

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES

July 15, 1999

FILE

AGENDA

- 7:15 Site Plan Review/Subdivision/Home Occupation Amendments – Public Hearing
- 7:30 James Mower– 59 South Road Subdivision – Continued Public Hearing
- 8:00 Lewis Dodge III – 14 Powwow River Road Site Plan Review – Continued Public Hearing
- 8:30 Steve Wilson – 46 Stumpfield Road Subdivision – Public Hearing

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson– Vice Chairman, Raymond R. Donald – Ex-officio (7:12PM), and Alternates David G. Morse and Robert Nigrello.

Absent: Beverly A. Fillio, Dr. Robert Marston and Alternate Peter A. Riley.

Others attending: Sarah Campbell – RPC, Lawrence K. Smith – Conservation Commission Chairman, Glenn P. Clark – Building Inspector, Alan Mazur – Fire Chief, Dennis Quintal - PE, Margaret Caulk, Victor & Susan Porro, Chip Dodge, Steve Wilson, Helen & Vernon Amazeen, Larry Erickson, Ronald Morales, Thomas Gage, David Woodburn, Herbert Woodworth, James & Mary Mower, and other members of the public who did not address their concerns.

Chairman Smith called to order this July 15, 1999 public planning board meeting at 7:05 PM with the roll call. Noting the absence of Dr. Marston & Mrs. Fillio, he then designated alternates David Morse and Robert Nigrello to participate in any voting matters before the board.

La Noria Development Corp.: At this time members reviewed the conditions set for Thomas Gage's approved 6-lot subdivision on Powwow River Road. Mr. Gage was before the board this evening to request final approval that all conditions have been met so the mylar could be signed and recorded. Building Inspector Glenn Clark indicated that he has inspected the bounds and that they meet his approval. It was noted that the boundary markers to be set along the newly proposed road would not be installed until after the construction of the road and that this would be part of the road bond agreement. Mr. Gage then addressed the 7 items of condition:

1. Pave entire cul-de-sac center– this is reflected on the plan;
2. Receive State Subdivision approval – received on May 19, 1999; SA19990001376;
3. Detailed drawing of road entrance from station 0 to station 1 – shown on sheet # 8 of the plan;
4. Remove ditches from the plan – done;
5. Receipt of all review & legal fees – paid up to date;
6. Bounds set – verified by the building inspector;
7. Acceptable bonding approval by Selectmen – verbal agreement approved, just waiting for a signed written agreement.

The Board noted a letter from Town Counsel stating that an agreement to post a cash bond in the amount of \$138,000 was approved, but the actual written agreement had not yet been drafted or signed. Furthermore, the funds would not be posted until the plan was recorded. Town Counsel recommended the plan be signed and recorded so that the bond agreement could be executed.

Mrs. Campbell stated that the town should be cautious to record the plan if the bond has not yet been posted.

Mr. Donald explained that the selectmen have no problem with the type of bonding proposed – a cash bond would serve the same purpose as a security bond. He said that the selectmen would like to have a signed agreement in hand prior to recording. It is not absolutely necessary to have the money in the bank – a signed agreement would suffice for recording purposes.

Discussion about what actual work could take place on the parcel prior to approved road bonding transpired. Members were concerned with development of the lots prior to bonding – having the bonding in place is a mechanism that would protect the town. Members agreed that the plan could be signed tonight, but not recorded until the bonding agreement has been drafted, signed and in the hands of the selectmen.

Site Plan Review/Subdivision/Home Occupation Amendments– Public Hearing: Chairman Smith opened the public hearing at 7:25 PM for proposed amendments to the Site Plan Review Regulations, Subdivision Regulations and Site Plan Review/Subdivision/Home Occupation applications. Mrs. Campbell explained that the proposed amendments to the sign provisions in the Site Plan Review Regulations are complicated and recommended that this portion of the public hearing be tabled until after the other public hearings scheduled for tonight are heard. Chairman Smith approved.

