



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

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

MINUTES
(Work Session April 22, 2004)

CALL TO ORDER: Chairman Day called the work session of the East Kingston Planning Board to order at 7:00PM.

ROLL CALL: Mrs. Lonek called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Vice Chairman Mr. RA Smith, Sr., Dr. RA Marston, DVM and MB Dworman, ex-officio
Alternate members present – Mr. JD Burton and Mr. EV Madej
Advisers present – Ms. Maura S. Carriel, Rockingham Planning Commission (RPC) Senior Planner,

BOARD BUSINESS:

Mrs. Belcher stated that she thought Ms. Carriel did an excellent job writing the chapter. She added that she compared Ms. Carriel's draft to what already exists and there is an incredible difference. She noted that Ms. Carriel's draft is more explanatory than the previous one. Mr. Burton stated that it was a definite improvement.

Ms. Carriel stated that thanks can also go to the Hampton Falls Planning Board because her chapter is taken a lot from theirs, which was done last year. She added that these two towns have the same issues.

MINUTES:

Mr. Day noted that the Minutes from April 15 are done and will be distributed after the meeting. They will be voted on at the next meeting.

Notes & Asides—

Mr. Day asked the Board if they had any comments regarding how the Board is doing business. Mr. Burton stated that he thought Mr. Day was running the Board very well. Mrs. Belcher stated that she thinks Mr. Day does an awesome job. She added that she thinks Mr. Day is very fair and that he doesn't let issues become personal. She also noted that she is glad Mr. Day is Chairman.

Mr. Day stated that he would like the Board to work hard to keep him honest in terms of how things are done. He added that if anything is going to trip the Board up, it will be procedure. If a step is skipped, there is potential to end up in court.

Granite State Challenge

Ms. Carriel stated that, as part of their annual municipal board training series that the Planning Commission puts on, there will be two training sessions scheduled for June 2 and June 23, both Wednesday nights. This is the Granite State Planning Board Challenge. Ms. Carriel said that the June 2 session will be a good training session for new Planning Board members or anyone to get planning board basics and it will be fun as well. It will eventually evolve into planning boards putting together teams. She added that it will be a good opportunity to get procedural questions answered. The June 23 session is the conservation commission/planning board relationship session. This will focus

on how to get conservation commissions and planning boards to have a better relationship in terms of reviewing plans.

90 days to a decision

Mr. Day stated that the site plan review note that addresses the period for rendering a decision is 90 days. It was corrected in the subdivision regulation, but it was missed in the site plan review. He added that this is an administrative detail that can cause problems. It is actually supposed to be "65 days". He asked the members that if they see something wrong in an ordinance or regulation, to please bring it up.

Mr. R. Smith stated that he recalled that a while ago the Board went over the site plan review and made a lot of changes. Ms. Carriel stated that changes are made every year. Mr. Smith brought up the 0.5 footcandle issue and Mr. Day stated that that has to be fixed. Mr. Day noted that if these are picked up, they can be construed as administrative corrections. He added that Ms. Carriel is working to incorporate the ordinance and regulation changes from Town Meeting and she and Mr. Day will review them.

Mrs. Belcher asked what the possibility was of making the books a little more user-friendly. Mr. Burton added that it would be much better if it was on a disc so that word searches would be possible. He added that if he had it on a disc, he could set up his laptop and search for any word. Mrs. Belcher stated that in place of the headers, it would be better if it said what the information on the page actually was, i.e., Article IX. She added that it is difficult to find a certain topic. Mr. Day stated that it is missing an Index. He added that Microsoft Word has an Index feature. Ms. Carriel said that she has it on a diskette set up in three different word files: ordinance, subdivision and site plan.

Correspondence

Mr. Day stated that he has spoken with counsel in regard to handing out the actual suits to members of the Board and was told he could do that because it is public information. As far as the Board discussing the suits, the Board would have to go into a non-public session. The Postle suit hearing is July 12 and the Mower hearing is August 10. He noted that they both will consist of 15 minutes per side making arguments in front of the Judge. Mr. Day stated that Counsel has asked him to go to the first one and others may also be asked to attend. Mr. Day said that Larry Edelman would be representing East Kingston.

