



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2007-2008
David F. Sullivan, Chairman
Vice Chairman

MINUTES
(Public Hearing of 17 April 2008)

AGENDA:

- 7:00PM - **Election of Officers and Board Business**
- 7:15PM - **Public Hearing** for a Design Review regarding a proposed lot line adjustment between Norman and Carol Freeman, 52 Main Street, EK and Granite State Gas (MBL 09-08-01)(PB #08-01)
- 7:30PM - **Continued Board Business**
- 8:10PM - **Adjournment**

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. RF Morales, Mr. DF Sullivan, and Mr. RA Caron, ex-officio.
Mr. R Forrest was not in attendance.

Alternate members present - Mr. J Cacciatore and Mr. E Warren.

Advisors present - Eric S. Steltzer, Planner, Rockingham Planning Commission (RPC).
Robert Steward, East Kingston Deputy Building Inspector.
Mark Durkee, Lieutenant, East Kingston Fire Department.

Lawrence K. Smith, Conservation Commission Chairman was not present, and Mr. D Quintal agreed to address any questions that might arise pertaining to Conservation.

Voting members - Mr. Warren was appointed a voting member in the absence of Mr. Forrest. Voting members for tonight's meeting will consist of Dr. Marston, Mr. Sullivan, Mr. Morales, Mr. Warren and Mr. Caron.

BOARD BUSINESS

Handouts to the Board:

Tools & Techniques for Managing Commercial & Industrial Growth information. This Seminar will be held at UNH at Pease Tradeport in Portsmouth on May 29th.

The Source. The most recent edition of the NHDES Drinking Water Source Protection Program newsletter.

New Hampshire Stormwater Center Workshops information. Registration fees for these workshops will be paid by NHEP for members of Planning Boards. Contact them if you are interested in attending.

Minutes. March 31, 2008 Selectmen's Meeting Minutes.

Pipeline Easements. A map showing the location of the Maritimes and Northeast Pipelines easements through East Kingston.

Minutes. Mrs. White asked if there were any changes or corrections noted to the 20 March 2008 minutes; there were no comments or changes offered. Dr. Marston, Mr. Sullivan, Mr. Morales and Mr. Caron were present at the March 20th meeting and will vote on the minutes. A motion was entertained to approve the minutes.

MOTION: Mr. Caron **MOVED** the Planning Board approve the 20 March 2008 minutes as presented. Mr. Morales seconded. The motion passed unanimously.

It was the consensus of the Board to wait for election of officers until Mr. Forrest arrived.

New Hampshire Ecology. Mr. Morales offered some insight on a publication he had read called, “*Communities and Consequences*” which described the unbalanced nature of New Hampshire’s ecology and how to go about repairing it. He stated the book gave many ideas on how to diversify and make towns inviting for the younger generation. At the present time, it is known there is an elderly housing panacea, although there is a lack of hard data on the subject. When elderly housing came about, it encouraged housing for older age groups but did not provide affordable housing for the younger age bracket. Elderly housing ordinances have caused distortion of demographics for older residents, and resulted in a much more senior population with a glaring gap of younger population. Diversity is needed to grow as a culture. Several years ago, the book “*The Wave*” showed business people how to target their market to produce a product that would be appealing to Baby Boomers as they aged.

Mr. Morales opined that citizen input could be helpful in soliciting what the town population would like to see, and agreed that something needed to be done about the situation. His idea was to perhaps hold Visioning Sessions with the public to solicit their feelings on what they wanted for the Town and what would they like to see change. This would give the Board somewhere to start.

At the present time, with the exception of the Village Center, East Kingston discourages apartments and multi-family dwellings, and it was only 2 years ago that “in-law” apartments were approved. Mr. Cacciatore stated that younger families cannot afford to buy houses, and Mr. Warren offered that there should be a “*happy medium*” somewhere. The Board agreed

Mr. Steltzer offered that the present Village Center concept is a great step toward affordable housing and smart growth. He also informed the Board that the State has three bills before them at the present time. Two will mandate what occurred with Britton vs Chester; that towns will have to have a certain percentage of their land devoted towards affordable housing. There are also programs from the State in regard to conservation and affordable housing and how they are both inter-connected. One program is the *Housing Conservation Planning Program*, passed by the Legislature last year, and offers a total of \$400,000 in grants to identify conserving the land within the Town and what the Town can do to make sure affordable housing is built and ensure it will maintain its affordability in the future. The first round deadline for this grant has just ended, but there will be another round in the fall.

