



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2006-2007:
James Mr. Day Day, Jr., Chairman
Catherine Ellen Belcher, Vice Chairman

MINUTES

(Work Session Meeting of 11 May 2006)

AGENDA:

7:30PM - Board Business
NH RAS-91-A:3 – Non-Public Session
TBA – Master Plan Goals and Visioning chapter revision
TBA - Town Center District zoning proposal
9:00PM - Adjournment

CALL TO ORDER: Chairman Day called the work meeting of the East Kingston Planning Board to order at 7:30PM.

ROLL CALL: Mrs. White called the roll. Members present were Vice-Chairman Mrs. CE Belcher, Chairman JR Day, Mr. Edward Albert Lloyd, Jr., Dr. RA Marston, DVM, Mr. RF Morales, and Mr. RA Smith, Sr.

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

BOARD BUSINESS:

Mr. Smith asked if tonight's meeting was illegal since the posting date at the bottom of the Legal Notice was the same date as the meeting. It was ascertained that, since the notice was posted on the 8th and not the 11th as typed, it was a typographical error and the meeting was not in violation.

Minutes-

MOTION: Mrs. Belcher **MOVED** the Planning Board approve the minutes of 20 April 2006. Mr. Smith seconded, and the motion carried unanimously. Mr. Morales did not attend the meeting, and abstained.

Zoning Board of Adjustment (ZBA) hearing - Mr. Day noted that the ZBA will meet on Thursday, 25 May, to hear an appeal from the Planning Board's decision to deny the Marston site plan application for a cell tower. He recognized Mrs. Belcher as a sitting member on the ZBA who has intimate knowledge of the application and issues. He requested that Mrs. White be sure Mrs. Belcher is provided with the applicant's appeal material.

Board of Selectmen (BOS) meeting - Mr. Day indicated that he had been asked to attend the next BOS meeting to address a question regarding subdivision fire protection provisions and the issuance of building permits.

Mrs. Belcher stated she had read the selectmen's meeting minutes, and it seemed to be a case of the cart before the horse - the cisterns ought to be accepted before the building permits are issued. Mrs. Belcher stated she believed Mr. Day should stand firm, for she believed the intent of the Board is to exercise some leverage with developers who would continue to build at their leisure [disregarding approval conditions]. Mr. Day stated he thought we were on firm ground and did not sense that anyone was in disagreement [on that point]. We have everything needed to deal with the present problem.

Mr. Smith stated his opinion that the Fire Department had been superseding the Planning Board right along, making decisions about what they think should be done. He felt the Planning Board should be making the decisions, and not the other way around. The Planning Board should be figuring out what should be done and making appropriate ordinance and regulation provisions to that effect. Mr. Smith concluded that it seemed that the Fire Department thinks they can do anything they want.

Mr. Morales stated that he thought they keep changing the rules. Another reason for the meeting is that the cistern is in, and a new rule came up that the cistern has to sit for 30 days to see if it will leak. Mr. Morales asked where did that rule come from, and why wait 30 days for the water to percolate out? He concluded that if the cistern doesn't leak in 24 hours, it won't leak. The rules should not be made up as they go along.

Mr. Smith stated it was always true that when someone put in a subdivision with multiple houses, there had to be a cistern and they had to be equal distance apart - 1200 feet. But he felt it ridiculous to require someone to put in a cistern for one house.

This is a requirement the Fire Department has imposed, and they have gotten away with it. They have no right to make those rules; it's the Planning Board's responsibility.

Mr. Smith observed that the National Fire Protection Association (NFPA) is just a body that formulates rules and regulations, but there is nothing that says you have to follow them. They are only recommended standards. Mr. Day suggested that the Planning Board can write the regulations to deal with such issues. Mr. Morales stated we need to bring the situation to a resolution and move forward.