Master Plan Housing Chapter

Mr. Day stated that he has spoken with Glen Greenwood. He added that he thinks there might be a way to rearrange schedules so that the NROC business and the Board's business are not conflicting. He stated that the Board might be able to take the work from this master plan chapter and push it into July or August so that it is not conflicting with NROC. The Board would just pay RPC the balance of the \$800 up front before the end of June. Ms. Carriel stated that they do have a draft so they are obligated to send in some kind of a work product at the end of the contract year.

Ms. Carriel stated that she assumed that everyone had looked through the draft. Mr. Burton asked if the affordable housing statute was enacted before or after the Chester case. He added that it was a 1991 Supreme Court case, but it might have been decided under 1988 statutory law. He noted that RSA 672:1 II is the one that deals with the opportunity for development of affordable housing.

Mr. Smith suggested getting a whole lot of people in and explaining what the Board is trying to do. Mr. Burton stated that the first thing the Board has to decide is where it plans on going with this. He noted that Ms. Carriel has made her recommendations.

Mr. Smith noted that, with regard to the table on page 10, he didn't feel the Town of East Kingston was very far off from other towns.

Ms. Carriel stated that she had hesitated to put that table in because, from a Planning Commission perspective, it is outdated and never had complete buy-in and consensus. Mr. Smith stated that what was needed was an update which would include the number of elderly housing units. Ms. Carriel noted Senate Bill 95, which was legislation

that came out of the Senate in 2002/2003. It passed in the Senate and was defeated in the House. One of the things that that draft legislation attempted to do was to exclude elderly housing from being considered affordable housing since it is restricted to a certain segment of the population. She added that if that legislation came back and succeeded, towns would not be able to use elderly housing as a way to get around the affordable housing issue. Mrs. Belcher noted that the elderly also need affordable housing.

Mr. Smith stated that there was supposed to be a block of affordable housing in the Maplevale development. Ms. Carrie noted that it is age-restricted (it is only for 55 and older) and, therefore, it is not available to the community as a whole. Mr. Smith stated that if the elderly came and could not afford one of the fancy units, they could take an affordable one.

Mr. Burton stated that Kensington and Brentwood, at least in 1990, seemed to be in the same place as East Kingston. Mr. Burton asked what is the town required to do by State law. He added that everyone assumes that low income housing means subsidized housing or government housing, which it doesn't. He said that he thinks it is also not clear enough in the case law or the statute to force us to act on those statistics. He added that he thinks there are things in the case law and statute that we are going to have to look at very hard.

Mr. Day asked if the Board could step back from the housing chapter and look at the Master Plan as an entity. He said the States' description of what a planning board's duties are has to be looked at. RSA 674:1 spells out the duties of the planning board in six paragraphs, the first three of which have to do with the Master Plan. He stated the Board's first duty is the master plan. He added that subsequent RSAs go on to talk about what the Master Plan should look like including the addition of a Visioning Chapter or something to that effect. He questioned if what the Board was doing with the housing chapter today was in consonance with where it should be going with respect to the whole Master Plan. He said that if it is not, the Board is wasting its time.

Mr. Smith stated that Mr. Day had said that the housing chapter was the worst chapter because it did not include elderly housing and the Board was redoing the housing chapter to get it up to speed so that it would fit into the Master Plan. He added that next year the Board could redo the Master Plan.

Mrs. Belcher said that the housing chapter was the most outdated one. She asked that since East Kingston and Exeter use the same school, is it possible to latch onto their numbers.

Mrs. Belcher stated that the numbers for Exeter and Seabrook were fine for them, but East Kingston is not like those towns. She stated that if you ask anybody who lives in East Kingston why they like living there, it is the make up of the housing and the mix. She added that the voters are going to be leery of anything the Board presents to them because they already feel that the Board snuck the elderly housing issue past them. She said that the Board has to tread cautiously about anything that it presents to the voters. She said that she doubts that zoning for affordable housing would pass with the voters. She added that the town's people are already angry about Maplevale, Cricket Hill and Country Hills. She doubts they will say yes to anything for a while.

Mr. Day stated that Ms. Belchers' concerns are why he wants to push this issue into July or August or sometime after NROC is done because the public needs to be drawn into this process. Mr. Burton brought up the Chester situation, where they had a zoning board that was actually more flexible than East Kingston. He stated that clustered housing was allowed in two special districts. East Kingston does not have clustered zoning, there is an open space ordinance which allows moving units together, but it still has to be on two acres. He noted that the Supreme Court of New Hampshire said that that kind of a zoning ordinance could not be enforced against somebody who wanted to break the two-acre rule. He added that what they said was that they would give the town of Chester some time to adopt a conforming zoning ordinance because it did not want to leave the entire town of Chester with no zoning ordinance. They said this statute is unenforceable and they ordered the town of Chester to revise it. He said that that statute is exactly what East Kingston has. What the town of East Kingston is faced with is a situation where there is a case that is 13 years old in the Supreme Court of that on its face anyone can walk in and say they want to build an apartment building and the town does not have an argument against them.

