



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2004-2005:
James Roby Day, Jr., Chairman
Richard A. Smith, Sr., Vice Chairman

MINUTES
(Regular Meeting and Public Hearings of 21 April 2005)

AGENDA:

7:00PM- **Board Business**

7:05PM- **Public Hearing** for David Baker, Apple Hill Golf Course, East Road (MBL 14-3-9), involving the expansion of the golf course clubhouse (PB#04-OE)

7:15PM- **Continued Public Hearing** for a proposed change in tenancy of a light industrial enterprise (PB#05-OA) of Paul Masone, 213 Haverhill Road, MBL 11-2-17 (PB#04-OB)

7:30PM- **Continued Public Hearing** for a proposed 22-lot subdivision of Bowley Real Estate, LLC, involving MBLs 1-1-1 and 2-2-3 (PB#05-01)

8:00PM- **Continued Public Hearing** for a proposed 18-lot residential cluster development of Glenn and Kathleen Clark, 21 Burnt Swamp Road (PB#05-03)

8:30PM- **Public Hearing** for Kevin and Christina Ferreri, 4 Greystone Road (MBL 17-1-14) regarding a lot line adjustment involving adjacent MBLs 17-1-15 & 17-1-12 (PB#05-04)

9:00PM - **Adjournment**

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM, and noted he shall take notes from which to prepare minutes.

ROLL CALL: Mr. Day called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Dr. RA Marston, DVM,
and Vice Chairman RA Smith, Sr.

Alternate members present – Mr. JD Burton, Mr. JL Fillio and Mr. EV Madej,
and Mr. MB Dworman, Ex-officio

Advisors present– Mr. LK Smith, Chairman, East Kingston Conservation Commission Chairman
Fire Capt. Andrew Conti, East Kingston Fire Department
Mr. RR Donald, East Kingston Building Inspector

Voting member – Mr. Day noted that the alternate member designated a voting member to comprise a full Board for April shall be Mr. Burton, barring other considerations.

BOARD BUSINESS:

Minutes-

MOTION: Mrs. Belcher **MOVED** the Planning Board approve the minutes of 17 March 2005 with minor corrections noted. Mr. Smith seconded, and the motion carried unanimously.

Action/Info Items-

Loss of a Board member- Mr. Day noted that this meeting will be Mr. Fillio's last as a member of the Board. Exigencies of life are taking Mr. Fillio and his wife to North Carolina, and Mr. Day lamented our loss of a dedicated, very talented and well-informed Board member. Mr. Day requested that he provide a letter of resignation as his last official act. The Board wished Mr. Fillio well.

Chairmanship- Mr. Day asked who would like to be the Planning Board chairman for 2005-2006. Mrs. Belcher nominated Mr. Day as chairman, and there were no other nominations.

MOTION: Mrs. Belcher **MOVED** to elect Mr. Day as Planning Board Chairman for the year 2005-2006. Mr. Smith seconded, and the motion carried unanimously.

Vice-Chairmanship- Mr. Day asked for nominations to the vice-chairmanship, and Mrs. Belcher nominated Mr. RA Smith, Sr., and Mr. Smith indicated that he would accept the position.

MOTION: Mrs. Belcher **MOVED** to elect Mr. Smith as Planning Board Vice Chairman for the year 2005-2006. Dr. Marston seconded, and the motion carried unanimously.

Rockingham Planning Commission (RPC) Commissioner- Mr. Day noted that his appointment to the RPC as an East Kingston commissioner expired 31 March 2005, and are there any recommendations to fill the next 4-year position.

MOTION: Mr. Smith **MOVED** to recommend the Board of Selectmen reappoint Mr. Day as Commissioner to the Rockingham Planning Commission upon the expiration of his last appointment. Mrs. Belcher seconded, and the motion carried unanimously.

Mr. Day thanked the Board for their confidence, and stated that he would prepare correspondence to the selectmen to the effect.

2005 OEP spring conference- Mr. Day described the conference as informative, and in particular, the legislative update as given by Atty. Tim Bates of *Mitchell & Bates*, Laconia. He noted that in 2004 the New Hampshire legislature devised a way to separate the question of impact fees from off-site exactions intended to defray the costs from development. He also noted that Mr. Bates felt the Supreme Court had seriously muddied the variances waters by "judicially legislating" another area variance hardship test. Mrs. Belcher would be particularly interested in the matter in her rôle as alternate member on the Zoning Board of Adjustment.