Mrs. Belcher noted that Mr. Smith was in the Fire Department and a member of its Board of Engineers, and thought it would be helpful for Mr. Smith to attend Monday's meeting in view of his involvement with both the Fire Department and the Planning Board. Mr. Morales also encouraged Mr. Smith to attend, and noted confusion the administrative staff must deal with when requirements are not clearly spelled out for applicants and developers.

Cornerstone Elderly Housing - Mr. Day described a potential problem the Building Inspector and Planning Board may have with Mr. Glenn Tebo's construction. He noted that the storage space in some units has been insulated and dry-walled, with electrical outlets throughout, and the space was very close to being habitable. He believed that it would be a simple matter of plugging in a space heater or two to use the rooms as living space.

Mr. Morales observed that the builder has only been approved for 1,500 ft of livable space, and why not require the dry-wall be ripped out. Mrs. Belcher stated that since we did not stipulate just how the storage space was to be built, we would not have grounds to make the builder change it, and that if the space had no built-in heat, it would not be taxable as living area. Discussion ensued about the nature of living space, with Mrs. Belcher suggesting we shall always face varied interpretations of the ordinance and regulations. Mrs. Belcher asked if the situation was the Planning Board's error, and Mr. Day stated that it was not, for the storage space was labeled as such on the application plan. Mr. Morales asked if we needed to more clearly define living space, and Mrs. Belcher thought we might need to amend the definition of a storage room for future clarity. Mr. Lloyd suggested that the definition of living space is defined as having windows and a heat source.

Mr. Day concluded that Mr. Tebo is presently charged with finding his own solution by removing electrical power to the spaces, except for the code-required overhead light.

South Hampton subdivision development - Mr. Day described a development proposal in South Hampton which includes some acreage in East Kingston. He noted that the land can be reached from Pine Woods where there is a 60 foot wide parcel of land to access back land. Mr. Smith stated that the access parcel was owned by the son of the person who originally owned the whole parcel, and if the developer wanted to get into the property, he would need to purchase the access from the son.

Mr. Day indicated having received a call from South Hampton Planning Board Chairman Keller about their having the first hearing for this development on the 5th of June. Mr. Day stated he is planning to attend the meeting. He observed that this situation is almost identical to the dealings we had with Kingston over the Tebo property where Kingston said no development on Kingston property. Kingston contended that without direct access, it would be scattered and premature. Mr. Day concluded that we are on firm ground to object if they want to build houses in the East Kingston portion without direct access. Mr. Smith asked if it was the same developer. Mr. Day replied that it might be one of Turner Porter's business entities.

Mr. Smith stated there were old Indian sites on the property, and wondered if that would slow development down a bit. Mr. Day suggested that East Kingston must be involved in the planning approval process because of the land in East Kingston, and the East Kingston Planning Board must be signatories on the final plan.

When asked where the South Hampton portion was, Mr. Smith indicated that it is the old farm on Stagecoach Road, and that the owner considered a conservation easement, but got more money from the developer. Mrs. Belcher asked whether East Kingston had received formal notification, and Mr. Day stated we had not, but there was yet time before the first hearing.

Country Hills elderly housing - Mr. Day explained that Mr. Jeffrey Caley wanted to know if a guardrail could be wood, rather than metal which the approved plan describes. Mr. Day asked if it constituted a change of plan and should the Planning Board ask for an expert opinion.

Mr. Smith suggested the Town Engineer look at it, and Mrs. Belcher agreed in light of the Board not having the expertise itself. Mr. Day stated that Mr. Caley considered it a matter of aesthetics. Mr. Day observed that the proposed change showed 6"x8" wooden beams he thought would be fairly substantial, and Mrs. Belcher also suggested that we might ask Mr. Dennis G. Quintal, P.E., to look at it.

Targeted Block Grant (TBG) - Mr. Day noted that the clock is running for submitting a TBG application to the Rockingham Planning Commission (RPC). He voiced concern that, in light of other Towns' applications, further delay on our part will put us farther down the queue for money. Reflecting on last year's work on the Master Plan Goals and Visioning chapter, he noted that we could do any number of things.

