



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2003-2004:
James Roby Day, Jr., Chairman
Richard A. Smith, Sr., Vice Chairman

MINUTES

(Regular Meeting of 21 August 2003)

AGENDA:

7:00PM- Board Business

7:15PM- Public Hearing for a Home Occupation Permit application of Mrs. Valerie K. Edge, 6 Sleeper Road, East Kingston, to operate a business involving the breeding and sale of canine puppies.

7:45PM- Public Hearing for a Compliance Hearing for Messrs. Cook & Sullivan for a 4-lot subdivision final approval involving MBL 11-2-11 (PB#02-11).

8:05PM- Public Hearing for a proposed 47-unit elderly housing site plan of Scapicchio/Mower involving MBLs 13-3-1 & 14-4-24 (PB#03-0D)

9:10PM - Public Hearing with Glenn J. Tebo for a proposed lot line adjustment involving MBLs 6-2-17 & 6-2-10 (PB#03-08)

9:40PM - Public Hearing with Glenn J. Tebo for a DESIGN REVIEW for a proposed 5-lot subdivision involving MBLs 6-2-17 & 6-2-10

10:10PM- Adjournment

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM.

ROLL CALL: Mr. Day called the roll.

Members present – Mrs. CE Belcher, Chairman JR Day, Mr. JL Fillio, ex-officio, Dr. RA Marston, DVM, Vice Chairman RA Smith, Sr.

Alternate members absent – Mr. JD Burton, Mr. EV Madej

Advisors present – Ms. Maura Carriel, Rockingham Planning Commission (RPC) Senior Planner
Mr. LK Smith, Chairman, East Kingston Conservation Commission
Fire Capt. Andy Conti, East Kingston Fire Department

BOARD BUSINESS:

Minutes-

MOTION: Mr. Fillio **MOVED** to accept the minutes of the 17 July 2003 Planning Board regular meeting as written. Mr. Smith seconded, and the motion carried unanimously.

Correspondence-

1. The Board was apprised of the notice for the Rockingham County Conservation District "Soil Field Day" for which there is a \$5 registration fee. It was noted that interested members would have to register by Friday, 22 August 2003.
2. It was noted that the seminar by the Center for Integrative Regional Problem Solving was limited to 100 participants. It is being conducted at the Durham campus of the UNH, and Mr. LK Smith said the doughnuts are free.
3. Mr. LK Smith noted that a flyer advertising a study effort by the NH Lakes Association to place economic and monetary value on New Hampshire waters is for our information only.

Notes & Asides-

Planning Board Budget. Mr. Day noted that, given Board expenses to date, we are \$9241 ahead of planned expenditures, and still remaining in this budget year is a December payment of \$2080.00 to the Rockingham Planning Commission. Salary expense since end of April has been zero, leading one to conclude that next year's requested budget is likely to be higher.

NH OSP October 25th Conference. Mr. Day noted that OSP is still wrestling with Plymouth State over conference amenities and scheduling details, but should have agenda information available soon.

ZBA alternate position. Mr. Day expressed his concern that he ought not be serving as an alternate on the ZBA in view of his present Planning Board position. He offered to resign if someone else on the Board would volunteer to fill the position. Mrs. Belcher expressed her interest in light of her extensive experience with both the ZBA and Planning Board in multiple rôles. Everyone cheered. Mr. Day indicated he would submit a letter of resignation, anticipating the Board would recommend Mrs. Belcher to the Board of Selectmen to fill the ZBA vacancy.

MOTION: Mr. Fillio **MOVED** the Planning Board nominate Mrs. Belcher for a Zoning Board of Adjustment alternate position to be appointed by the Board of Selectmen. Dr. Marston seconded, and the motion carried unanimously.

PUBLIC HEARING FOR A HOME OCCUPATION PERMIT APPLICATION OF MRS. VALERIE K. EDGE, 6 SLEEPER ROAD, EAST KINGSTON, TO OPERATE A BUSINESS INVOLVING THE BREEDING AND SALE OF CANINE PUPPIES.

The hearing was opened by Mr. Day with a description of the hearing procedure, and what the Board's recommendation to the Board of Selectmen involves. It was noted that Mrs. Edge's application did not include square footage calculations required to establish the extent of the enterprise within the residence. The Board acknowledged having the property tax card information which could eventually be used to calculate the missing information.

