

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
September 17, 1998

FILE

AGENDA

- 7:00 Rockingham Planning Commission – Exeter River Corridor & Watershed Presentation
8:00 Thomas J. Brandolini – 17 Rowell Road – Home Occupation – Public Hearing
9:00 Charles Marden – MSK Lumber Complex – Site Plan Review – Discussion
9:15 Susan O’Flaherty – 57 Depot Road – Home Occupation - Discussion

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, John L. Fillio – Ex-officio, Catherine J. George and Alternates Beverly A. Fillio and Robert Nigrello (8:15).

Absent: Dr. Robert Marston.

Others attending: Sarah Campbell – RPC, Lawrence K. Smith – Conservation Commission Chairman, Glenn P. Clark – Building Inspector, James Nupp, Theresa Walker – RPC, Dennis Quintal - PE, Atty. Patricia Weathersby, Thomas Brandolini, Atty. Dan Jones, Chip Dodge, Mark Durkee, Wayne Couture, Charlie Marden, Jack Mahoney, Louise Castonguay, Susan & Philip O’Flaherty, Kevin Murphy, and Laurie Carbone.

Chairman Smith called to order this September 17th public planning board meeting at 7:06 p.m. with the roll call. Noting the absence of Dr. Marston, he designated Alternate Beverly A. Fillio to participate in any voting matters before the board.

August 20, 1998 and September 10, 1998 Planning Board Minutes: The Board reviewed the minutes dated 8/20/98 and 9/10/98.

MOTION: Mrs. Fillio motioned to accept the August 20, 1998 and September 10, 1998 Planning Board minutes as presented. Mr. Fillio second. With no further discussion, the motion passed 5-0.

Exeter River Corridor & Watershed Management Plan: Theresa Walker of the Rockingham Planning Commission gave a presentation of the Exeter River Corridor & Watershed Management Plan. She noted that although East Kingston does not fall into the river’s corridor, it is included in the watershed. There are seven towns included in the corridor and three in the watershed. She further stated that the seven towns need to adopt the ERCWM Plan as a part of their Master Plan and the other three towns are requested to adopt the plan as part of the water resource section of their Master Plan.

Ms. Walker then presented aerial slides of the corridor and watershed throughout the region. She stated that there are over 70,000 acres in the watershed and that the plan will be updated every two years. RPC is requesting the town’s feedback of this plan, which will be incorporated into the final draft.

Joint Board Meeting: The Board was reminded of the upcoming joint board meeting with the Planning, Zoning and Selectmen Boards to be held on Thursday, October 29th. Planning Board members requested the meeting address acquiring an enforcing body to uphold the Planning Board’s work. (I.e., home occupation ordinance, site plan review conditions, etc.)

90-Day Clock Amendment: This amendment is a statute amendment that must be incorporated into the town’s subdivision regulations. This statute governs the planning board’s time for consideration of applications, (see attached). Mrs. Campbell stated that while reviewing the regulations, she would like to suggest other housekeeping amendments.

Mrs. Campbell presented the following proposed amendments to the Subdivision Regulations:

1. Amend SECTION XII.B. Procedure (page 14) by replacing it with the following: (See attached.)
2. Amend SECTION III Procedure (page 2) and SECTION XII (page 14): (See attached.)
3. Delete SECTION XII.D Final Plan (page 3) (See attached.)
4. Amend APPENDIX C Design Specifications for Cul-De-Sac Street (page 20) by removing the center circle, thus requiring the complete circle to be paved to accommodate snow removal at the recommendation of the road agent.

MOTION: Mrs. George motioned to hold a public hearing for the above proposed subdivision regulation amendments on October 15, 1998 at 7:45 PM. Mrs. Fillio second. With no further discussion, the motion passed 5-0.

At this time Mrs. George and Mr. Fillio announced that they would not be able to attend the October 15th meeting.

Noise Ordinance: It was noted that the Board of Selectmen are requesting the Planning Board's opinion on whether or not Article IV – General Provisions, Section A would suffice in the enforcement of noise disturbances. Several members felt the paragraph was enforceable noting its intent, however, Mr. Fillio stated the paragraph is too vague and general to enforce.

