



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2006-2007:
Mr. JR Day, Jr., Chairman
Mrs. BE Belcher, Vice Chairman

MINUTES

(Work Session Meeting of 10 July 2006)

AGENDA:

7:30PM- **Joint Meeting with the East Kingston Conservation Committee**

8:15PM – **Information/Discussion/Loose End Items**

- Agenda for 20 July Regular Meeting
- ZBA hearing for cell tower 18 July update
- CIP letter proposal for August
- Bowley suit update & growth control ordinance change proposal
- ZO/Reg book publication conundrum
- South Hampton/East Kingston Pine Woods development
- Potential Flea Market to ZBA?
- SDR Section VII.R change recommendation (Andy Conti)

Action items

- Town Center District zone and Town-wide proposal with Conservation Commission
- Subdivision Regulation Δ proposal IRT fire suppression and building permits

9:40PM - Adjournment

CALL TO ORDER: Chairman Day called the work meeting of the East Kingston Planning Board to order at 8:15 PM.

ROLL CALL: Mrs. White called the roll. Members present were Vice-Chairman Mrs. CE Belcher, Chairman JR Day, Mr. RA Smith, Sr., and Mr. Lloyd. Dr. RA Marston, DVM did not attend and Mr. Morales was attending a selectmen's meeting. Mrs. Robinson was absent due to the sudden illness of her husband.

Voting to accept the minutes was waived until the regular board meeting on the 20th as the entire board was not present.

BOARD BUSINESS:

Joint Meeting with the East Kingston Conservation Committee for discussion of East Kingston Natural Resources Inventory, Town Center and Town-wide ordinance proposals using environmental mapping overlays from RPC.

Agenda for 20 July Regular Meeting

Paul Masone

Mr. Day stated that he had just received a letter from Mr. Masone that day explaining that he would not be bringing the original prospective tenant to the board due to complications, but he has a new tenant to present; Mr. Rodger Burke. Mr. Masone will not be able to attend the meeting in person and has asked Mr. Dennis Quintal to represent him at the hearing. Mr. Burke is hoping to open a business repairing and rebuilding bucket trucks, wheelchair vans and other similar types of equipment.

Jeff Marston's Cell Tower

Mr. Day stated that there is a ZBA meeting on Tuesday, July 18th on the cell tower matter to decide whether or not there is merit in the appeal to prompt a ZBA rehearing. The board will know on Tuesday whether the ZBA has decided to have a rehearing or if they are satisfied with the decision as it stands. Mr. Day's thoughts were that the best way to deal with the matter was to have the public hearing nevertheless since the abutters have all been notified. If the ZBA decides to rehear it, the planning board would open the hearing and continue it if necessary.

Mr. Smith stated that the Waldron's lawyer was "pretty good at that stuff". Mrs. Belcher replied that he could not speak since it was not a hearing but just a meeting of the zoning board members to determine whether or not they felt they had made an error or not in their original decision. If they decided they did not made an error, then the Waldron's lawyer could appeal to Superior Court.

Mr. Day stated that in the meantime, the planning board would motor along in their own public hearing and make their own decisions, and one way or the other they would talk to the cell tower people.

Gregory Sancroff

Mr. Day referred the board members to the Selectmen's meeting minutes of May 30 and June 12. Mr. Sancroff had spoken to them and come back to them with sufficient evidence for the selectman to say yes, you are grand-fathered. Mr. Sancroff is going to come to the planning board and is down for a public hearing, but we did not notify the abutters since he has asked for relief from many items in the site plan application. Mr. Day suggested he come to talk to the board and they would look at what he was proposing and advise him as to what they wanted for a site plan.

Kathy and Fred Ford

Mr. Day referred the board to material from Mr. and Mrs. Ford on a proposed mini-storage type of operation near the railroad tracks. Since Mr. Ford is in no rush but wants to do it right the first time, Mr. Day suggested he come and talk to the board so they could determine what they wanted in the site plan.

Flea Market

Mr. Day informed the board that Mrs. Todd (the woman who wants to open the flea market) would be another possible ZBA action. He asked Mrs. Belcher if she was familiar with it and she replied that the e-mail from Mrs. Todd was the first she had heard of it. Mr. Day explained that apparently there was some sort of flea market operation in Rowley, MA and they are getting evicted. Now they want to come to East Kingston and use Sarabell Laser's old property to have a flea market once a week. The property is zoned residential/agricultural. Mr. Day said he spoke to Mr. Daly from the ZBA about whether or not Mrs. Todd should come to the planning board first and Mr. Daly said to just send her to the ZBA because they are going to have to ask for a variance.

