



Planning Board
Town of East Kingston
New Hampshire

2003-2004:
James Roby Day, Jr., Chairman
Richard A. Smith, Sr., Vice Chairman

MINUTES
(Working Session of 1 May 2003)

Call to order: Chairman Day called the meeting to order at 7:05PM

Roll call: Members present - Cathy Belcher, Roby Day, Jack Fillio, Dr. Marston,
Alternate member present - Eugene Madej

Mr. Day presented an agenda which divided the business in hand into Board Business and Agenda Business. The Board decided to pursue Board business first. It was noted that Mr. Richard A. Smith, Vice Chairman, was absent, and that Mr. Madej shall act in his stead as a voting member.

Recruitment- The Board reviewed a letter from Mr. John D. Burton, 129 Havenhill Road, East Kingston, expressing interest in an appointment as a Board alternate member. In discussion, Mr. Burton's qualifications were reviewed, and the Board's needs assessed.

MOTION: Mrs. Belcher **MOVED** the Board recommend to the Board of Selectmen they appoint Mr. Burton to an alternate member position on the Planning Board. Mr. Fillio seconded, and the motion carried unanimously.

Expectations- Mr. Day asked the Board to cogitate on how we would like to function in our public meetings, and in our administrative work. It was generally agreed that the Board would try to follow Roberts' Rules of Order for formal meetings and hearings, focusing discourse through the chair, and minding the clock.

Mr. Day asked the Board to undertake an effort to identify flaws, typos, oversights, and any other shortcomings in the body of ordinances and regulations. If such errors and omissions are identified routinely, they can be dealt with easily in the hearing process. All agreed to do so.

The Board's budget was examined, and it was found that our pro-rated expenditures to date for 2003 leave us approximately \$2643.69 ahead at the end of April. However, that said, economies can still be found to save tax dollars by not sending certified mailings to the Town, and requesting Board members pick up Board materials from the Town Office from time to time.

Mr. Day spoke to his concern about having a long-range picture for the year which identifies required activity, such as Capital Improvements Program, Growth Control Ordinance, and Master Plan updates. No one disagreed.

Town Council, John V. Daly, Esq., addressed in a memo dated 30 April 2003 four questions regarding bonding in the case of the National Tower monopole construction and maintenance (see enclosure). Bonding was a condition of approval, and Mr. Daly's comments indicated Mr. Jim Rech was not agreeable to some of the desired parameters. Board discussion ensued, and concluded that the applicant be informed by council that

- 1- The removal bond be in the amount of \$15,000, together with an escalation clause to anticipate increasing costs.
- 2- The Board cannot accept a provision for bond revocation for any reason upon 30 days' notice.
- 3- The Board will accept no less than three (3) years for the timeframe in which lawsuit or proceedings may be brought against the bonding company. Council has advised that 3 years is the standard New Hampshire requirement.
- 4- A completion bond is not necessary in view of the utility of the removal bond.

Bylaws revision- The Board reviewed proposed changes to the 1991 Planning Board Bylaws, Rules of Procedure, and General Governing Rules. The proposed changes encompass current state statute requirements, updating the Board's internal structure and officer responsibilities, and refinements in Board procedures which ought to clarify how business is conducted.

MOTION: Mrs. Belcher **MOVED** the Board accept the proposed changes to the bylaws, and present them in a public hearing on 15 May 2003 at 7:15PM. Dr. Marston seconded, and the motion carried unanimously.

The Board agreed to attend to an Agenda item, and return to Board business thereafter.

Cook/Sullivan Subdivision- The Board reviewed correspondence presented by several abutters submitted since December 2002 which addressed their concerns. The Board concluded that the presentation of Mr. Frank Postle, 7 Ashlie Road, in a letter with enclosures dated 17 April 2003, encompassed the most thoroughly catalogued delineation of abutter concerns. He enumerated 19 questions/opinions, summarized as follows with the Board's responses:

- 1- Application of Zoning Ordinance Article V, H. Mr. Postle contends that the Light Industrial Zone employs more restrictive setbacks and other requirements than the Town Residential Zone. He interprets this to suggest that the greater restrictions should apply. He also indicates that there might be conflict in the event of a change of use from industrial to residential with subsequent impact on setback requirements for adjoining industrial lots.

