

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
June 15, 2000

FILE

AGENDA

- 7:15 Jeffrey & Susan Marston – Giles Road Lot Line Adjustment – Public Hearing  
7:30 Future Land Use Chapter – Public Hearing  
8:00 Doug Melanson – Giles Road Subdivision Proposal - Discussion

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice-Chairman, John L. Fillio – Ex-officio, Dr. Robert Marston, Beverly A. Fillio and Alternate Members Peter A. Riley (7:04 p.m.) and David Morse (7:04 p.m.).

Absent: Alternate Robert Nigrello.

Others attending: Lawrence K. Smith – Conservation Commission Chairman, Sarah Campbell – RPC Planner, Fire Department Captain Andy Conti, Fire Chief Alan Mazur, Deputy Fire Chief Rob Carter, Building Inspector Glenn P. Clark, Deputy Building Inspector Kent Shepherd, Jeffrey & Susan Marston, Doug Melanson, and Tom Brouillette – Licensed Land Surveyor.

Chairman Smith opened this June 15, 2000 public Planning Board meeting held at the East Kingston Town Hall at 7:00 p.m. with the roll call.

Planning Board Minutes: The Board reviewed minutes dated May 18, 2000. Members present and eligible to vote on their acceptance were Chairman Smith, Mr. Johnson, Mr. Morse and Mr. Riley. Since Mr. Riley and Mr. Morse were not in attendance at this time the minutes could not yet be approved.

Home Occupation Invisible Clause: Chairman Smith opened discussion on the home occupation invisible clause noting that discussion on this issue was held at the last meeting but not all members were present, thus full board participation on this matter was not conducted. With the presence of a full board this evening the matter could be addressed. The issue before the board was to decide if the determination of whether a business met the invisible clause criteria should be done at the discussion level or the public hearing level. Such determination has been made at both levels in the past; the board wishes to be consistent in its procedures.

It was agreed that the determination should be made by the planning board and not the selectmen. It was also agreed that the determination must be made part of the record for the application, however whether that record was at the public hearing level or discussion level needed clarification.

Mrs. Fillio stated that in her opinion an applicant should be able to discuss with the board their proposal at a preliminary discussion. If the board found the business met the invisible clause criteria then the applicant would not be required to have a public hearing; however, if there was any question about whether the invisible clause criteria has been met, then a public hearing would be warranted.

At this time Mr. Riley and Mr. Morse entered the meeting (7:04 p.m.).

Upon briefing Mr. Riley and Mr. Morse on the subject at hand, Mr. Riley responded that if a business were truly invisible the board wouldn't know about it, thus they would not need to go through the public hearing process.

Dr. Marston stated that he thought an application should be determined invisible or not at the discussion level. Mrs. Fillio agreed adding that if there are any objections to the invisible clause criteria then the board can move the application to public hearing level. She said she doesn't see why a public hearing would be necessary if the home occupation was *absolutely* invisible.

Mrs. Campbell stated that there should be a concrete paper trail to fall back on – memories don't cut it. The home occupation applicant should be *consistently* sent to the planning board and its discussion made part of the minutes (on record); if the business is determined not invisible then the board can hold a public hearing.

Mr. Riley said that whether the business is invisible or not is based on the application itself (i.e. if a sign is used).

Mrs. Campbell replied that the issue of invisibility is more than just whether or not signage is required. The board has told people that if their business is invisible then they don't need a permit.

Mrs. Fillio stated that one must apply either way – the process must be consistent, but whether a public hearing is warranted for each application is to be determined by the board. The question before the board is what will be the proper procedure for all home occupation applicants.

Noting the time, Chairman Smith tabled this home occupation discussion until later.

**Jeffrey & Susan Marston – Giles Road LotLine Adjustment– Public Hearing:** Chairman Smith opened the public hearing for the Marston's proposal for a minor lot line adjustment concerning MBL# 17-03-01 (property owned by the Marston's), located on Giles Road, and .68 of land owned by Boston and Maine Corporation. The purpose of the boundary adjustment would be to create a safe access to and from MBL# 17-03-01. Mr. Marston submitted a plan to the board along with a waiver request from Subdivision Regulations Section D.4, which was read into the minutes.