Master Plan Goals & Visioning chapter- Mr. Day described what had been done to organize the Town-wide gathering planned for Saturday, 23 April. Three planners from the RPC shall facilitate the seminar to discuss what residents would like to see relating to community facilities, housing and transportation. Mr. Day noted that this will be the first of two working meetings, and the RPC will complete their work by 30 June, allowing us to hold a public hearing perhaps in July. Any changes to the Goals & Visioning chapter would be incorporated as a revision to the Master Plan to facilitate the Board's continued efforts to keep the document current and relevant.

PUBLIC HEARING FOR DAVID BAKER, APPLE HILL GOLF COURSE, EAST ROAD (MBL 14-S-9) INVOLVING THE EXPANSION OF THE GOLF COURSE CLUBHOUSE (PB#04-OE).

Mr. Day opened the hearing, acknowledging Mr. Baker and his engineer, Mr. Quintal.

For the applicant, Dennis G. Quintal, PE, CWS. Mr. Quintal described the proposed site plan, noting that the Kensington abutters had been properly notified. He also noted that he had made attempts to discuss various aspects of the plan with the East Kingston Fire Department. He indicated that in order to satisfy site plan regulation requirements for access to fire suppression water, he had contacted the Kensington Fire Department about using a cistern located on East Road just over the Kensington/East Kingston border. Mr. Quintal stated that the Kensington Fire Chief had no objection to our using their cistern to satisfy such a requirement.

Mr. Quintal described the three waiver requests before the Board addressing the question of surveying the entire property bounds, surface contours and physical features, and depicting all soils and wetlands information. He indicated that the property is very large, and the proposed site plan involves only an addition to an existing structure well away from property boundaries. He also noted that the wetlands and soils information is unchanged from the property's original site plan.

Mr. LK Smith, Conservation Commission Chairman, was queried as to his opinion whether the soils and wetlands information should be required. Mr. Smith stated that the information is already in hand, concluding that a waiver would be appropriate.

Mr. Day described his understanding of the Board's discussions at the March 2005 meeting that the primary concern centered upon adequate provision for egress from the new addition in the event of fire or other emergency.

Fire Capt. Conti indicated that he had correspondence from the Fire Chief who considers the Kensington fire cistern proposal to be unacceptable. He noted that the cistern in question is only 10,000 gallons of water, and the attaching hardware is an under-sized 4-inch head. Mr. Baker suggested that perhaps a dry hydrant could be installed on his property at the bottom of the hill, and Mr. Conti thought that would suffice. Expressing some bewilderment, Mrs. Belcher observed that the Kensington cistern is not very old.

After some consultation, Mr. Quintal stated that Mr. Baker would be willing to have a dry hydrant installed for the pond at the bottom of the hill by East Road on his property.

Mr. Fillio, echoing Mrs. Belcher's surprise, noted that we have a number of 10,000 gallon cisterns in Town, and asked if in fact the Fire Department is suggesting that any change to an existing structure, be it residential or otherwise, would necessitate some applicant provide for upgrade of a cistern to the current 30,000 gallon requirement. Mr. Conti demurred, and suggested that that was a question for the Fire Chief.

Mr. Donald observed that this application is a site plan, rather than a subdivision, and the only consideration in this instance is safety and not the construction of cisterns or fire ponds. He noted that this particular site plan is non-residential and isolated from abutting properties and structures.

Mr. Day stated his understanding that two waivers are being requested, of which the waiver request from site specific soils mapping cites Site Plan Regulation Section IV, B.11. which refers to Subdivision Regulation Section X. The second waiver cites Site Plan Review Regulations Section V regarding provisions in paragraphs A. and O. Board discussion ensued with Mr. Smith suggesting both waivers are reasonable and should be approved.

MOTION: Vice Chairman Smith **MOVED** the Planning Board approve 1) the waiver request involving MBL 14-3-9 (PB#04-OE) for relief from Site Plan Review Regulations Section IV – Submission Requirements B.11. as it refers to Subdivision Regulations Section X – Soils and Wetland Data Requirements, and 2) the waiver request involving MBL 14-3-9 (PB#04-OE) for relief from Site Plan Review Regulations Section V – Required Exhibits and Data as it refers to surveyed property lines, total surface contours and physical features of the property. Mrs. Belcher seconded, and the motion carried unanimously.

Board discussion ensued regarding conditions of approval with Mr. Day suggesting the following proposed conditions:

1. Fire Department approval of building construction plan fire safety provisions.
2. All fees and charges due the Town in connection with the site plan, including but not limited to the reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town be fully discharged.
3. Final mylar to be submitted to the Board for chairman signature and recording.