Referring to the East Kingston Zoning Ordinance ARTICLE XVI-HOME OCCUPATIONS, Mr. Day noted its expressed intent, expected standards, and permitted uses. He suggested Mrs. Edge describe her proposed business and its environment to the assembled.

Mrs. Edge explained that she loves animals, and noted that her disability is relieved by them. She catalogued her animals to include 3 St. Bernard dogs, 9 Pug dogs, a pig, a number of chickens, a ferret, guinea pigs, and birds. Mr. Edge observed that she is doing an excellent job taking care of them all.

Mr. Fillio asked whether the St. Bernards are kept for sale. Mrs. Edge said her intention was to sell one more litter, and then concentrate on the Pugs. Mr. Fillio asked whether the dogs are contained, or in fenced areas. Mrs. Edge indicated that the St. Bernards were on runners, and her intention is to fence in the back yard and the whole property in order to let the animals loose. She thought a fence would also afford her some privacy for herself. When asked when the fence will be built, Mrs. Edge prevaricated, saying that finances are a concern, but she anticipated it would be done in the Spring.

Dr. Marston asked if building a fence will stop the noise complaints lodged by neighbors. Mrs. Edge said she hoped so. She felt the St. Bernards would not bark quite so much if they were taken off the runners.

Mr. Smith asked if the dogs would be running loose all day, to which Mrs. Edge replied the 12 dogs are kept in the barn at night. To Mr. Fillio's enquiry about breeding them, Mrs. Edge stated she is concentrating on the Pugs. To Mr. Smith's enquiry about the disposal of feces, Mrs. Edge said she washes the area down, bagging and disposing the waste in the garbage.

Mr. Day opened the hearing to a butter comment -

Mrs. Kristen Bator, 4 Sleeper Road, stated she has a number of concerns and objections to Mr. and Mrs. Edge keeping dogs. She asserted Mrs. Edge is behaving irresponsibly in the care of the dogs as evidenced by the persistent barking and the limited space she has in which to keep them. She noted that the dogs leave their waste in her yard, and her children have been chased by the St. Bernards because the dogs are not contained properly.

Mrs. Bator expressed concerns over the Edge's washing the dog feces onto her property, that she is concerned for her water supply being contaminated, and stated that there is a dispute with the Edge's over the placement of a fence on the Bator property. She also questioned the impact of business traffic on Sleeper Road, a very short, restricted road with limited room to drive, let alone park customer vehicles.

Mrs. Constance Dyer-Kurland, 1 Troll Way, stated she has lived there since the 1970s, but it is only since the Edge's have been keeping dogs has there been problems in their very compact, residential neighborhood. She noted that the St. Bernards are a particular nuisance, prompting repeated calls to the police for their barking at night.

Mr. Yoland Bator, 4 Sleeper Road, concurred with his wife's comments, adding that he had a letter from Mr. and Mrs. Wayne Cooke, 38 Powwow River Road, which addresses many of the same issues. He presented the letter to the Board for the record.

Mr. Day closed the hearing to abutter comment.

The Board proceeded to deliberate the issues as they apply to the ordinance. Mr. Fillio expressed his opinion that the proposed home occupation did not fit into what the ordinance lists as a permitted use. He also felt that the demonstrated problems with barking and abutters' descriptions of waste material on their property point to the present situation failing to conform to the ordinance standard that *"The home occupation must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter."*

Dr. Marston noted the problems of noise and trespassing dogs. Mrs. Belcher questioned whether the Planning Board has jurisdiction in this instance, given the underlying zoning of the area is agricultural/residential. It might be construed that raising animals is an agricultural activity, but her considered opinion, in light of the property being less than 1/2 acre, is that there is insufficient room for such an enterprise. The houses are very close together, and the neighbors are clearly aggrieved by the dogs' persistent barking. Mrs. Edge interjected that Mrs. Bator's comments were false, and questioned if the Board was going to accept them.

Mr. Smith stated that with such large numbers of dogs, there would have to be restrictions placed on the scope of any such home occupation, and it appears, in fact, to be a commercial venture more suited to a commercial zone.

