



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2009-2010
David F. Sullivan, Chairman
Edward Warren, Vice Chairman

MINUTES
(Public Hearing of 16 April 2009)
7:00pm

AGENDA:

- ◆ **Call to Order**
- ◆ **Approval of Minutes** for 19 March 2009
- ◆ **Discussion** with Jeff Caley regarding elderly housing ordinance questions.
- ◆ **Discussion** with representatives from the elderly communities regarding revising documentation for trash pick-up/recycling for the elderly housing.
- ◆ **Michael Castagna**, Castagna Consulting Group, for Plan NH to explain about the mini charette.
- ◆ **Diana Whitmore** to explain her request for home occupation to be placed on the agenda in May.
- ◆ **Community Technical Assistance Program (CTAP)** application discussion with the Conservation Commission.
- ◆ **Discussion** on the Wind Energy Ordinance draft.
- ◆ **Board Business**

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

ROLL CALL: Mrs. White called the roll.

Members present – Dr. RA Marston, Mr. D Sullivan, and Mr. D Pendell, ex-officio.
Mr. E. Warren and Mr. R Morales was not in attendance

Alternate members present – Mr. J Cacciatore. Mr. R Forrest was not in attendance.

Advisors present – Julie LaBranche, Planner, Rockingham Planning Commission (RPC)

Others present – Representing the elderly communities:

Cornerstone – Tom Christenson

Maplevalle Farms and Woods – Bruce Kalapinski, Richard Pothier, Zim Clancy and George Lynch

Cricket Hills – Barbara Williams, Marie Robie, Beverly Morin, Duncan McLeod

Country Hills – Peter Gilligan and Chip Carreiro

Also present: Michael and Ina Castagna, Plan NH; Diana Whitmore, Home Occupation applicant; Scott Urwick, East Kingston Conservation Commission; and residents Gary Hinz and Dan Guilmette.

Voting Members: As Mr. Morales was not in attendance, Chairman Sullivan appointed Mr. Cacciatore as a voting member for the meeting.

Board Business

Approval of March Minutes. As Mr. Caley had not arrived by his appointment time, the Board moved to the approval of the March minutes. Mr. Sullivan asked if there were any changes or additions to the minutes. There being none, he asked for a motion to approve.

MOTION: Mr. Pendell **MOVED** to accept the March 19th minutes as presented. Dr. Marston seconded. The motion passed.

RPC Commissioner Opening. There was still an opening for one more RPC Commissioner, and Mr. Sullivan had expressed an interest in filling that void. The procedure was for the Board to nominate a person and send a recommendation to the Board of Selectmen for their approval.

MOTION: Mr. Pendell **MOVED** to nominate Mr. Sullivan for the position of RPC Commissioner and send the appropriate letter to the Selectmen. Dr. Marston seconded. The motion passed unanimously.

Mrs. White will send a letter of recommendation to the Board of Selectmen.

For the Board's Information

- A driveway permit application for Julie Turner was received.
- The remaining balance of the I-ZIP grant in the amount of \$3,750 was returned to NH Housing.
- The approved Circuit Rider contract will go to the RPC in June when it is time to renew the contract.

Diana Whitmore - Home Occupation. Mrs. Whitmore was in attendance to explain her proposed home occupation application to the Board, as she would not be able to attend the formal public hearing in May. She would send a representative to that meeting, but wanted to explain to the Board why she was back before them.

In November of 2008, she had been before the Board with a proposal for a kennel operation, which entailed building a large freestanding structure at the rear of her property. The Board determined at that time that what she was proposing was not a home occupation but a business in a residential zone, which the ordinances did not allow, and the Planning Board did not have the authority to change. They recommended she approach the Zoning Board of Adjustment (ZBA) for relief in the form of a variance.

When she approached the ZBA, she presented them a more scaled-down proposal than she had originally approached the Planning Board with. This new proposal was to provide services out of her home and did not involve a new separate building. In listening to Mrs. Whitmore's proposal, the ZBA had no issues. Part way through her application, the ZBA determined what she was proposing might actually qualify as an invisible home occupation and that she should approach the Board of Selectmen as Article XVI.E.11 of the Home Occupation Ordinance states that "*Occupations not listed above that are of a similar nature, and only if the Board of Selectmen finds that the occupation meets the provisions of this section.*" The ZBA tabled their hearing for a period of 60 days to allow Mrs. Whitmore time to approach the Selectmen for a determination of her proposal.