Members suggested the Selectmen **write** a new noise ordinance as is allowed under RSA 47:17 (Bylaws).

Citizen's Petition: The recording secretary announced that she would be circulating a citizen's petition proposing to relax the septic system setbacks for existing septic system replacement. She stated that replacing an existing system can be difficult for many East Kingston property owners because of the town's wetland setbacks. The State's minimum requirements are 75 feet from Hydric A and 50 feet from Hydric B. East Kingston requires an additional 25 feet for both soils.

Mr. Dennis Quintal stated that the town of Kingston places their septic system requirements under the authority of the health inspector and not under the zoning ordinance. This gives the health officer the authority to grant the State's minimum setback requirement to property owners alleviating the burden of going to the Zoning Board of Adjustment.

Mr. Lawrence Smith stated that the Conservation Commission's position has always been to support the State's minimum setbacks, as there is scientific justification for them. The town's setbacks do not have such justification for requiring the additional 25 feet.

The recording secretary asked if the Planning Board would be willing to present this amendment or if the citizen's petition process should be used.

Mrs. George stated that a citizen's petition may be better received by the town.

MOTION: Mr. Fillio motioned to table this discussion until the next work session. Mr. Johnson second. With no further discussion, the motion passed 5-0.

Thomas J. Brandolini – Home Occupation – Public Hearing: Chairman Smith opened the public hearing for Thomas J. Brandolini at 8:05 PM. Mr. Brandolini, claiming his business is grandfathered, proposes the continued operation of a general auto repair business identified as "Haverhill Tune-up Service" from his residence at 17 Rowell Road. Mr. Brandolini is represented by Attorney Dan Jones from Exeter.

Atty. Jones stated that this hearing is about the grandfathered operation of an auto repair business on Rowell Road. He stated that this business, owned by Mr. Brandolini has been in operation at 17 Rowell Road since at least 1988 and that he (Brandolini) is entitled to continue under those terms. He stated that he is ready to supply witness testimony both written and in person, from his client's auto parts supplier Jack Mahoney and from neighbor Wayne Couture. He then submitted for the record written statements from John J. Mahoney, Treasurer of Mahoney's Auto Parts, Inc. and Wayne D. Couture of 22 Rowell Road, (see attached).

Mr. Brandolini presented two file folders containing approximately 102 original invoices from Mahoney's Auto Parts, Inc.*

At the inquiry of the Board, Atty. Jones stated that "Haverhill Tune-up Service" had listed the address of an apartment in Haverhill, MA for tax purposes.

Mrs. Fillio asked if this business was ever located in Haverhill.

Mr. Brandolini replied that it did from 1977 to 1986 and then it moved to 17 Rowell Road.

Mrs. Fillio inquired if Haverhill business permits will reflect this business being located in Haverhill.

Mr. Brandolini stated that only an office is listed in Haverhill. No repairs are listed there.

Mrs. Fillio asked if there were ever any repairs conducted in Haverhill.

Mr. Brandolini responded affirmatively and stated that repairs were once conducted at 769 Amesbury Road in Haverhill. He said the business moved in 1986.

*These invoices have since been copied and made a part of this record.

Mrs. Fillio asked if Mr. Brandolini was aware of the home occupation requirements in 1989.

At Mr. Brandolini's negative response, Mrs. Fillio stated that ignorance of the law is no excuse. Mr. Brandolini agreed.

Mrs. Fillio inquired if Mr. Brandolini has ever applied for a home occupation permit before.

Mr. Brandolini replied that he had done so in 1994 and was denied because the Board of Selectmen found his business did not fit into the businesses allowed. He then stated that in 1994 he was trying to conceal that he had been working from his residence since 1987.

Mrs. Fillio stated that he has not proven beyond a reasonable doubt that the business was in operation at 17 Rowell Road before 1989.

Atty. Jones responded that such proof is not needed for this body. He went on to say that Mr. Mahoney delivered automotive repair supplies to the Rowell Road residence since at least 1988.

At the recognition of the Chairman, Mr. John J. Mahoney stated that before he and his auto parts business move to Contoocook, NH, he supplied Mr. Brandolini with auto parts from as early back as 1984. He stated that Mr. Brandolini has invoices to prove that he supplied auto parts to the 17 Rowell Road location as early as 1988. He stated that originally the invoices would reflect a Haverhill post office box even though deliveries were being sent to East Kingston. Because there was confusion with the auto parts delivery people, the post office box address was changed to 17 Rowell Road.

