



PLANNING BOARD  
TOWN OF EAST KINGSTON  
NEW HAMPSHIRE

2005-2006:  
James Roby Day, Jr., Chairman  
Richard A. Smith, Sr., Vice Chairman

MINUTES

(Regular Meeting and Public Hearings of 20 April 2006)

AGENDA:

7:00PM- **Board Business**

7:15 PM-**Public Hearing** for a proposed change to East Kingston Zoning Ordinance Article XX – STRUCTURE OR LAND USE CONFORMANCE

7:20 PM – **Public Hearing** for a proposed change to East Kingston Zoning Ordinance Article XVI – HOME OCCUPATIONS

7:30PM- **Continued Public Hearing** for Glenn & Kathleen Clark (Nadeau), 21 Burnt Swamp Road (MBL 10-4-8) in regard to an 8-lot cluster subdivision (EKP# #06-03).

8:15 PM – **Public Hearing** for Jeffrey & Susan Marston, 38 Giles Road, (MBL 17-3-1) in regards to a communications tower site plan proposal (EKP# #06-OA).

8:45 PM – **Design Review** for Greg Sancroff, 10 North Road (MBL 14-3-6) in regard to a proposed land use.

9:00 PM - **Public Hearing** for Paul R. Masone (MBL 11-2-17), 213 Haverhill Road, with a prospective tenant in the light industrial park (EKP# #04-OB).

9:30 PM – **Public Hearing** for Richard Salmonson in regard to a proposed home occupation at 1 Troll Way (MBL 10-3-1).

10:00PM- **Public Hearing** for Julie Turner, 87 Haverhill Road (MLB 10-4-4) in regard to a 2-lot subdivision (PB#06-02)

10:15 PM - **Adjournment**

**CALL TO ORDER:** Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM, and introduced new Planning Board Secretary Barbara A. White of Newton, New Hampshire.

**ROLL CALL:** Mr. Day called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Dr. RA Marston, DVM, Mr. RA Caron, ex-officio, and Vice-Chairman RA Smith, Sr.

Alternate members present – Mr. EA Lloyd, Jr.

Advisors present – Jill Robinson, PhD, Senior Planner, Rockingham Planning Commission  
Mr. LK Smith, Chairman, East Kingston Conservation Commission Chairman  
Mr. RR Donald, East Kingston Building Inspector  
Fire Captain Andrew Conti

**Voting members** - Mr. Day noted the entire Board is present.

BOARD BUSINESS:

**Minutes-**

**MOTION:** Mr. Lloyd **MOVED** the Planning Board approve the working meeting minutes of 6 April 2006 with no corrections noted. Dr. Marston seconded, and the motion carried unanimously.

**MOTION:** Mr. Lloyd **MOVED** the Planning Board approve the non-public minutes of 6 April 2006 with no corrections noted. Dr. Marston seconded, and the motion carried unanimously.

**Planning Board Elections** – Mr. Day noted that it was time for the annual election of officers and asked for nominations. Mrs. Belcher nominated Mr. Day for the chairmanship, and Dr. Marston seconded. There being no other nominations, Mr. Day called for a vote:

**MOTION:** Mrs. Belcher **MOVED** to elect Mr. JR Day as Chairman. Dr. Marston seconded, and the motion carried unanimously.

Mr. Day thanked the Board for their vote of confidence, and Mrs. Belcher claimed that Mr. Day did an “awesome” job as Chairman. Mr. Day observed that she only said that because she didn’t want the job herself.

Mr. Day called for nominations to the vice-chairmanship. Much to the Board’s surprise, Vice-Chairman Smith declared that he would not be serving another term.

Dr. Marston nominated Mrs. Belcher for the vice-chairmanship, and Mr. Lloyd seconded. Mrs. Belcher objected, but after some discussion and cajoling, Mrs. Belcher reluctantly accepted. Mrs. Belcher stated that she would agree to take the position if Mr. Day agreed never to be absent. Mr. Day demurred, noting that he would be absent for the August meeting, but reassured Mrs. Belcher that he placed every trust and confidence in her as a prospective “Madam Vice”. There being no other nominations, Mr. Day called for a vote:

**MOTION:** Dr. Marston **MOVED** to elect Mrs. Belcher as Vice-Chairman. Mr. Lloyd seconded, and the motion carried unanimously.

Mr. Day noted that we had much to do to live up to Mr. Smith’s reputation for leadership, civic duty, and sense of volunteerism, and accolades were directed to him for his serving on the board since 1973, and serving as Chairman from 1975 to 2003.

Mr. Day stated that he was impressed and humbled by the kind and quality of civic service all the Planning Board members displayed. He observed that from his perspective the Board members work particularly well together, and are to be commended for their selfless dedication.