Mrs. Campbell then addressed the proposed amendments to Subdivision Regulations VII.B.4 regarding boundary monumentation. The existing text would be replaced with the following:

Permanent concrete monuments (4"x4"x4') or granite monuments or acceptable drill holes in stone shall be set at least at all corner points of each proposed lot before the plan is signed.

It was noted that these changes came about in an effort to be more consistent with allowable monumentation standards set by the licensed land surveyors' regulations and also to be more specific about concrete marker sizes.

Mrs. Campbell then addressed proposed amendments to the Site Plan Review Regulations, Subdivision Regulations, and Home Occupation applications, which would include a reference on each application stating that properties located within 200 feet of the proposal be deemed an abutter.

With no questions or comments from the board or public,

MOTION: Mr. Morse motioned to approve the proposed amendments to Subdivision Regulations VII.B.4 and the Site Plan Review Regulations, Subdivision Regulations, and Home Occupation applications as presented. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

James Mower – 59 South Road Subdivision – Continued Public Hearing: Chairman Smith opened the public hearing at 7:30 PM for James Mower's proposal to subdivide 47 acres located at 59 South Road, MBL# 13-3-9 into 2 lots. Dennis Quintal, PE represented Mr. Mower stated that this hearing is a continuation from the June 17th hearing.

Mr. Quintal went on to say that at the last meeting they discussed the wetland crossing for the proposed driveway. He stated that the culvert size calculation was in error - the calculation regarding the rainfall intensity was incorrect and its value has since been changed, however, this new calculation does not effect nor change the size of the culvert proposed. He stated that these new findings were presented to Conservation Commission Chairman Larry Smith.

He further stated that the existing culvert's top is rotted away and he intends to replace it. He noted that the regulations require wetland crossings to be located at the narrowest point to allow for the least amount of impact, which has been done here. He then state that he has met with DES's Senior Inspector Gino Infascelli, who conducted a 4-hour site walk (subsequent to the issuance of permit # 1999-0068) and concluded that the wetland crossing approval granted on May 25, 1999 would remain in effect. He is just waiting for written documentation of that affirmation.

Mr. Quintal said that the size of the culvert would not create any disturbance to the wetland located upstream from it – whatever flowage goes through the existing culvert would remain the same. The purpose of the wetland permit was to acquire access to the upland to subdivide this parcel into two lots, which meet the frontage, area, upland, well, and test pit requirements. The building inspector witnessed the test pits. He further stated that the proposal has received state subdivision approval (SA1999001391), septic design approval, and wetlands crossing approval (#1999-00668). Further delays in approving this subdivision application may effect financing the project.

When asked about a driveway permit, Mr. Quintal replied that he has not applied for a permit yet. He would prior to its construction then he stated that the proposed driveway's location meets sight distance requirements. He also noted the parcel is not located in a floodplain area.

With no questions from the board, Chairman Smith opened the meeting to questions and comments from the abutters.

Ms. Margaret Caulk stated that she has been a resident of 69 South Road for 26 years and she strongly opposes the project. She said that her property is most directly impacted as water runoff is directed towards it. She thanked her neighbors for their strong support of her endeavor regarding this issue. She then submitted a signed petition consisting of signatures from 55 New Hampshire residents and 1 Maine resident (16 East Kingston residents, 39 residents from the towns of Concord, Sanbornton, Barnstead, Brentwood, Manchester, Newmarket, Exeter, Strafford, Dover, Nottingham, Durham, Rochester, Newfields, Barrington, Portsmouth, Somersworth, Deerfield, and Wolfboro, and 1 resident from East Lebanon, Maine). The petition states that the undersigned support Ms. Caulk in her environmental concerns and oppose the Dredge and Fill application and approval filed by Mary & James Mower.

