

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
June 19, 1997

FILE

AGENDA

7:45 **Connie McMahon / Joe Courtney - 63 Burnt Swamp Road Subdivision - Discussion**
8:00 **Marjorie & Merrill Damon - 71 Main Street Home Occupation - Public Hearing**
8:30 **Larry & Karen Bean - 4 Powwow River Road Subdivision - Public Hearing**
9:00 **Gerald & Jacqueline Bean - 112 Lot Line Adjustment - Public Hearing**
9:30 **Marie Robie - 49 Burnt Swamp Rd Subdivision - Public Hearing**

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson - Vice Chairman, James Roby Day, Jr. - Ex-officio, Catherine George, Dr. Robert Marston, and Alternate Beverly A. Filio (7:50 PM).

Absent: Alternate Robert Nigrello.

Others attending: Lawrence K. Smith - Conservation Commission Chairman, Sarah Campbell - RPC Circuit Rider, Glenn P. Clark - Building Inspector, Marjorie and Merrill Damon, Marshall Merrill, Gerald Bean, John Herrick, Dan Johnson -LLS, Kevin Bean, Larry Bean, Marie Robie, Joe Courtney, James Van Bokkelen, Ardith & Michael Polletta, Nancy Reiss, Curtis Jacques, Roberta Converse, Craig Scholpp, Paul Nichols -LLS, and Davis Finch.

Chairman Smith called to order this June 19th, 1997 public planning board meeting at 7:34 p.m. with the roll call.

Madeline Marshall Resignation: The Board acknowledged a letter of resignation as Planning Board Alternate from Madeline Marshall and requested a letter of appreciation be sent to her.

Future Land Use & Acquisition Committee: Mr. Johnson stated that the committee is in its beginning stages thus, it is too early for an update. As the committee progresses, he will report the committee's finding to the board.

May 19, 1997 Minutes: The board review minutes dated May 19, 1997 and noted corrections on pages 3 and 4.

MOTION: Mrs. George motioned to accept the May 19, 1997 Planning Board minutes as corrected. Mr. Day second. The motion passed 5-0.

Incoming Correspondence: Chairman Smith acknowledged the following correspondence:

1. RPC Planning Assistant Grant - a 50/50 matching grant. Matching town funds must be available as of July 1, 1997. Projects must be completed by June 30, 1998. Application deadline is 5PM July 11, 1997.
2. Exeter Watershed News

Connie McMahon / Joe Courtney - 63 Burnt Swamp Road Subdivision Proposal - Discussion: Chairman Smith opened discussion for Connie McMahon's property at 63 Burnt Swamp Road, MBL# 11-4-1. Mr. Joe Courtney and Mr. James Van Bokkelen will be representing Ms. McMahon. Ms. McMahon is proposing to subdivide 15 acres into two parcels.

Mr. Courtney stated that the property is currently being surveyed. Tax maps indicate Ms. McMahon holds deed to 15 acres, however, the parcel is approximately 31 acres. The subdivision proposal will consist of two lots. Parcel A will include the existing house and barn and contain 5 acres with 250 ft. of frontage. Parcel B will contain the remaining acreage.

Mr. Van Bokkelen informed the board that the purpose of this subdivision is to place the larger parcel (B), in a conservation trust, in which he, his wife and sister are trustees. "Howfirma Trust" is an open space trust that has 501(c)(3) tax status. (Non-profit organization.)

It is the intention of the trustees of Howfirma Trust to acquire large parcels of land, place them in current use and sit on them. Only in the event that a larger parcel should need to be purchased, and the trust fund cannot fund this purchase, then a parcel may be sold to raise the moneys needed to acquire it. In such a scenario, the IRS would become involved.

Mr. Van Bokkelen further explained that because Howfirma Trust is a private operation, it is not the best option for property owners to donate their properties as a conservation easement. There would be little tax write-off to that property owner.

He then produced a map showing properties the trust has already acquired, properties he owns himself, and properties the trust is considering purchasing. At the inquiry of the board, he also stated that the actions of the trust are at his, his wife's and his sister's discretion. He also stated that amending the trust would jeopardize the 501(c)(3) status. The trust can only sell land to make money to put back into the trust.

He continued to say that the trust can only dissolve if it passes its assets on to a similar organization.

Mr. Van Bokkelen then stated that the proposed parcel B of the McMahon property may not be considered buildable. The property is mostly wetlands with an acre or two of dry about 900 ft. in from the road.

Mrs. Campbell responded that the board is bound not to create lots that do not meet the zoning ordinance.