#### **Action/Information Items-**

**Targeted Block Grant (TBG).** Mr. Day received a flyer from the RPC regarding this year’s targeted block grant which has a due-date of June 2<sup>nd</sup>. He noted we are presently working on updating the Master Plan Community Profile chapter, and passed out a doorstep list for review. Various ways were discussed about taking the count of house types throughout Town, including driving around and physically documenting each house type. Mrs. Belcher complained that Mr. Day had failed to include her own “New Englander” as a house type. Mr. Day thought her house was “Victorian”, but promised to add “New Englander” to the list. Mr. Donald and Mrs. Belcher suggested looking at the tax card files in the Town Office, for all the properties had pictures of the houses included. This would save time and gas money, and it was agreed to develop a strategy for collecting the information at the next working meeting.

Mr. Day asked what might be the subject for this year’s TBG application, and discussion ensued about impact fees and the fees schedule methodology. Dr. Robinson stated that the RPC would not be in a position to help with completing the methodology to implement the fees schedule. Mr. Day stated that the methodology was doable with some final touches on it. He suggested that this discussion be left for the work meeting in deference to the busy schedule of tonight’s meeting, and that Ron Morales had some ideas about updating the Master Plan.

**Mrs. Belcher’s Grandfather Information and Growth Management Master Plan chapter draft materials.** These two items will be discussed at the working meeting.

**Master Plan Goals and Visioning chapter.** Mr. Day pleaded with the Board to be ready to discuss the update at the working meeting in order to place it on the agenda for a public hearing in May. He noted that the RPC had put a great deal of work into it, and we are close to an excellent final product.

#### PUBLIC HEARING FOR A PROPOSED CHANGE TO THE EAST KINGSTON ZONING ORDINANCE ARTICLE XX – STRUCTURE OR LAND USE CONFORMANCE.

Mr. Day opened the public hearing and asked Mrs. Belcher to present the change recommendation. She described how, as a member of the Zoning Board of Adjustment, she came to understand that a grandfathered use cannot be changed, nor can an accessory use on a non-conforming property be converted to a principle use. Any such change would have to conform to present ordinance and regulation provisions, and this change recommendation will provide clarification of this statutory limitation.

The floor was opened for public comment, and there being none, the floor was closed.

**MOTION:** Mrs. Belcher **MOVED** that the amendment to the East Kingston Zoning Ordinance Article XX – STRUCTURE OR LAND USE CONFORMANCE be placed on the March 2007 Town Meeting ballot as follows:

**ADD** a new Paragraph F. to read:

“F. Permitted to convert an accessory use to a principle use. Such a conversion would be considered a change of use, and would be required to adhere to all the provisions in the current zoning ordinance, and subdivision/site plan review regulations. *(Comment: Adopting a firm rule of clarification regarding the change of uses of pre-existing, non-conforming parcels will preclude inadvertent, or covert, transformation of those uses.)*  
**(Adopted 3/07)”**

Mr. Caron seconded, and the motion carried unanimously.

Mr. Day presented the change and cover sheet for the Town Clerk for Board signatures, and closed the public hearing.

**PUBLIC HEARING FOR A PROPOSED CHANGE TO THE EAST KINGSTON ZONING ORDINANCE ARTICLE XVI – HOME OCCUPATIONS.**

Mr. Day opened the public hearing, and noted that he would present the change recommendation in Mr. Morales’s absence. He described the change as a new sub-paragraph to Paragraph C. Standards, to wit::

“10. Disposal of all solid waste generated by the business must be at the business owner’s expense, and shall not be provided by the Town of East Kingston. **(Adopted 3/07)”**

Mr. Day noted that the Town has experienced some difficulties of this nature, and that it was never intended that business waste be accepted in the residential waste stream. This change would codify the Town’s present practice of not accepting business refuse.

The floor was for public comment, and there being none, the floor was closed.

**MOTION:** Mrs. Belcher **MOVED** that the amendment to the East Kingston zoning Ordinance Article XVI – HOME OCCUPATIONS be placed on the March 2007 Town Meeting ballot as follows:

**ADD** new Paragraph C. Standards. 10. To read:

“10. Disposal of all solid waste generated by the business must be at the business owner’s expense, and shall not be provided by the Town of East Kingston. **(Adopted 3/07)”**

Mr. Caron seconded, and the motion carried unanimously.

Mr. Day presented the change and cover sheet for the Town Clerk for Board signatures, and closed the public hearing.

**CONTINUED PUBLIC HEARING FOR GLENN & KATHLEEN CLARK, 21 BURNT SWAMP ROAD (MBL 10-4-8) IN REGARD TO AN 8-LOT CLUSTER SUBDIVISION (EKPB #06-03).**

Mr. Day opened the public hearing.