Ms. Caulk went on to thank Selectman Ray Donald for advising her to seek the services of a professional engineer to review the calculations submitted by Mr. Quintal in the drainage report. She expressed her frustration in the attitudes of planning board

members, conservation commission members and DES staff who found her questioning of the Mower's experts irritating. "Who are we to question the experts?"

She then addressed page 14 of the DES application regarding the runoff calculation. She stated that the figure is double what was originally stated. The actual calculation is 24 cubic feet per second, not 12. She said that this is only one of many errors. She then asked Mr. Ronald Morales, also of 69 South Road and holding an MBA in chemical engineering, to review the calculation error made by Mr. Quintal.

Mr. Morales explained the process of calculation and noted that over a period of 60 seconds a force of 89,856 pounds of water could pass through the culvert— that's 44.93 tons of water equaling 10,767.26 gallons per minute.

Ms. Caulk then submitted a resume and credentials of Dr. Larry K. Brannaka who is a research assistant professor of civil engineering at the University of New Hampshire. She stated that Dr. Brannaka reviewed the materials submitted to the Planning Board on June 15, 1999, which Mr. Quintal refused to provide to her, and rendered the following analysis:

1. There are problems with the calculations noted in the report;
2. The documentation is lacking;
3. The results are not feasible and are highly improbable;
4. The soils types do change between the proposed driveway and Ms. Caulk's property;
5. Calculation of 12 cfs is wrong – should be 24 cfs;
6. An 18" culvert would need over 7 feet of head to drive this water through – only 1 ½ feet are proposed;
7. An 18" pipe is incapable of handling 12 cfs of water never mind 24 cfs; and
8. He (Brannaka) does not have much confidence in the total analysis.

Ms. Caulk then went on to say that she suggests the Planning Board do its homework. She then directed comments to the Mower's that they (Mower's) should be appreciative that she is spending her own time and resources to promote the health and safety of the community as well as protecting the environment. She stated that the DES approval doesn't matter.

Ms. Caulk turned toward the Planning Board and stated that if the board proceeds to approve this subdivision plan, she would be forced to hold all involved responsible for the water destruction to her property. She said that she would go to the New Hampshire Attorney General.

Mr. Larry Erickson asked if anyone from the board had visited the site and seen the area in question. The wetland permit is to allow them to fill 793 square feet of meadow and install an 18" x 26' culvert for driveway access. He said that the existing culvert has been there for 25 to 30 years and that this area has never seen the kind of water Ms. Caulk is talking about. They are not changing anything that is already in existence now. The culvert is the same size and that would not change the flow – the new culvert would allow what flows there now to continue to flow. He stated that he wished the Planning Board had gone out to look at the area as they are not filling in any large area, just replacing a little culvert that would handle the same flow.

Mr. David Woodburn of Terrace Lane stated that their (Mower's) claims of not changing anything are unfounded. All the figures used in the drainage report are based on old facts. He said the school might be proposing to dump more water on the Donovan property, which would impact the flow calculations presented by Mr. Quintal.

Mr. Erickson responded that the school has nothing to do with this proposal – that issue is separate.

Mr. Woodburn stated that they must consider the future.

Mr. Erickson replied that right now there are no changes to the property or water flow.

Mr. Woodburn stated that they know existing problems with the school's water run-off could arise and that it is premature to issue approval of this subdivision.

Conservation Commission Chairman Larry Smith stated that for the record he wants it known that the calculations presented in the drainage report were done by Dennis Quintal and not the Conservation Commission. Mr. Quintal was employed by Mr. Mower and he (Quintal) did not participate in any reviews conducted on this property with the Conservation Commission. Mr. Smith then asked if anyone who signed Ms. Caulk's petition ever visited the site – most of the signatures were not East Kingston residents and are probably not familiar with the property.

Ms. Caulk responded affirmatively.

Mr. Woodburn questioned the school water problem.

Conservation Commission Chairman Larry Smith stated that he has seen the site and in his 36 years of natural resource experience, an 18" pipe in place of a 12" pipe will not worsen the situation – that is impossible.