Mr. Brandolini stated that there is no business in Haverhill, but he keeps a post office box there as many of the cars he repairs come from that area. He also stated that he prefers to receive payments for repair through a post office box v. rural delivery.

Mrs. Campbell stated that in 1994, Mr. Brandolini told the Planning Board, on two occasions, that this business was not established in East Kingston until 1991. Furthermore, the Board of Selectmen denied his 1994 application for home occupation because the nature of the business was not a permitted use.

Mrs. George asked Mr. Brandolini if he is now saying that he lied to the Board in 1994.

Mr. Brandolini replied that he did not want to be on record that the business was operating in East Kingston back in 1989. He stated that he and his brother purchased the house in 1986, he bought his brother out in 1987, and that his brother never lived in the house. He claimed that he started working out of the Rowell Road location in 1987 although he only has invoices for 1988.

Mr. Fillio responded that Mr. Brandolini moved in in 1986, worked on cars there in 1987, but denied this in 1994. He questioned why.

Mr. Brandolini stated that he denied this because he didn't want to be on record for tax purposes. This is why he rented office space in Haverhill.

Mr. Fillio reiterated that Mr. Brandolini moved here in 1986, operated the business here in 1987, lied to the Board in 1994 for tax reasons, went before the Board of Selectmen who denied the application in 1994, and now is here to say the business has been running in East Kingston since 1988. He asked Mr. Brandolini what is it he trying to do and stated that this Board needs more clarification.

Mrs. Fillio asked why Mr. Brandolini is applying for a home occupation now when he was denied in 1994.

Atty. Jones stated that this is a different application. The one in 1994 was for a home occupation, this one is for the determination of whether or not Mr. Brandolini's auto repair business is grandfathered since it has been in operation since 1988.

Mrs. Fillio responded that auto repair businesses were not allowed in 1988.

Atty. Jones stated that others were allowed. He went on to say that Mr. Warren's operation had identical circumstances and that the only proof of it was the testimony of Mr. Conti's recollection that Mr. Warren worked on his (Conti's) suburban.

Mr. Fillio asked why it took four years to realize you think you are grandfathered.

Mr. Brandolini stated that the reason he didn't come forward with this revelation in 1994 was because the Internal Revenue Service could use this information against him. He again stated that he is not going on record with this issue now. He said the reason he lied is immaterial to this hearing.

Atty. Jones stated that Mr. Brandolini's neighbor, Mr. Couture is here to attest the business was in operation on Rowell Road in 1988.

Mr. Couture after being recognized by the Chairman stated that he moved into East Kingston in February 1988 and observed then and still today, that Mr. Brandolini has been working on cars.

Mr. Mahoney adding to his testimony, stated that Mr. Brandolini took care of his fleet of vehicles from December 1983 to 1987 (moving to Contoocook in 1987). He further stated that he delivered his vehicles to 17 Rowell Road for repairs and maintenance, except for oil changes, which were conducted on site.

Mrs. Filio stated that it looks like Mr. Brandolini has been running an illegal business since 1989.

Atty. Jones responded that he did not see what was illegal about it. He said that this business was in operation prior to the home occupation permit statute.

Mrs. Filio stated that Mr. Brandolini had one year to acquire a permit when the ordinance went into effect, thus he has been illegal since 1990. She inquired how this business can be considered legally grandfathered when the business was never legal in the first place.

Atty. Jones argued that the business was legal and that there is no termination provision in the ordinance for businesses who did not apply for a permit within one year.

Mrs. Campbell stated that an annual permit was to be obtained. Nine years have passed and no such permit had been obtained. She stated that even businesses in operation prior to 1989 were required to get an annual permit.

Atty. Jones answered that Mr. Brandolini didn't get one and that there is no statute that says you lose your status if you don't file.

Mrs. Filio asked in any of the abutters remember this business being in operation back in 1988.