Mrs. Whitmore then went before the Board of Selectmen. Since one Selectmen was an abutter and the other was not in attendance, the remaining Board member could not make a decision. That Board member saw no problem with what her scaled-down proposal was and recommended she go back to the Planning Board with her changed proposal for home occupation. The Selectmen also suggested she ask for the most amount of dogs she thought she might ever have so she would not need to come back before the Board for a change. Her original request was for 3 dogs; she would like to amend that to "up to 5 dogs". She would go back to her original number of 3 if that was not acceptable.

Mrs. Whitmore noted she would be sending a representative to the May meeting in her place, and that Mrs. White, Planning Board Secretary, had agreed to make copies of her pertinent information from the ZBA file to accompany her Home Occupation application. She would send a letter with her representative giving him

permission to speak for her. Ms. LaBranche noted she might want to include letters from her neighbors; Mrs. Whitmore stated that she had a signed petition that would be included with her application materials.

Mr. Sullivan asked that Mr. Pendell recuse himself for this hearing at the May meeting since Mr. Rattigan, Mrs. Whitmore's attorney, had approached him directly. This way no sense of impropriety could be inferred.

Mrs. Whitmore thanked the Board for listening to her proposal. Mr. Sullivan closed this discussion.

Discussion with Jeff Caley. Mr. Caley wanted to discuss the 55-age restriction on both parties for elderly housing. He stated that Federal Guidelines mandate only one party needs to be 55. He has 12 homes left for his development (Country Hills) and would like to know if the Board would consider the one party 55 age restriction for the remainder of his development. Also, there is now a 17% elderly ratio and the cap is 15%. Federal Guidelines permit 20% of the houses in an elderly housing development to not be age restricted.

Mr. Caley hoped there was some leeway in these restrictions so he can finish his development and the Town can benefit from the revenue. It would also provide jobs to build the remaining houses. He explained that his development was just under 70% complete. The total number of homes built is 26; one is the model and another is a spec home that was rented to a couple who meets the criteria.

Ms. LaBranche noted that State statutes and Federal law sets a minimum standard. This requires elderly housing developments to have age restrictions of at least one member being aged 55 and 80% occupancy. Municipalities can set adopt stricter standards, which East Kingston has done. They require both parties to be age 55 with a 100% occupancy.

The Board explained to Mr. Caley that they did not have the latitude to change an ordinance, and that only the ZBA had the authority to grant a variance to an ordinance. The only other way would be for the ordinance itself to be amended which would need to be presented on next years' warrant article (2010) or a Citizen's Petition to change the ordinance, which would also need to wait until Town elections in March 2010.

Mr. Caley asked if the Planning Board could give a recommendation to the ZBA if they felt something should be changed. Mr. Pendell stated it was not usual procedure to give a recommendation.

Mr. Caley thanked the Board for their time. Mr. Sullivan closed this discussion.

Mrs. White informed Mr. Caley that the next Zoning Board meeting was scheduled for June 18.

Mr. Sullivan asked if anyone had any questions or statements. Mrs. Tom Christenson stated he would be in favor of changing the age to only one party being 55 and thought it would make the properties more saleable in the future. He did not think it would change the character or intent of the development if only one party and not both was aged 55 and did not see anything negative to changing it.

Mrs. Williams stated that the same issue had come up before and the concern was that too young an age could mean small children. Mr. Cacciatore stated there would need to be an age set for the person to be allowed if they were to be younger than 55. Ms. LaBranche stated that if there was a younger person in a care-giving position, they could not be prevented from living in the development and noted that the ordinance might need to be adjusted for that.

Discussion with representatives of the Elderly Housing Group. Representatives from the elderly communities were in attendance for guidance relative to the procedures they would need to follow to change their documentation in order to enable the Town to provide their trash pick-up and recycling. Warrant Article #24, passed at Town Elections, "*authorized the Planning Board to amend the recorded plans, covenants, and by-laws of the elderly housing developments at their expense*".

Mr. Sullivan said the elderly communities would need to hire an attorney to change their covenants, the Town Attorney would review and approve, and then the Planning Board would either approve or deny. Mrs. White explained that the paperwork process would need to be completed by October 26 for the community to be included on the contract for 2010. The trash removal contract goes up for renewal at the end of each year based on how many pick-ups there are, so the number needs to be identified before contract negotiations can be implemented.

There was discussion between the representative and the Board as to how this was to take place. One of the stipulations of the change was that the Town Counsel would need to review the paperwork to approve the wording of any amended language. Mr. Christenson asked if there was any *recommended* language they could use, and it was explained that the change could mostly likely entail removing the reference to “private” trash pick-up and recycling on whatever documents it was stated as such. It was suggested that the Town Counsel craft whatever language they would need which would ensure that it was correct and that all four were the same. The point was made that doing so would not be within his scope of duties as Town Counsel; the communities would need to employ their own legal representation.