At this time, Chairman Smith ordered the discussion with James Van Bokkelen and Joe Courtney to be continued until after the scheduled public hearings this evening.

Marjorie & Merrill Damon - 71 Main Street - Home Occupation Public Hearing: Chairman Smith opened the public hearing for Marjorie and Merrill Damon of 15 Spruce Street, Malden, Massachusetts. The applicants propose to operate a small welding repair business at the 71 Main Street location, MBL# 14-02-03.

Mrs. Damon stated that she and her husband are interested in purchasing the Merrill property at 71 Main Street, provided they can operate their small welding business from the premises. She explained that the majority of the business would be done at the job site using a portable welding unit on a truck. The business address would be at 71 Main Street with a small home office for bookkeeping and the like.

Mrs. Damon further stated that her husband is 59 years old and would like to scale down his work load. The move to NH alone would result in a large percentage of a reduction to his work load. He is looking to retire in a couple of years. This welding business is a one-man job as it has been for the last 30 years.

Mr. Michael Polletta stated that the current business of Merrill & Sons Truck Repair should not be allowed. He argued that the Board of Adjustment denied his application for a home occupation permit.

Mrs. Roberta Converse stated that she was not notified when changes to the Merrill Truck Repair occurred. She stated that the truck repair is not a conforming use.

Chairman Smith stated that the issue is with the application before the board, not the current property owners and their business. That issue should be addressed to the Board of Selectmen.

Ms. Nancy Reiss inquired as to what "scaling down" meant.

Mrs. Damon responded that her husband will do the majority of his repair off the premises. In relocating to East Kingston, they will be leaving behind the overhead of renting a shop. He currently has two customers in NH and both require work to be handled out at the job site using the mobile welding unit.

Mrs. Converse stated that she feels the business is of a commercial/industrial nature and should not be permitted in a residential zone. She opposes the operation of a business of this type in her neighborhood.

Mrs. Damon stated that she would agree to the setting of restrictions should the application be approved.

Mr. George explained that the Home Occupation permit is reviewed and renewed on an annual basis. Changes in the business are reported to the Selectmen's Office, where the Selectmen are charged with granting or denying its renewal.

Mr. Johnson inquired if the proposed welding repair business would comply with Article 10.3.6 (*The home occupation must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter.*)

Mrs. Damon responded that the business does and will comply with this rule.

Mr. Damon stated that the mobile unit is noisy, but it goes out to the job site. Any repairs done at the residence will be done inside the garage using a quiet electric welding unit.

Ms. Reiss stated that if Mr. Damon is working at the job site, then the Home Occupation permit is for more of a bookkeeping/office situation.

Mrs. Damon agreed. She then compared her husband business to the carpentry trade stating that a carpenter may build cabinets at his shop, then install them at the job site.

Mr. Day stated that he did not think the proposed use is a permitted one. This proposal violates Articles 10.3.2, 10.3.5, and 10.3.6. It is a commercial enterprise.

Dr. Marston disagreed and stated that the work is done at the job site.

At the inquiry of Ms. Reiss, Mrs. Damon stated that a sign would not be needed. The business is based on reputation. This is not a street business. Much of the work is done at the job site.

Mrs. Damon then elaborated on the types of work her husband does. She included a project her husband did for a movie production company. He made 60 old fashioned street lamps for the scenery.

Mr. Damon stated that on occasion, he would bring home a bucket from a case loader. This type of bucket measures 24 inches long and 30 inches high. This would be transported to his shop by way of a pick-up truck. At no time would a bucket loader or large type of machinery be brought to the residence.

Mrs. Fillio stated that she was concerned with this small business growing into something big. That would not fall into a permitted use.

Mr. Day reiterated that this is not a permitted use.

Chairman Smith disagreed.

Mr. Damon stated his business truck is a one ton truck with a welding unit.

Mrs. Converse submitted her written letter of disapproval and then requested a written copy of the decision.

Mrs. Damon stated that she sent out 9 letters to abutters explaining the scope of their proposal. Two letters came back stating that they had no problems with the Home Occupation intentions. She stated most of the abutters do not oppose.

Ms. Reiss stated that if restrictions were placed on the business, she would have no problem with it. She does not want noise, trucks, or traffic. She prefers the arts/craft type of welding over the industrial type.

Mrs. Damon stated that they would be willing to be placed on a one year trial with restrictions. If there are complaints or problems, they will cease the business operations at the residence.

Mr. Day responded that compromise is not easy to enforce. This is not a permitted use.