Returning to the outstanding question of a fire suppression water source, Mr. Burton pointed out that Site Plan Review Regulations Section VI.M. states such requirements shall be in accordance with the Subdivision Regulations. In further discussion, the Board expressed its desire that the Fire Department reexamine its position vis-à-vis site plan requirements in cases where the plan is comprised of additions or modifications to existing conditions. If the Department is convinced such extraordinary measures are required, then Mr. Baker's suggestion of a dry hydrant on his pond should be accepted.

Mr. Quintal enquired as to whether a building permit could be issued before a hydrant could be installed with the understanding that a Certificate of Occupancy would not be granted until the hydrant and the structure are complete. The Board agreed.

Mr. Day opened the floor to a better comment, of which there was none. He then entertained a motion for conditional approval for the site plan.

MOTION: Vice-Chairman Smith **MOVED** the site plan of Mr. David Baker, Apple Hill Golf Club, East Road, East Kingston, involving MBL 14-3-9 (PB#04-OE), for an addition to the club house be approved with the following conditions:

1. Fire Department shall approve building construction plan fire safety provisions.
2. Fire Department shall reexamine its refusal to accept the use of a fire suppression water source available in Kensington on East Road. In the event, provide documentation to the Planning Board citing the rationale for a final recommendation.
3. As may be found necessary, applicant provide a fire pond with a dry hydrant with access from East Road to meet the requirements as set forth in the East Kingston Subdivision Regulations, and inspected and accepted by the East Kingston Fire Department.
4. Easement language for Fire Department testing and inspection of the dry hydrant system be reviewed by Town Counsel. Final language to be recorded with the Rockingham Register of Deeds.
5. All fees and charges due the Town in connection with the site plan, including but not limited to the reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town be fully discharged.
6. Final mylar to be submitted to the Board for chairman signature and recording.
7. Simultaneous construction of a dry hydrant system, if required, and the structure addition itself shall be permitted with the understanding that the Building Inspector shall not issue a Certificate of Occupancy until the Fire Department is satisfied the pertinent and relevant fire safety conditions are met.

Mrs. Belcher seconded, and the motion carried unanimously.

Mr. Day closed the hearing.

CONTINUED PUBLIC HEARING FOR A PROPOSED CHANGE IN TENANCY OF A LIGHT INDUSTRIAL ENTERPRISE (PB#05-OA) OF PAUL MASONE, 213 HAVERHILL ROAD, MBL 11-2-17 (PB#04-OB).

Mr. Day opened the hearing, and gave the floor to Mr. Masone.

Mr. Masone introduced Jonathan Kalinoski of *J&T Wood Grinding Equipment, LLC*. Mr. Kalinoski described his proposed business at Mr. Masone's industrial site of one that included sales, warehousing, and repair of large grinding and materials screening equipment.

Mrs. Belcher posed several questions including which building would he occupy, how much space would he require, and what would be the nature of equipment repair work to be done. Messrs. Masone and Kalinoski replied that *J&T* would be in the new Building #7, occupying about one third of the floor space. Equipment repairs involving hazardous materials and fluids would be done off-site for the most part. Mrs. Belcher expressed her concern that records be kept of hazardous materials and their disposal.

Mr. Fillio asked what numbers of large machines would likely be kept on the premises, and whether the tenant would be required to use drip pans to catch oil. The applicant acknowledged that such would be good maintenance practice.

Mrs. Belcher asked about hours of operation, noting that a condition of approval for Mr. Masone's last site plan was a provision for the acceptance of imposed hours of operation for tenants in the new buildings. Mr. Kalinoski stated that his intended hours of operation were to be 6:00AM to 6:00PM, and that the business was primarily retail, with a few customers and FedEx/UPS deliveries on site. Mrs. Belcher enquired about security, and Mr. Kalinoski noted that he would employ fifth wheel locks and the like, but that the large equipment typically required special training to operate.

Mr. Burton asked about how parts deliveries would be made, and Mr. Kalinoski responded that he and his partner will use their own pick-up trucks.

with asked where the new and used equipment would be parked on site. Mr. Masone noted that the parking approved in the site plan for the building had ample parking outside for both equipment and customers.

Mrs. Belcher asked whether Mr. Kalinoski would be agreeable to an annual inspection by the Fire Department of the premises, and a requirement for them to keep a log of any hazardous materials and fluids for the Fire Department's review. Mr. Kalinoski stated that he would agree to those requirements.

