

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
May 27, 1999

FILE

AGENDA

- 7:30 Dr. George Storm – 44 North Road Site Plan Review – Public Hearing  
8:00 William & June DiProfio – 139 Depot Road Subdivision – Public Hearing  
8:30 East Kingston Elementary School– Site Plan Review – Public Hearing

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, Beverly A. Fillio, Dr. Robert Marston and Alternate David G. Morse.

Absent: Raymond R. Donald – Ex-officio, Alternates Robert Nigrello and Peter A. Riley.

Others attending: Sarah Campbell– RPC, Lawrence K. Smith – Conservation Commission Chairman, Glenn P. Clark – Building Inspector, Robert Rossi – Road Agent, Alan Mazur – Fire Chief, James Levelle – LLS, Dennis Quintal, Jeff Nawrocki, Barbara Lobdell, Kevin Fitzgibbon, Richard Poelert, Kevin Jones, Suzanne Mazur, Dr. George Storm, Atty. William Beckett, Vito Kasinskas, Curtis Jacques, Roby Day, John L. Fillio – Selectman, Donald Andolina – Selectman, Mr. & Mrs. Alan Resnick, Ellen Spengler, William DiProfio, Skip Bagdoyan, David Woodburn, Debra Whalen, and other members of the public who did not address their concerns.

Chairman Smith called to order this May 27, 1999 public planning board meeting at 7:10 PM with the roll call. He then designated Alternate David Morse to participate in any voting matters before the board.

Minutes: The Board reviewed minutes dated May 20, 1999 and noted corrections.

MOTION: Mr. Johnson motioned to accept the May 20, 1999 minutes as corrected. Mrs. Fillio seconded. With no further discussion, the motion carried 4-0 (Mr. Morse abstaining)

Dr. George Storm– 44North Road Site Plan Review -Public Hearing: Chairman Smith opened the public hearing at 7:15 PM for Dr. Storm's proposal to operate "Turning Point Farm" from 44 North Road, formerly the Rosenberg property.

Dr. Storm gave a lengthy presentation describing the nature and scope of the "Turning Point Farm" an agriculturally based non-profit school also housing the residency of Dr. Storm and his pediatric office. Included in this presentation were the following:

Dr. Storm has resided in the area for 35 years and has dreamed of operating a facility that would educate bright children who are having difficulty learning in a traditional teaching environment. These children might have social difficulties, which would cause them to stumble in the traditional classroom. He stated that had there been a similar intervention program in Colorado, the Columbine High School incident could have been prevented. The facility would integrate agricultural activities in the schools' curriculum, which has been proven therapeutic in learning studies. The school would target middle school-aged students and preschool/kindergarten-aged students totaling 35 to 40 students to start. Farming activities considered in the proposal include fish farming, lama packing, spinning, animal care, and goat cheese processing and sales (small farm stand). This would be a model program with the support of many educational experts and the Department of Education. This would be a year-round teaching program. There would be no impact or burden to East Kingston's school system, yet there may be possible scholarships for chosen EK residents to attend. Building and fire codes would be upgraded.

Noting the 501C3 tax-exempt status of the proposed school, it was explained that the portion of the house used for Dr. Storm's residency and medical practice would be liable for property taxes, while the remaining use of the house and property would not. Students would at first be transported to classes via private transportation with possible plans to implement a busing schedule a later date.

Atty. Beckett expounded on the proposal by saying the medical practice and the residency portions of the building will be taxable. The rest of the property and building would not. He could not give a percentage of the actual building that would be taxable. He reiterated that students enrolled at Turning Point Farm would not burden East Kingston's school system.

At the Board's inquiry, Dr. Storm stated that there would be no student residency, just day classes with approximately 6 to 7 teachers and 35 students. He noted the facility could accommodate parking for 26 vehicles.

**MOTION:** Mr. Johnson motioned to invoke jurisdiction on the application for site plan review for property located at 44 North Road, MBL# 15-3-3. Mrs. Fillio seconded. With no further discussion, the motion carried 5-0.

Mrs. Campbell read aloud a letter from abutter James Nupp.