Mr. Burton went on to say that this is basically keeping poor people out of the town. He added that members of the police department cannot afford to live in the town. He stated that it is not good if the police do not live in the town in which they work. He added that if someone brings a case against the town, the courts will be the ones to decide

what shape a particular development will take. The Board will lose all control over anyone who wants to jump through this big open hole in the ordinance. The Board will no longer be able to choose if they want to add cluster housing, three-family units, or attached apartments, etc.

Mr. Burton said that if somebody wanted to walk into East Kingston and put up an apartment building, all they would have to do is go to court. He added that by not addressing the issue, the Board is giving up control of things that it might otherwise have control of. Most of the surrounding towns are ignoring this issue. Eventually the land around here is going to be valuable enough so that developers will find it useful to bring these cases. By ignoring the statute, we are giving up control.

Mr. Smith asked how they could put an apartment on two acres. Mr. Burton stated that they could put an apartment on 10 acres. He added that that is not the point. Right now they cannot put an apartment house on 100 acres.

Mr. Smith stated that that was a concern in the beginning when the Board put in a site plan review. He added that it was put in to try to keep condominiums and those things out. He added that he thought it would be an excellent idea to have an apartment house on 100 acres.

Mr. Day stated that zoning is social engineering. Mr. Burton stated that one of the things that make people uncomfortable about open free markets is the fact that one of the advantages of regulating economic activity is that you can control the poor people, they can be kept out. That is the thing that is happening here. Mr. Burton stated that he thought that people should be allowed to do with their land a little more than is currently allowed. Mr. Burton added that what the Board is doing is telling people what they can and cannot do with their land.

Mrs. Belcher stated that all of the ideas of zoning should be included in the town. Mr. Burton stated that you can take some incremental steps that do not involve manufactured housing. He added that he felt they could get away with not having multi-family housing if it was done right. Mrs. Belcher noted zoning by soil types. Mr. Burton stated that his problem with zoning by soil types is that it ends up being completely uncontrolled. Mr. Burton added that the question before the Board is are they going to just put their heads in the sand and wait for someone to come along take them to court or are they going to actually consider what the real law is. He stated that at the very least, the Board has to go to the voters and give them the facts.

Mr. Burton said the question is how does the town zone. It is a residential community. It has already been decided that they do not want any tax money from commercial or industrial entities.

Mr. Smith offered a new suggestion that they rezone the area from Monahan's corner to the Kingston town line as a multi-family district so that two-family houses would be allowed (a village district). He added that they could convert their existing houses into two-family houses and that would get more people into the center of town and keep them out of the suburbs. Mr. Burton said that two-family housing is allowed on three acres.

Mr. Smith stated that there could be another district from the post office to the town line on the westerly side of the road as an apartment district. Mrs. Belcher stated that she did not think there was buildable land there. Mr. Smith stated that Mr. Lewis had about 30 acres in that area that are buildable.

Ms. Carriel stated that what she thought the housing chapter has to do is show what the picture is in terms of housing right now. Everybody knows that housing is expensive and what these statistics and demographics show is how East Kingston fares compared to the surrounding towns. She said that it gives an interesting piece of information when you look at median family income and what someone can afford. She added that this is not low income, this is about what kind of diversity do you want to see in the population in your town. Ms. Carriel stated that she used the county median for an example in her draft. She added that what they should start off doing in terms of a public forum is explain to people what is being undertaken, talk about the general trends in terms of housing and the concept of what happens when someone's kids move out and want to live in town, but cannot afford to do so. If there are no multi-family units, that means that there is a limit to affordable housing. Mr. Burton stated that he thought there had to be multi-family housing.

Mr. Day said the cost per unit is cheaper for multi-family housing. Mr. Burton noted some of the towns around Manchester have a lot of houses that have in-law apartments. He added that what it does is create a separate community within a community.