Mr. Quintal stated that the calculation error was addressed at the beginning of the meeting and that Ms. Caulk and the engineer she employed verified this. This new information has already been presented to the Conservation Commission. This calculation was only used to size the culvert – it did not have anything to do with the water run-off, other calculations support that. Despite the corrected error, the new figure still has nothing to do with water coming on to the Caulk property.

At Mrs. Mary Mower's inquiry, Mr. Quintal stated that the volume of water does not change.

Mr. Donald stated that he is amazed at the numbers being thrown at the board as these planning board members are not qualified to determine what calculations are correct. He said that the board continually turns to the Conservation Commission for their expertise in this area. He then asked Conservation Commission Chairman Larry Smith if he has heard any information to doubt the numbers being presented tonight and if he has any second thought about the calculations where a revisit to the site would be warranted.

Conservation Commission Chairman Larry Smith responded that installing a larger pipe would only help the current situation and that he does not feel a revisit to the site is necessary.

MOTION: Mr. Donald motioned to approve the application to subdivide 59 South Road, MBL# 13-09-09, a 47-acre parcel into 2 lots based on the application meeting the required subdivision criteria and at the recommendation of the board's technical expert, Conservation Commission Chairman Larry Smith. Robert Nigrello seconded.

DISCUSSION: Mr. Herbert Woodworth of South Road questioned the historical value of the property. He asked if the Board had received his letter dated June 9, 1999 and if so, did it have any impact on this decision.

Chairman Smith responded that the board had in fact received his letter and that he, too, has been affected by the development of an historical parcel. He said that the 100-acre parcel abutting his own property on Sanborn Road has recently begun development, which saddens him, however, if an application meets all the criteria for a subdivision, the board must approve it.

With no further discussion, Chairman Smith called the vote. The motion carried 5-0.

Lewis Dodge III – 14 Powwow River Road Site Plan Review – Continued Public Hearing: Chairman Smith opened the public hearing at 8:09 PM for Lewis (Chip) Dodge's Site Plan Review application to operate a woodworking business from 14 Powwow River Road, MBL# 10-3-9. This parcel is located in a commercial zone. He noted that this hearing is a continuation from June 17th.

Mr. Dodge representing himself stated that at the last meeting he was asked to provide the board with a more specific plot plan addressing parking, unloading and loading, trash, road access etc. He submitted a new 11x17 sketch and noted that the parcel is a 2-acre lot consisting of two buildings. The building currently being used by him measures approximately 10,000 square feet, however he is only issued about 3,240 square feet (90'x36' of the first floor). He said that although he is allotted 90'x36' feet of the building, he only uses about 50'x36' of it. He does not have enough equipment to occupy all the space allowed.

He went on to explain that the front of the entire building is used for parking, as it is all gravel.

Mr. Donald stated that he did visit the site and he found no problems.

Fire Chief Alan Mazur stated that he inspected the premises and that that everything is all set.

Mr. Dodge went on to explain that the building consists of two doors for loading and unloading, nothing would be outside, not even the trash. Most of his scraps including sawdust are given away. He stated that at some point he would like to put up a sign.

He was then directed to comply with the sign provisions outlined in the Site Plan Review Regulations.

Discussion then entailed about hours of operation. Mr. Dodge stated that he would be happy with the hours of 7:00 AM to 5:30 PM. Members were concerned with setting such restrictions on the hours of the business citing unfairness to the business owner; however, they realized their responsibility to the surrounding residentially zoned properties to protect them from commercial disturbances.

A motion was made and seconded to approve the plan as presented without hour's restrictions, but was later withdrawn. More discussion over whether or not the current ordinance regarding noise was specific enough to address and enforce noise problems resulted in the Board agreeing that although hours of operation of the business should not be restricted, the hours in which noise could be heard beyond the property line could.