Mr. Pendell suggested they submit a draft for the Town Attorney to review and approve before any documentation is finalized. Mr. Kalapinski noted that there was only one place in Maplevale’s covenants that referred to trash and recycling and thought Cricket Hill might be the same as they had the same builder. His thought was if that reference was removed, the requirement would be met and it could be recorded. Mr. Sullivan recommended that nothing be recorded until the Town Attorney had a chance to review it.

Mr. Urwick offered since there could be many different documents that referred to the trash pickup, perhaps their attorneys might craft something which states it supercedes any other document that came before it and all the individual documents would not need to be changed.

Mr. McCleod noted that at an earlier date they had submitted a spreadsheet to the Mr. Rob Caron, former Chair of the Selectmen, which included all their costs and number of pick-ups. Mr. Pendell stated that Mr. Caron had expressed an interest in serving on the Trash Committee, and he was sure that he would still have the information that had been submitted and would bring it to the discussions.

The Board and the representatives also had discussion with regard to some specifics of the actual trash pick-up and recycling as to types of containers, frequency of service and location of pick-up. Mr. Pendell, ex-officio, informed the representatives that those types of decisions would need to be made in conjunction with the Selectmen signing a new contract for trash removal coming up at the end of the year. Their suggestions and concerns would certainly be taken into consideration and he encouraged them to submit them to the Board of Selectmen for review. Applications for residents wanting to serve on the Trash Committee would be coming to the Selectmen’s Office in the near future and they would be making appointments.

Mrs. White reviewed that the contract based on the number of pick-ups was renewed at end of each year. In order for a community to be able to receive pick-up in 2010, all the completed necessary paperwork would need to be in to the Selectmen’s Office by October 26, 2009 to be included on the contract. If any community were deemed eligible after that date, they would be included in the contract and added to the budget at the next contract renewal time (the first January following the approval by the Planning Board).

To review, the procedures are:

- All changes to be made by an attorney
- East Kingston Town Counsel must approve the wording of any amended language
- Comes back before the Planning Board to approve or deny
- All completed and approved paperwork must be in to the Selectmen’s Office by October 26, 2009

Mrs. White passed out an information sheet to the representatives.

The representatives thanked the Board. Mr. Sullivan closed this discussion.

Michael Castagna, Castagna Consulting Group, for Plan NH. The Planning Board had applied to Plan NH for a charette to help in trying to come up with a workable plan for a commercial business district that would help alleviate the residential tax burden. East Kingston had not been awarded a full-blown charette, but the Plan NH committee felt that the Town could use some help from them. They have agreed to hold a mini-charette where 2-3 of their members would meet with the citizens and public officials in an open forum to discuss the issues and offer suggestions so the Town could move forward in their endeavor.

Mr. Castagna explained that the mini-charette would be a consensus-building, real-estate marketing forum with stake-holders (local businesses and residents) which would allow them to move forward with realistic expectations of what kinds of companies will be able to be attracted to the Town. Since the Town does not control any of the property, there would need to be a public/private partnership with the private landowners. He suggested having the meeting on other than a regular meeting night, or perhaps on a Saturday morning. Mr. Castagna's thought was that the mini-charette could take from 2-4 hours for the process.

Mr. Castagna explained that there would be no set "fee" for the mini-charette; they were asking for a donation from the Town to their scholarship program. He suggested approaching business owners in Town to see if they would like to contribute toward the donation amount. Offering refreshments at the session was also suggested to help achieve more participation.

The Board thanked Mr. Castagna for his explanation of the process and noted they would gather information and put together a flyer to perhaps be distributed with the tax bills, if that was permissible. They would poll all the various boards in Town to try and come up with a date for the forum that was not in conflict with other meetings. This date would most likely be sometime in June.

Mr. Sullivan closed this discussion.

Discussion regarding Community Technical Assistance Program (CTAP)

The Planning Board had requested a joint meeting with the Conservation Commission to help in deciding if there was an activity for which they could agree to submit an application; many of the choices seemed to be geared toward conservation. Scott Urwick was in attendance representing the Conservation Commission.

RPC Planner Julie LaBranche reviewed the categories with the members of the Boards.

Land Conservation Planning/Natural Resource Protection

- *Development of GIS-based natural resource inventories*
Mr. Urwick stated they did have a GIS map, but the information was 15 years old. This might be an application option.
- *Development of land conservation plans to identify and protect areas of ecological priority*
Mr. Urwick stated that the Conservation Commission has a map on which they have identified properties which they feel are ecologically significant.
- *Development of a conservation lands inventory and/or stewardship plan to track and protect ecological values of Town-owned conservation lands and town-held easements.*
Mr. Urwick thought this could be an option to consider.
- *Implementation of conservation strategies identified in the Land Conservation Plan for NH Coastal Watersheds, which includes developing conservation a overlay district and conservation strategies.*
This might be an area to consider. Mr. Urwick asked about the Beginning with Habitat Program; Ms. LaBranche will report to the Board just what this is.