East Kingston Police Officer Marquis was recognized and invited to comment. He stated that the Department has had to respond to many complaints about the dogs, noting that Mrs. Edge was found guilty in court for letting her dogs run loose.

MOTION: Mr. Fillio **MOVED** the Planning Board recommend to the Board of Selectmen that they **DENY** Mrs. Valerie Edge's application for a home occupation permit to raise and sell canine puppies at 6 Sleeper Road, East Kingston. Mrs. Belcher seconded, stating it violates the ordinance by virtue of it not being a permitted use. Mr. Day asked for a roll call vote:

Mrs. Belcher – aye
Mr. Smith – aye
Mr. Fillio – aye
Dr. Marston – nay
Mr. Day – aye

Mr. Day informed the applicant and the assembled that the Planning Board shall recommend to the East Kingston Board of Selectmen that the home occupation permit application be denied. He then closed the public hearing.

PUBLIC HEARING FOR A COMPLIANCE HEARING FOR MESSRS. COOK & SULLIVAN FOR A 4-LOT SUBDIVISION FINAL APPROVAL INVOLVING MBL 11-2-11 (PB#02-11).

Mr. Day noted that the compliance hearing was a means by which the applicant and the Planning Board can assess progress toward fulfilling the conditions of approval for, in this case, a 4-lot subdivision.

It was agreed that Mr. Cook would refer in turn to each of the 16 conditions to the Board's approval of 20 May 2003. In the course of discussion, Mr. Smith asked whether the expiration date in October 2003 for the driveway

permit from the State would cause any problems. Mr. Cook said that it could, but that was all the more reason they fulfill the conditions of approval without delay.

The Board acknowledged that all the conditions were met except for:

- 1) agreed completion bonds for Sullivan Drive and Bowley Road
- 2) final approval in writing by the Town Engineer of the residential cul-de-sac plan
- 3) the Building Inspector's signature on the Certificate of Monumentation, and
- 4) a letter from Town Counsel stating he agrees to the deed easement language for the one fire suppression system required for the residential portion of the development.

The Board agreed the remaining conditions could be tracked by the chairman.

MOTION: Mr. Fillio **MOVED** the Planning Board authorize Mr. Day to sign the mylar(s) for the final plan set when the remaining conditions have been met. Dr. Marston seconded, and the motion carried unanimously.

Mr. Day closed the public hearing.

PUBLIC HEARING FOR A PROPOSED ELDERLY HOUSING SITE PLAN OF SCAPICCHIO / MOWER, MBL513-3-1 & 14-4-24, INVOLVING 47 ELDERLY HOUSING UNITS WITH A COMMUNITY CENTER (PB#030D).

The hearing was opened by Mr. Day with a description of how it would be conducted.

Ms. Carriel, RPC Senior Planner, was asked to describe her reviews and conclusions with regard to the plan's completeness. She enumerated the original submission's missing items as noted in her review memorandum dated 8 August 2003 to the Board, indicating that the revised plans submitted by *Gregsak Engineering, Inc.* had provided the missing information with the exception of one involving fire suppression systems. Fire Capt. Conti stated he had had no discourse with the engineering firm, and did not believe the Fire Chief had either.

Mrs. Belcher asked that the presenter for the applicants give a brief description of what is being proposed for the benefit of all assembled.

For the applicants, Mr. William Gregsak, P.E. – Mr. Gregsak described the elderly housing community proposal, known as "Apple Hill Adult Community", as one of 47 units with a community center, employing community well systems and multiple septic systems. The development entrance was to be from East Road, with the road tying into the end of Andrews Lane. Mr. Gregsak used a color graphic drawing of the overall plan for illustration.

Mr. Fillio queried Mr. Gregsak regarding the color scheme used on the drawing, noting that wetlands types and uplands were virtually indiscernible. He felt that it was useless as a tool to edify the public. Mr. Gregsak did not disagree.