Mrs. Louise Castonguay of 18 Rowell Road stated that she has lived in East Kingston since 1980. She said that she couldn't testify whether or not this business has been going on since 1988. She stated that Mr. Brandolini told her the business was in Haverhill and that he would only be working on cars part-time at his home. She went on to say that a lot of cars showed up there and it's been a mess.

She stated that snowplows are forced to go around the vehicles he stores along the road and that tow trucks and flatbed trucks are in and out blocking traffic as they unload. She stated that vehicles worked on by Mr. Brandolini are test driven up and down the road and that these road tests are done with potentially faulty vehicles.

Mrs. Castonguay further stated that Article 10.3.2 provides that the exterior of the building must not create or display any evidence of the home occupation, except a permitted sign. Variation from the residential character is prohibited. She says this is violated with the flatbeds, cars up on blocks, and the tow trucks coming and going at 9 and 10 o'clock at night. She said that Mr. Brandolini was denied a permit to operate this business in 1994 but has continued to run it.

Mr. Mark Durkee of 7 Rowell Road stated that he resides directly next door to Mr. Brandolini and that he is against the operation of this business. He stated that he has been notified that he may lose his mortgage because of the nature of this abutting business. He stated the toxins and fluids used next door are dangerous to the value of his home. Run off from this business has a great potential to contaminate his soil and dug (shallow) well.

He went on to say that the neighbors on the other side of Mr. Brandolini live less than two feet from this. He pleaded that there must be a way to stop this. He said that everyday his livelihood and his property decreases in value. He stated that the mess next door is an eyesore and it is not legal, as it is not permitted in a residential neighborhood. He said that flatbeds and wreckers constantly block traffic. He again stated he opposes this business and has concerns about his drinking water.

Atty. Jones stated that this board can only consider what was going on in 1988. He said that there is no documentation of contaminants. He stated that this application before the board is not for what is going on today, but what was going on in 1988. He went on to say that Mr. Brandolini has upgraded his property and that both the abutters and supplier says so.

Mrs. Fillio responded that the business was denied back then and Mr. Brandolini hasn't said nor done anything to change her mind about its illegality.

Atty. Jones stated that the 1994 decision was not denied by the Planning Board but by the Selectmen. He said that the Planning Board submitted their tied, 2-2, recommendation to the Selectmen.

Mrs. Castonguay stated that although it is true the Planning Board's vote was 2-2, the application was denied and that this is public record.

Mr. Fillio stated that Mr. Brandolini claims he moved here in 1986-87 and was operating the business on Rowell Road in 1988, yet he used a Haverhill address.

Mr. Brandolini responded that he still uses a Haverhill address today.

Mr. Fillio asked Mr. Brandolini how the Board is to know he (Brandolini) is not lying now. He said the invoices presented reflect deliveries made to East Kingston, not that work was being done in East Kingston. He inquired if there are any records of invoices generated by Mr. Brandolini reflecting the business' address of 17 Rowell Road.

Atty. Jones responded that the abutters have said the business was there in 1988.

At the lack of a second, Mrs. Fillio's motion to send this application to the Selectmen for a decision failed.

Mr. Brandolini reiterated that the Planning Board's 1994 decision was a tie. He claimed that he later found out that prior to the Board of Selectmen's decision, Mrs. Castonguay and Mrs. Durkee met with the Selectmen without his (Brandolini's) presence.

Mr. Johnson inquired if the application before the Board is for the determination of grandfathering or for a home occupation.

Mrs. Campbell stated that the procedure is for the Planning Board to hold a public hearing and make recommendation to the Selectmen. *Article X.9: ...After the public hearing, the Planning Board will make a recommendation to the Selectmen as to whether the Home Occupation Permit should be granted. The application will then be forwarded to the Selectmen who will issue their final decision.*

She continued to say that no reference of grandfathering was brought up in 1994.

MOTION: Mr. Johnson motioned to recommend the Board of Selectmen deny the application for home occupation predicated that the business is of a commercial nature and does not, nor ever did, fit into the provisions of a home occupation. Mrs. Fillio second.

DISCUSSION:

Mrs. George stated that she was having trouble with the grandfathering part of this case.

The Board was polled: Mrs. Fillio – in favor;
Mr. Johnson – in favor;
Mr. Fillio – in favor;
Chairman Smith – in favor; and
Mrs. George – opposed.