Mrs. Belcher asked if we should not consider a farm-friendly ordinance. She mentioned the excellent Office of Energy and Planning (OEP) materials at hand which recommended as much. By doing so, East Kingston could be in a position to offer some waivers to farms regarding odors and noises, etc., and prompt developers who want to build next to farms or potential farm areas to think about buffers from development. She suggested a clear definition of what farms and farming are would be useful, and confirm that a farm is not just a bunch of cows or vegetables; it could be greenhouses or a turkey farm.

Mrs. Belcher suggested that farms and agricultural activities might be exempted from site plan review, making things easier to promote and attract them. She felt such considerations would go hand-in-hand with what we state in the Master Plan about open space and rural character. She thought that perhaps tax breaks and assorted exemptions could be offered as incentives to farmers.

Mr. Morales noted that some municipalities give tax credits for new housing designed with so-called green technology. Mrs. Belcher suggested tax breaks for really old houses, like her own and Doc Marston's. There was general agreement that it is a travesty the way we presently tax very old, so-called antique houses, and consensus that the assessment method is biased, absurd, and unfair. Mr. Morales, with his selectman hat on, did not disagree, suggesting he would like to see another assessing agency apply a more even-handed methodology.

May 18 Agenda - Mr. Day touched upon items for Thursday's Public Meeting:

- Mr. Quintal has asked for a waiver for a shared drive on Joseph Conti's 2-lot sub-division since the property is so wet.
- There are no obvious problems with Mr. Davis's 2-lot sub-division proposal for his 18 acre parcel, and it would appear that Doc Marston is an abutter to the Davis property.
- We have not received any revisions to the Clark cluster subdivision, and any further delay will make timely review difficult.
- No new or revised materials for the 2-lot subdivision of Ms. Julie Turner, 87 Haverhill Road, have been received as yet. The clock is running on this application, and timely review for next week's hearing is impossible.
- Paul Masone has yet to provide any materials regarding a proposed new tenant.

NH RSA 91-A:3 NONPUBLIC SESSIONS:

MOTION: Mr. Day **MOVED** to enter into nonpublic session under RSA 91-A:3. Paragraph (e) "Consideration or negotiation of pending claims or litigation..." A roll call vote was taken with Mr. Morales, Mr. Lloyd, Mr. Smith, Dr. Marston, Mrs. Belcher, and Mr. Day voting affirmatively.

The Board was polled as to whether divulgence of the information discussed would chance rendering proposed action ineffective.

MOTION: Mr. Morales **MOVED** the minutes for nonpublic session in regard to RSA 91-A:3 (e) be **SEALED** until such time as the litigation in question against the Town of East Kingston is resolved. Mr. Smith seconded, and Mr. Morales, Mr. Lloyd, Mr. Smith, Dr. Marston, Mrs. Belcher, and Mr. Day, constituting the entire Board, voted affirmatively.

MOTION: Mr. Morales **MOVED** to adjourn from non-public session. Mr. Smith seconded and the motion carried unanimously.

CONTINUED BOARD BUSINESS:

Master Plan Goals and Vision Chapter - Mr. Day referred the Board to the latest iteration of the Goals and Vision chapter which includes corrections and additions from Mrs. Belcher, Chairman LK Smith (CC), and himself (from work session materials and RPC discussions). He noted that the chapter format was revised for clarity of presentation, but the substance of it is unchanged.

Mrs. Belcher suggested that at some point in time, reference to the definition for rural farming, and traditional and historical character should be included. She suggested verbiage plucked from the OEP materials to the effect: "Preserving rural character as a visual aspect of countryside scenery, pasturelands, farmlands, forests, historical stone walls, undeveloped shorelines, walk friendly roads, and historic buildings with the characteristics of promoting traditional, rural or small town values of community, independence, responsibility, self-government, conservation, entrepreneurship, and strong work ethic." She felt that such a focus and description should be incorporated in the chapter to give substance to recommendations.