Mrs. Belcher enquired about lighting, and Mr. Masone noted that there would be no additional lighting as a consequence of this tenancy.

Mr. Day opened the floor to a better comment, of which there was none.

MOTION: Mr. Dworman **MOVED** the Planning Board approve the new tenancy of *J&T Wood Grinding Equipment, LLC*, at light industrial park, 213 Haverhill Road, with the following conditions:

1. Tenant's hours of operation shall be 6:00AM to 6:00PM, excluding Sundays.
2. Fire Department shall conduct an annual safety inspection of the firm's premises.
3. *J&T* shall maintain documentation of all hazardous materials which are used or stored in the course of the firm's conduct of business. Such documentation shall be reviewed by the Fire Department when necessary, and as a part of an annual safety inspection.
4. All fees and charges due the Town in connection with the site plan change in tenancy, including but not limited to the reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town be fully discharged.

Dr. Marston seconded, and the motion carried unanimously.

Mr. Day closed the hearing.

CONTINUED PUBLIC HEARING FOR A PROPOSED 22-LOT CLUSTER SUBDIVISION OF BOWLEY REAL ESTATE LLC INVOLVING MBLs 1-1-1 AND 2-2-3 (PB#05-01).

Mr. Day opened the public hearing, and briefly described the application's history to date, noting that the Board had taken jurisdiction for the conventional subdivision in February 2005 in order to establish a means to calculate housing density.

For the applicant: Michael Garrepy. Mr. Garrepy noted that he would provide the Board with a revised set of plans, and that they had been forwarded to Dr. Jill Robinson, RPC Senior Planner, and Jay E. Stephens, P.E., East Kingston Town Engineer, for review. He noted further that, since the last meeting, two site walks were conducted with members of the East Kingston Conservation Commission and Planning Board, garnering useful feedback and insight about concerns, and the plan's strengths and weaknesses.

Mr. Garrepy indicated that his impression was the Conservation Commission did not have many concerns, but did note their call for 18 inch culverts at wetlands crossings. He expressed his own concern that 18" culverts would change the road grade, and further impact wetlands. His recommendation, as is also the Town Engineer's he noted, would be to use 15 inch culverts.

Mr. Garrepy noted that preservation of the 59 contiguous open space acres was still being discussed with the Conservation Commission with regard to how exactly it would be protected. He contended there were several options, all of which were do-able in his estimation. A homeowners' association could carry the responsibility for it, or it could be deeded to NH Fish & Game, or some other conservation entity. Mr. Garrepy felt that, for now, a deed restriction of some kind would commit the property to conservation, and the details could be sorted out later.

Mr. LK Smith referred to two letters, the first under his hand to the NH Wetlands Bureau wherein he comments on the applicant's Dredge and Fill Application #2005-00552. He states that the Conservation Commission is concerned about the proposed 12" pipes for wetlands crossings, and recommends 18" culverts instead. The second letter is addressed to the Planning Board and supplements the Town Engineer's comments about the Drainage Analysis and Sediment and Erosion Control Plan.

Discussion ensued, with Mr. Garrepy acknowledging Mr. Smith's concerns, with the suggestion that the culvert size could be problematic. He indicated his willingness to consider Mr. Smith's drainage analysis comments.

Mr. Day described the site walk he attended with Mrs. Belcher and Mr. Burton, and noting that Dr. Marston had attended the other site walk. For his part, Mr. Day's biggest concern proved to be the shared driveway for lots #1, 2, and 3 off the proposed Squire Way. He described it as being very long, with a considerable portion of it at a 10% grade on a steep hillside, and with what is clearly a precipitous drop off one side into an existing gas pipeline easement area. He acknowledged that it is an unfortunate arrangement of topography that makes finding a way onto these isolated uplands a difficult problem. The applicant's original proposal to use 300 feet of guard rail along the easement side of the driveway brings into question the quality and viability of the design.

Mr. Garrepy acknowledged that Fire Department input would be most useful. He noted that the proposed driveway is 14 feet wide, and the Town Engineer is recommending 18 feet, with a turn-around for emergency vehicles.

Mrs. Belcher expressed her concern about anyone trying to negotiate such a driveway in winter conditions, and strongly recommended Mr. Garrepy find another way to get to the isolated pockets of uplands. Mr. Fillio stated that these concerns are equally applicable whether there be one or three houses off the driveway.