For the applicant, Mr. Kenneth A. Berry of *Beals Associates*. Mr. Berry introduced his associate, Mr. Scott. Cole, who would present the cluster subdivision plan. Mr. Cole described the redesigned 8-lot subdivision, which includes 8 new lots and 1 existing home, and noted that the current plan leaves 21.8 acres of open space. There is a reduced wetlands impact by virtue of lot and road layout, and state permits outstanding include those for subdivision and site specific wetlands. Mr. Cole noted that they already had a driveway permit from the previous plans, and they are presently asking for three waivers from the subdivision regulations:

1. SECTION VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND J. A waiver is requested to permit an 8% road grade in portions of the cul-de-sac.
2. SECTION VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND D. A waiver is requested to allow the cul-de-sac to be 1,170 at its longest point.
3. SECTION XVI – REQUIREMENTS FOR CONSTRUCTION OF ROADS AND STREETS IN THE TOWN OF EAST KINGSTON F.1. A waiver is requested to allow for a 20 foot wide road, rather than the required 24 feet, to reduce impervious surfaces and provide more green area.

For fire protection a fire pond would be located at the south end of Lot 1. On the previous plan, the distance from the fire pond to the nearest structure was 1,180 feet. That distance in this new design is reduced to 900 feet.

Mr. Cole concluded that this design fits the land better, and features improved traffic safety for residents with only one entrance onto Burnt Swamp Road

Mrs. Belcher asked for clarification of the cul-de-sac directions and length, and where the fire pond is located. Mr. Cole stated again that the south-north portion is 1025 feet, and the segment is east-west 1170 feet from the Burnt Swamp entrance. The fire pond will be on Lot 1.

Mr. Berry pointed out that the buildable areas were to be on the flat terrain of each lot, avoiding the steep slopes, except for Lot 6 which encompasses much terrain previously disturbed by sand and gravel excavation.. Also, that the cul-de-sac and all the development had been pushed to the far (south) side of the steep slopes.

There were no further questions to the applicant by the Board, and Mr. Day indicated that the Board must consider if the plan is complete enough to take jurisdiction. Mrs. Belcher asked whether there was a drainage analysis done, and Mr. LK Smith stated the Conservation Commission had one for the cluster plan, but not for the conventional yield plan.

Finding no major omissions or errors with the application, the Board accepted the plan as satisfying the ordinance and subdivision regulations sufficiently to take jurisdiction.

**MOTION:** Mrs. Belcher **MOVED** to take jurisdiction of the 8-lot cluster subdivision proposal of Glenn and Kathleen Clark, 21 Burnt Swamp Road (MBL 10-4-8) (EKPB #06-03). Mr. Caron seconded, and the motion carried unanimously.

Mr. Day noted that the 65-day clock has begun ticking and that the Board should move forward, to look at the plan in its entirety.

Dr. Robinson had two questions regarding the plan. The first was in regard to access to the Open Space/Common Land. Zoning Ordinance Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT P. states “*Such common land shall have suitable access to a road only within the subdivision.*” Dr. Robinson asked if the area between lots 1 and 2 will be used as access to open space, and if not, is there another area that will be used? Mr. Berry noted that this has not been addressed as of yet, but provision for an easement across one of the lots to open space/common land would be addressed in the homeowner’s association provision.

Dr. Robinson’s second question was in regard to protection of the open space/common land. Zoning Ordinance Article XI.Q. requires the submission of legal instruments describing the ownership and management of common land. Also the ownership and management of the landscape buffer area and means of marking the open space with permanent signage or tree disc markers needs to be addressed so that lot owners will know where these areas are and understand the restrictions in these areas. Mr. Cole stated that 4” disks affixed to trees would be used. Mr. Berry asked if the street width waiver had been received, and Dr. Robinson stated she believed it had.

Mr. LK Smith was asked if there were any other comments from the Conservation Commission’s perspective. He reiterated the need for a drainage analysis for the yield plan, and recommended the Board require it before accepting the plan. He also recommended a motion to that effect. Mr. Day thanked Mr. Smith, noting his comments would be taken under advisement by the Board.

Mr. Day suggested to Mr. Berry and Mr. Cole they obtain proper lot numbers from the Administrative Assistant at the Town Office. Mr. Day stated to the Board that there were 3 waivers for consideration, and perhaps a 4<sup>th</sup> depending on how much the steep slope was nicked.

Other unanswered issues included the cul-de-sac bulb diameter, and whether its center is to be left green, or paved over. Mr. Day deferred to the Fire Department regarding a recommendation about road width, cul-de-sac bulb diameter and its center, and traffic flow. There was much discussion about what size the bulb should be for easy egress/ingress by fire trucks and other emergency equipment and the road width issues. No conclusions were reached.

Mrs. Belcher asked for a description of the proposed road grades in the subdivision to better understand the waiver request. Mr. Scott responded that the grade varied from 4% to 8%, and that the bulb on the longest leg was 4%. On the other portion of road, grading varied from -2½% for half the length to +1½ % on the second road. Discussion ensued with Mrs. Belcher asking about road grades in Town. Mr. LK Smith and Mr. Day noted that Greystone Road was probably 8½-10%.