MOTION: Mr. Day motioned to deny the application for a home occupation permit for the Damon's at 71 Main Street, MBL# 14-02-03 predicated on Article 10.5, *not a permitted use.*

The motioned failed for lack of a second.

MOTION: Dr. Robert Marston motioned to recommend that the Selectmen APPROVE the application for a Home Occupation permit for Marjorie & Merrill Damon to operate a welding repair business at the 71 Main Street location, MBL# 14-02-03. Mrs. Catler in e George second. The motion passed 4-1. (Mr. Day opposed.)

Mrs. Damon stated that she and her husband would like to attend the Selectmen's meeting in which this Home Occupation recommendation will be on the agenda.

The recording secretary advised her and any interested abutters to contact the Selectmen's office to check the agenda for Monday.

Larry & Karen Bean - 4 Powwow River Road Subdivision - Public Hearing: Chairman Smith opened the public hearing at 8:40 p.m. for Larry & Karen Bean who propose a 2 lot subdivision of 5.3 acres located at 4 Powwow River Road, MBL# 10-03-10.

Mr. Dan Johnson, LLS (NH License # 0651 expiring 10/31/98), of Plaistow Consultants will be representing Larry and Karen Bean. He began his presentation explaining that this 2 lot subdivision is for the purpose of creating a lot for the son to build on.

The board reviewed the plans noting the wetlands, septic, driveway, proposed location of house and well.

Mr. Dan Johnson stated that the driveway would need to cross a brook. The most narrow point was chosen. He had already filed a Dredge and Fill application with the state. He pointed out the Hydric A and Hydric B soils on the plan.

Mr. Dan Johnson also stated that he has applied for a state driveway permit and state subdivision approval. He is currently awaiting a wetlands response before the state subdivision approval is given.

The board reviewed the plans and noted that the 4000K area must be located 20 ft. from the boundary line.

Mr. Larry Smith stated that the Conservation Commission has already met and discussed this proposal. They will be submitting their findings to the state. He stated that the commission would like to see culverts used and possibly replace the area crossing the brook with mitigation.

The board reviewed issues brought up from the preliminary discussion of this proposal held in January. It was noted that the 3/4 acre was met. Also noted was no criteria for HISS mapping to be done and no soil scientist seal and signature were on the plan.

MOTION: Pursuant to RSA 676:4 (b), J. Roby Day, Jr. motioned to accept jurisdiction on the application to subdivide 5.3 acres (MBL# 10-03-10) into two parcels. Catherine George second. The motion passed 5-0.

MOTION: Edward C. Johnson motioned to Approve the application to subdivide 5.3 acres into two parcels, MBL#10-03-10, located at 4 Powwow River Road subject to the following conditions:

1. Soil Scientist's seal and signature on mylar;
2. Correct assessor's # 10-3-16 (lot 2) on mylar (including all notes);
3. Move 4000K area to accommodate 20 ft. setback;
4. The proposed subdivision receive State subdivision approval;
5. The proposed subdivision receive State driveway approval;
6. The proposed subdivision receive State dredge & fill approval;
7. Set 2 concrete markers and noted on mylar.

Dr. Robert Marston second. The motion passed 5-0.

Gerald & Jacqueline Bean - 112 Haverhill Road Lot Line Adjustment - Public Hearing: Chairman Smith opened the public hearing for Gerald & Jacqueline Bean's proposal for a lot line adjustment between MBL# 10-03-11 and 10-03-13 (owned by John R. Herrick) at 9:20 p.m.

Mr. Dan Johnson will be representing Gerald and Jacqueline Bean. He pointed out on the plans two land swaps between the Bean's and Mr. Herrick. Mr. Herrick will convey a small sliver to the Bean property, the Bean's will convey a larger piece to the Herrick property. Noted is that the conveyance is for contiguous use only. Not intended for separate use.

The board reviewed the plans and noted that two concrete markers need to be set and so noted on the mylar.

Mr. Dan Johnson stated that old markers can stay, no need to remove them.

MOTION: Pursuant to RSA 676:4 (b), Catherine George motioned to accept jurisdiction on the application for Lot Line Adjustment between MBL# 10-03-11 and 10-03-13. J. Roby Day, Jr. second. The motion passed 5-0.

MOTION: Edward C. Johnson motioned to Approve the application for Lot Line Adjustment between MBL# 10-03-11 and 10-03-13 subject to the following condition:

1. Set 2 concrete markers and note on mylar.

Dr. Robert Marston second. The motion passed 5-0.