Buffer/Wetland Protection

- *Development or amendment of buffer protection ordinances*
Covers adding buffers to wetlands and streams not protected by the Shoreland Protection Act. Messers. Urwick and Sullivan noted that there were buffers already in place in the ordinances. Mr. Urwick noted the Powwow River flows through the Town and is covered by the State Shoreland Protection Act. Ms. LaBranche observed there are limitations on development for setbacks for septic systems, but there were no buffers identified for streams or wetlands. This could be an item for consideration.
- *Development or amendment of subdivision and site plan regulations to strengthen provisions related to buffer protections.*
Ms. LaBranche noted that ordinances carried more weight than regulations, but were not as flexible. The Board could consider where they might place any additional buffers.
- *Development and assistance in implementing an outreach program to town residents on the importance of buffer maintenance and protection.*
The Town could develop an outreach program for residents to teach buffer maintenance and protection to homeowners who want to voluntarily maintain their areas. This might be an option.

Mr. Urwick stated the Conservation Commission had tried for years to have the 5th grade science classes tour some of the conservation lands in Town, specifically Red Gate. The thought was if a boardwalk could be built, it was an opportunity for the public to observe the different species of birds and types of wetlands. Mr. Gilligan noted there was a boardwalk in a swamp area in Action, Massachusetts near the Police Station that the Board could observe as a model if they were interested.

- *Wetlands evaluation (conducting wetlands inventories and evaluations)*
Would include an inventory and identification of high value and prime wetlands. Ms. LaBranche asked if the Town had done a wetlands study. Mr. Urwick noted that Conservation had done a wetland inventory and evaluation of certain wetlands in the Town with rankings, but it did not have prime designation as it had not been conducted by a certified wetlands scientist. ***The note after this bullet indicates this is a project that could average from, \$15,000-\$20,000, and Towns wanting to tackle this project would need to provide the additional funding.***

Stormwater Management

- *Development of regulations to limit stormwater runoff, including site plan and subdivision regulations and conservation design alternatives...*
Includes limiting stormwater runoff and impervious surfaces, and implementing some new stormwater management projects. This would include anything that came before the Board for site plan review and subdivisions. Ms. LaBranche noted that federal requirements do not apply, as East Kingston is not an MS4 community and does not meet the density thresholds. New alteration of terrain regulations would apply, and depending on the amount of disturbance, could require permitting. Some towns are starting to develop regulations to address the smaller projects that do not require state permitting.
- *Delivery of training for boards/committees on low impact development practices and stormwater management designs...*
These cover developing stormwater regulations or conducting training for boards and the general public on how to implement low impact development practices.

Projects falling loosely into any of these categories could be eligible for application. There would be a pre-approved list of providers to choose from and the project would be bid out to a proposed provider to see if they would accept the scope of work for the amount awarded.

The Board agreed that they were most in favor of the education and outreach program category. Mr. Urwick noted they could tie buffer maintenance and protection into wetland quality, and that East Kingston had the prime Town-owned wetland to use for their education project; Red Gate. Ms. LaBranche noted that the grant was for up to \$8,500 and if they were chosen for that amount, it could cover costs to develop educational materials and an outreach program and perhaps even build the boardwalk. She would find out if that actual building of the boardwalk would be eligible to be part of the program. Ms. LaBranche offered to work on completing the application and the Board agreed for her to do so.

MOTION: Mr. Pendell **MOVED** to submit the application to CTAP (Community Technical Assistance Program) for the development of an outreach program. Mr. Cacciatore seconded. The motion passed unanimously.

Wind Energy Ordinance discussion.

MOTION: As the hour was late, Mr. Pendell **MOVED** to table the wind energy discussion for the May meeting. Mr. Cacciatore seconded. The motion passed unanimously.

Mr. Sullivan asked for a motion to adjourn.

MOTION: Dr. Marston **MOVED** the Planning Board adjourn. Mr. Pendell seconded. The motion passed unanimously.

Mr. Sullivan closed the meeting at 9:40 pm.

HANDOUTS TO THE BOARD

- Information sheet on the changing of the elderly housing documents to allow trash/recycling.
- Cooper's Grove article.
- FEMA Flood Insurance information
- Selectmen Meeting Minutes of March 16.

Respectfully submitted,

Barbara A. White
Recording Secretary

David Sullivan
Chairman

Minutes approved ***May 21, 2009***