Mrs. Belcher noted that Mr. Gregsak had met with the East Kingston Board of Selectmen on 30 June 2003 to discuss the question of upgrading the private portion of Andrews Lane. She indicated it appeared there was an agreement struck that the condition of Andrews Lane was "grandfathered" insofar as present Town road standards were concerned. Mrs. Belcher stated she disagreed with such an interpretation, observing that any change or upgrade to a property changes everything. Mr. Gregsak noted that it would be a private road on private property, the last 600 feet of the Andrews Lane right-of-way being owned by Mr. Scapicchio. Mrs. Belcher iterated that, where there is change, grandfathering provisions no longer apply, and the road would therefore have to be built to Town standards.

Mr. Smith asked how wide the private portion of Andrews Lane is presently. Mr. Gregsak believed it to be 15 to 20 feet wide, but that Mr. Scapicchio actually held the deed to a 30 foot right-of-way.

After some discussion regarding the completeness of the proposed application, the Board considered taking jurisdiction.

MOTION: Mr. Smith **MOVED** the Planning Board take jurisdiction for the 47 unit elderly housing development site plan of Scapicchio/Mower involving MBLs 13-3-1 & 14-4-24. Mr. Fillio seconded, and the motion carried unanimously.

Mr. Gregsak continued with a more detailed review of the proposal, and Mr. LK Smith, Conservation Commission Chairman, asked about the Dredge and Fill application. Mr. Gregsak indicated it was to be submitted tomorrow (22 August), to which Mr. Smith stated the Conservation Commission would then review it at its next meeting. Mr. Smith noted he believed there was more wetland impact than the plan presently shows.

Mrs. Belcher offered her first criticism of the overall plan to be the proposed duplex units #28 & 29 as being isolated from the "community" by wetlands, necessitating the residents use Andrews Lane to get to the community center. She and Mr. Fillio stated the Board's intent when crafting the ordinance was to create the feeling of a community within a community, to afford the residents the quiet and privacy the elderly often seek in retirement. It was further observed that units #30-33 were isolated as well, requiring a very long driveway that crosses two wetland areas.

Mr. LK Smith asked about the conservation easement proposal noted on the plan which appears to consist mostly of wetlands. He asked who Mr. Gregsak thought would be willing to hold the easement. Mr. Gregsak replied the easement would be offered to the Town, or any other body willing to accept it.

Mr. Day asked why an easement was considered in the first place. Mr. Gregsak suggested it would protect the property from further development, and Mr. Day responded 1) the proposed easement is mostly wetlands, not likely ever to be disturbed, and 2) further development would be highly unlikely, given the acreage is required to calculate the project's housing density, and provide for the community's common land.

Ms. Carriel asked if the intent regarding the easement area was to characterize the land as common land for the development, and/or, was the public to have access. It was noted that, given the nature of the wetlands and uplands in this parcel, the ordinance's provisions for woodland walking paths and nature trails would be difficult to accommodate. The uplands are virtual islands surrounded by some very poorly drained wetlands.

Dr. Marston noted that on a development plan submitted for the same property many years ago, the same entrance from East Road was proposed, but with a steeper grade. There was also talk then of a 30 foot high retaining wall for the sides of the road cut. Mr. Gregsak stated he had no intention of building retaining walls.

Mr. Day opened the hearing to abutter comment-

Ms. Margaret Caulk, 69 South Road, read a prepared statement in which she strongly opposed the development of the land because of the impact on wetlands, the ecosystem, open space loss, endangerment of wildlife such as the spotted turtle, East Kingston demographics, Town services, and taxes. Her written statement with an attachment showing parts of the Town's 2003 budget reflecting municipal services, growth in elderly housing, and population projections, was presented to the Board.

Mr. Bob Moore, 38 Andrews Lane, felt the proposed units immediately behind his property did not fit into the Town's concept of an elderly housing community. He also expressed concern with potential traffic flows on the rather narrow Andrews Lane, and asked whether the road's upgrade would mean a taking of abutters' land. Mr. Moore further noted that the proposed plan contravenes the Town's Master Plan goals which encourage the preservation of open space and a rural/agricultural environment.