Mr. Day reviewed the waiver requests, noting that he understood the maximum length of cul-de-sac provision to be concerned with traffic safety and access for emergency equipment. Mr. Cole noted that in the revised plan, the fire pond is 250 feet from Burnt Swamp Road.

Mr. Donald (BI) reflected that the Country Hills of East Kingston elderly housing development has a loop road with the requirement for a gate at one end. He asked whether the Board's entertaining this road length waiver request would contradict the Board's reasoning from the Country Hills review, and prompt a request for similar treatment. Mr. Day countered that, firstly, Autumn Lane is considerably longer than the proposed road before us, and secondly, the gate requirement is the State's and not the Town's. NHDOT would not allow unobstructed traffic from two road cuts in such close proximity onto North Road. Mr. Day noted that Mr. Donald's question was a valid one to raise.

As there was no further Board comment, the floor was opened to abutters.

John Barrett, 17 Burnt Swamp Road. Mr. Barrett wanted to know if the builders were going to reclaim the pit and get rid of the swail from the gravel pit that had never been taken care of in the past. Mr. Day responded that the applicant's plan would, of necessity, include completion of the gravel pit reclamation. Mr. Barrett stated that it was supposed to have been reclaimed before and wasn't, so what assurance would there be that it would be done now?

Mrs. Belcher stated that the Board can address the cost to reclaim the pit by including it as a bonding requirement for plan approval. Mr. Donald stated that there had been a reclamation plan and a letter of credit presented to the selectmen, but the letter of credit was allowed to lapse without the reclamation being done. Mr. Cole noted that a reclamation plan is now a part of the subdivision plan.

There being no further abutter comment, the floor was closed to abutters.

Mr. Day summarized by noting that the Board would consider the waivers, and that Mr. Berry should get any revised plan set to the Town Engineer. Mr. Berry agreed to speak with the Fire Department and Road Agent for more clarification on road width and bulb size to enable maintenance and fire equipment ingress/egress.

Fire Capt. Conti suggested that a cul-de-sac bulb with a green center and one-way traffic would facilitate emergency equipment access, as well as avoid confusion for neighbors. He also suggested the Fire Department would have no issue with a 20 foot road with gravel shoulders. Mr. Conti stated he would research the turning radii of fire equipment, and Mr. Berry noted that most such questions are concerned with school bus turning radii which can require as much as 190 foot diameter circles.

Mrs. Belcher expressed concern, reflecting Mr. Barrett's concerns, that we are permitting the developer to deal with both the development and reclamation. She felt it necessary that the Town Engineer be fully apprised of the two questions, and that he be involved in the final solution to them, including the release of any bonding with regard to either. Mr. Day did not disagree, and noted that the previous plans incorporated most of the disturbed areas, which this plan does to a lesser extent. The question will require clear provisions for both the development and the reclamation plan in any final approval.

Mrs. Belcher expressed another concern which became apparent to her on the Board's site walk of the property in the Fall 2005. She noted that there is what appears to be an abandoned logging road going straight up the hillside which acts as a run-off funnel, and reclamation should include control of such run-off. Mr. Berry agreed, stating that run-off and erosion control devices are a part of the present reclamation plan, presented on page R1.

Mr. Berry asked whether the Board would address the waiver requests this evening, and Mr. Day responded that the Board needs input from advisors such as the Town Engineer and Fire Department first. He reassured Mr. Berry that the waivers did not appear to be controversial, and should not prove to be stumbling blocks.

**MOTION:** Mrs. Belcher **MOVED** the Planning Board continue the public hearing for Glenn and Kathleen Clark, with *DeBross Builders, Inc.*, in regard to an 8-lot cluster subdivision of MBL 10-4-8 (EKPB #06-03) until 18 May 2006 at 7:30PM. Mr. Caron seconded, the motion carried unanimously.

Mr. Day closed the public hearing.

PUBLIC HEARING FOR JEFFREY & SUSAN MARSTON, 38 GILES ROAD, IN REGARD TO A COMMUNICATIONS TOWER SITE PLAN PROPOSAL FOR MBLs 17-3-1 & 16-4-1 (EKPB #06-OA).

Mr. Day opened the public hearing and observed that Dr. Marston may be related to the applicants, and is an abutter. Dr. Marston agreed and recused himself from the Board. Mr. Day noted that Mr. Lloyd shall sit as a voting member for these deliberations.

For the applicant, Mr. Tom Lennon, *Industrial Communications, Marshfield, MA*. Mr. Lennon introduced a number of engineers, counsel, and co-applicants, including Mr. John Champ, Site Acquisition Specialist, and offered materials showing a 180 foot monopole, rather than the lattice tower as originally depicted. He noted that this was not a change, but a correction to the original application as was brought to his attention by the Marstons.