Mr. Smith suggested the Planning Board consider a new ordinance which would address a requirement that new house lots have their wells tested for a building permit. He noted that there appears to be a number of new houses in Town with bad water, and the problem is Town-wide. Mr. Day thought that such a change might very well fit nicely into the East Kingston Building Code.

Mr. Morales observed that Peter Jewett's General Store well had been shut down by the State for bad water, and Mrs. Belcher noted that public or community wells are different from private wells. She understood that it is alright to poison yourself in the privacy of your own home, but we cannot poison the public or children in school. Mr. Morales added that community wells such as the Maplevale elderly housing development are treated by the State as municipal systems which require annual testing.

Mr. Day noted that he added a recommended action for an aquifer district overlay. He observed that the Town of Kingston just voted an aquifer district overlay for the entire town in an effort to gain some control over their water supply. Kingston sits on at least two substantial aquifers, and there have been several attempts at large-volume withdrawals by private concerns.

Mr. Day suggested that testing of water could be addressed in the language of an aquifer district overlay. Discussion ensued with Mr. Morales stating he thought there are RSAs and case law which would allow a municipality to make it a requirement that buildable lots have potable water. He described tests that can be run without actually drilling to demonstrate whether the probability of potable water is high. Mr. Morales also stated that water was at the top of the list of concerns identified in the Town-wide visioning seminars, and Mr. Day thought people were under the impression that the water table would be sucked down. Mr. Morales expressed his concern that if bacteria were present, the only recourse might be to drill a new well, as the bacteria could not be cleaned out, and who wants to drink bleached water. Mr. Day observed that he drank the stuff on Long Island as a kid, when he didn't know any better, that is.

Mr. Day asked the Board if they thought this chapter revision was complete enough to hold a public hearing at the next regular meeting. He stated he would prefer to have a motion to proceed to a public hearing for its incorporation as the 2006 Master Plan Goals and Vision chapter revision. He suggested that the fifteen minutes noticed and devoted to the public hearing could be used for further revision, if that is the Board's desire. Mr. Smith suggested moving forward with a public hearing, and Mr. Morales stated that the present form is quite comprehensive, and would be supported by zoning ordinances and RSAs.

Mr. Lloyd asked if the recommendation referring to the growth control ordinance really described what it was. Mr. Day deferred to Mrs. Belcher, who thought it wise to include a reference to it wherever appropriate in the Master Plan. She suggested stating 'the current application of a growth control ordinance with annual updates'. She thought we should make as many references to it in the master plan as necessary. Mr. Lloyd thought we should make the phrase a sentence to read something like 'Continue to manage the growth control ordinance by doing annual reviews, etc.'

Mr. Morales agreed that actions were needed to support the goals, and all phrases should be sentences with a verb added, to wit, "establish", "maintain", "control", "administer". In further discussion, the Board entrusted Mr. Day with putting verbs where there should be verbs in all of the recommendations, and changing the phrases to sentences. Mr. Day noted that growth control is a misnomer; it is really growth management, if we are to adhere to the statutory language.

Mr. Day turned the Board's attention to Recommended Action #15 – "Protect those Natural Resources Inventory (NRI) features" posited by the Conservation Commission. He described the substantial efforts being taken at the regional planning level to put together overlay maps for all the types of things we are wanting to protect, e.g. forests, soil types, etc., and suggested that when the overlays become available in Summer 2006, we should be able to use them to formulate action related to our own NRI.

Mr. Morales reported that the selectmen met with State Senator Maggie Hassan recently who described the NH legislature's attempts to eliminate the parochial attitude of '*We solved the problem here*'. Solutions might need to be regional or statewide, as in the cases of Eastern Equine Encephalitis (EEE) and West Nile Virus. He wondered whether we should make reference to a bigger, more regional approach to planning beyond the boundaries of East Kingston. Mr. Day noted that that very question is addressed in the language Dr. Robinson provided that is included under "Regional Planning".