The motion passed 4-1.

Atty. Jones requested the Planning Board make a factual finding on the evidence presented of whether or not the business was in operation at 17 Rowell Road in 1988.

Mrs. Fillio asked if Mr. Brandolini filed his 1988 taxes for "Haverhill Tune-up Service" as being located at 17 Rowell Road.

Atty. Jones responded that this was irrelevant.

Mr. Brandolini stated the home occupation goes with the use of the property.

Mrs. Fillio asked if Mr. Brandolini was fixing cars at 17 Rowell Road in 1988.

Mr. Brandolini replied yes.

Mrs. Fillio asked if Mr. Brandolini was charging fees for fixing cars and as a result made money.

Mr. Brandolini replied yes.

Mrs. Fillio asked if Mr. Brandolini filed his business earnings made at 17 Rowell Road with the IRS.

Mr. Brandolini replied that this issue is irrelevant. He stated the taxes for this business were filed from 380 Main Street, Haverhill, MA.

Mrs. Fillio stated that in 1994, Mr. Brandolini stated the business was not in operation at 17 Rowell Road back in 1988.

Atty. Jones again requested a factual finding on the evidence and stated that this is all that matters.

Mr. Durkee inquired if Mr. Brandolini is still allowed to operate his business or will he be stopped now.

Chairman Smith stated that these hearing findings will be passed onto the Board of Selectmen who will make their final decision.

Mr. Brandolini stated that he wanted the Planning Board to determine whether or not the business is grandfathered. He stated that the Board of Selectmen told him that this Board would make that determination.

Mrs. Fillio stated that Mr. Brandolini had a year to make application for grandfather status and he did not do it. She said that this must mean he was not [grandfathered].

Atty. Jones stated that he wants the record to show he has requested a factual finding on the evidence presented.

Chairman Smith ended the public hearing for Thomas J. Brandolini at 8:50 PM.

Charles Marden – MSK Lumber Company – Site Plan Review – Discussion: Chairman Smith opened discussion for Charles Marden's conceptual proposal for site plan review at 8:54 p.m.

Mr. Marden stated that he is Trustee of Chuck Woodlands Realty Trust, which owns MBL#'s 11-2-16 and 11-2-17, formerly MSK Lumber. He stated that he is looking to develop the property, as it is zoned light industrial/residential. He said that he needs questions answered by the Planning Board prior to plan development. He then submitted a letter explaining his proposal.

Mr. Dennis Quintal, PE stated that he was asked by Mr. Marden to generate a topography map of the site. He presented a conceptual plan indicating the size of the parcels, wetland location and buildable lands. He stated that given the building setbacks, buffer setbacks, and topography of the parcels, only about 8 out of 56 acres is developable.

Mr. Quintal asked if the drainage areas are to be included in the 100-foot setbacks. He stated that a dredge and fill permit from the State would be needed to access some of the dry land. He continued to say that he did not understand the Town's justification for 100-foot setbacks from Hydric A. He stated that he wants to work with the Planning Board to develop this property keeping the best approach to both the town and abutters.

Mr. Kevin Murphy, direct abutter to the parcels, stated that he is aggravated that 10 and 18-wheelers are going in and out of the complex at all hours of the day and night. He stated that when those big trucks come bouncing in and out of the driveway at 3:00 a.m., he and his family do not get much sleep. He further stated that he is not getting any help with this problem.

Chairman Smith proceeded to inform Mr. Murphy that this meeting was for discussion only and was not a formal public hearing.

Mr. Murphy replied that he wanted the Planning Board to know this was an ongoing problem before they (PB) considered future proposals for this site.

Mrs. Laurie Carbone stated that she lives directly across the street from this complex and that she too, is frustrated with what has been going on. She stated that she has submitted a videotape of trucks entering and exiting the complex at all hours of the night. She stated that the videotape will show traffic at 11:52 p.m., 9:58 p.m., 7:30 p.m., 12:05 a.m., 3:52 a.m., 4:15 a.m., 4:04 a.m., and 3:32 a.m. She stated she and her family are woken up at all hours of the night. She stated that only commercial tractor-trailer trucks are going in and out.