Mr. Lennon and Mr. Kevin Delany presented a PowerPoint presentation showing the type of proposed tower (a monopole as opposed to a lattice tower), signal coverage, and lack thereof for various companies (i.e. *Sprint, Nextel, Cingular, T-Mobile, Verizon*). The presentation showed definite blank spaces in the northerly area of East Kingston and parts of adjoining Kensington, and demonstrated how a tower on the Marston's hill would fill in the dead areas.

Mr. Champ addressed the site plan, describing a proposed utility access easement and site construction, and showed examples of monopoles. He noted that the site itself would include a fenced area of 10,000 square feet. Mr. Champ explained the location of the proposed tower on the property and what structures would be included in the compound. He also spoke about waivers submitted referring to Article XV, Section H, ¶ d) 1) Topography and other site features; 2) Availability of alternative site locations; 3) Geographic location of the property; and 4) Size/magnitude of project being evaluated and availability of co-location.

Mr. Day thanked the applicants for their most edifying presentation. He also reiterated that the ordinance article requires provision of co-location and thought that the schematic showed that there would be room on the pole for other folks. Since the applicants were from Massachusetts, Mr. Day explained that in New Hampshire, the Board is charged to consider whether the application is complete, and if deemed so, the Board would take jurisdiction of the plan. The Board would then have 65 days in which to make a decision. Mr. Day stated that in his reading of the application, he considered it to be complete, with a few difficulties which would be addressed during deliberation. Mr. Day solicited comments from the Board. There being no comments, Mr. Day entertained a motion to take jurisdiction.

Mrs. Belcher asked if there would be a conflict with the Zoning Board of Adjustment (ZBA), and if it needed to be addressed at this time. Mr. Day suggested that jurisdiction would need to be taken to move forward on the application. Without jurisdiction, neither approval nor denial could be given.

Dr. Robinson stated that some boards require a denial before sending to another board, which she thought was the better practice.

Counsel for *Cingular* asked if the Board was considering whether or not waivers were proper. He referred to Section H of the ordinance article which addresses waivers to regulations, and suggested the Board would have the authority to grant the requested waivers. Mr. Day noted that there is a clear distinction between ordinance and regulation in New Hampshire. He observed that Counsel was referring to an ordinance provision that specifically refers to regulations, rather than the ordinance. The ordinance itself is our local law, and the Board does not have license to contradict or contravene it, so the Board's hands are tied. The ordinance won't let the Board say yes out of hand. It does not say the Board cannot deny the application with a recommendation to the ZBA that it take into account dimensions of hardship for such a variance.

Mr. Day described prior informal discussions with the Town Council and the chairman of the ZBA, who agreed that a denial is needed to act. The Board was asked if it could give approval on condition the ZBA grant a variance, and Mrs. Belcher explained that they would need grounds to approach the ZBA, and sufficient grounds would be the Board's denial.

Counsel asked that, given the effort that was taken to supply all the information, could it be kept on file so as not to have to be duplicated again. Mr. Day assured him that the information would be kept on the file.

**MOTION:** Mr. Lloyd **MOVED** the Planning Board take jurisdiction of the telecommunications tower site plan application of Jeffrey and Susan Marston, 38 Giles Road (MBLs 17-3-1 & 16-4-1) (EKPB #06-OA). Mr. Caron seconded, and the motion carried unanimously.

Mr. Day read Zoning Ordinance Article XV, ¶D. 2. USE DISTRICTS, which prohibits new tower construction in a residential district. He then opened the discussion to abutters.

Mr. Mark Cook, 32 Giles Road. Mr. Cook noted that a tower would be prohibited in a residential area, and was concerned that, if it were allowed, it would impact the view from his house (i.e., that he would be able to see the fencing and structures, along with the tower). Mr. Lennon assured Mr. Cook that the site would be on the southeast section of the property, inside the tree area, and the fencing and structures would not be seen. He showed a picture of the tree area where the tower would be located.

Mr. Richard Simpson, 35 Giles Road. Mr. Simpson expressed concern over how the tower would affect property values. The Board suggested to him that it would have no affect on his property value, as property values in the areas where there were already towers had not devalued. Mr. Simpson asked what the tower would look like and was shown a picture of a monopole with flat panel antennas.

Mr. Curtis Jacques, 43 North Road. Mr. Jacques asked if the town was to receive any tax revenue from the tower, as it was eventually to be used by several carriers. Mr. Raymond stated that it was up to the appraising company. Mrs. Belcher stated that the Town Office would have information about what revenues the Town receives, if any, from the present tower in the Light Industrial District.

Mr. Cook asked about RF emissions and interference with Internet access, and was assured by the applicant that there was no interference of any kind. Mr. Champ indicated that any interference there might be would be experienced by the individual carriers, rather than local users.

Mr. Day closed the floor to abutters.