Board response. The underlying zoning for all of East Kingston is residential/agricultural. In this particular case, the applicant might choose to use the land to grow corn, raise pigs, build houses, or establish a furniture repair shop. By choosing a residential use, the applicant must comply to all residential land use parameters, and adjacent, undeveloped lots must logically conform to applicable setback requirements in their turn. As lots are developed in one use or another within zones permitting different uses (e.g. Light Industrial/Residential), particular zoning requirements shall be applied, and the clear implication is that some uses may subsequently be restricted for individual lots as a consequence. This is not considered contrary to the theory and practice of zoning in New Hampshire.

- 2- The backlot (11-2-11-3). Mr. Postle contends the proposed backlot is in fact a backlot for proposed lot 11-2-11-2. That lot is only now being created by virtue of subdivision, and therefore does not meet the ordinance requirement of being a lot of record from before March 13, 1996. He further contends that the ordinance wording speaks of "both" lots, the implication being the ordinance anticipated only two lots from such a subdivision.

Board response. Article IX.B. is not specific enough to preclude conflicting interpretations. One might accept Mr. Postle's interpretation of "lot of record", or one might take the original, un-subdivided lot as the lot of record, and accept that, in the proposed subdivision, there is only one backlot created, and it meets all of the remaining Article IX requirements. The Board shall ask for legal council opinion in the matter.

- 3- NH DOT Driveway permit. Mr. Postle contends that the original driveway permit was predicated on a plan for elderly housing, and not a light industrial environment.

Board response. The applicant has submitted a new permit application with the State for the new proposed use.

- 4- Upgrade of Bowley Road to a Class V road. Mr. Postle relies on RSA 231:22 Reclassifying a Class VI Highway to indicate that any change to the status of Bowley Road requires a vote of the legislative body (Town Meeting).

Board response. Ongoing discussion with the Board of Selectmen indicate they approve of upgrading the road, and further research is being done at the Planning Board level with the NH Office of State Planning (OSP), legal council, and the NH Municipal Association.

- 5- Subdivision Regulation Sec IV.H. The regulation requires a 20 ft radius curve at street intersections. Mr. Postle's implied concern is not the radius, but rather a perceived "taking of land" by virtue of the creation of new road frontage along what was formerly the side of a residential lot (30 ft setback vs. 10 ft setback). He also refers to RSA 674:25 Districting Under Interim Zoning Ordinance which requires a 50 ft setback.

Board response. East Kingston's ordinance setback of 30 feet is applied to a lot's frontage. Abutting lots in this instance are described as having their frontages on Ashlie Road in their deeds and in Town records. It follows that setback requirements applicable at the time the lots were created remain unchanged.

With regard to RSA 674:25, East Kingston's ordinances are not interim, and the RSA is not applicable.

- 6- Continuation of Ashlie Road. Mr. Postle contends that Subdivision Regulation Section IV.A requires for "the continuation of the principle streets in adjoining subdivisions.." He interprets this to mean the new road connection must not be an intersection with a stop sign, and that the applicant must apply for a waiver.

Board response. The intent of the Section IV.A provision is to provide for the smooth flow of traffic. NH OSP strongly encourages such planning to mitigate congestion, and to promote access for emergency services. There is nothing inherent in the word "continuation" from which to infer stop signs and intersections ought not be employed.

7- Delinquent property taxes.

Board response. There are none.

8- Additional test pits.. Mr.. Postle indicates some test pit information is not provided.

Board response. Sheet 7 of the current subdivision plan present information from pits dug on 19 March 2003.

9- Bowley Road/Sullivan Drive intersection sight lines. Mr. Postle believes there is inadequate sight line to the south of the intersection.

Board response. The applicant indicates his plans provide for adequate sight lines. In any event, all sight lines in any Town development must meet Town standards, or State standards where applicable.

11- (There is no #10) Use of easements to meet minimum lot size. Mr. Postle is uncertain whether the lots are adequate in view of easements and wetlands.