Mrs. Belcher stated that they could not just go to the ZBA; they needed to be denied someplace first. Mr. Day stated that he had asked Mr. Daly that specific question. Mrs. Belcher stated that the ZBA has no authority to hear an appeal or a variance unless some administrative official has said no. For example, a person could have gone to the planning board and they would have said no, you need a variance for that. Or a person could have gone to the building inspector who would say no, you need a variance for that. Mr. Smith agreed that that should be how the process should be handled.

Mr. Day said he spoke to Mr. Daly about that very thing and Mr. Daly stated that they only needed to go before the ZBA, not the planning board.

Mrs. Belcher stated that it could be grounds for an appeal from somebody else if they heard it wasn't handled properly.

Mr. Day said he was confused and had looked in the RSA book for something specific in regards to that and could not find it.

Mrs. Belcher answered that it would not be in the RSA, but in the handbooks as to how that was to be implemented. It would be in any of the law lecture series the board was given or could be looked up on line at the office of state planning.

Mrs. Belcher strongly disagreed with Mr. Daly and stated she could not imagine how else you could offer someone a variance because someone has to tell them no (first). Even if it is an equitable waiver from dimensional requirements, the building inspector still has to say no, you need a waiver since a variance says you are changing the rules.

Mr. Day replied that at this point and time, Mr. Daly was saying he would entertain a hearing for the Mrs. Todd. Mr. Day told Mr. Daly that that was contrary to what he had led him to understand years ago.

Mrs. Belcher interjected that possibly Mr. Daly knows of a change in the law that the planning board does not know. Mr. Day asked Mrs. Belcher if she could research the matter more and she agreed she would. She stated she would e-mail Mr. Chairman but he would need to kill her afterwards, as his e-mail address was a secret.

Mr. Smith asked how many acres there were and Mr. Day answered there were 33 acres, with 18 acres of wetlands.

Mrs. Belcher stated that they would basically be turning the property into commercial piece of property.

Mr. Smith stated that there would be a lot of traffic going in and out, and someone would need to direct traffic so no one would get killed. Even though Mrs. Todd is presently paying someone to direct traffic where she is, Mr. Day stated that she would need to find someone willing to do that here.

Mr. Smith asked how they would be taxed as the town would need to receive some revenue from the business.

Mr. Smith also asked if there were any items the board was really going to work on at the next meeting or was it just going to be discussion. Mr. Day answered that there were the Paul Masone and Jeff Marston public hearings, and then there were two discussions only; Mr. Sancroff and Mr. Ford.

Mrs. Belcher stated from the letter Mrs. Todd had written that there would be traffic from Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and sometimes New York on a weekly basis, which meant there would be no more Sunday driving through East Kingston.

She stated to Mr. Day that when she found out the answer of whether Mrs. Todd needed to go the planning board before the ZBA, she would e-mail the information to Mr. Day and he could approach Mr. Daly as she was uncomfortable confronting him.

CIP Letter Proposal

Mr. Day directed the board to the CIP proposal letter. His suggestion was to send the letter now and schedule a work session in early August, where representatives from the different departments would come and talk to the board at 5-minute intervals. This way the board would not need to wait for them to fill out the forms and send them in, which was not always in a timely manner. Mrs. Belcher stated it should be mandatory to RSVP if they would be attending.

Mr. Lloyd suggested that it might be helpful to let them know what the board expected from them. Maybe something on the order of "please be prepared to provide updates to Tables 9 and 10". Mr. Day noted that they did not get any information from the library last year and Mr. Smith noted the board did not receive any information from the historical committee either.

Mrs. Belcher asked if Mr. Day was sold on the Sunday date in August (from the sample letter he had distributed) and Mr. Day explained that he had just plugged in a date; he did not even know what day of the week August 15th was. He had suggested early August since he would be gone the latter part of the month to "New Found Land" looking up his dead Grandfather. They had found the house his grandfather was born in, which is now the town museum, and would be flying as it took 3 days to drive. He stated "You can't get there from here."