Mr. Curtis Jacques of 43 North Road stated that he moved to East Kingston in 1974 and at the time the Rosenburg's were paying \$15,000 a year in property taxes. Since UNH purchased the property there have been no taxes collected and the town has lost over \$300,000 of which the remaining taxpayers of East Kingston had to pick up. He stated that he is not in favor of the proposal if the property is tax exempt, the property should be put back on the tax roll.

He further stated that Route 108 has been designated a truck route and that placing a school here may pose serious safety issues for students enrolled. He stated that he would like to see the property sold and used residentially.

At Mrs. Fillio's questioning, Dr. Storm stated that the school use of the building would certainly outweigh the residential use of the building. Again, the types of children enrolled in the school would be normally bright children who have stumbled through elementary school, but are not worthy of special education assistance. Children, who if left to their own devices, could become difficult. He noted that children want to do well. These types of children have their own individual learning styles, which puts them into jeopardy when placed in traditional classrooms.

Mr. Vito Kasinskis of 31 North Road stated that he has been a resident since 1985 and that his issue with this proposal is whether this proposed use qualifies as a residential use or commercial use. Although a noble idea, because the building would be owned and operated by an institution, the use must be categorized as commercial. If this commercial use of the property stays and the school does not succeed, does this mean future uses of the property would also be commercial? And if so, to what extent of a commercial enterprise is allowed. He stated that a strict definition of this proposal's statement should include provisions that if the school does not succeed, then the property is reverted back to residential use. Only then would he support the proposal.

Dr. Storm responded that the land and building couldn't support a farm or family. He then questioned a horse boarding business directly next door. He asked if this too, was categorized commercial, as the horse farm is also providing a service. He further noted that the project would not be started without enough capital to see it through longevity.

Mrs. Fillio stated that she thought the project was a wonderful idea, but had difficulty fitting the use into an agricultural or residential use. The farming is only secondary to the use of the school and the school falls under a commercial use. She then directed the applicant to go to the Zoning Board of Adjustment (ZBA) for a waiver from the zoning.

Mr. Johnson agreed that the use must first be approved by the ZBA.

Dr. Storm questioned whether a joint meeting of the Boards would be appropriate.

Atty. Beckett stated that he has read the zoning ordinance and at best it is unclear as to what uses are allowed. He said that under the law proposed uses are subject to zoning. He stated that he has looked through East Kingston's zoning ordinance to see if the school's use is a prohibited use. It is not listed as such; thus he has determined it is allowed. He said that he couldn't find anything in the ordinance that prohibits its use.

He then quoted Article V which, states:

*A. The Town of East Kingston shall be mainly a district of farms and residences.*

Atty. Beckett stated that the house will be used as a single-family residence, the conference rooms at the back of the building will be used for the school and the outside (the land) shall be used agriculturally with the involvement of children. He said that he still feels (as stated in his letter dated 3/11/99) that this proposal does not need to be in front of this [planning] board at all. All the uses are allowed under the zoning.

He then questioned what he should file a variance from. He asked that this proposal not be shoved off to a different board.

Mr. Johnson explained that it is his understanding that the proposed medical practice is allowed under Home Occupations, and the farming is allowed under zoning, but the school operations are commercial and this property is not zoned for that use.

Atty. Beckett responded that day cares are also allowed under Home Occupations.

Mr. Alan Resnick of 34 North Road stated that he is new to the community and enjoys living here. He said that he does not endorse the proposed use, nor does he oppose it. He is concerned with what will happen to the property when the school is gone. He further inquired if a full site plan would be required for this proposal, as these plans are crucial to the abutters.

Mrs. Fillio stated that a school is not listed as an allowed business in the ordinance, which makes it a commercial venture. She suggested the applicant go before the ZBA, get a variance, then come back to the Planning Board and set up the criteria for the school.