Mr. Anthony Batal, Sr., 26 Andrews Lane, observed that the 30 foot wide piece of Mr. Scapicchio's property that accesses Andrews Lane on the north side directly across from his own parcel is very wet. He stated there is a small stream there and a drain pipe that has required repeated cleaning out by the Town to keep flooding off his own land. Mr. Batal questioned the wisdom of putting a driveway there, which, to his estimation, would make the flooding problem worse. Mr. Batal then addressed his concern that the anticipated traffic flow will not be out to East Road, but rather, down Andrews Lane past the elementary school. He also thought there would be some considerable diversion of traffic from East Road through the neighborhood.

Mr. Woodworth, 31 South Road, stated that he believed he has lived in East Kingston longer than anyone present. He has seen the area in question subjected to development and further attempts to develop. He stated he

supported Ms. Caulk's positions entirely, and that he strongly opposes this or any other development of the Scapicchio/Mower land. Mr. Woodworth also felt the proposed entrance road from East Road would likely exacerbate the problems he is having with thieves and vandals on his property by providing an easier access to the land.

Mr. Woodworth asked who would live in this development, to which the Board responded residency in elderly housing developments is restricted to persons 55 years and older. Mr. Woodworth felt that to be a form of age discrimination which could create legal problems for the Town. He was assured by the Board that the ordinance was crafted with the greatest attention paid to State and Federal statutes governing that very issue. The proposed ordinance was also vetted by the Rockingham Planning Commission, the New Hampshire Municipal Association, and Town Counsel before it was placed on the Town Meeting ballot.

Mr. Day closed the hearing to abutter comment.

Mrs. Belcher noted that she has reservations with the East Road entrance to the development. She felt there are likely to be sight distance problems, as well as traffic diversion and similar problems. Mrs. Belcher noted that the Board can ask for a scoping meeting with the NH Department of Transportation to address these concerns. In conjunction with these concerns, she suggested the Board should also want to see a traffic impact study done.

Mr. Gregsak, noting the Board's and abutters' multiple concerns, suggested an alternate plan. He revealed another colored pictorial of the property which consisted of 41 elderly housing units grouped along a very long cul-de-sac road, with the added proviso of an emergency gravel road from the cul-de-sac to the end of Andrews Lane. A break-through gate would be incorporated at the Andrews Lane point of connection. He and a representative from *Jireh Property Investment, LLC*, asked to know if such a plan would be considered feasible by the Board, in light of the subdivision regulation limit on the length of cul-de-sacs.

The Board observed that the alternate plan more closely conformed to its concept of an elderly housing development, and that the emergency gravel road could be considered, requiring review by the East Kingston Fire Department, Police Department, Board of Selectmen, and Town Engineer.

Mr. Day suggested to Mr. Gregsak that, rather than have the Board deny the present application, it could be withdrawn instead. He also noted that the Scapicchio/Mower lot line adjustment approved at the 15 May 2003 Planning Board hearing has yet to be recorded, as was requested by Mr. Gregsak on behalf of the applicants.

Mr. Gregsak and the *Jireh Property Investment, LLC* representative in consultation requested the lot line adjustment recording still be held in abeyance for the time being, and the present application shall be withdrawn. The Planning Board accepted their application withdrawal, and Mr. Day agreed to hold on to the LLA mylar.

Mr. Day closed the public hearing

PUBLIC HEARING FOR A PROPOSED LOT LINE ADJUSTMENT FOR GLENN J. TEBO INVOLVING 11 GREYSTONE ROAD, EAST KINGSTON, AND MBL56-2-17 & 6-2-10 (PB#03-08).

The hearing was opened by Mr. Day with a description of how it would be conducted.

Ms. Carriel was asked to review her comments in her memorandum to the Board dated 7 August 2003. She noted that she had reviewed two plan sets, the second having been submitted in response to her comments. Despite her critique, Ms. Carriel noted that four of the items she felt should be corrected before recommending the Board take jurisdiction were not addressed: 1) a signature block for the Town of Kingston Planning Board, 2) building setbacks from property lines and poorly/very poorly drained soils, 3) East Kingston Subdivision Regulations Section VII.A, which calls for not less than 125 feet of width in any parcel's dimensions, and 4) a statement regarding error of closure added above the surveyor's stamp.