MOTION: Mr. Nigrello motioned to approve the Site Plan Review application for the operation of a carpentry business at 14 Powwow River Road, MBL# 10-03-09 conditional that audible noise must not be detected beyond the property line before the hour of 7:00 AM or after the hour of 7:00 PM. Mr. Morse seconded. With no further discussion, the motion carried 5-0.

Steve Wilson – 46 Stumpfield Road Subdivision– Public Hearing: Chairman Smith opened the public hearing at 8:30 PM for Steve Wilson's (Hampshire Development) plan to subdivide a 9.1-acre parcel located at 46 Stumpfield Road, MBL# 15-04-04 into 2 lots. Noting the application was complete.

MOTION: Mr. Morse motioned to invoke jurisdiction on the proposal to subdivide 9.1 acres located at 46 Stumpfield Road, MBL# 15-4-4 into 2 lots. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Mr. Dennis Quintal, PE submitted a revised plan from the one originally submitted with the application. He noted that the only changes to the new plan were to add proposed driveway locations, test pits, and 4K area. The plan still needs state subdivision approval, the stamp of the licensed land surveyor and the bounds need to be set.

He went on to say that the proposal meets frontage, area, setbacks, and soils requirements. Septic design approval was received on MBL# 15-4-12.

Members noted that lot 15-4-12 is required to have two test pits. Mr. Wilson stated that they didn't want to conduct more test pits on the golf course area and that they would ask for a waiver. He said that when the parcel was originally subdivided back in 1987, test pits were performed. He said that he does not intend to apply for septic approval for that lot, though he realizes he must show the lot as buildable.

Mr. Donald responded that each lot must be treated as a house lot regardless of Mr. Wilson's intentions. Owners and intentions change.

Mr. Quintal stated that any plans to get an approved septic design on the parcel would need to go through the building inspector who would require the test pit information. Testing could be done at a later date.

Mr. Donald stated that the ordinance says to do and show a test pit so it must be done. Discussion on test pits and perc test transpired resulted in the board agreeing to allow the transposing the original test pit information from the 1987 subdivision plan to this plan.

MOTION: Mr. Morse motioned to grant conditional approval on the application to subdivide 9.1 acres at 46 Stumpfield Road, MBL# 15-4-4 into two lots based on 1) the plan show a second test pit and perc test; 2) the proposal receive state subdivision approval; 3) the licensed land surveyor's stamp be shown on the plan; and 4) show the proposed wells on both lots. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Rockingham Planning Commissioner: The Board acknowledged the August 1999 expiration date of Larry Smith's position as Commissioner to the Rockingham Planning Commission. At his request,

MOTION: Mr. Donald motioned to recommend to the Board of Selectmen that Larry Smith be re-appointed as Commissioner to the Rockingham Planning Commission for a term of 4 years to expire August 2003. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Rod Stanley– 38 Powwow River Road– Discussion: Though not on the agenda, Chairman Smith allowed discussion with Rod Stanley of Amesbury, MA, who is considering purchasing property at 38 Powwow River Road. Mr. Stanley stated that he and his wife would like to buy the property and operate a small scope horse business that would include boarding, buying & selling, and instructional riding. He said that he would eventually like to work up to a 7-stall barn with turnout and an inside-riding ring. The main focus of the business would be riding instruction for beginners.

When asked about how he would handle dust problems, Mr. Stanley replied that he would put down wood chips. The board took up discussion on whether or not the use would be permitted as it seemed to fall under both the provisions of service and agricultural uses and the ordinance does not provide definitions to separate or categorize them any further. One could argue the use is agricultural and clearly allowed by the ordinance or that it is a service industry that could be governed under site plan review, but not home occupation.

The Board directed Mr. Stanley to apply for a site plan review where issues of noise, dust, odor, etc. could be addressed. It was noted that he did not have to own the property to apply.

At Mr. Clark's request the record will show that he, Building Inspector Glenn Clark, held no discussion with the board regarding this property. He spoke neither for nor against the proposal.