*...We are writing this letter to request a waiver of Section 4 (D) of the Subdivision Regulations for the purpose of having a shared driveway between the above referenced lots. (17-03-01 & 16-04-01) The reason for this request is to increase sight distance from the Railroad Bridge and increase the overall safety and visibility of the access to the above referenced lots...*

At this time it was noted that Dr. Marston would abstain from any voting matters regarding this application as the applicants were his family members and he was a direct abutter to the properties in question. Chairman Smith designated Mr. Riley to vote in his place.

Noting that the application was complete,

**MOTION:** Mrs. Fillio motioned to invoke jurisdiction on the lot line adjustment application for MBL# 17-03-01. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Mr. Riley stated that he is not sure the board can approve this plan without railroad representation. He is concerned with the anticipated development of the backlot (MBL# 17-03-01)– with the railroad easements acknowledged the railroad company needs to agree on the development of the backlot.

Members informed Mr. Riley that Mr. Marston already owns the backlot as well as the front lot and that he (Marston) has a right to develop his own land. Mr. Riley disagreed and stated that his understanding is that the old railroad agreements would prohibit this development.

He elaborated by saying with the existing easements and old railroad statutes, the town may not have the authority to approve this lot's development. Mr. Riley was asked to be more specific about the railroad statutes he was referring to. He replied that he was not comfortable with disclosing them but that he had spoken briefly with the applicants about them at an earlier date.

Mrs. Marston stated that she had indeed spoken to Mr. Riley earlier but after Mr. Riley's comments this evening about not being able to develop their own property, she feels she must have misunderstood their previous discussion. She was not under the impression they could not build a house on their land because it was adjacent to railroad property.

At this time Chairman Smith moved the issue to the waiver request submitted by the applicants. Noting its contents and the Marston's reasons for requesting it,

**MOTION:** Mr. Johnson motioned to grant a waiver from Subdivision Regulations V.D, to increase the safety and visibility of the access to MBL# 17-03-01. Mrs. Fillio seconded. With no further discussion the motion carried 4-0-1 (Mr. Riley abstained).

Mrs. Fillio stated that maybe the board should look into Mr. Riley's concern – the board needs to be sure it has the authority to grant the approval of this application.

Mrs. Campbell responded that if the railroad had a problem with the Marston's developing their backlot they wouldn't be selling him the property to improve his access to it.

Mr. Riley stated that the railroad might decide to convey this property down the road, and they have old rights to it, the town does not have the specific authority to approve its development.

Mr. Johnson rebutted that the railroad had no problem when the board approved the development of an adjacent railroad lot on Sanborn Road last year. If the railroad sells the property then that new owner has the right to do what he wants with it.

Mr. Marston added that he cannot do anything to the property within 25 feet of the rail – that is why the property line is being proposed where it is.

Mrs. Campbell stated that the Marston's have been working with the railroad for quite sometime now – there has been plenty of conversation with the railroad people and the Marston's regarding their plans for their land.

Mr. Marston reported that the railroad's engineering department drew up the plans themselves and their (railroad's) attorney (Kelleher) wrote and approved the deed – this deed allows for the use of the to-be conveyed land as a driveway.

Mr. Riley reiterated that the old statutes on the books prohibit the development of lots adjacent to the railroad. He stated he feels obligated that since he has some knowledge of these issues (railroad rights) he needs to address his concerns to the board.

At this time Chairman Smith asked that the other items brought up at the last meeting be noted. The recording secretary read an excerpt of the May 18, 2000 minutes.

*On further inspection of the conceptual plan, members made notation that a reference pin should be installed at the "Detail A" section of the boundary. Though a pin cannot be placed in the center of a stream, a reference pin may be placed in its stead. Or, indicate on the plan the exact point of change in bearing on the new outer boundary line. There also needs to be a notation of the status of the existing railroad access; since it would continue to be used by the railroad, it could not be abandoned.*

Mr. Riley stated that if the bearing from pin to pin is noted then there is no need to place a boundary pin in the river. Mr. Larry Smith responded that it is standard surveying procedure to put in a reference pin (when one cannot be placed in its appropriate location) that shows the change in bearing.