Board response. Every lot created in any subdivision must conform to standards which call for sufficient upland, setback from wetlands, septic system needs, and consideration of utility easements. The applicant's proposed lots meet or exceed all the Town's, as well as State, requirements.

12- Access to industrial development via Ashlie Road. Mr. Postle objects to connecting industrial lots directly with residential lots.

Board response. It may be appropriate to use road signage to control commercial traffic. The Town Highway Agent and Board of Selectmen are in a position to address such a concern.

13- Retaining wall on road intersection. Mr. Postle's concerns regard placing a wall on a property line and its maintenance.

Board response. There is no retaining wall on current plans.

14- Proximity to power lines for residential lots. Mr. Postle expresses concern for supposed health issues from exposure to EMF radiation. A power utility easement traverses the proposed residential properties.

Board response. East Kingston has no regulating authority in either ordinance or regulation governing the accommodation of power utility easements. Mr. Postle's literature from California and elsewhere does raise some environmental groups' concerns with unchallenged scientific conclusions of suspected adverse effects from living in close proximity to high-tension power lines. More to the point, the State of New Hampshire governs the employment of such utilities equipment, and how the private sector may be compensated by its placement on privately held property. Public electric utilities easements criss-cross East Kingston, through developments, past private residences, and each has had to conform to state and federal statute.

15- Impact on abutters and creation of new lot frontage.

Board response. See response to Number 5 above.

16- Site specific Soil Survey. Mr. Postle suggests the plans are based on a soils survey done before the land was disturbed by a gas pipeline utility.

Board response. Site specific soil mapping is required where soils are complex. The soils in this property are of uniform consistency, as evidenced by soil test pits and site investigation by the applicant, and assessment by the Town Conservation Commission.

17- Driveway relocation. Mr. Postle provides a picture of apparatus associated with the gasline utility that he believes is in the path of a proposed driveway.

Board response. There is sufficient room within the property lines to adjust a driveway location to avoid any utility hardware. The applicant is permitted to construct access over gasline easements under the utility company's supervision.

18- Storm Water Drainage Analysis. Mr. Postle expresses numerous concerns with how an analysis ought to be properly done, and the issues it ought to address.

Board response. The East Kingston Town Engineer has reviewed the Drainage Analysis the applicant submitted, and has reported to the Board that all of his concerns regarding the subdivision plan have been addressed.

19- RSA 485-A:17 Terrain Alteration. Mr. Postle suggests that more than 100,000 square feet of area will be covered with an impervious barrier. Also, East Kingston Subdivision Regulation Section VII.B.1 requires other State applications be filed in that event.

Board response. The applicant states there is less than 100,000 square feet involved in this subdivision plan that would be devoted to structures and/or impervious roadway. In the event, this subdivision plan must be submitted to the State for its approval. As for the abutter's question regarding protected shoreland, the applicant notes the Powwow River at this location is not considered "fourth order", and thus does not require a permit under RSA 485-A:17.

The Board returned to Board business.

Subdivision and Site Plan Review Regulations revisions- The Board reviewed a proposed change to Subdivision Section XIV – Procedure for Obtaining Approval for Subdivision. The change encompasses the inclusion of provision to defray municipal review costs generated by municipal agents and the Rockingham Planning Commission Circuit Rider Planner. An updated fees schedule is included.

The Board reviewed a proposed change to Site Plan Review Section IV – Submission Requirements. The change encompasses the inclusion of provision to defray municipal review costs generated by municipal agents and the Rockingham Planning Commission Circuit Rider Planner. An updated fees schedule is included. The Site Plan Review Application is updated by deleting the fees schedule, and substituting a paragraph referring the question of fees to Section IV.4.

MOTION: Mrs. Belcher **MOVED** the Board accept the proposed changes to the subdivision and site plan review regulations, and present them in a public hearing on 15 May 2003 after 7:15PM. Mr. Madej seconded, and the motion carried unanimously.

Adjournment-

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

Respectfully submitted on 2 May 2003,

James Roby Day
East Kingston Planning Board

Minutes approved: _____