Mr. Day noted that while looking at the two or three comparative tables and the Exeter data distorts the rest of the data dramatically. He added that as an exercise in futility, he factored out Exeter in Table H2, Housing Ownership and Occupancy to see if ignoring Exeter would bring East Kingston numbers into a clearer perspective as to how the town measures up. Consistently, he said, East Kingston doesn't look quite so divergent as a consequence. Exeter is dramatically different from everyone else around East Kingston. It is a little city with DPW, water and sewer, full time fire and police, 14,000 population. He asked if East Kingston is doing itself a disservice in including Exeter in these statistical summaries to try to see where to go.

Mrs. Belcher stated that East Kingston cannot compete with Exeter. Ms. Carriel stated that Exeter is in there because it is a neighboring community and they share the same school district. Mr. Day stated that the pressures on the housing stock are dramatically different, the pressures on municipal services is very different. Ms. Carriel stated that the reason for it being there is when the growth control ordinance is done, neighboring communities are looked at to see how the town compares.

Mr. Day referred to the Housing Ownership and Occupancy chart. He stated that the line entitled "Area total and average" under Owner Occupied, East Kingston is 92.5% and without Exeter, East Kingston is 89.4%. This brings it much closer to where everyone else is. The renter occupied number without Exeter is 10.6%, so it is a little lower but not dramatically. Mr. Day added that with respect to the Vacancies, East Kingston is 2.9%, without Exeter the average is 2.8% so East Kingston is in the same ballpark. Mr. Day asked where does the Board go from here and what kinds of things will it recommend to the town.

Ms. Carriel said that what this is supposed to be is an inventory or a description of what is currently available.

Mr. Burton stated that the preliminary question is whether the Board is going to recommend any changes. He added that based on the Supreme Court case against Chester, if we want to comply with the state law we have to make some changes.

Mr. Dworman said that he thought the town would be more willing to accept the village concept, designating certain areas with different acreage zoning. He feels the town would be more inclined to accept that idea because it fits in with the character of the surrounding communities.

Mr. Burton stated that by putting more units per acre, you are creating economics that are more favorable to people who are not rich.

Mrs. Belcher stated that she also likes the idea of allowing in-law apartments. She added that she didn't know if that would have to be restricted to a specific area, but she thinks it works for people who want to maintain their property as it is cheaper to convert a portion of their home or make an addition with a separate dwelling. Right now duplexes are allowed, but they have to be connected. She stated that there are some of these types of properties in town, but they are either grandfathered or illegal. She added this would give people more use of their property if they wanted an income apartment.

Mr. Burton brought up the idea of converting garages into separate living areas for college kids or elderly parents. He stated that he thought the town would go for something like that. He added that with elderly parents, they don't necessarily want to live in the house with the rest of the family, they want to be independent.

Mr. Dworman asked why would someone want to live in an apartment in East Kingston when they could live in one in Exeter or Portsmouth. They would not be working here because there are no jobs in East Kingston. He added that the people who would rent an apartment would be a relative or an in-law.

Mrs. Belcher disagreed because she stated that there is such a need of housing stock in this area. Not everyone who wants to rent an apartment wants to live in a city atmosphere.

Mr. Day suggested adding a category for elderly housing on Table H3, Housing Distribution to paint a clearer picture and address the elderly housing question. Ms. Carriel stated that she would talk to Kory Skalecki to find out the number of units. Mr. Day stated that the Board should go into a public forum with its own list of ideas and recommendations.

Mrs. Belcher asked at what point does a house with an in-law apartment become a duplex or an apartment building. She stated that it would have to be very clear on that issue. Ms. Carriel stated the Planning Commission did a model ordinance which some towns use, which says the size of the accessory apartment shall be a minimum of 600 sq ft and shall not exceed 1/3 of the living area of the entire dwelling. So there is a cap. It distinguishes between in-law apartments and duplexes. Ms. Carriel stated that it has to have its own entrance with kitchen.

Mrs. Belcher stated that using the village concept would throw out the growth control ordinance because if a developer bought a 50-acre parcel to build a village it would not be economically feasible if he were given only three permits per year.

Mr. Day stated that that since it would be considered an innovative land use, growth control would not apply.

Ms. Carriel stated there can be soil based lot zoning where you allow a lot to be sized according to its septic suitability.

Mr. Burton stated that you can transfer the rights to develop 10 acres of your land which is five units to someone in another district so they can develop 5 units of 5 acres of their land called density redistribution. Mr. Day stated that it is like pollution credits.