In order to find a way past this driveway conundrum, Mr. Day tasked Mr. Garrepy to 1) confer with the East Kingston Fire Department, and to walk the site with the Fire Chief if possible, or the Deputy or Assistant Fire Chiefs if not, 2) find another route onto the uplands in question, and/or 3) look elsewhere for ways to satisfy his desire for density if there is no acceptable solution.

Mr. Garrepy turned to his *Bowley Real Estate, LLC*, memorandum of 11 April 2005 in which he responded to comments in Dr. Jill Robinson's memorandum of 31 March 2005. Specific item comments included:

#3- The question of Conservation Commission involvement in the permitting process would be addressed in the normal course of permitting. Mr. LK Smith made reference to East Kingston Zoning Ordinance Article VI – WETLANDS CONSERVATION DISTRICT E.1. which addresses the question.

#6- Buffer landscaping. Mr. Garrepy's suggested verbiage reflects the East Kingston Zoning Ordinance Article XI SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT L. language. Mrs. Belcher described the proposed lots #1, 2 and 3 as abutting pre-existing dwellings which are very close to their own lot lines. She asked whether additional buffer vegetation would be appropriate. Mr. Burton asked about planting more trees, and Mr. Fillio noted that the existing canopy would make such additional planting ineffective.

#9- Mr. Garrepy does not feel the Senior Planner's recommendation for sidewalks is warranted. He noted the Conservation Commission's comment that sidewalks are impervious surfaces. Mr. Burton said he thought sidewalks to be ridiculous in such a location; Mr. Fillio observed that they would be sidewalks to nowhere, unconnected in any useful way to anywhere else.

Mr. Day informally polled the Board as to whether we would support the use of sidewalks in this development. Seven of the eight members indicated they would not.

#10- Mr. Garrepy disagrees with the Senior Planner about planting additional shade trees in view of this particular plan's use of wooded lands. He stated that limits of clearing would be noted on the plans.

#12- Mr. Garrepy's response comments focused on lighting and fixtures, noting that his company likes to use them for aesthetic purposes where they can. Mr. Day noted strongly that lights of any kind diminish the night sky visibility, and would encourage the Board to avoid any lighting wherever possible. Mr. Garrepy contended that such features add value to properties, and asked the Board to look at other projects his firm has done in the region.

#13- The traffic report was completed, and makes only minor recommendations.

#17- Complications with soils and wetlands have required the applicant move a fire pond location. The Fire Department will be involved in its placement and design.

Mr. Day addressed the question of bonding briefly, noting that Rowell Road was recently repaved by the Town, and subsequent damage due to heavy construction equipment should be easily identifiable. Mr. Garrepy said that he would confer with Mr. Jay Stephens, Town Engineer, to find an appropriate bonding amount.

Mr. Dworman referred to Zoning Ordinance Article XI.P. which calls for access to open space/common land from within a development. Discussion followed, and it was determined that the common land in this development is clearly accessible from the proposed Squire Way, and the applicant will examine how access might be provided from Winslow Drive.

Mr. Day asked the Board whether it considered the cluster plan sufficiently complete to take jurisdiction, and if so, he would entertain a motion to that effect.

MOTION: Mrs. Belcher **MOVED** the Planning Board accept jurisdiction for the single family cluster residential development portion of the *Bowley Real Estate LLC* subdivision plan (PB#05-01). Mr. Smith seconded, and the motion carried unanimously.

Mr. Day opened the floor to abutter comment, of which there was none. Thereupon, Mr. Garrepy requested the hearing be continued until the next regularly scheduled hearing meeting.

MOTION: Mrs. Belcher **MOVED** the Planning Board continue the public hearing for the *Bowley Real Estate LLC* 22-lot cluster subdivision (PB#05-01) to 19 May 2005 at 7:15PM. Mr. Smith seconded, and the motion carried unanimously.

Mr. Day closed the hearing.

Mr. RF Morales joined the Board, relieving Mr. Dworman, and assuming the ex-officio position.

CONTINUED PUBLIC HEARING FOR A PROPOSED 18-LOT CLUSTER SUBDIVISION OF GLENN AND KATHLEEN CLARK, 21 BURNT SWAMP ROAD INVOLVING MBL 10-4-8 (PB#05-03).

Mr. Day opened the hearing. He noted that since the first hearing at which the Board held that the application was incomplete, the applicant's engineer has been very responsive in providing materials, and the quality of the work product was indicative of his professionalism.