Mrs. Campbell stated that the Planning Board directed the applicant to apply for a site plan review. She stated that the Planning Board was not certain the use was allowed, but felt to determine that, a site plan review would be required. A site plan review is a request for a change or expansion of use - it is the process for a non-residential use. She stated that no site plans were requested at this point because the Board was not sure the proposed use was allowed and didn't feel it was fair to subject the applicant to engineering fees prior to the Board's determination of whether or not the use was allowed. Should the use be allowed, the second step would be for the applicant to submit full plans of the parcel and building with proposed changes.

When asked about the 501C3 tax-exempt status, Atty. Beckett stated the proposal is waiting for the necessary approvals. Dr. Storm added that approval for non-profit status would be given retroactive to the mailing date of their request, if the town approved the project.

Mrs. Fillio stated that regardless of tuition or non-profit status, the school is a business and it does not belong in the residential district. It's a wonderful idea, but it is still a commercial operation.

Chairman Smith stated that he agrees that the proposal needs to go before the ZBA for a variance.

Dr. Storm was then informed of the ZBA process and its estimated time frame.

Atty. Beckett stated that the animals, children and doctor's office are all allowed under the ordinance.

Chairman Smith responded that the school portion of the proposal is the business, not the farm.

Mr. Larry Smith stated that the Planning Board has received advice from Town Counsel to direct the applicant to go to the ZBA.

Mr. Robert O'Shea of 17 Stumpfield Road stated that should a developer purchase the property, the impact on the town would be much greater than what is being proposed here. He said that the property taxes lost to Dr. Storm's proposal would be lost in the long run should houses with children attending the East Kingston school district be built.

Mrs. Fillio responded that the Planning Board is not saying they don't want to the proposed project, they (Planning Board) just don't have the authority to approve a commercial use in a residential zone, the ZBA does.

Mr. Jacques stated that a year ago the Town voted to repeal a warrant article to change the zoning on North Road to commercial. If this business qualifies as commercial, it is not allowed. He then questioned the traffic impact associated with this proposal.

Mrs. Campbell offered that one alternative to the use of the property would be to subdivide it into 7 to 10 house lots, which would also increase the traffic flow and because the impact would be on a state road, it (the traffic) would fall under the jurisdiction of the State Department of Transportation.

Mr. Resnick stated that although he too, admires the idea of the proposal, he requests that it (proposal) goes through a rigorous site plan review process. If this proposal goes before the ZBA, he requests the same.

Dr. Storm asked if the horse-boarding farm located next door was considered a commercial business.

Dr. Marston responded that the horse farm is categorized as an agricultural farm by the State's definition because in addition to horse boarding, it raises foals. Mr. Johnson added that the property is zoned residential/agricultural.

Atty. Beckett stated that in order for him to go to the ZBA, they must show hardship - there is no way to show that here. Just because the neighbors raise a foal, it means they (neighbors) are agricultural, he stated that this shows the zoning ordinance is not clear. He stated that the Board is making a big mistake. The ordinance does not specifically prohibit the proposed use of a school; thus the Board must allow it. He further stated that the zoning ordinance does not define the term residential/agricultural. He stated that each

member applies his or her own ideas. If it is not clearly prohibited in the ordinance than it is allowed. He stated the ordinance does have definitions of commercial uses. He went on to say that he does not know why he is here before this board.

Members responded that a variance is not the only option when going before the ZBA. He (Storm) could apply for an Appeal from Administrative Decision thus arguing the interpretation of the ordinance. Only the ZBA has the authority to waive provisions in the zoning ordinance.

Mrs. Debra Whalen of 131 Depot Road stated that part of the Master Plan was to promote the preservation of rural and agriculture character of the town. She stated that approving this proposal is an opportunity to preserve quite a bit of open space.

Mrs. Fillio stated that the primary mission here is not agricultural, it is students. Farming is only secondary to the use.

**MOTION:** Mr. Johnson motioned to deny the application for site plan review for property located at 44 North Road based on the proposal not being a permitted use, and to direct the applicants to go to the Zoning Board of Adjustment. Mrs. Fillio seconded. The motion carried 5-0.