Ms. Carriel stated that she thought there were two towns that have transfer development density rights and she didn't know if either of them have used it. The problem is there have to be a market for it.

Ms. Carriel added there is another concept that can be introduced which is called "inclusionary zoning" whereby a developer comes in and the town tells them that they will allow a density bonus if they agree to make some homes smaller in square footage or permanently protected to be sold at a below market rate. Ms. Carriel stated that Exeter has a project like this right now. She added that inclusionary zoning could be part of open space where cluster is allowed.

Mr. Day stated that there was town in Reston, VA created in the 1950s. There was an entire variety of housing options where people can move up or down and not leave the town.

Mr. Burton stated that a town the size of East Kingston cannot be expected to have every single option for every income level because it is not practical.

Ms. Carriel stated the case law requires that towns allow the opportunity for a diverse housing stock. Mr. Burton added that the town does not have to make sure it has affordable housing, it has to allow the people who own land in the town to build affordable housing.

Mr. Dworman stated that he thinks the smart growth method is the way to go because you are able to maintain the goals of the Master Plan, able to maintain the character of the town by rezoning certain areas with smaller lot sizes. It would be a less expensive way because there could be building on 1/2 acre lots instead of two acre lots.

Mr. Burton stated that there could be community septic and well. He added that he would not want public water or sewer because of the taxes.

Mr. Day stated that the cluster housing ordinance provides for that and the elderly housing ordinance also does that.

Ms. Carriel stated that one of the planners (Jill Robinson) has developed a visual presentation of the village concept or hamlet, which is smaller. It gives a good explanation of what the village concept is and what are some of the key

factors. She added that the NROC presentation will talk about land use regulations. Ms. Carriel suggested another work session and do a public presentation after NROC.

Mr. Day stated that he Board has to flush out all the recommendations and add an elderly housing portion to the database.

Mr. Burton stated that he did not find the comparison with neighboring communities all that instructive. To him, what was constructive was the comparison of how much people make to how much of a house they can afford.

Mrs. Belcher stated that having Exeter's number in the comparison throws East Kingston's number off and it gives a false representation. Ms. Carriel suggested just doing a comparison to the RPC region, which are 27 communities from Portsmouth to Salem. She added that when the statute talks about housing, a community's responsibility is to look at the regional housing demands.

Mr. Dworman suggested dividing it to include the regional but also a separate one comparing East Kingston to other similar communities such as South Hampton and Kensington.

Mr. Day stated that it is instructive to note that East Kingston is in good company with immediate surrounding town whose profiles are the same.

Ms. Carriel said that there has to be some planning for a public session. Mr. Day stated that they have to be prepared to make recommendations. It has to be explained to them what the rules are and what the Board recommends. Ms. Carriel suggested going through the NROC presentation first.

Mrs. Belcher noted page 9 of the draft where it says that the town would need to add approximately 30 additional units. Ms. Carriel stated that she would like to take this out. Mrs. Belcher stated that this would give a developer an argument to say that it is in the housing chapter. Ms. Carriel is considering taking out that whole table and just talking more about the regional needs assessment that is being done now.

Mrs. Belcher stated that it can be addressed by innovate land use tools for example village, in-law apartment, lot by soil base. It doesn't mean that the town will have them all but they will be a part of the Master Plan.

Discussion ensued regarding demographics and whether they should be included in this chapter. Mr. Burton stated that he felt that it is dangerous to mix demographic discussion with zoning discussion because of the history of courts knocking down zoning ordinances and saying that a town is using a zoning ordinance to create certain demographics.

Mr. Day stated that the next challenge is the Vision Statement and that is probably where demographics would come in. Mr. Day asked Ms. Carriel what the Board could do to help with the next step. Mr. Burton stated that he thought it would be a good idea if members of the Board gave their own comments for Ms. Carriel.

Ms. Carriel said what she would like to focus on between now and the next month is to make the changes, take out the 1994/1996 housing needs and put something that reflects what is being done now. She is going to take the old and out of date numbers out. Also she wants to look at some ways to streamline the information. She asked for specific information from the members.

Mr. Smith suggested keeping the first ten pages and changing pages 11 and up.

Mr. Day stated that NROC picked East Kingston as having natural resources that they wanted to look at.

Mr. Day said Saturday, May 15 will be the Tebo site walk.

Adjournment:

Respectfully submitted,

HELEN M. LONEK
Recording Secretary

Approved 5/20/04