For the applicant: Kenneth A. Berry, LLS, of *Beals Associates, PLLC*. Mr. Berry introduced Scott D. Cole, project manager, and Attorney John G. Cronin of *Cronin & Bisson, P.C.*, Manchester. He noted the additional materials the Board had been provided since the March hearing, in particular a plan showing the parcel's terrain slopes colored to distinguish slopes of 15-25%, 25-35%, and greater than 35%. Mr. Berry noted also that a plan sheet with revised open space calculations to reflect discussion with Dr. Jill Robinson, RPC Senior Planner, is available for the Board's review, as well as a plan sheet showing all the test pit locations and a working drawing of updated site specific soils survey information.

Mr. Berry indicated he had had discussions with the East Kingston Fire Department about two proposed fire ponds for the project. One pond would be off Burnt Swamp Road, and the other would utilize an existing pond on an abutter's property with the hydrant hardware on the side road. The fire pond plans are as yet unpublished, and Mr. Berry expressed concern that he had not received any communication from the Board regarding the completeness of the application. He felt that there have been sufficient materials submitted to render the application complete and requested the Board act accordingly.

Mr. Day disagreed that there had been no communication with the applicant, noting that as soon as the March meeting minutes were available, a copy of them and the February meeting minutes were forwarded to Mr. Ned Lucas of *Cronin & Bisson*, at his particular request. Mr. Berry acknowledged that perhaps his client had not kept him informed.

Mr. Day noted that Mr. Berry's colored depiction of slopes has proved very useful. He also noted that the revised open space calculations were in fact more generous than the ordinance would have the plan to be. Mr. Day suggested he would recommend the Board consider the application complete for purposes of taking jurisdiction. The Board could then address its primary issue with the plan concerning development on terrain with slopes of

15% and greater. Mr. Berry acknowledged that he and Mr. Cronin understood the Board's position with regard to the application of the subdivision regulation's stated purpose and intent that development be consistent with the recommendations of the East Kingston Master Plan. Mr. Day noted that the color-coded terrain depiction clearly shows that a number of lots would be excluded from development if the applicant accepts the Board's determination. He felt the Board would be remiss not to insist the applicant reconsider the plan's present configuration.

Mr. Berry deferred to Mr. Cronin who indicated he was present at the hearing for two reasons: 1) to request the Board take jurisdiction of the applicant's plan in view of its completeness in accordance with the subdivision regulation checklist, and 2) to address the Board's objection which centers upon the Master Plan and subdivision regulation purpose and intent. Mr. Cronin acknowledged that the East Kingston Master Plan did make recommendations about development on steep slopes, but noted that he believed there is no East Kingston ordinance, regulation, or prohibition dealing with such development. He asked the Board reconsider its position. He asked that the Board make a specific finding or ruling about where development would not be allowed on steep slopes if the Board would not reconsider. By doing so, Mr. Cronin suggested the applicant could then consider changing his plan, or, as a last resort, opt to challenge.

Mr. Burton responded by stating he thought it ridiculous that Mr. Cronin is asking the Board to make a general proclamation of what the law is without the presence of its own counsel, and that he is lecturing the Board on points of law. He advised the Board we not make any such determination without the advice of counsel, particularly given the presence of opposing counsel. Mr. Burton stated he assumed Mr. Cronin was not trying to advise the Board himself. Mr. Cronin responded that he was not, and that he was acting on behalf of his client, and had conversed with the Board's counsel as well.

Mr. Day stated that the Board has agreed that the Conservation Commission's interpretation of the subdivision regulation and Master Plan recommendation points in question is a reasonable one, and that interpretation is the Board's position as well. The applicant must therefore conclude that development on terrain with slopes of 15% and greater is unacceptable.

Mr. LK Smith, Conservation Commission Chairman, stated that his interpretation of the subdivision regulation and Master Plan provisions would exclude land with slopes of 15% and greater from density calculations, as well as from development.

Mr. Burton expressed his concern that the Board be advised by Counsel before it makes any pronouncement about its interpretation of the ordinance and regulation. Mr. LK Smith noted that he disagreed with Counsel's use of "development" as it applies to density calculations and actual construction. Mr. Day observed that given the opinions of both Counsel and the Conservation Commission, differing marginally as they may, the effect on the applicant is the loss of as many as 5 or 6 building lots in the present plan.

Mr. Day indicated that he felt the plan was sufficiently complete to take jurisdiction, and would entertain a motion to that effect.