She continued to say that she bought the property 14 years ago and never had a problem when the complex was a lumberyard. She pleaded for the Planning Board to view the video. She stated that an appraiser came to her house and told her the activity going on next door depreciates her property's value.

Mr. Fillio stated that he has viewed the tape and that he can't deny her allegations of traffic at all hours of the night.

Mr. Murphy stated that the town of Kingston has hours of operation and that East Kingston should do the same. He stated that he is getting a petition together to do just that. He stated that he has had no help from the Selectmen and that Article IV prohibits this type of nuisance yet no enforcement is being done. He stated he asked the Selectmen who he is supposed to go to for help and they said to go to the Planning Board.

Mr. Marden stated that the lumber mill stopped last year and he leases two buildings. He stated in reference to the commercial trucks coming and going; the dust problem will be taken care of and the noise problem is being worked on. He said that he plans to move the driveway toward the Shepherd property.

At the inquiry of the Board, Mr. Marden stated that the trucking traffic is generated from a trucking terminal he is leasing to.

Mr. Quintal stated that once the driveway is moved, much of the noise would be corrected.

Mr. Murphy stated that 18-wheel dump trucks are industrial, not *light* industrial vehicles.

Mr. Quintal stated that he needs clarification for the questions outlined in Mr. Marden's letter. He stated that the abutters' concerns can be addressed at a formal public hearing. He further stated that Mr. Marden wants to develop this land as commercial.

Mr. Fillio inquired as to what types of businesses will need the smaller commercial buildings referred in the letter.

Mr. Marden responded that small commercial buildings 4-500 up to 1200 square feet are needed for plumbers and woodworkers.

Chairman Smith stated that Mrs. Campbell will forward a written response to the letter with copies to both Mr. Murphy and Mrs. Carbone.

Susan O'Flaherty-57 Depot Road- Home Occupation- Discussion: Chairman Smith opened discussion for Susan O'Flaherty's home occupation proposal at 9:40 p.m.

Mrs. O'Flaherty stated that she is proposing a small pottery studio and shop from her home. She stated the studio portion would be located in the barn and the shop on the front porch of her house. She then submitted a sketch of the property showing a proposed parking lot behind the barn.

She explained that she is a part-time potter and is currently employed full-time. She is proposing business hours of weekdays by appointment only, Saturdays 10-5, and Sundays 12-5.

At the inquiry of the Board, Mr. O'Flaherty stated that she has no plans to pave the proposed parking lot as she wants to preserve the home's character and integrity. She said she would use pea stone gravel instead. She explained that patrons would need to walk back out of the parking area and around the front of the barn, along the pathway to enter the shop.

The Board reviewed the sketch and requested Mrs. O'Flaherty measure the distance from the road's center to the path in front of the barn. The Board noted their concern of this close proximity as well as the proximity of the dangerous intersection of Willow and Depot Roads. Members were advised to drive by the proposed business location for viewing purposes prior to the public hearing next month.

Brandolini Case: Mrs. George stated that she would like to explain her decision in the previously held Brandolini public hearing. She stated that the NHMA's Law Lecture Series #3 "Grandfathered!" (page 5) states that business activities which are a nuisance or harmful to the public health and welfare can have no grandfathered rights, regardless of how long they have been in existence.

Mrs. Fillio requested the recording secretary contact other surrounding towns for their regulations on business' hours of operation. Mrs. Campbell stated that in her opinion, there have been mistakes in the 1989 grandfathering provisions. She stated that existing commercial entities got placed on the home occupation list. This included illegal commercial businesses located in residential zones.

She stated her point is that certain entities are commercial businesses in residential zones because they were established after the commercial district was voted in. Once this commercial zone was created, all commercial business established from that point on would be considered illegal. She further stated that you can't grandfather an illegal operation. She said that this Brandolini business was a commercial venture in a residential zone and should have never been sent down the home occupation path. It is not a permitted home occupation.

With no other business before the Board,

MOTION: Mr. Johnson motioned to adjourn. Mr. Fillio second. The motion passed 5-0 and this September 17, 1998 public planning board meeting ended at 10:15 p.m.

Therine Belcher
Secretary

Minutes complete and on file September 21, 1998.