Mr. Riley stated that it already has endpoints – he doesn't see how a third pin would matter. Mr. Larry Smith replied that it doesn't matter so much as written on the plan, but it matters if you want to find the bound on the ground. Mr. Riley disagreed.

Mr. Marston stated a note was added in the legend that indicates the change in bearing.

Mr. Riley said he thinks it would be a waste of time and money to have a reference pin installed. He and Mr. Larry Smith then had words about which of them might be more qualified to make that determination.

Mrs. Campbell questioned the status of the other driveway – though it would not be used, it would not be abandoned. The railroad would still use it. After further consideration she noted that the plan's depiction of the driveway is acceptable as presented as it is addressed in the deed.

Upon examining the Detail "A" of the plan, she stated that she is not sure it (the detail) accurately represents the proposal. The measurements noted do not add up. She stated that maybe she just doesn't understand its purpose. After further discussion, the board agreed that Detail "A" could stand as presented.

**MOTION: Mr. Fillio motioned to approve the minor lot line adjustment for MBL# 17-03-01 as presented. Mr. Johnson seconded. With no further discussion, the motion carried 4-0-1 (Mr. Riley abstained).**

For the purposes of recording into the minutes Mr. Marston remitted \$46 in cash to the recording secretary for the cost of recording the plan at the Registry of Deeds. Mr. Marston requested in addition to the chairman signing a mylar to be recorded at the registry, a second mylar be signed for the railroad company. He was advised that it is the board's policy not to turnover signed mylars to anyone as once the approving signature is applied, anyone could change the mylar and have it recorded without the board's knowledge. A signed printed plan was offered in its place. Mr. Marston accepted. Chairman Smith then applied his signature to one mylar and five sets of prints. Mr. Marston thanked the board for their time and left the meeting at 7:56 p.m.

**Future Land Use Chapter:** Chairman Smith opened the public hearing for the adoption of the Future Land Use chapter of the Master Plan at 8:00 p.m. Mrs. Campbell reviewed the changes made to the chapter since the last meeting. She noted that the map is complete and that the board may need to discuss whether or not to print the maps (for the book) in color. She strongly recommends color copies to properly identify the several color codes used in it.

Mrs. Campbell then discovered a minor mistake on the pie chart on page 12. She also stated that the executive summary pretty much explains the chapter – the town needs more non-resident land use valuation to balance the shortfall created by the residential use valuation. The maps and charts in the chapter are good visuals to support it (the chapter). She then explained the new tax scenario with the utilities – the utilities are not required to pay the state education tax, thus they pay a slightly lower rate to the town.

Chairman Smith opened discussion regarding the adoption of the Future Land Use chapter to the public. No comments from the public were raised. The number of color copies (if any) would be discussed later.

**MOTION:** Mr. Johnson motioned to adopt the Future Land Use Chapter of the Master Plan with noted correction. Mrs. Fillio seconded. With no further discussion, the motion carried 5-0.

**Doug Melanson – Joslin Road Subdivision– Discussion:** Chairman Smith opened discussion at 8:12 p.m. with Doug Melanson regarding his proposal to subdivide land into three lots on Joslin Road. He noted that this is conceptual discussion only as no application is pending.

Mr. Melanson introduced himself and his licensed land surveyor, Tom Brouillette. He stated that he would like to subdivide a 9.8-acre lot in East Kingston and part in Exeter into a total of four lots (three in East Kingston). He noted that each lot would have the required 200 feet of road frontage and a minimum of two acres (2.4, 2.5, 2.5, & 3.7 – in Exeter).

Chairman Smith inquired of the Fire Chief's requirements for fire suppression. Fire Chief Mazur responded that there is a waterhole on Joslin Road and each lot must measure a maximum of 1200 feet from it to satisfy fire suppression requirements.