Mr. Lloyd offered grammatical criticism of several recommended action descriptions, and Mrs. Belcher made a motion to do whatever is necessary to satisfy his fine sense of syntax and congruity. No one disagreed with Madam Vice.

Mr. Smith stated that when discussing growth and its impact on schools, there was too much stress on the local school. He pointed out that the elementary school isn't the only the school we are dealing with, and that one must consider the middle and high schools as well. Mr. Morales said he brought that up during the Ratigan interrogatories, but they only wanted to dwell on the one school.

Mrs. Belcher described studies which clearly demonstrated that agricultural and open space lands pay more in taxes to municipalities than are required to support them with services, reducing the burden to residential taxpayers, whose services cost more than their individual tax dollars. She asked whether something needed to be amended to address not just the local schools, but also all the schools, and Mr. Day stated that this was the opportunity to do it, and Dr. Robinson was working on it.

Mr. Day observed we have a historical committee but not a heritage commission, and there may be a need for a heritage commission, since such a one would have teeth. After some deliberation and searching through the RSA indexes, Mr. Lloyd found the definition of a Heritage Commission, and the authority to establish one in RSAs 673 and 674:44-a., to wit: "A heritage commission may be established in accordance with RSA 673 for the proper recognition, use and protection of

resources, tangible or intangible, primarily man-made, that are valued for this historic, cultural, aesthetic, or community significance within their natural, built, or cultural contexts.” Mr. Lloyd was lauded for his sleuthing.

In discussion it was noted that there was a history chapter in the 1988 Master Plan which appears to have disappeared. Mr. Day said he does not consider the 1988 Master Plan to be out of date. We have simply updated portions of it. Mr. Smith described how portions of the Master Plan were left out. He noted that it happened before with ordinance and regulation provisions as well. He concluded that someone in Exeter thought we didn’t need all the bits and pieces. Mr. Day said we can reconstruct and repair it.

MOTION: Mr. Morales **MOVED** to present the East Kingston Master Plan Goals and Visioning chapter in a public hearing on 18 May 2006 at 7:15 PM. Mr. Smith seconded, and the motion carried unanimously.

Mr. Belcher stated she believed we should include a definition of the nature of rural character in the chapter in view of how our culture continues to change. She offered the following definition: “Preserving rural character as a visual of countryside scenery, pasture land, farm land forests, historic stone walls, undeveloped shorelines, walk-friendly roads, and historical buildings with the characteristics of promoting traditional rural or small town values of community, independence, responsibility, self-government, conservation, entrepreneurship and strong work ethic.” No one disagreed that should be included, and discussion ensued as to how it would be. Mr. Day promised to find the best spot for it.

Town Center District zoning ordinance proposal - Mr. Day referred the Board to 3 pages of the Town tax maps he had marked up. On the first page depicting primarily the intersection of Haverhill Road and Depot Road/Main Street, Mr. Day incorporated the commercial area as Mr. Lloyd and Mrs. Belcher suggested. He noted that is where the Board left off last time.

Mr. Morales pointed out that some properties were only partly in the commercial zone, and could be potential problems. Mr. Lloyd reiterated that a given lot had to have frontage on the streets, and the entire lot, or the first 500 feet of it, would be included. Mr. Day observed that Kingston had had difficulty with this question because their definitions were imprecise, as was seen at the public hearing for a proposed Hannaford’s supermarket in their historic district.

On the second page, Mr. Day color-coded the town center, commercial zones, and remaining open space. He described his difficulty with trying to deal with an identifiable open space zone in East Kingston because the space is fragmented. Mr. Day noted that at yesterday’s RPC meeting, many commissioners described their towns’ efforts to do precisely what we are proposing with regard to town centers. He concluded that we are ahead of them in our thinking since we are looking at how to balance growth that might come from an enhanced town center. From those discussions came the conclusion that if there is a concentration of potential, as a town center would be, then it is reasonable to balance it so as not to distort the growth. Mr. Day described how balancing might be achieved through zoning for different lots sizes, and the use of incentives such as transfer of density rights, and the like.