Mr. LK Smith asked whether notification had to be made to towns within 20 miles of the new tower. Mr. Day said that would be addressed. Mrs. Belcher read from the regulations that all towns within 20 miles of the tower would need to be informed and agreed that the applicant and Planning Board should have included them on the abutter list. She read from NH RSA 12-K:7 Regional Notification which states: "1. (a) Any municipality or state authority or agency which receives an application to construct a PWSF which will be visible from any other New Hampshire municipality within a 20-mile radius shall provide written notification of such application and pending action to such other municipality within the 20 mile radius." Mr. Day assured the applicant that such towns will be notified if upon appeal from a denial, the ZBA grants a favorable concession for the Planning Board to act upon. Mrs. Belcher reaffirmed that it is the ZBA, and not the Planning Board, which has the authority to consider interpretation of a local ordinance and grant relief.

**MOTION:** Mrs. Belcher **MOVED** to **DENY** the telecommunication tower site plan application of Jeffrey and Susan Marston, 38 Giles Road (MBLs 17-3-1 & 16-4-1) (EKPB #06-OA) predicated upon its failure to comply with the East Kingston Zoning Ordinance Article XV – TELECOMMUNICATIONS FACILITIES Paragraph D. Siting Standards 2. Use Districts provision that no new tower construction be permitted in the Residential District.. Mr. Lloyd seconded and the motion carried unanimously.

Mr. Day suggested the applicant approach the ZBA for a use variance. He also suggested that the ZBA would understand from these minutes that the Planning Board would favorably endorse such a site plan if latitude is found to grant a variance. He then closed the public hearing.

DESIGN REVIEW FOR GREG SANCROFF, 10 NORTH ROAD (MBL 14-3-6) IN REGARD TO A PROPOSED LAND USE.

Mr. Day opened the design review public hearing.

Mr. Sancroff came forward and stated he was looking for direction on the design review process. He described how he came to buy the property in the first place, and his intended use of the property for antique auto restoration and building custom cars. He noted that the Building Inspector had indicated that he was reluctant to issue an occupancy or use permit, and proposed he clarify his situation with the Planning Board.

Mr. Day described the design review process, it being intended not to commit either the applicant or the Board to any decision in the matter, but rather, it is a forum to exchange information and ideas about a particular parcel of land. Mr. RA Smith expressed his view that the building in question was built as a garage and would always be a garage. He recollected that in 1953, the garage was the biggest business in Town, employing about ten people. The business changed hands, and eventually wound down, but the structure remains a garage.

Mr. Lloyd asked what exactly Mr. Sancroff was planning to do with the property. He asked for clarification as whether the use would be commercial or strictly a private garage for auto restoration. Mr. Sancroff stated that he purchased the property specifically to use for antique auto restoration, and perhaps to sell them after restoration. He indicated that, for insurance purposes, it would be a commercial use.

Mrs. Belcher asked if Mr. Sancroff intended to live there as well. He stated that he did not, and that the living quarters above the garage have been gutted, that there is no power or kitchen and bathroom facilities. Mrs. Belcher asked further as to his future intentions for the space as living quarters. Mr. Sancroff stated that he did not think the property was conducive to living space above a garage. He would be concerned about fire hazards from the garage activity.

Mr. Day summarized what he thought the Board and Mr. Sancroff needed to discuss. He noted that Mr. Smith had correctly pointed out the structure has always been a garage, but insofar as we are concerned that the vesting of grandfathered rights is the question, its past and future use must be established. There was much discussion on the history of the property as to what it was used for and who owned it at various times. Mr. Donald said that the Town had taken it for unpaid taxes, cleaned up the property, and then returned it to the mortgage bank. The bank in turn sold it to Dr. Terry Bennett for the Town's back-taxes, legal fees, and hazardous materials clean-up costs. Mr. Donald noted that he had been informed by Mr. Sancroff at the time of his purchase that there still were vehicles in the garage.

Mr. Sancroff described the circumstances of his purchase from Dr. Bennett, stating that he consulted with a real estate lawyer to determine whether the use was still grandfathered. The answer from Dr. Bennett's lawyer was that the property had always been used to store cars for sale. Mrs. Belcher reflected that a realtor will tell you what you want to hear. Mr. Sancroff reiterated that the advice he got was that vehicles were always stored there for sale, and Dr. Bennett actively advertised on eBay, and used the site for commercial purposes. He referred to correspondence from the Board of Selectmen in 1996 which

informed Dr. Bennett that the property's zoning had reverted to its original residential form, but that his facility (Dr. Bennett's) was still grandfathered because of its use at the time, and the selectmen included a state regulation for the storage of vehicles. Mr. Donald admitted that he had signed the letter Mr. Sancroff referred to.

