

Ms. Carriel stated that the work session is a good opportunity whether you have people in the town interested in it or not. There have been no surveys to find out how people feel. She asked if people are concerned about housing and are they concerned that their kids cannot afford to locate in the town. She added that it is interesting to look at the median income information and you look at the cost of housing. There are fewer options than she thinks there could be in East Kingston.

She stated there is the open space subdivision option, which RSA's do qualify as being a conduit for affordable housing, multi-family developments, cluster and manufactured housing, which is allowed anywhere in town.

Mr. Day qualified that by saying they manufactured housing is allowed anywhere in town on a two-acre lot. Mrs. Belcher noted Barton's, which was grandfathered.

Mr. Dworman noted that Barton's has recently been sold. Mr. Dworman added that affordable housing begins with affordable land and when it gets to the point where land is no longer affordable, affordable housing turns into multi-family housing. He asked Ms. Carriel if the town has to stay within the range of 6%. He added if the housing stock increases, can the town be expected to stay roughly within that 6%. Ms. Carriel stated that the town has to look at what it is doing compared to other towns so there are no obvious disparities. One of the issues is two-family; the State defines multi-family as "three or four units". Elderly housing does not qualify as affordable housing.

Ms. Carriel stated there are a couple of things that the town can consider from the recommendation in the smart growth report, the village concept is one way to accommodate multi-family. She added that another idea is accessory dwelling units, which some towns will allow on a standard lot. And in East Kingston, that would be considered a two-family. Ms. Carriel encouraged the Board to read the first section of the Law Lecture Series to understand what the case law is saying and what other communities have encountered.

Ms. Carriel stated that this chapter is very similar to the one that was done in Hampton Falls. It will serve as a starting point.

More discussion ensued regarding the housing chapter which will be taken up at the next work session on April 29, 2004 at 7:00 PM in the Town Hall

Mr. Day asked what the Board should come prepared to do at the work session. Ms. Carriel stated the "Municipal Law Lecture Series". There are two parts: the first part is about what the obligation is and the second part is how the town can plan for affordable housing. She added that hopefully people from town will come and give their comments.

Mr. Day stated that the Board has to hold a hearing on this before it is adopted. Ms. Carriel stated that NROC is having two public presentations. Mr. LK Smith stated their next working session is May 10 (dry-run for the presentation) before the public presentation on June 7 at the elementary school and June 16 is the follow-up public meeting at Town Hall.

Mr. Day stated that he thought the work session would be to prepare for a public forum for input from the town. Mr. Day stated that the Board come prepared so that when the Board holds the public forum, the Board can address the issues and make intelligent responses to questions. Mr. Burton asked if the Board was going to solicit comment from the public. Mr. Day stated that the Board is going to solicit comment from the public, but not next week's work session.

Mr. Day reiterated Ms. Carriel's point that if the Board starts holding these public meetings for input, it is going to get confused with NROC. Mr. Burton stated that NROC is going to do a much more effective job of illustrating things and explaining that the Board is able to do. Mr. Day stated that the Board has spent \$800 on this and they are expected to spend another \$800 by June 1 because it is a matching grant. Ms. Carriel stated that a lot of this information is inventory work. It will give a picture of what the situation is now and it looks at things that the town has to do. Mr. Burton does not want the public to be confused.

Ms. Belcher asked if they can use NROC's ideas and incorporate them into our chapter. She asked why doesn't the Board plan on a housing presentation. Mr. Burton stated that he had wanted a draft ahead of time. She suggested planning a housing public hearing a week after June 16 and that will still give the Board time to incorporate much of what is learned from NROC and not lose out on the opportunity of having two agencies help to draft this.

Ms. Carriel stated that the value of NROC is that a lot of people will show up and it will be a time to find out what people like and don't like. Mr. Day stated that they could hold a housing forum on June 24, a week after the regular Planning Board meeting.

Mr. Day suggested to the Board that they read all the information.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Smith seconded, and the motion carried unanimously at 9:55PM.

Respectfully submitted,

Helen M. Lonek
Recording Secretary

approved 4/22/04