The second program is *Inclusionary Zoning Implementation Plan Program* (IZIPP), which is run by the New Hampshire Housing and Finance Authority. There is \$100,000 available in total grants, which will go to municipalities who want to deal specifically with affordable workforce housing. The first round application deadline is May 15th, with a second round deadline sometime in June or July. Grants are usually \$10,000 and can be used to hire a consultant who would work with the Town to identify what the values are that the Town has, and based off those values, what you can do to help create places for people to live and ensure that people living in Town now can stay here in the future. RPC is one of the certified consultants, but there are other independent consultants that can be used also.

PUBLIC HEARING FOR A DESIGN REVIEW REGARDING A PROPOSED LOT LINE ADJUSTMENT BETWEEN NORMAN AND CAROL FREEMAN, 52 MAIN STREET, EK AND GRANITE STATE GAS (MBL 09-08-01)(EKP# 08-01)

The public hearing for a design review and consultation for a proposed lot line adjustment between Norman and Carol Freeman, 52 Main Street, EK (MBL 09-0-8-01) and Granite State Gas (EKP# 08-01) was opened. It was noted that Mr. Erik Newman, counsel for Granite State Gas Transmission, Inc.; Patricia Quinn from Granite State Gas; and Mr. and Mrs. Norman Freeman were present. Mr. Newman and Ms. Quinn were invited to come up front, nearer the Board.

Mr. Newman clarified that the purpose of this Design Review was to ask the Board’s guidance on how to proceed with the application for lot line adjustment in light of the non-conforming status of both the Freeman lot and the

Granite State Gas parcel. Both lots are smaller than the required minimum area under Article IX of the EK Zoning Ordinance. The existing gas lot is not a "building lot" due to lack of walls or roof over the gas facilities, and cannot be further developed due to the presence of existing above- and below-ground gas facilities. The proposed lot line adjustment would reduce the size of the Freeman's non-conforming lot by an additional 525 square feet, and increase the size of the gas lot to .526 acres.

Mr. Newman explained that Easterly Survey was in the process of preparing a formal plan that would conform to the checklist guidelines, and that plan will show Granite State Gas presently has a parcel of land in the Northwest corner of the Freeman's lot that is 35' wide x 50' deep. The 35' occupies the full width of an existing utility easement, which extends both North and South. This lot line adjustment would extend that parcel Southerly within the ROW an additional 15'.

The purpose of the lot line adjustment is to bring certain above-ground utility infrastructure facilities fully within a single lot owned in fee by Granite State Gas. In 2006, they installed additional above-ground infrastructure facilities on the existing lot. Both the Freeman's and Granite State Gas have agreed it would be in everyone's best interest to have that fully encompassed within a single lot.

Mr. Newman had two specific issues he wanted to discuss with the Board. The first issue is that the Freeman's lot is a grandfathered, pre-existing non-conforming lot, with the lot size being less than the minimum lot size requirements. This lot line adjustment would have the effect of further reducing the lot size by 500 sf. In looking at the Town's ordinance, it was not entirely clear whether this is a permitted action or not, given the status of their lot as a non-conforming lot.

Mr. Morales interjected that this was not the first time such an issue has come up, and he himself was not sure just how to interpret the ordinance. The position was that if you have a non-conforming lot and you make it more non-conforming, that is not allowed. If you have a non-conforming lot but did something that made it closer to conforming, that would be allowed.

Mr. Newman stated he had looked at Article XX, but it dealt specifically with non-conforming uses or structures. He would best characterize the Freeman's lot as dimensional non-conformity. Although this section of the ordinance prohibits enlarging or expanding in use or in structure, it does not really say anything about a dimensional non-conformity.

Mr. Steltzer's interpretation is that the land *usage* is also tied to the land. If the expansion is of the land being residentially zoned, even though it is not tied to a structure per se, it would be expansion of the gas lot or a minimization of the lot in residential use.

Mr. Newman wondered if the circumstances are a little unique, where they were not doing a lot line adjustment to increase the buildability or develop the Granite State lot in any way. Nor were they really changing the Freeman's lot because the area of the lot line adjustment is presently encumbered by a utility easement that has above-ground infrastructure facilities on it. He agreed that the underlying policy was that this might be something that might require a variance.

Mr. Morales acknowledged they might have to go before the ZBA, who may be the governing body to actually make that determination versus the Planning Board. The Planning Board is bound by what they believe the ordinance says.

Mr. Steltzer explained to Mr. Newman that each town handles ZBA hearings differently. It is set up on how the Board has handled these instances in the past. In some towns, in order for a variance hearing to go before the ZBA, the applicant needs to have a Planning Board denial letter. So it is actually the Planning Board making the decision whether a variance is needed towards a certain zoning ordinance. If that has been precedence in the past for this Board, then that is the continuation it should have. Some towns want to have a full-blown plan review just to get a denial letter, and some towns will just write the letter of denial and send the applicant to the ZBA.