Mr. Day stated his opinion that the matter is firstly one for the selectmen to resolve. He contended that Mr. Sancroff must convince the selectmen that the property's use has not changed since 1996, if that is the desired benchmark. Otherwise, a continued use from 1972, or even 1963, when zoning as we know it was first established, would need to be affirmed. If the selectmen are satisfied that grandfathered rights remain intact, then certain rules apply, such as the prohibition of any expansion of use, etc.

Mrs. Belcher felt she disagreed with Mr. Day's opinion. Referring to grandfathering materials which Atty. Bernie Waugh published for an OEP Law Lecture series, she suggested the property be reinstated to its original use as a garage with a small residence overhead. She noted that there might have been illegal changes to the use in the intervening years, but she would not oppose restoring the property to its original use, and felt this could be done at the Planning Board level. Mrs. Belcher described the limitations of uses which are grandfathered, and recommended that the Planning Board hear a site plan review to establish clearly the provisions and limitations of the grandfathered use. She noted that, practically speaking, there is no other use for the property.

Mr. Lloyd expressed his opinion that the original use of the property may be irrelevant, and that the land use at the time zoning was established would determine what grandfathered rights are vested.

Mr. Day observed that he did not necessarily disagree with Mrs. Belcher. He reiterated his concern that the so-called grandfathered use be confirmed as continuous, and he did not feel the Planning Board was in a position to do that, and that the selectmen are. He suggested that a site plan would be appropriate in any event if the selectmen are convinced of there being valid grandfathered rights.

Mr. Donald questioned whether a change in tenant would trigger the need for a site plan review. Discussion ensued, with Mrs. Belcher quoted from the Site Plan Review Regulations which clearly require such review in the case of a change in tenancy. Mr. Day concluded that, if the selectmen decide the grandfathered rights are vested, then the Planning Board will expect to see Mr. Sancroff at a site plan review. Mrs. Belcher noted that if they do not, then Mr. Sancroff could appeal to the ZBA, and failing that, Superior Court.

Mr. Caron suggested to Mr. Sancroff go to the Town Office and request an appointment to get put on the Selectmen's meeting agenda for May 1<sup>st</sup>. Mr. Day summarized that at the heart of it is the need to establish that the proposed grandfathered use was not abandoned or discontinued, for which there is case law to that effect.

The floor was opened to abutter comment.

Mr. Curtis A. Jacques, 43 North Road. Mr. Day questioned whether Mr. Jacques was in fact an abutter, but the Board agreed to let him talk anyway... Mr. Caron suggested for five minutes. Mr. Jacques described how the place has been a problem for the Town ever since he moved here in 1974. He noted that drugs were sold from the place, and who knows what else. He complimented Mr. Sancroff on the restoration work he has done with the property, but raised concern about contamination affecting ground water. Mr. Sancroff referred to a NH DES 1999 letter to Dr. Terry Bennett which reputedly gives the property a clean bill of health.

Mr. Day suggested that Mr. Sancroff may now have a clear course of action to pursue, and closed the discussion.

PUBLIC HEARING FOR PAUL MASONE, 213 HAVERHILL ROAD (MBL 11-2-17), WITH A PROSPECTIVE TENANT IN THE LIGHT INDUSTRIAL PARK (EKP# 04-OB).

Mr. Day opened the public hearing, and stated that he had received communication from Mr. Masone requesting the hearing be continued. Mr. Masone's prospective tenant was either unavailable, or was not prepared for a hearing.

**MOTION:** Mrs. Belcher **MOVED** the Planning Board continue the public hearing for Mr. Masone and a prospective tenant until 18 May 2006 at 9:00PM. Dr. Marston seconded, and the motion carried unanimously.

Mr. Day closed the public hearing.

PUBLIC HEARING FOR RICHARD SALMONSON IN REGARD TO A PROPOSED HOME OCCUPATION AT 1 TROLL WAY (MBL 10-3-1).

Mr. Day opened the public hearing, and described the nature of home occupations which are commercial activities in the Residential District. He further described the permitting process, and invited Mr. Salmonson to explain his proposal.



Mr. Salmonson requested to have a sign-making business at the residence. He proposed to produce wooden signs and truck lettering. Mr. Salmonson indicated that he was looking to move to East Kingston from Newbury, MA, and conduct a sign-making business from his home. He stated that has been in business for about 33 years, and has been looking at how and where to semi-retire.

Mr. Day stated that any business would have to fit within the ordinance's list of permitted uses, and Mr. Salmonson suggested that he considered his work to be a craft. He stated that 75% of the truck lettering would be performed at another location, but the wood signage would be completed at this shop. He designated them as carved or rustic signs.

Mr. Caron inquired as to what type of equipment would be used in the making of the signs. Mr. Salmonson stated that various types of woodworking tools, mostly saws, would be used. Mr. Salmonson stated he would also like to raise the roof of the building so the inside would have a ceiling height of 10 ft. to allow him to display his collection of antique signs (inside the building) above the shelving.