Mrs. Belcher suggested they RSVP to Mr. Chairman. Mr. Day suggested that they could RSVP to Barbara as the central contact person to acknowledge that a representative would be at the meeting.

Mr. Day reminded Mrs. Belcher she would be chairing the August meeting.

The Bowely Suit

Mr. Day stated that he had sent a note to Mike Donovan asking him a question regarding the currency of the town's growth control ordinance that was in position before the interim growth control ordinance was put in place. He is seeking a legal opinion on that because the interim growth control ordinance was only good for one year. Mr. Day stated that the board remembered what happened at town meeting 1998 and what didn't happen at town meeting 2001. He asked if that necessarily meant then that the previous growth control ordinance (the 1994/1995 version which very closely mirrored the one we have today) was in effect? The board has substantially fulfilled the requirements of the interim ordinance.

Mrs. Belcher asked "if the spirit of the ordinance was maintained and the town acted as though it had been maintained, and if there was some sort of typographical error in it, does that 'throw out the baby with the bathwater?'" She believed it should not and could not imagine that a judge would say the spirit of the ordinance had not been met, or that the spirit to fulfill and enact and implement it had not been met.

Mr. Day went digging in the RSA book for guidance and clarification as to whether or not an interim growth control ordinance would necessarily replace something that is in place. That is the legal question he needs answered and he hopes to have that answer by next week.

Mr. Day stated that he was caught in a bind because the board does not have the new zoning books published yet. The question arises "what do we do with article 13?" He also posed that question to Mr. Donovan.

Mr. Smith stated that he was bothered when he took a ride around the circle into the development off of 108 and saw an amazing number of foundations already in. Mrs. Belcher said she had ridden her bike there two weeks ago and there were no foundations then. Mr. Day stated that the builder has 10 building permits but has not begun the development off Rowell Road; has not even cut a tree. He is working on the southern end and has the fire suppression systems in and all shined up. Mr. Day stated that it would be built out post-haste. What he was unsure of was if the houses were spec houses or not because they were given to entities other than Turner Porter himself; the old card shuffle trick, which is allowed.

Mr. Day is hoping that Mr. Donovan will not say “No, that doesn’t work because you weren’t applying the rules of the 1994 ordinance in spite of the fact that they very closely mirror what you were applying.” Mr. Day could argue that it is still in place and that East Kingston still has growth control, but right now the world is under the assumption that the town does not.

Andy Conti

Mr. Day stated that Mr. Conti had sent the board yet another version of the SDR Section VII.R change recommendation. His newest version stated that “adequate fire protection shall be provided for all subdivisions subject to review and approval of the town fire chief. Measures may include but shall not be limited to cisterns, fire ponds, and dry hazards. Any subdivision creating less than three new lots shall be except from needing to provide fire protection as long as the following mandates are met: a) the three lots are residential/agricultural in use, and b) the newly created lots shall be recorded with the following note “any further subdivision of these parcels shall require the installation of an approved fire protection source as per the subdivision regulations.” There was discussion over just how many houses they were referring to until fire protection would need to be installed – 2 or 3.

Mrs. Belcher stated that she thought the purpose of the board’s relaxing the fire suppression requirement was for people like Joann Grant who was just looking to subdivide for one more lot. Now the fire department is talking about two subdivisions and you would end up with three parcels, which means that a fire suppression system would not be required until a 4th parcel is created. Mrs. Belcher wondered what was the different between 4 or 10?

Mrs. Belcher said she understood the financial hardship of \$30,000-\$40,000 to install a cistern for one additional house could not be recouped, but if you were selling two lots as opposed to one, there should be money between the sale of the two lots to cover the cost of the cistern. Mrs. Belcher also stated that the more houses the fire department wants to allow without a fire suppression system, the weaker the argument about fire suppression becomes in the first place. Mr. Day agreed.

Mrs. Belcher asked Mr. Smith what he thought. Mr. Smith replied that he thought that the fire department had decided to write the laws of the town and they got away with it. A lot of people have come to believe that what they’re saying isn’t true. They have 3,000 gallons of water on their truck and can have 3 more tank trucks here within 15 minutes; all they have to do is call. If they put a little foam in the water, it reduces the amount of water they need to put out a fire by 1/3, which would give them 9,000 gallons, so it can be done. Mr. Smith asked the board when was the last time there was a fire in town that they used all the cisterns and no one could recall.