Mr. Morales asked Mr. Newman if he had reviewed the Submission Requirements for lot line adjustment, and Mr. Newman responded that he had. Mr. Morales stated this was not a public hearing but a design review. There would need to be a public hearing with abutter notification. Mrs. White interjected that since this was a Design Review,

and since abutters had been notified, the hearing could be continued and the abutters would not need to be re-notified. Mr. Steltzer stated that it was a preliminary design review with a non-binding discussion.

Mr. Newman stated that they had come before the Board tonight instead of just coming in with a full application in May. His understanding of the role of the ZBA is that they are the final arbitrator of matters of interpretation of the ordinance. It was Mr. Newman's hope that the Planning Board could make a decision on the interpretation of the ordinance.

Mr. Morales reminded Mr. Newman that it was a Design Review and therefore no binding decisions could be made; it was a non-binding discussion. Since abutters had been notified, this design review offered the applicant the opportunity to ask for a continuance and therefore no re-notification of the abutters would be necessary.

Mr. Morales explained that the normal lot line adjustment procedure is to fill out the form, meeting all the criteria on the checklist to complete the package, and present it to the Board for Public Hearing. The Board would determine if a variance would be needed or not, and if so, deny the application since it is not the function of the Planning Board to grant variances. Should the application be denied, the applicant would then have an opportunity to petition the Zoning Board for a variance.

Mr. Newman's second issue was that as per the checklist, each of the lots was to be identified by Tax ID. At one time, the Granite State lot had a Tax ID designation of Lot 32. As he understands, when the new accessing system was brought into place, the utility infrastructure was given its own map designation as Map 18. Presently Granite State Gas pays taxes and the tax card which is the basis for that, states Map 18, Lot 1. Mr. Newman understands this to cover the entire utility infrastructure in Town. There was never a deed; there was a condemnation proceeding in 1966 by which Granite State acquired title to the property. Mr. Newman's observation was that at one time there was an assigned Tax ID, it was deleted, and the total infrastructure has subsequently been assigned a Tax ID number. Presently Granite State's lot on the Freeman's property does not have an individual Tax ID.

Mr. Newman wanted to know if the decree he had included and his explanation offered sufficient identification for this lot, or did he need to resolve this with the Town somehow before proceeding. Mr. Morales suggested going to the Town for that. Mr. Newman stated he had already gone to the Town and they do not know why it was deleted and not given a new number either. Mr. Newman did not know what the procedure for assigning a Tax ID would be. Mr. Morales suggested they go back to the Town Clerk and perhaps either they or the Rockingham County Registry could help determine what would be needed. Avitar might also be helpful with the tax map.

Mr. Newman stated they would get it resolved and if the lot line adjustment were ultimately approved, they would get two deeds. His question was did he need to present a Tax ID number to the Board as a precondition to the application. Mr. Morales stated normally the Planning Board does use the Map Block Lot numbers as the legal marker. Mr. Newman inquired if they could refer to it as the lot formerly identified as Lot 32, as it does have history with the Town as a recognized lot.

Mr. Steltzer asked how they were referring to the lot if it did not have an ID. Mr. Newman opined they were using a metes and bounds description. Mr. Caron noted the tax card reflects one gas line.

Mr. Durkee asked who was paying the taxes on the land; the Freeman's stated that they were. Mr. Newman opined that Granite State Gas was paying taxes on the infrastructure and perhaps the Freeman's were paying taxes on the land.

Mr. Newman asked if they would be able to come back with a formal application that does not have a formal Tax ID Number assigned to it at that point and get a decision on the variance question and continue to resolve this with the understanding that prior to the final decision on the application a pre-condition would be to resolve this issue.

There was more Board discussion and the final determination was that there needed to be some sort of identifier for the property and they needed to find out what they can legally utilize as a marker. He stated they would need to check with the Local Government Center and/or Town Counsel and get back to Mr. Newman. Mrs. White will contact both entities to get an answer for Mr. Newman.

Mr. Steltzer asked if the second gas company had title to any of the land they were discussing. Mr. Newman explained that they occupy the ROW and would continue to have easement interests in the land.

Mr. Newman requested the hearing be continued to May 15. Mrs. White answered that abutters would not need to be re-notified and that the continuation notice in the newspaper and public postings would suffice. Mr. Newman inquired what the latest date by which he could submit the information to be included on the May agenda would be. Mrs. White responded that April 28th was the latest date by which to submit the application. Mr. Newman asked what the procedure was if they could not have all the required information ready by April 28th. Mrs. White stated that he could request a continuance to the next meeting, either by mail or fax, and they would place him on the June agenda.