Dr. Storm stated his confusion as to why he was directed to go to the Planning Board when he really needed to go to the ZBA. Members explained that in order for him to apply to the ZBA, he needed to go before the Planning Board first. One can only go before the ZBA if they have been denied by an administrative official or board first.

**William & June DiProfio– 139 Depot Road Subdivision – Public Hearing:** Chairman Smith opened the public hearing at 8:30 PM for William & June DiProfio's proposed plans to subdivide 24.19 acres into three lots, proposing two buildable lots with remaining lot being combined with MBL# 04-01-16 (owned by Francis Colanton).

Mr. William DiProfio explained that Mr. Colanton had asked to purchase land out behind his home for his (Colanton's) golf course. He stated that Lavelle Associates did the subdivision work and once the subdivision was approved, the board could expect Mr. Colanton to come in with a site plan review.

Mr. James Lavelle, LLS noted the two frontage lots in the proposal. One lot had an existing dwelling with 250 feet of frontage and 3.83 acres, and the other lot had 200 feet of frontage and 2.35 acres. The remaining backlot of 18.01 acres would be combined with land owned by Francis Colanton. He stated that Mr. Colanton would proceed at a later date with the expansion of the golf course.

The Board reviewed the plans noting sheet #1 showing the total parcels, sheet #2 showing the front lots on a larger scale, and sheet #3 showing all topography of all three lots and test pit data.

Mr. Lavelle noted that the subdivision has already received State Subdivision approval (# SA1999001374) and a State Driveway permit (# 06-135-172). He also stated that the Building Inspector witnessed the test pits.

In reviewing the plans, Mr. Larry Smith stated that the application needs a drainage report with calculations as required by Article VIII.E.2 of the zoning ordinance. Members noted other administrative items needed on the plan.

**MOTION:** Mrs. Fillio motioned to invoke jurisdiction on the plan to subdivide property located at 139 Depot Road, MBL# 4-1-15. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Ms. Diane Eadie of the Kingston Planning Board and Conservation Commission stated that the Kingston Planning Board would be happy to work cooperatively with the East Kingston Planning Board when the site plan review of the back nine holes of the golf course are proposed. She said that Mr. Colanton has issues in both East Kingston and Kingston and both towns would be watching this development very closely.

**MOTION:** Mrs. Fillio motioned to approve the application to subdivide 24.19-acre parcel located at 139 Depot Road, MBL# 04-01-15 into 3 lots as presented conditional on 1) lot sizes in square footage be noted on the plan; 2) abutter's names and addresses be noted on the plan; 3) correct MBL# 4-1-20 for new lot 1 be shown on the plan; 4) submission and satisfactory review by Conservation Commission of drainage report with calculations; and 5) the setting and verification of boundary monumentation. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

**Home Occupation Enforcement:** Mrs. Fillio questioned the procedure for enforcing home occupation compliance. She stated that at a recent Selectmen's meeting she was informed that in order for the code enforcer to inspect each home occupation as it comes up for renewal, the process to do so must first be presented at Town Meeting and voted for in ballot form. She stated that as of

discussion held with the Planning Board last year, she was under the impression that inspections would be done for this June (1999) when renewals were up.

Chairman Smith stated that the intent of the ordinance was that each home occupation would be checked for expansion or changes at renewal time.

Selectman Donald Andolina responded that the Board of Selectmen do review all home occupations when they come up for renewal. One form of inspection is that they (Selectmen) conduct their annual town tour of the town looking for home occupation compliance and other violations. He stated that this inspection is usually done from the street. The second inspection is done at the receipt of renewal applications. Each home occupation must fill out a questionnaire, which helps the Selectmen determine if changes or expansions have occurred. If the Board suspects changes or expansions, then the code enforcer is sent out to investigate and enforcement action is taken if warranted.

He continued to say that next year the Selectmen hope to implement a home inspection for each home occupation as it comes up for renewal. If complaints are received about a home occupation the code enforcer is sent out immediately to investigate and a notation is placed in the home occupation file to be considered at renewal time.