MOTION: Mr. Morales **MOVED** the Planning Board take jurisdiction for the proposed 18-lot cluster subdivision of Glenn and Kathleen Clark, 21 Burnt Swamp Road, involving MBL 10-4-8 (PB#05-03). Mr. Smith seconded, and the motion carried unanimously.

Before addressing the Board's interpretation of the Subdivision Regulation Section III.C. with respect to the Master Plan Natural Resources Chapter Paragraph 7 SLOPE (E) OVER 25%, Mr. Day opened the hearing to abutter comment:

Attorney Chris Boldt, *Donahue, Tucker, & Ciandella*, representing Joseph and Susan St. Martin, 5 Burnt Swamp Road. Mr. Boldt stated his clients have strong reservations about the propriety of the plan in view of the impact of the slopes, road pitches, and drainage issues that affect their property. They agreed with the Board's not taking jurisdiction at the last meeting because it was not complete due to the plan's problems, and ask that the Board strongly follow its Counsel's advice that this is not an outright prohibition but a consideration of the Master Plan. Mr. Boldt referred to a case law decision in Barnstead that Atty. Ned Lucas, *Cronin & Bisson*, alluded to at the March meeting. He noted that that particular case addressed growth control, and did not bear on this application.

John M. Barrett, 17 Burnt Swamp Road. Mr. Barrett asked about plans for reclamation of the gravel pit on the Clarks' property. Mr. Day assured him that reclamation remained a serious concern of the Board. Mr. Barrett noted that the gravel pit permit included a requirement for reclamation, and also a provision that no slopes would exceed 2:1. He contended that there were slopes which did in fact exceed the permitted limit, and that they constitute a hazardous condition and citing one accident in which, fortunately, no one was injured.

Mr. Day closed the hearing to abutter comment and asked the Board whether there were further comments and questions.

Mr. Morales asked Mr. Berry whether proposed lots #16 and #17 were non-buildable lots, noting the presence of vernal pools. Mr. Berry responded that the lots were to be non-buildable and recorded as such. He noted that lot #18 was also non-buildable.

Mr. Day directed the discourse to the applicant, indicating that if he is willing to revisit the use of 15% slopes and greater for development, then continuing the hearing is justified. If the applicant is unwilling, the Board may be faced with another decision.

Mr. Cronin responded by indicating the applicant would like to go forward with the present plan as it stands. A Board decision will give him something to address and perhaps appeal.

Mr. Day addressed the Board, stating that the applicant appears unwilling to reconsider the plan to avoid the development of land with slopes of 15% and greater. He noted that the Board may be obligated to deny such an application by the subdivision regulations.

MOTION: Mr. Morales **MOVED** the Planning Board **DENY** the single family cluster residential development application of Glenn and Kathleen Clark, 21 Burnt Swamp Road, involving MBL 10-4-8 (PB#05-03), for the applicant's refusal to exclude from the development plan that land which contains slopes of 15% and greater, as is required by the East Kingston Subdivision Regulations Section III Purpose and Intent Paragraph C. in reference to the East Kingston Master Plan Natural Resources Chapter, Paragraph 7.SLOPE (E) OVER 25%. Mrs. Belcher seconded, and the motion carried unanimously.

Mr. Cronin asked the Board whether it was denying the entire plan, or just the building lots in question. Mr. Burton asked how do we do that. Mr. Cronin suggested that we approve the plan but deny the lots in question as non-buildable. Mr. Burton stated that the Board has denied the plan.

Mr. Day closed the hearing.

PUBLIC HEARING FOR KEVIN AND CHRISTINA FERRERI, 4 GREYSTONE ROAD (MBL 17-1-14) REGARDING A LOT LINE ADJUSTMENT INVOLVING ADJACENT MBLs 17-1-15 AND 17-1-12 (PB#05-04).

Mr. Day opened the hearing, acknowledging the presence of Mr. Ferreri, Mrs. Lister, and Ms. Morash, the three parties to the application. He described in brief detail how Mr. Ferreri's dilemma was the unfortunate result of having mistook a pipe in the ground for a lot boundary monument, with the subsequent construction of his swimming pool on his neighbor's property. The proposed lot line adjustment would swap enough land amongst the three neighbors to preserve each lot's conformance to the zoning ordinance minimum lot size requirements.