For the applicant- Henry H. Boyd, Jr., LLS. Mr. Boyd of *Parker Survey & Engineering* presented the proposed lot line adjustment, describing the plan, and noting that a statement regarding error of closure was placed above his LLS stamp on the plan. He indicated he would like to submit a request for waiver of the East Kingston Subdivision Regulations Section VII.A, regarding the minimum width of a building lot in view of the applicant's

intention to further subdivide the property. It was noted that his waiver request addressed only one narrow dimension of the lot, and that there were in actuality two dimensions which did not conform to the regulation.

Mr. Day informed the applicant and Mr. Boyd that NH RSA 674:53.II. requires a planning board request particular information from another town's planning board if proposed land use changes or activity bound or overlap municipal boundaries. He then presented a letter to that effect to Mr. Glenn Coppelman, Kingston Planning Board Chairman, who was present for the hearing as an abutter.

Mr. Day then addressed the abutter list Mr. Tebo had provided in his application, noting that East Kingston had to add two additional abutters (one residential address on Greystone Road, East Kingston, and the Town of Kingston), and that the list did not include the licensed land surveyor or wetland soils scientist as required by NH RSA 676:4. As a consequence, those persons as abutters were not legally notified of the public hearing within the statutorily required timeframe, and the Planning Board is precluded from taking jurisdiction.

Mr. Boyd and Mr. Tebo asked the Board what would be an acceptable plan, notwithstanding the abutter list corrections. Mr. Fillio suggested there is no justification for granting a waiver for lot dimensions in this instance. He indicated that in view of the land's present, acceptable use and conformity, one cannot justify resorting to contravention of the Town's regulations for the sake of further development.

Discussion ensued about the purpose of this particular lot line adjustment. Mr. Boyd presented a proposed 5-lot subdivision involving a short cul-de-sac with two of the lots that include land in the Town of Kingston. Problems identified included 1) the narrow widths in the proposed lot containing the existing house at 11 Greystone Road, 2) the 30 foot frontage of one proposed lot which contains an existing house in Kingston (the Tebo residence), and 3) the future location of a house on one newly created lot with land in Kingston. In the first instance, the Board left the lot design to the applicant and his engineer to conform to the regulation.

In the second instance, Mrs. Belcher noted that RSA 674:53 requires any proposals which affect lands in more than one municipality must conform to the ordinances and regulations of all municipalities touched thereby. She stated that the lot in East Kingston on the cul-de-sac with 30 feet of frontage could therefore not be accepted by virtue of the Town's requirement for 200 feet of frontage on a road.

In the third instance, Mr. Coppelman suggested the Kingston Planning Board would probably have few concerns, so long as any house built on the lots were not in Kingston. Otherwise, questions of scattered development would arise, with emergency services having to travel through two towns in order to respond, and school children bussing could be an insoluble dilemma.

Mr. Boyd and Mr. Tebo suggested they would reevaluate the lot line adjustment and subdivision proposals.

Mr. Day opened the hearing for abutter comment-

Mr. Jim Malatras, 19 Greystone Road, Kingston, stated that what Mr. Tebo proposes is specifically prohibited by the covenants attached to the property deed. He described the covenant provisions for any such plan to be presented to a "design review board", which Mr. Tebo had not done, but more importantly, he stated the covenants prohibited changing the use of the land from its intended residential nature. Mr. Malatras believed the present proposals violate that legal restriction, contending that the East Kingston Planning Board ought not approve any land use which contradicts the covenant provision.

The Board noted Mr. Malatras's concern, suggesting that covenants are agreements between land-owners, and as such, are civil matters. Furthermore, it is the Board's understanding that a municipality has no jurisdiction or authority to enforce covenants.

Mr. Robert Furfari, 13 Greystone Road, noted that the Board should not entertain a waiver for the 125 foot lot dimension minimum. He further commented that the former owner of 11 Greystone Road and Mr. Tebo had avoided discussing their plans with neighbors and abutters, perhaps sensing there would be controversy.

Mr. Day closed the hearing to abutters, and closed the public hearing.

CONTINUED BOARD BUSINESS:

18 September 2003 agenda- The Board reviewed the list of possible agenda items, noting that the meeting could be another long one.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Smith seconded, Mr. Filio thirded, and the motion carried unanimously at 10:30PM.

Respectfully submitted,

James Roby Day
Minutes approved _____