**East Kingston Elementary School – Site Plan Review – Public Hearing:** Chairman Smith opened the public hearing at 9:00 PM for the East Kingston Elementary School's proposal to construct a 7,433 square foot addition to the existing school located at 5 Andrews Lane. Mr. Jeff Nawrocki of JSN Associates is the engineer and designer of the project.

Mr. Nawrocki stated that in March 1999 the town approved to fund the project but until State funding was resolved, the construction was put on hold. With the funding issue all set, the School is ready to begin construction upon the approval from the Planning Board. He went on to say that the biggest problems regarding this project were drainage issues which will be discussed in more detail. They needed to get rid of any additional water from the project and the water already on site.

Skip Bagdoyan of Ambit Survey presented the site plan. He noted that the project included reconstructing dry land - draining the existing retention pond and turning it into parking. The three drainage issues to deal with were 1) the run-off of surface water; 2) ground water; and 3) run-off from the building. Several catch basins were designed to collect and direct this water from the site to an area across the street, and down the end of Terrace Lane, eventually emptying into a wetland area located on the Woodburn property.

He stated that an existing culvert will be improved and will empty water across Andrews Lane, which will now be greatly reduced because of the new drainage plan. At the bottom of Terrace Lane a large outlet protection device will be installed to slow down the velocity of water run-off to that location. He then submitted 2 drainage analysis reports and a geotechnical evaluation report.

Chairman Smith stated he finds it comical that back when the school's first addition was presented, he advised the engineer to send all the water from the site down to the wetlands located at the end of Terrace Lane. He stated that the engineers wouldn't listen and laughed at his idea. Now, with continued water problems on the site, the new plans are submitted to do just what he had recommended.

The Board reviewed the plans and inquired about the number of classrooms and their design. Members requested such plans be presented for review.

Mr. Nawrocki stated that the one-story addition is being designed to accommodate a second story should the need arise.

**MOTION:** Mrs. Fillio motioned to invoke jurisdiction on the site plan review for a 7,433 square foot addition to the Elementary School located at 5 Andrews Lane. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Mr. David Woodburn of 11 Terrace Lane stated that although the project looks good on paper, he was never contacted by anyone about the proposal to direct run-off to his property.

Mr. Kevin Fitzgibbon stated that he contacted Mr. Woodburn three weeks ago.

Mr. Woodburn further stated that for the past 19 years that he has resided there, the ditch has never been cleaned out.

Mr. Bagdoyan stated that an 18" pipe would run the length of Terrace Lane to transport the water. He stated that Mr. Woodburn wants the school to build a pond on his property.



When asked if Mr. Woodburn objected to the pipe running the length of Terrace Lane and dumping water into the existing wetlands on his property, he (Woodburn) stated that he didn't want the water just "dumped" there. He said that Andrews Lane is a nightmare and he doesn't want the same thing to happen here.

Further discussion about the water drainage issue resulted in Fire Chief Alan Mazur expressing his concerns about the need for adequate fire suppression – expressively a fire pond. He stated that he too would be happy to see a fire pond at the end of Terrace Lane as his fire apparatus can handle the current building size, but once this is increased getting more water to the site as soon as possible is a serious concern.

Mr. Nawrocki responded that the new addition would have a firewall constructed between it and the existing building.

Mr. Bagdoyan stated that constructing a fire pond is beyond any discussion he has had with the school or engineer. He stated that a pond could be built on Mr. Woodburn's property, but that it would encroach on more than just his property. He further stated that in order to build a pond he would need to obtain approval from the state, which could take up to a year.

Fire Chief Mazur stated that no preparation has been given to the fire suppression issue. He inquired where the water would come from for a sprinkler system.

Mr. Nawrocki responded that the existing school and the addition would be treated as two separate buildings with a firewall between them. The fire suppression plans are on file with the State Fire Marshall.

Mr. Bagdoyan suggested the Fire Chief go to the Board of Selectmen for a fire pond.

Fire Chief Mazur stated that his recommendation as East Kingston Fire Chief is to include a fire pond as part of this site plan review proposal.

Mr. Bagdoyan stated that the fire pond is a legitimate issue, but the school needs to be built this summer and it can't wait for fire pond approval.