Mr. Day inquired if customers would be coming to the premises, and Mr. Salmonson stated perhaps now and then, but he usually went to his customers as the requests were largely by phone. Mr. Day also asked how many vehicles there were, and Mr. Salmonson stated he had two, one of which was an antique. Mr. Day reminded him that only one vehicle was allowed to be visible, and that the other would need to be parked inside the garage, to which Mr., Salmonson agreed.

Mr. Day asked what permitted use under the Home Occupations ordinance did Mr. Salmonson consider his business to be, and he replied that he would consider it an art or craft. Mr. Day read from the ordinance standards, reiterating that there was only to be permitted signage, only one commercial vehicle showing, and what percent of the floor area was allowed (50% since Mr. Salmonson was on a state highway).

Mr. Day addressed the Town's intentions regarding home occupations, and commercial activity in residential zones. He noted that the permitted commercial uses were chosen so as not to impact the residential nature of a neighborhood.

Mrs. Belcher observed that, except for a small sign, any business must not look like a business.

Mr. Day opened the floor to abutters.

Mr. Wayne Cooke, 38 Powwow River Road. Mr. Cooks asked what the hours of the business would be, and also expressed concern about noise and chemicals. Mr. Salmonson stated that he proposed hours of operation to be 8AM to 5PM, Monday through Saturday (no Sundays), that there would be no noise outside of working hours, and that he used pre-coated panels which were painted off-site. By the time he brought them to the shop, there would be no fumes. He stated that he mainly used regular paints, mineral spirits and oil-based primer in his work.

Mr. Day closed the floor to abutters.

Mr. Donald suggested a Fire Department Inspection. Mrs. Belcher inquired about hours of operation and deliveries, and Mr. Salmonson stated that there would be few deliveries because he usually carries his supplies in his own truck.

Dr. Robinson asked about venting for paint fumes, and Mr. Salmonson stated that there was no spray painting to be done on the premises, so it would not be necessary.

After some discussion, the Board and applicant agreed to four conditions for an approved permit.

**MOTION:** Mrs. Belcher **MOVED** the Planning Board recommend the Board of Selectmen approve the Home Occupation permit application of Richard Salmonson for a sign-making business at 1 Troll Way (MBL 10-3-1) with the following conditions:

1. The Fire Department conduct periodic safety inspections of the premises.
2. Hours of operation not to exceed 8:00AM to 5:00PM, Monday through Saturday.
3. Material Safety Data Sheets (MSDS) for all chemicals used in the home occupation be provided to the Fire Department and Board of Selectmen.
4. No spray painting be permitted on the premises.

Mr. Caron seconded, and the motion carried unanimously.

Mr. Caron inquired where Mr. Salmonson got his paint and he replied mostly from home improvement stores. Mr. Donald suggested he get MSDS (Material Safety Data Sheets) on his paints and thinners from the suppliers or the Internet, and give them to the Fire Department.

Mr. Caron recommended Mr. Salmonson request to be put on the agenda of the Selectmen's meeting for 1 May 2006, and Mr. Day closed the hearing.

PUBLIC HEARING FOR JULIE TURNER, 87 HAVERHILL ROAD (MBL 10-4-4), IN REGARD TO A 2-LOT SUBDIVISION (EKPB #06-02).

Mr. Day opened the public hearing, and stated that Ms. Turner's engineer, James Lavelle, had requested the Planning Board continue the public hearing. He noted that the Board had not received any new planning materials from him since the March hearing. Board members expressed concern that the applicant was failing to provide information in a timely fashion, and at some point it could be appropriate to require the application be submitted anew.

Mr. Donald remarked something about his brain not thinking very slowly. The Board commiserated.

Mr. Caron questioned the date on the letter from Mr. Lavelle, and Mr. Day and Mrs. Belcher suggested they thought it was due perhaps to the date from a previous letter that was not updated.

**MOTION:** Mrs. Belcher **MOVED** the Planning Board continue the public hearing of Julie Turner, 87 Haverhill Road, in regard to a 2-lot subdivision of MBL 10-4-4 (EKPB #06-02) until 18 May 2006 at 9:30PM. Mr. Caron seconded, and the motion carried unanimously.

Mr. Day closed the public hearing.

CONTINUED BOARD BUSINESS:

**Work meeting.** Mrs Belcher expressed concern that she would not be able to attend the previously arranged work meeting of 4 May, and asked whether another time could be found. After some discussion, the Board agreed to meet in the Town Office conference room on Thursday, 11 May 2006, at 7:30PM. It was also agreed that the Master Plan Goals and Visioning chapter revision be placed on the 11 May 2006 meeting agenda, and the Board could put the final touches on it at the work meeting.

ADJOURNMENT:

**MOTION:** Dr. Marston **MOVED** the Board adjourn. Mrs. Belcher seconded, and the motion carried unanimously at 10:15 PM.

Respectfully submitted,

Barbara A. White  
Recording Secretary