Mrs. Belcher stated she envisioned the question to be like a town budget with only so much money that you can move around within that budget, so long as you didn’t overspend the bottom line. Drawing the parallel, she asked if we are looking at a total build-out, allowing extra development in some places while reducing it in other areas. Mr. Lloyd likened it to a density yield plan for the Town. Mrs. Belcher asked where we would find a methodology to do that, given that is precisely what a court would challenge. Mr. Day says that Jill Robinson is working on that for us.

Mr. Morales asked where do we want to encourage development. Where do we want to build homes, the village district, the commercial property. If we could come up with that, it would help focus the Master Plan. Mr. Day suggested we might not need to define specific lots; we might be able to talk in terms of overlays, rural/agricultural and define exceptions to that.

Mr. Smith suggested including the town park and field in a town center district, and Mr. Day we are working with a draft. Mr. Morales stated that identifying what you wanted to preserve and what you wanted to develop is at the heart of any comprehensive plan. Mr. Day suggested the Board wait until Dr. Robinson could be a part of the plan development, because she expressed a desire to help. Mr. Morales suggested using the TBG money to map out the entire town. Mr. Day noted that he had spoken with Dr. Robinson about such a project being a TBG subject, and that she had advised against it, for such work is already a part of what she expects to help us with.

Mr. Day observed that the Board has yet to chose a Targeted Block Grant project. Mrs. Belcher asked if we wanted to choose another master plan chapter, and suggested a farm friendly ordinance. The Board reached general agreement that Mr. Day should submit a TBG application to the RPC for the preparation of a new farm-friendly zoning ordinance article.

Mr. Smith suggested cutting up large lots to increase the number of houses in the center of town, singling out MBL 9-3-7. Mr. Morales suggested smaller lots in town and larger lots outside.

Referring to a draft Article III-A Town Center District zoning ordinance proposal, Mr. Day explained that revisions from the last time the Board reviewed this are in italics. Mrs. Belcher expressed some concern regarding workforce units and multiple

housing units. Mr. Day explained that the RPC seems to be in agreement that the threshold is 4 units per multiple-housing structure for it to be an attractive option to builders. If we wanted to permit such housing, what would we want it to look like?

Mrs. Belcher had some questions regarding capping the number of multi-family units in the town center. Could existing homes be converted to multi-family homes rather than encouraging new housing? Mr. Morales suggested it might be best to have a heritage or historic commission in place first to help the Planning Board make those decisions.

Mrs. Belcher stated that we need to visualize the potential of what could happen if we don't have clear direction about permitted development. Mr. Morales added that creating a village center implies high density. Mrs. Belcher suggested a 3-family unit, and Mr. Morales thought a 3-floor building with a smaller footprint might be more cost effective for a builder. Discussion followed about a maximum height of 35 feet in the ordinance somewhere, but no one was able to find the reference. Suspicions were raised that the restriction might be one of those bits lost in Exeter. Mr. Day described that in Portsmouth, the maximum height of any building is limited by the height of the spire on the church in Market Square.

Mr. Day asked whether everyone was comfortable with the proposed town center district as it presently stands. There was general agreement to that effect, and Mr. Day suggested he would smooth the article language to reflect the present recommendation, and work with Dr. Robinson for the remainder of the comprehensive plan. He asked the Board to plug as many of the holes in the draft ordinance as can be for the next work session.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Planning Board adjourn. Mr. Morales seconded, and the motion carried unanimously at 9:20PM.

Respectfully submitted,

Barbara A. White
Recording Secretary

James R. Day, Jr.
Chairman

Minutes approved May 18, 2006

Enclosure: Master Plan Vision and Goals chapter revision