Marie Robie - 49 Burnt Swamp Road Subdivision - Public Hearing: Chairman Smith opened the public hearing for Marie Robie's proposal to subdivide 128.7 acres into two parcels located at 49 Burnt Swamp Road, MBL# 10-05-02 at 9:30 p.m.

Paul Nichols, LLS (NH License # 0825 expiring 12/31/97) will be representing Mrs. Robie. He stated that Mrs. Robie is proposing to subdivide 128.7 acres into a 5 acre parcel with existing house and over 200 ft. frontage and a 123.7 acre parcel to be sold to Howfirma Trust (a conservation trust).

He requested that the Board grant waivers for HISS mapping and test pits as no development will occur on the new lot.

The Board reviewed the map noting the property abuts the Eaton State Forest and other properties owned by Howfirma Trust.

Mrs. Robie stated that the Dept. of Transportation has agreed to issue a driveway permit if brush is cleared by the roadway. She indicated that a permit would be in the mail by next week.

Mr. Van Bokkelen stated that at this time Howfirma Trust allows hunting on its properties, however, careless hunters may jeopardize that.

The Board noted that two concrete markers would need to be set.

Mr. Van Bokkelen stated that he would like to set an additional concrete bound for Mrs. Robie.

MOTION: Pursuant to RSA 676:4 (b), Edward C. Johnson motioned to accept jurisdiction on the application to subdivide 128.7 acres into 2 parcels, MBL# 10-05-02. Catherine George second. The motion passed 5-0.

The Board discussed reservations about creating lots that do not meet ordinance requirements.

Mr. Van Bokkelen stated that the area behind Mrs. Robie's house should perc as it is dry.

The Chairman asked for any abutter questions or concerns.

Mr. Craig Scholpp stated that he had no problems with this subdivision. The sale of the property to a conservation trust is a plus for the town.

Mr. Davis Finch inquired as to what if any long term protections exist for this proposal.

Mr. Van Bokkelen explained that the trust is worth 4 million dollars. The intention of the trust is to acquire open space lands and maintain them. He may find new trustees or pass it on to a similar organization. The agreement of the trust bounds him to these intentions.

He then expounded on his history. He grew up in Newburyport with roots to South Hampton. It bothered him when much of his hometown developed. Much of Newburyport's open space is now gone. He founded a software company (FTP Software) and donated moneys to the trust to carry out his wish to preserve open space. He considers it a hobby to buy open space lands to block out large subdivisions.

Mr. Day requested that a copy of the trust, with signatures be forwarded to the Board.

MOTION: J. Roby Day, Jr. motioned to Approve the application to subdivide 128.7 acres into 2 parcels, MBL# 10-05-02, which will include waivers from Subdivision Regulations Section VI.J - HISS mapping and Section XII.C.4 - perc testing, (noting the purpose of the waivers are based on the fact that the newly created lot of 123.7 acres will be placed in a conservation trust) subject to the following condition:

1. Set 3 concrete markers and note on mylar.

Catherine George second. The motion passed 5-0.

Connie McMahon/Joe Courtney- 63 Burnt Swamp Road Subdivision Proposal - Discussion (con't): At this time the discussion on the McMahon property continued. Issues included whether or not the proposed new lot would be considered buildable. Lot line adjustments were discussed as well as a merger to the Robie property.

Mrs. George asked if the board would consider approving this proposed subdivision if it was for conservation purposes only.

Mr. Van Bokkelen stated that the mylar could note that the parcel is unbuildable.

It was discussed that the remaining 5 acres with the existing McMahon house and barn would need to show 3/4 acres dry with the required frontage. A variance may need to be obtained if those requirements could not be met.

Mr. Van Bokkelen stated that he will investigate the parcel further to determine if there is enough dry land on the 5 acre parcel.

10 North Road: Mr. Curtis Jacques inquired if the Planning Board knew if the EPA requirements on 10 North Road had been done. He stated that well testing was a part of those requirements. He continued to say that the property is a junk yard and asked in the Planning Board or Selectmen can do anything about it.

The Board advised Mr. Jacques to inquire to the Selectmen's office.

Work Session: A work session is scheduled for Wednesday, June 25th, 7:00 p.m. in the Conservation office at the Town Offices. The agenda will include discussion on the Capital Improvements Plan and Site Plan Review amendments. The next regular session will be held Thursday, July 17th.

MOTION: Dr. Marston motioned to adjourn. Mrs. George second. The motion passed 5-0 and this June 19th, 1997 public planning board meeting ended at 10:40 p.m.

Respectfully submitted,

Secretary

Minutes completed and on file June 23, 1997.