Mr. Newman asked if the tax lot issue needed to be fully resolved in order to come back before the Board to get the initial decision on whether or not a variance was needed. If not, they could work on getting that resolved before meeting with the ZBA, if that was the next step. Mr. Morales stated that the decision whether or not they would need to petition the ZBA for a variance would most likely be a one meeting decision, but they did need to find out if they could legally proceed without a proper number in the first place.

Mr. Steltzer offered that from a Planner's perspective, it's would be clarified by the Engineer's signature on the plan. The Engineer has to do his research to figure out what the metes and bounds are on the property and who owns what. If they are signing off on it, it's their seal that they are certified by the State. If a plan comes before the Board with an Engineer's signature, the Board could take action on it.

Mr. Caron noted the tax card stated B3413, P2623, and ascertained they were the two pipeline numbers. Mr. Cacciatore opined it meant book and page and perhaps they could find out the information needed from the Registry. Mr. Newman reflected it could be the grant of the original utility easement.

The floor was opened to abutters. Mr. D Quintal was present and an abutter, but had no comment or questions. The floor was closed to abutters.

Mr. Newman and Ms. Quinn thanked the Board for their time.

A motion for continuation was entertained.

MOTION: Mr. Caron **MOVED** to continue the Public Hearing regarding the proposed lot line adjustment between Norman and Carol Freeman, 52 Main Street, EK and Granite State Gas (MBL 09-08-01)(EKP# #08-01) until May 15. Mr. Morales seconded, and the motion passed unanimously.

The design review was closed.

CONTINUED BOARD BUSINESS

Election of Officers. Mr. Morales noted that there were four members eligible for the position of Chairman and Vice Chairman; himself, Dr. Marston, Mr. Forrest, and Mr. Sullivan.

It was noted in light of the fact that Mr. Forrest had other obligations and could not be present at the meetings at 7:00pm, it would be more favorable to the Board for Mr. Forrest to become an alternate rather than a regular member. Mr. Warren agreed to become a regular member rather than an alternate. Mr. Caron would bring up this issue at the next Selectmen's meeting and the change would be made. Mr. Morales explained that the position of Chair did not need to be the all knowing. There was support from the rest of the Board members as well.

Mr. Morales nominated Mr. Dave Sullivan for the position of Chairman for a 1-year position, 2008-2009.

MOTION: Mr. Morales **MOVED** to elect Mr. Sullivan Chairman. Mr. Caron seconded, and the motion carried unanimously.

Congratulations to the new Chairman, Dave Sullivan. The Vice Chairman position will be voted on at the May meeting.

Rockingham Planning Commission. Mr. Steltzer noted that Mr. Day had turned in his resignation to the Rockingham Planning Commission, and that Mr. Smith's term had expired. Presently, there was no RPC Commission representation for the Town of East Kingston. This position meets ten (10) times per year.

Municipal Planning Organization (MPO). This is an entity that exists in order to receive federal dollars for transportation funding. The MPO meets on a quarterly basis.

Both the RPC and the MPO are in need of representation by the Town. Mr. Steltzer noted there is a large overlap between the MPO representing the community, and those who are RPC representatives. RPC Commissioners constitute the MPO Policy Committee.

Mr. Morales suggested an ad be run for these positions in the Exeter Newsletter under the Community News Section/ Public Announcements, and in any other newspaper that would get the information out there. He offered that usually information posted in the Community News section is free. Mr. Steltzer will provide information for Mrs. White who will get the ad to the newspaper.

Comprehensive Shoreline Protection Act (CSPA). Mr. Steltzer also informed the Board that a training session would be held at the Brentwood County Offices on May 5. Mr. Steltzer opined it would be helpful, especially for the newer members, to understand the Act and this training session would be a good opportunity to familiarize them with it. Mr. Smith had previously presented information regarding this training session. The CSPA is currently effective as of April 1, but there are legislative actions being considered which would extend the implementation date to October 1.

Mr. Morales referred to a handout on this previously given by Mr. Smith, and asked if Mrs. White could provide another copy to the Board members (RSA 483-B or www.DES.NH.GOV/CSPA).

Next Month's Agenda. Mrs. White reviewed that the items for next month's agenda would be Mr. Julian Dunlop for a new tenant for Carmen's Diner, Mr. Sullivan's lot line adjustment, and Granite State Gas if Mr. Newman submits his information in time.

Mr. Sullivan asked if there was any other Board discussion. There was none and a motion to adjourn was entertained.

ADJOURNMENT:

MOTION: Mr. Caron **MOVED** the Planning Board adjourn. Mr. Warren seconded, and the motion carried unanimously at 8:07 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

DF Sullivan
Chairman

Minutes approved May 15, 2008

There were no changes offered to the March 20 th minutes.
--