Mr. Woodburn responded that if this fire pond isn't constructed now, it would never get done, plus there is enough water with this drainage plan to build it.

Mrs. Suzanne Mazur stated that the safety of the children should be first here, even if it results in the school being built a little later than planned. She said that the fire suppression concerns raised must be addressed— all the rules must be followed.

Mr. Bagdoyan replied that there is no place to construct a fire pond on the school's property, and if one is needed, it should be a public project. He further stated that the school is not unsafe because it doesn't have a fire pond.

At Mrs. Fillio's inquiry as to if there was enough water on hand for fire suppression, Fire Chief Mazur responded negatively.

Mr. Nawrocki claimed that there was adequate egress and that the project meets all the codes.

Fire Chief Mazur responded that adequate egress is not enough and that he is not happy with the lack of fire suppression plans presented for the school.

At this time discussion about classroom size and accreditation transpired.

Mrs. Fillio stated that this plan shows water run-off being drained onto someone's property, did the school get this property owner's (Woodburn) permission?

Mr. Woodburn replied that he gave the school permission to look at his property, but not to go ahead with their drainage plans.

Mr. Larry Smith noted for the record that it would not take a year for the school to get state approval for a fire pond. Should the applicant submit an expedited plan it would take a maximum of 30 days.

Mr. Bagdoyan apologized for exaggerating.

Other members of the Board expressed their concern that fire suppression/fire pond is important to this proposal.

Fire Chief Mazur reiterated that getting sufficient water to the building is a concern and that non-combustible buildings DO burn.

Again Mr. Nawrocki stated the addition would be separated by a firewall and very rarely would both sides of a firewall burn.

The Board continued to review the plans noting the catch basins and drainage plan. Mr. Bagdoyan noted that the existing septic system would support the addition.

It was also noted that the school's legal counsel had advised that the easement for drainage on Terrace Lane be addressed by the town as water would also be collected from residences along Terrace Lane and not just the school. Catch basins would also be located on town property – not just a school issue.

**MOTION:** Mrs. Fillio motioned to continued this public hearing for the East Kingston Elementary School application for Site Plan Review to Thursday, June 17, 1999 at 8:30 PM to allow the school to resolve the drainage issue with Mr. Woodburn. Mr. Johnson seconded.

DISCUSSION: Members expressed that the drainage issue must be addressed to all abutters on Terrace Lane. Mr. Bagdoyan stated that the pipe would run down the 60-ft. right-of-way and onto Mr. Woodburn's property. Members agreed that Mr. Woodburn would need to give his permission for this.

Chairman Smith called the vote. The motion carried 5-0.

More discussion about the pipe across Andrews Lane transpired. It was noted that when this pipe was installed it was designed to allow a fixed rate of water to the Donovan property. This new drainage plan would greatly reduce the water being directed to the Donovan property.

Mr. Bagdoyan stated that the existing pipe to the Donovan property is undersized and that a second pipe would be added.

Mrs. Campbell requested that a detail of the proposed drainage pipe along Terrace Lane and where the r.o.w. ends be submitted. She also requested that a copy of the Donovan drainage easement be submitted.

Mr. Richard Poelaert stated that delaying the project a couple of months would be detrimental to the construction time frame.

Mrs. Campbell replied that significant issues need to be addressed prior to moving ahead with this project. When she requested to see the topography for 200-300 feet beyond the Terrace Lane cul-de-sac, Mr. Larry Smith stated that he could show that information on the town's GS map.

Further review of the plan resulted in the following items needing to address for the next meeting.

1. Show main entrance on page #2;
2. Settle easement issue with abutter Woodburn (submit agreement);
3. Show lines between abutters on the plan;
4. Bring the floor plan to the next meeting;
5. Detail of drainage pipe along Terrace Lane to the end of the ROW; and
6. Submit a copy of the Donovan drainage deed.

With no further business before the board,

**MOTION:** Dr. Marston motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 5-0 and this May 27, 1999 public planning board meeting ended at 10:00 PM.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file June 1, 1999.

Minutes approved on

6/17/99