Site Plan Review Regulations Amendments: Continued from earlier in the meeting, Chairman Smith re-opened the public hearing at 9:20 PM for proposed amendments to the sign provisions in the Site Plan Review Regulations. Mrs. Campbell distributed sign size information that is allowed in other towns. She asked that members read the information and be ready to discuss it at the next meeting. She noted that thus far she recommends removing the maximum width restriction and adopting a maximum area instead. Chairman Smith announced that this public hearing would be continued to Thursday, August 19, 1999 at 7:15 PM and that this announcement would serve as public notification.

Notes from the Selectmen's Office: At this time the board took up discussion about issues of concern from the Selectmen's office. The first item was regarding sign provisions. The Selectmen's office reports that Article IV and Article X do not state how many signs are allowed, while Site Plan Review VII.E allows for only one.

Mr. Donald stated that the Selectmen are not trying to tell the Planning Board how to do their job, they are just apprising the board of inconsistencies and contradictions in the ordinance. He gave the example of the gift shop on Main Street and that there is a temporary sign on canvas and a coke machine (in his opinion: another form of signage), and that there is confusion about what is allowed on a commercial property located within a residential zone. He stated that the Planning Board needs to clean up the ordinances to make them more enforceable.

Mrs. Campbell read each of the sign provisions mentioned above out loud and then asked what was not clear about them. Home occupations must meet Article IV, and signs in light industrial/commercial must meet Site Plan Review Regulations VII.E.3.

Mr. Donald asked Mrs. Campbell if she would contact the administrative assistant and explain each of the provisions to her.

The next item from the Selectmen's office regarded amending Article IV.J **Temporary Manufactured Housing**. It was noted that this provision only allows the temporary usage of a manufactured house during the construction of a new house on the property. The Selectmen would like to see the language changed to allow the usage of a conventional stick house while another home is being constructed on the property.

Mr. Donald stated that the intent of the ordinance is to allow the construction of a new home on the property and later remove or demolish the old house, still maintaining one permanent dwelling per lot. He said that the language of the ordinance should clearly explain the full intent.

Members were concerned with changing the ordinances every time a special issue comes up.

Mr. Donald stated that although this Board of Selectmen understood the intent of the ordinance and allowed the construction of a new dwelling while an existing dwelling remains on the property (to be removed later), another cast of board members might not.

The Board agreed to place this item on the back-burner list to amend for March 2000.

The third and final note from the Selectmen's office was in relation to Kevin Murphy's silk screening business on Haverhill Road. During the home occupation renewal process it was discovered that Mr. Murphy has expanded his business to include truck lettering. The same materials, chemicals and equipment are used as with the silk screening business. The problem is that trucks/vehicles are being lettered outside in the driveway. Does Mr. Murphy need to apply for a new home occupation permit for the truck-lettering portion of the business?

Members discussed the scope of the business and noted that any work done outside of a dwelling is in violation of Article 10.3.1, 10.3.2, & 10.3.4 and not allowed. He must either garage the vehicles he is lettering or letter them off the premises.

Minutes: The board reviewed minutes dated June 17, 1999.

MOTION: Mr. Donald motioned to accept the June 17, 1999 minutes as presented. Mr. Morse seconded. With no further discussion, the motion carried 3-0 (Mr. Johnson & Mr. Nigrello abstaining).

East Kingston Elementary School: Chairman Smith stated that Mr. Kevin Fitzgibbon submitted a new drainage proposal for the board to review. Since the drainage agreement with Mr. Woodburn did not work out, the school was proposing to direct water run-off onto the Shaftmaster property, direct abutter to Woodburn.

Mr. Donald stated that more information may be obtained by attending the Selectmen's meeting on July 19th, when the school board would be on the agenda.

With no further business before the board,

MOTION: Mr. Nigrello motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 5-0 and this July 15, 1999 public planning board meeting ended at 9:55 PM.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file July 19, 1999.

Minutes approved on

9/16/99