Mr. Smith also stated that back when the fire department started the business of requiring cisterns, fires were quite prevalent. But now people are more aware of fire. There are ads on TV reminding you to change the batteries in your smoke detectors, people were not burning wood like they used to, and a lot of new houses don’t have wood burning fireplaces in them. Mrs. Belcher agreed that we definitely have more fire awareness now.

Mrs. Belcher asked Mr. Smith if he thought that the board should not require cisterns at all? He replied he thought that if someone wanted to build a house and live in it, they shouldn’t be required to install a \$60,000 cistern. Mrs. Belcher agreed. She asked Mr. Smith how many houses he thought they should be allowed to build before installing a cistern and Mr. Smith answered that he thought they could build 3 houses.

Mr. Smith stated as an example to see how bad the situation was, that the house on North Road didn’t have to put in a fire cistern, and when Mr. Beattie tried to build a house across the street, they had to put a fire cistern in. He thought that was very unfair and Mrs. Belcher agreed.

Mr. Smith stated that the idea in the beginning was that the fire department would put in fire wells or cisterns and have the money budgeted in the fire department budget and everyone in town paid for it; no one building one house would have to pay for it.

Mrs. Belcher stated that after reconsideration, she agreed that Mr. Beattie should need to have a fire suppression system of some sort as he would be refurbishing old cars and he would have flammables there.

Mr. Smith stated that he thought he should be allowed to live in that house. A large structure had been built on the end of the printing shop. He stated that they would need a ladder truck if there were ever a fire on the roof as it was so tall. He was very surprised when he saw the size and height of the addition; he had thought it would be small.

Dave Sullivan and Judy Cook

Mr. Day informed the board that Dave Sullivan and Judy Cook had sold the subdivision to a developer in Hampstead by the name of Dube. There was a blurb from Jay Stephens in the pre-construction meeting notes of June 21 saying the road had been finished and the two-year clock could start ticking.

Mrs. Belcher hoped that this new developer would do the same justice that Mr. Cook had in mind when he started. Mr. Day reminded Mrs. Belcher that this developer had bought a plan and unless he executed that plan, he would need to come back to the board.

Mr. Sullivan had admitted to being in over his head; Dick was the financial brains and Dave was the dirt and machinery brains, and you needed to have both to make it work.

Maximum Height

Mr. Day stated that he had been searching through all his ordinance books back to 1994 and could not find any reference to a maximum height of structures in the town except in the light industrial zone. So in theory, in the rest of the town you could build 7-story apartment buildings. Mr. Smith stated that that was something that should be changed, just like the light issue for one candlepower.

South Hampton/East Kingston Pine Woods Development

Mr. Day had distributed two legal notices from South Hampton. He had spoken to Dave West, the Circuit Rider hired from the RSA for this project who explained the situation. The town had denied the builder's application on some really silly technicalities, which they were within their rights to do. In the meantime, the town's Manchester lawyer who is also a hired gun (not their town counsel) has put a moratorium on any further subdivisions or site plans involving residential development pending an interim growth control ordinance proposal to special town meeting. They don't technically have Porter's application so this is one way to stop him dead in his tracks. And lo and behold, the next week they have his application in front of them and they are going to have another meeting to decide.

Mrs. Belcher said that was why the laws were written; to protect developers from planning boards who would do that sort of thing. But the board's interest is the town, which is not the developer's interest. Mr. Smith stated that he read that the moratorium would allow the builder to build five houses a year. Mr. Day stated that the builder did not have any plan. Mr. Smith asked what East Kingston was going to do at their end of this development. Would we deny them until they come up to speed?

Mr. Day stated that his personal opinion was that the town should not allow any development in East Kingston property without direct access or it would be scattered and premature. That was precisely what Kingston did to East Kingston with Tebo's development and he supported it 100% percent. Mrs. Belcher agreed.

Mr. Day addressed South Hampton's planning board chairman and he understands that that is what the board is looking at. He assured him that the plan they have in front of them, which EKPB will not see until they take jurisdiction, has no development in East Kingston; they are just using it for density. Mrs. Belcher agreed they could use it for density all they want. Mr. Day agreed, unless they get access and that's what that sliver of property was originally intended for on Pine Woods.