The existing house and wells were noted as well as the sight distance measurements for the lots in both towns (at least 510 feet each). There would be no wetland filling. When asked about the placement of one of the driveways, Mr. Brouillette stated that its location was chosen because of an existing wood road, a cut in the trees and stonewall, and a culvert. He was advised all driveways must be at least ten feet from the boundary line. Test pits were witnessed by the building inspector.

Further review of a conceptual plan resulted in the following notes: state subdivision approval would be required for all proposed lots under five acres, soil calculations would need to be translated to the new soils and data language, concrete bounds would be required at all new points, new MBL#'s would need to be obtained from the Selectmen's office, and a formal application must be submitted 21 days before the board's scheduled meetings held on the third Thursday of each month. Mr. Melanson thanked the board at left the meeting at 8:24 p.m.

**Farm Friendly:** Chairman Smith inquired if any of the members read the "Farm Friendly" literature sent out with the minutes last month. Mr. Johnson stated that he had and asked if the town has a different set of building codes for agricultural buildings. Building Inspector Glenn Clark replied negatively and added that the BOCA Codes are used for all buildings in town.

Chairman Smith stated that he received a "Farm Friendly" kit to help the board preserve and incorporate farms in town. He noted several brochures included in the kit. He stated that the state says greenhouses and horse farms are classified agricultural – any farm or animal use that promotes open space is considered agricultural. He reported that the Shaftmaster property is for sale and there was an inquiry of whether an animal rescue shelter could be added to the already operating horse/boarding farm. Would this use fall under an agricultural use or a commercial use? It is questions like these the board need to consider and take a stand on. He encouraged members to read the literature in the kit.

**Master Plan:** Further discussion on the possible color copies of the future land use map (for the books) transpired resulting in the board agreeing to print out color copies of the maps upon the completion of the Master Plan revision. The exact number of color copies and black and white copies would be determined at a later date. The only chapter to be completed in the Master Plan is the Goals chapter, which was rewritten last year but not yet adopted. Noting the chapter's completion,

**MOTION:** Mr. Johnson motioned to hold a public hearing on July 20, 2000 for the adoption of the Goals Chapter of the Master Plan. Mrs. Fillio seconded. With no further discussion, the motion carried 5-0.

**David Morse:** Mr. Morse stated that he would like to bring to the board's attention that he is in the preliminary stages of planning an elderly housing development on his land located on Willow Road. If any board member has questions regarding his plans they are to feel free to address them to him.

**Home Occupation Process – Invisible Clause:** Continuing the discussion on whether the determination of an invisible business should be done at the discussion level or the public hearing level, the board was polled. Those in favor of determining whether or not a business meets the invisible criteria at the discussion level were Dr. Marston, Mr. Riley, Mrs. Fillio, Mr. Johnson, Mr. Fillio and Mr. Morse. In favor at the public hearing level was Chairman Smith.

Mr. Riley stated that any question about signage or visual issues of a business should go through a public hearing process. Chairman Smith stated that if it is done at the discussion level there could be a mix up. If done at public hearing level then all home occupation applicants go through the same process. He further stated that he thinks the board is making a mistake by allowing home occupation decisions to be made at the discussion level.

For the record, the home occupation procedure will be to direct all home occupation applicants to the planning board who would make the determination of whether or not a full public hearing is warranted – the determination of invisible clause criteria being met may be done at the discussion level, without a public hearing.

**Minutes:** Noting the presence of all the members at the last meeting dated May 18, 2000, Chairman Smith directed those members eligible to vote on their acceptance to do so.

**MOTION:** Mr. Johnson motioned to approve the May 18, 2000 Planning Board minutes as presented. Mr. Riley seconded. With no further discussion, the motion carried 4-0.

With no further business,

**MOTION:** Dr. Marston motioned to adjourn. Mr. Johnson seconded. The motion passed 5-0 and this June 15, 2000 Planning Board meeting ended at 8:50 p.m.

Respectfully submitted,

Catherine Belcher  
Secretary

Minutes completed and on file June 17, 2000.

Approved: 7/20/00