For the applicants: Paul F. Nichols, PE, LLS. Mr. Nichols acknowledged having prepared the plan for the applicants. Mrs. Belcher expressed her opinion that his work appeared very professional and complete. Mr. Nichols noted that Mr. LK Smith had been consulted with regard to their requesting waivers from having to conduct a site specific soils survey and delineate wetlands and topography on the plan.

Mr. Day asked Mr. Smith to address the requests for waiver, and Mr. Smith indicated that both requests were reasonable in view of the information having been prepared previously in detail for the original subdivision and the simplicity of the application itself.

Mr. Day opened the floor to abutter comment, of which there was none.

Mr Day suggested he would entertain motions in regard to the requested waivers in view of the Conservation Commission Chairman's advice, and the application's straight-forward simplicity.

MOTION: Mr. Smith **MOVED** the Planning Board grant a waiver from East Kingston Subdivision Regulations Section X –Soils and Wetland Data Requirements to Mr. Ferreri so as not to require a site specific soils survey in view of the advice of the Conservation Commission. Mr. Morales seconded, and the motion carried unanimously.

MOTION: Mr. Smith **MOVED** the Planning Board grant a waiver from East Kingston Site Plan Regulations Section IV –Submission Requirements, B.11. to Mr. Ferreri so as not to require the plan depiction of wetlands and topography in view of the advice of the Conservation Commission. Mr. Morales seconded, and the motion carried unanimously.

Mr. Day described a list of proposed conditions of approval as the following, and entertained a motion for conditional approval:

1. Certificate of Monumentation signed by the East Kingston Building Inspector.
2. Final mylar to include the stamp and signature of the licensed land surveyor.
3. Final mylar to include signature blocks for each of the three parcel owners making application, with a note stating the signatories each agree to the lot line adjustments affecting their respective lots.
4. Final mylar to include a detailed description of each waiver granted by the Planning Board.
5. Final mylar to be submitted to the Board for chairman signature and recording.
6. All fees and charges due the Town in connection with the lot line adjustment, including but not limited to the reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town be fully discharged.

MOTION: Mr. Smith **MOVED** the Planning Board approve the lot line adjustment proposed by Mr. and Mrs. Ferreri, Mr. and Mrs. Lister, and Ms. Morash, MBLs 17-1-14, 17-1-15, & 17-1-12 (PB#05-04), with the following conditions:

1. Certificate of Monumentation signed by the East Kingston Building Inspector.
2. Final mylar to include the stamp and signature of the licensed land surveyor.
3. Final mylar to include signature blocks for each of the three parcel owners making application, with a note stating the signatories each agree to the lot line adjustments affecting their respective lots.
4. Final mylar to include a detailed description of each waiver granted by the Planning Board.
5. Final mylar to be submitted to the Board for chairman signature and recording.
6. All fees and charges due the Town in connection with the lot line adjustment, including but not limited to the reviews of Town Counsel, Town Engineer, RPC Senior Planner, and Fire Department, and administrative costs incurred by the Town be fully discharged.

Mr. Morales seconded, and the motion carried unanimously.

Ms. Morash expressed her disappointment with the building permit process in East Kingston. She contended that, had someone, i.e., a building inspector, checked the original permit for proper boundary marker locations, this would not have happened. Mr. Donald responded, stating that he considered the owner ultimately responsible for knowing the bounds of his or her property, and that to require such a degree of permit scrutiny would invariably increase costs to the taxpayer by virtue of time spent on the job, and the total cost to obtain a permit. More to the point, the Town would be asked to assume yet another responsibility that rightfully rests with the landowner.

Mrs. Lister, a party to the lot line adjustment, informed the Board that she had hoped to have a discussion with the Board about a three-lot subdivision of her own property. She was advised that a "discussion-only" meeting with the Board in May can certainly be scheduled, but if she would like to submit an application, the submission deadline for the 19 May meeting is Thursday, 28 April 2005.

Mr. Day closed the hearing.

CONTINUED BOARD BUSINESS:

More Action/Info Items-

New ordinance and regulation books- Mr. Day noted that each member should already have the 2005 edition, with a red cover, and those who would like three-ring binder versions, please let him know. Mr. Morales, Mrs. Belcher, and Mr. Burton expressed their desire for the three-ring binder version.

Tax maps- Mr. Day observed that the 11x17 tax maps the Board is working from are dated September 2003, that the Town Office maps are dated September 2004, and that we shall be getting updated maps in July 2005.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Morales seconded, and the motion carried unanimously at 10:05PM.

Respectfully submitted,

James Roby Day, Jr.
Minutes approved *17 May 2005*