Mr. Lloyd interjected that he had heard something about access off of Stagecoach Road and Mr. Day replied that it was Stagecoach Road in South Hampton, not East Kingston. Mrs. Belcher interjected that that was where Henry and Grace Crosby had lived.

Mr. Day reported that the Circuit Rider was not being kept in the loop with all the legal machinations, so he really wasn't sure where they were going with this and what the fallout would be. Mrs. Belcher offered the opinion that it was accidentally on purpose. Mr. Lloyd assumed that South Hampton had to have the meeting to discuss the revised application. Mr. Day stated that Dave West had shown him South Hampton's current growth control ordinance, which takes up about $\frac{3}{4}$ of a page.

Mr. Day stated that if Mike Donovan came back to the board and said they have no growth control ordinance, period, his thought was to move to take a revised growth control ordinance to town meeting. The board could have an ordinance in place that would take effect in November, until town meeting. If the board does not do that, then they have no growth control, period. Mr. Day asked the board their thoughts on the matter since they looked skeptical.

Mrs. Belcher stated that she had been thinking of chairing the August meeting when Mr. Day not going to be there and Mr. Day stated he would lend Mrs. Belcher his gavel.

Mrs. Belcher stated she thought it would be prudent for the board to be prepared to have an interim growth control ordinance ready in case they found out that the present one was not in effect. She stated that the board could go before the town again. Mr. Day reminded Mrs. Belcher that an interim growth control ordinance would require the board go to a special town meeting. He had spoken to Glenn Greenwood and Jill Robinson from the RPC about this matter, and the timing and work involved is such that by the time the board could get an interim growth control ordinance to a special town meeting, they would be in the window to have a regular town meeting in place and take effect in the beginning of November.

Mr. Day reminded the board that a special town meeting was expensive, as was the one in 1996. That it had inherent costs associated and it was his opinion that it was not worth the bother and heartache to have one, especially since the regular meeting time was so close. And also the Selectmen would need to approve, as the board cannot make that decision alone.

Mr. Day stated that unless the board strongly disagreed with that line of thought, he thought they would make the most money and be fair and honest with themselves and everybody else by just saying "hey, we're going with a revised growth control ordinance; we'll hold a public hearing in time to have it take effect in November, and you can vote on it at town meeting."

Mrs. Belcher stated that there would be a 4-months window of time for development. She stated that the planning board, in all honesty, could drag its feet as much as it needs to before anything is approved. Mr. Day stated that if you have an application before you, then all bets are off if you start putting things in place after the fact. Mrs. Belcher agreed wholeheartedly.

Mr. Day explained that the big concern the selectmen and Mike Donovan spoke too was what the immediate fallout would be. The town has a handful of subdivisions with unsold lots like Maplevale. Mr. Smith asked Mr. Day if he would buy any of those lots and he replied probably not, but there were a couple of lots with trees and blueberry bushes on them. Mr. Smith offered the fact that there were several of the front lots with water grass growing on them and how would you get to some place high enough to build a house? Mr. Day interjected they would be a good place to build affordable housing. Mr. Day also stated that Osgood had four lots and Glenn Clark had eight lots and those lots would fill up.

Mrs. Belcher stated that if anything, the results of those building permits having to be issued without the compliance of a growth control ordinance would only help and support the board in the data. It would serve to remind the town why it is important to have a growth control ordinance, and could prove to the board's benefit in selling the growth control ordinance again.

Mr. Day asked if the board disagreed about going to public hearing with this in September or at least working on it in September? That would give the board plenty of time for updates and to revise the sunset clause. The board already has some ideas of a trickle over, dribble down, or carryover they know is workable and doable because Exeter does it. Mrs. Belcher interjected that the board only has the present meeting and the meeting in August in which to make the September timeframe.

Mr. Day stated that his quince crop is going to be terrible this year, he only had 7 quinces on the tree. There was discussion as to what a quince looked like and Mr. Day explained that it looked like a fuzzy apple that tasted sour. He stated that in colonial America, every backyard in New England had one, including John Adams. Mr. Lloyd asked if it was required by the planning board and Mr. Day agreed. Mr. Smith said his Aunt used to have one and made jam out of them. Mr. Day said his father used to make sauce and jam. Mr. Lloyd offered that the plural of quince was quinci.

ADJOURNMENT:

The board adjourned at 9:40 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary