



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 18 September 2003)

AGENDA:

7:00PM- Board Business

7:15PM- Public Hearing for a proposed condominium conveyance application of Mrs. Lisa Auger, 52/54 Burnt Swamp Road, East Kingston, MBL 10-6-1 (PB#03-10).

7:30PM- Public Hearing for a site plan review of Mr. & Mrs. John Mulvey, 17 Haverhill Road, East Kingston, MBL 9-8-19 (PB#03-OE).

7:45PM- Public Hearing for a proposed 2-lot subdivision of Mr. Wayne Ewald involving MBL 14-3-5 (PB#03-09).

8:20PM - Public Hearing for a proposed 41-unit elderly housing site plan with a community center of Messrs. Scapicchio & Mower involving MBLs 13-3-1 & 14-4-24 (PB#03-OF).

9:25PM - Public Hearing for a proposed lot line adjustment of Mr. Glenn J. Tebo involving MBLs 6-2-17 & 6-2-10 (PB#03-08).

10:10PM- Adjournment

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:04PM.

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 present – Mr. EV Madej

Alternate members absent – Mr. JD Burton

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

BOARD BUSINESS:

Minutes-

MOTION: Mr. Smith **MOVED** to accept the minutes of the 21 August 2003 Planning Board regular meeting as written. Mr. Fillio seconded, and the motion carried unanimously.

Correspondence-

1. The Municipal Law Lecture series sponsored by the NHMA was discussed. Mr. Day asked if any members were interested in attending, the registration fees will be charged to the Board's budget.
2. The NH OSP Fall Planning & Zoning Conference scheduled for 25 October 2003 at Plymouth State was discussed. With a registration deadline of 17 October, Mr. Day asked members to let him know of any interest in attending.
3. Mr. Smith presented a flyer from the RPC for ordering the 2003-2004 OSP Planning and Land Use Regulation books. Mr. Day indicated that Ms. Gallant, East Kingston Administrative Assistant, has ordered them for us, the Town, and the ZBA.

Notes & Asides-

NH OSP Smart Growth audit. Ms. Carriel noted that the RPC had provided an OSP consultant with a copy of our ordinances and regulations and Master Plan. He reviewed them to identify policy discrepancies, and areas where the Town might better prepare itself to deal with growth. Ms. Carriel stated the consultant made two primary recommendations: 1) Soil-based lot sizing rather than a blanket 2-acre minimum. The Town could also create zoning districts requiring larger lot sizes to balance concentrations of housing in, for example, a Town center. 2) Update the Master Plan visioning chapter by involving residents in open fora. The present goals can thereby be validated or changed to meet the Town's needs. Ms. Carriel indicated we shall have more specific feedback in due course.

New Town street names. Mr. Day noted Rowell Cove Road is now Cove Road, and Taylor Way will have three houses which include a former Willow Road address.

PB budget. Given anticipated expenses for 2004, the Planning Board budget should not be dramatically different from 2003. Mr. Day noted that the present budget the selectmen use does not describe specific line items very clearly (e.g. Targeted Block Grant), but 2004's budget shall be detailed for easier understanding and management.

PB/ZBA Recording Secretary. The Administrative Assistant has placed advertisements in the *Carriage Towne News* and *Exeter News Letter* soliciting applications. She has asked all applications be submitted by 15 October.

Cornerstone Baptist Church, Stratham. Mr. Day noted he had met with Realtor Choate, Pastor Hutchinson, and a church trustee to discuss the Larry Bean property at the corner of Rtes 107A and 108 in the East Kingston commercial zone. He indicated they were apprised of the need for a site plan review and all that entails, that the 2.7 acre parcel might pose space problems for their plan to build a church with room for school rooms, a septic system large enough to accommodate the congregation population together with the house (parsonage), and parking space requirements.

The Joseph Conti 10.4 acre parcel on North Road presently for sale was also considered. It was noted there is a large flood zone depicted on the East Kingston tax map that runs through the Conti parcel from North Road.

Country Hills of East Kingston. The Board discussed the dilemma raised by Attorney Ratigan of *Donahue, Tucker & Ciandella* for Messrs. Caley and Densen in regard to a note on their approved elderly housing development plan, and the applicants' understanding of what they and the Board agreed to in the course of deliberation. The plan note in question states "NO INDIVIDUAL UNIT SHALL EXCEED 1,500 SQUARE FEET OF LIVING SPACE". The applicants claim they understood from the Board's deliberations that the zoning ordinance interpretation allowed for a single unit to have a 1,500 square foot footprint, allowing for additional living space in a second storey.

Mrs. Belcher read from the 21 December 2000 and 18 January 2001 minutes wherein the Board addressed zoning ordinance change recommendations. References to elderly housing unit square footage in the change recommendation verbiage included "square feet in footprint", apparently without distinguishing "footprint" from "living space". Mr. Fillio stated his opinion that the Board's intent all along was to offer housing for the elderly which would allow them to "downsize" from formerly active lives into smaller, more easily manageable accommodation. He felt to allow for a 1,500 square foot footprint, unrestricted to the number of stories, could result in houses with as much as 3,000 square feet of living space, a size that is larger than most dwellings in East Kingston today. Mr. Day agreed, suggesting the idea would be preposterous, and contrary to any logical planning intent for a "retirement community" ordinance. He noted a reading of the ordinance wording today in Article XII.B.4., to wit: "*No individual unit shall exceed 1,500 square feet of living space, and no single-family building shall exceed 1,500 square feet in footprint*", leaves no doubt in his mind that the ordinance intention is to limit living space to 1,500 square feet, regardless of the number of stories. Consensus of the Board appeared to be that 1,500 square feet of living space for elderly housing units was the Board's planning intention.

DISCUSSION ONLY FOR A PROPOSED CONDOMINIUM CONVEYANCE APPLICATION OF MRS. LISA AUGER, 52/54 BURNT SWAMP ROAD, MBL 10-6-1 (PB#03-10).

A public hearing was originally planned in the agenda for Mrs. Auger, however in the application's review, the Board determined the abutter list was incomplete and could not be completed by the applicant or the Town. The

plat plans submitted by Mrs. Auger were prepared by a licensed land surveyor who has left the country, and there was no wetland soils scientist identified.

Neither Mrs. Auger nor any representative was present for discussion. The Board informally discussed the application in their absence, noting that Town Counsel had affirmed the application is defined by New Hampshire statute as a subdivision, that the condominium documents appeared to harbor no flagrant mistakes or contradictions, and that the questionable accuracy of the two plat plans submitted will require the property plans be redone. The Board noted that errors such as magnetic north arrows pointing in different directions (a 90°+ azimuth discrepancy), and the apparent exclusion of a wetlands area clearly shown on the Town's tax map bring into question the plans' overall accuracy.

PUBLIC HEARING FOR A SITE PLAN REVIEW OF MR. & MRS. JOHN MULVEY, 17 HAVERHILL ROAD, EAST KINGSTON, INVOLVING MBL 9-8-19 (PB#03-OE).

The Board noted that the Mulveys' proposal did not involve a change in the site configuration, or its use. Mr. Mulvey was asked to describe his plans for the two businesses for which the former owner, Mr. Denis Plante, had obtained Planning Board approval.

Mr. Mulvey stated that it was his intention to recombine the auto body repair and used car sales businesses into one business to be known collectively as "Den's Auto Body". Mr. Plante had separated the two enterprises in order to permit the used car sales business to be operated by a second person. When asked where the used cars would be parked, Mr. Mulvey noted his intention of parking vehicles only on the paved areas in front of his house and the auto repair garage complex. He acknowledged the need to keep the area in front of his property's fire suppression dry hydrant clear for Fire Department access.

Mr. Fillio asked how many cars Mr. Mulvey thought he might have to present for sale. Mrs. Belcher asked how many cars can be fitted onto the property. Mr. Mulvey estimated that he could fit 20 vehicles in the property's rear, 8 in front of the house, 8 in parking spots in front of the garage, and 5 in auto body repair bays in the garage.

Mr. Day opened the hearing to a better comment.

Mr. Mark Coorsen, 7 Haverhill Road, asked what Mr. Mulvey's intentions were regarding lighting of the area. He observed that his home is directly behind the Mulveys, and in the Winter, he has experienced artificial light spilling onto his property and into his house. Mr. Mulvey responded that he had no intention of changing any of the lighting. He indicated that a light in the rear of the property that might offend was actually disconnected.

Mr. Day closed the hearing to a better comment.

Ms. Carriel interjected that the site plan review authority paragraph states "*all changes and expansions of use – including change of tenants – require written notification to the Planning Board, who will determine whether the proposal shall be required to undergo the full site plan review and public hearing processes.*" Discussion ensued as to whether the Mulveys actually needed to come for a site plan review in the first place. The Board eventually agreed that the information the Mulveys provided was pertinent, and useful for the Town's execution of its oversight authority.

MOTION: Mr. Fillio **MOVED** the Planning Board waive any outstanding site plan review requirements not already fulfilled by the Mulveys with their present application, and approve the proposed combining of two, presently separate, business ownerships. Dr. Marston seconded, and the motion carried unanimously.

The Mulveys were advised by Mr. Day to forward a letter to the Board of Selectmen stating their intention, and citing the Planning Board's approval. The Planning Board shall inform the Board of Selectmen of its action.

Mrs. Mulvey enquired about the administrative requirements to obtain a NH State dealer license, stating they understood that permission from the municipality was first necessary before a license would be approved. The Board confirmed that the Mulveys would have both the public hearing proceedings minutes and a Planning Board Notice of Decision letter.

PUBLIC HEARING FOR A PROPOSED 2-LOT SUBDIVISION OF MR. WAYNE EWALD INVOLVING 16 NORTH ROAD, MBL 14-3-5 (PB#03-09).

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

For the applicant: Mr. Erik Saari, *Jones & Beach Engineers, Inc.*, Stratham. Mr. Saari gave a brief description of the proposed subdivision of the 5.03 acre lot at 16 North Road into two building lots, one of which is designed as a backlot. The Board considered Ms. Carriel's Senior Planner review memorandum dated 11 September 2003.

The Board noted the application appeared sufficiently complete to take jurisdiction.

MOTION: Dr. Marston **MOVED** the Planning Board take jurisdiction of the Ewald subdivision plan (PB#03-09). Mr. Smith seconded, and the motion carried unanimously.

Discussion ensued with Mr. Saari responding to each of the nine review comments in turn. Of the nine, the Board considered the question of prospective house proximity to a water source for fire suppression the most important before moving forward. The applicant had not taken into account the subdivision regulation requirement for a water source within 1200 feet of a house, and was uncertain of existing sources. The Board noted that, if either proposed house could not be so serviced, the applicant would have to provide for it in some fashion. Mr. Saari was encouraged to address the question to the East Kingston Fire Department.

Mr. Smith asked whether a drainage report should be required. Mr. Saari noted that the property is flat, open field, sloping gently toward North Road, which presently has a drainage swale. There is also a 15 inch culvert which carries water runoff to the west side of the road onto the Sams Way Real Estate Development, LLC, and Joseph Giannino properties. Mr. LK Smith confirmed the present drainage provisions, noting there are no wetlands on the property to complicate matters. Mr. Smith iterated his opinion that a 15 inch culvert may not be sufficient for future additional runoff from house roofs and driveways.

The remaining uncompleted or unaddressed comments were considered by the Board to be easily corrected, or will be reserved for preparation of the final plan. Mr. Saari requested the Board continue the public hearing to the October regular meeting.

MOTION: Mrs. Belcher **MOVED** the Ewald proposed subdivision for 16 North Road, MBL 14-3-5 (PB#03-09), public hearing be continued until 16 October 2003 at 7:45PM. Mr. Fillio seconded, and the motion carried unanimously.

PUBLIC HEARING FOR A PROPOSED ELDERLY HOUSING SITE PLAN OF SCAPICCHIO/MOWER, MBL 13-3-1 & 14-4-24, INVOLVING 41 ELDERLY HOUSING UNITS WITH A COMMUNITY CENTER (PB#03-0F).

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

For the applicant: Mr. William Gregsak, P.E. Mr. Gregsak gave a brief description of the revised plan, stating that it was to be a 41-unit elderly housing development with a community center to be named Apple Hill Adult Community. It would consist of 20 duplexes and a single residence on a 2100+ foot long cul-de-sac with a gravel emergency access road from the turn-around at the end of Andrews Lane. The emergency road would be gated in a fashion to allow emergency vehicles through.

The Board considered Ms. Carriel's Senior Planner review memorandum dated 11 September 2003. It noted the application appeared sufficiently complete to take jurisdiction.

MOTION: Mr. Smith **MOVED** the Planning Board take jurisdiction for the 41 unit elderly housing development site plan of Scapicchio/Mower involving MBLs 13-3-1 & 14-4-24. Dr. Marston seconded, and the motion carried unanimously.

Discussion ensued, addressing each of the review memorandum comments. Three waiver requests were noted on the plan: 1) topography and soils on the lot consolidation plan. Chairman LK Smith noted it is provided well enough elsewhere in the plan set. 2) 2:1 side slopes for wetlands crossings, rather than the regulatory 3:1. The Board clarified that for such a waiver, guard rails shall be required. 3) a 2160 foot long cul-de-sac, rather than the

regulatory 1000 feet. The Board noted that this waiver approval will depend upon a satisfactory configuration of the emergency access road, and sufficient off-site improvement to the privately owned portion of Andrews Lane to accommodate emergency vehicles. A fourth waiver was noted by Ms. Carriel as a probable requirement: the plan set does not yet have a lighting plan which would most likely require a waiver. Mr. Gregsak indicated his intention to submit a lighting plan.

Review memo items #2 through 8 were agreed to by Mr. Gregsak without comment. Memo item #9 addressed the emergency access road gate and lock, and the road's proposed 8% grade. The Board reserved its opinion until the Fire Department was consulted, and suggested Mr. Gregsak confer directly.

Mrs. Belcher asked whether any construction vehicular traffic was anticipated for Andrews Lane. Mr. Gregsak noted that all such traffic was intended from East Road, and the Board emphasized its objection to construction traffic on Andrews Lane. Mr. Gregsak agreed there would be none.

Memo item #11 called for greater detail of the cul-de-sac bulb, and the Board pointed out to Mr. Gregsak that the present requirement is for a 75 foot radius circle which is completely paved.

Discussion ensued about item #14 wherein several driveways appear to be too short to accommodate a normal vehicle. Mr. Fillio noted that some of the popular SUVs and RVs can be 18 feet and longer, and would stick out into the street. Mr. Gregsak indicated he would reexamine the proposed driveways.

Ms. Carriel suggested cut and fill calculations should be provided (item #15) to determine whether an excavation permit might be needed. Mr. Gregsak noted that the soil from the cuts will be used for the fills, and his plan did not necessitate the use of retaining walls. He further noted that the proposed sidewalks will incorporate a grass strip to separate them from the road, except where space restrictions for the cuts and fills preclude it.

Discussion ensued when Mr. Gregsak was asked to explain what he meant by a "Cape Cod berm" for street curbing. He described the curb to be made of the same asphalt (bituminous concrete) as the street pavement, formed in such a way to provide drainage control. He indicated that the existing terrain and topography necessitated a community drainage system with such a curb configuration.

Mr. Gregsak was asked to describe to the assembled the walking path plan so as to show that they conformed to ordinance requirements. The Board noted one proposed path to the south of Andrews Lane that appeared to traverse wetlands. As for the suggestion some portion of the property be placed in a conservation easement, Mr. LK Smith offered that, given anticipated NH legislation and rules, an easement may not be necessary because the wetlands would be used to mitigate disturbance elsewhere on the property. Mr. Smith also asked about the metes and bounds on the plan set. Mr. Gregsak assured him and the Board that the metes and bounds for the site plan shall coincide with those for the as yet to be recorded lot line adjustment for the Scapicchio and Mower parcels.

Item #18 asked for the status of the community water system permit approval. Mr. Gregsak stated it "was in the works". As the review item described, Mr. Day requested that Mr. Gregsak notify abutters with wells that might be affected of any pump tests to be conducted. The abutters could thereby monitor their own wells for adverse effects, and Mr. Gregsak agreed to do so.

Mr. Day noted that after taking jurisdiction, the Board shall forward the plans and drainage report to the Town Engineer for review, and the fire suppression information to the East Kingston Fire Department. Mr. LK Smith asked if there would be a revised drainage report, given the changes from the original site plan. Mr. Gregsak stated he would provide the necessary seven (7) updated report copies. Comment from the Conservation Commission and the Police Department shall also be solicited by the Board, and considered in its deliberations.

The remaining review items were acknowledged by the Board as administrative, and would be addressed in due course, to wit: condominium document and easement language review by Town Counsel, recording of the original lot line adjustment, and all approvals and permits in hand.

Mrs. Belcher observed that a number of the residential units and a proposed walking path very closely abut a neighbor's property. She asked if such a configuration would invite trespass. Mr. Gregsak believed the property boundary was clearly marked.

Mrs. Belcher noted that five of the units remain isolated from the community. The northerly most units are considerably removed from the main body of houses on the cul-de-sac. Mr. Gregsak suggested he thought those units might actually prove to be the most attractive by virtue of their elevated location with a view, their proximity to the community center and golf course across East Road.

Mrs. Belcher reiterated her concern with regard to access from East Road, and safety questions about sight distances and curves in the road close to the intersection. The Board acknowledged that if NH DOT granted a permit, it would be more difficult for the Town to influence the decision on grounds of safety questions. Mrs. Belcher remained convinced that a "scoping meeting" with NH DOT could be useful, and recommended the Board pursue the matter.

Mr. LK Smith asked whether the Board was going to request a site walk before the snow flies. After some discussion about who could make it, the Board and Mr. Gregsak agreed to a site walk on 4 October 2003 at 10:00 AM. Interested members shall rendezvous at the end of Andrews Lane and proceed with Mr. Gregsak, who assured the Board the road and locations will be staked and flagged by then. Mr. Smith noted that he had walked the site in 1992, and was familiar with the terrain. Mr. Fillio observed that the site walk constituted a working session for the Board, that the public is invited to attend, but public comment would not be solicited.

Mr. Day opened the hearing to abutter comment-

Mr. Herbert Woodworth, 31 South Road, wanted to know whether a plan copy is available for the abutters and was offered one. He noted that he agreed entirely with Mrs. Belcher's comments about the potential for trespass on his property, and asked who would assume that liability, and what recourse he had. Mr. Fillio observed that, as is always the case in such matters amongst neighbors, it is a civil matter where criminal activity is not a factor.

Ms. Margaret Caulk, 69 South Road, read a prepared statement in which she iterated her concerns from the last hearing about environmental impacts, and went on to ask the Board who will assume responsibility for the safety of East Kingston residents. She contended that the elderly have diverse problems, that the Town has already approved several such developments, and this particular proposal presents hazardous road conditions for the slow to react, and the faint of heart. She felt that the burden on the Town to provide municipal services to this burgeoning elderly population will be onerous and difficult.

Mr. Day thanked Ms. Caulk for her comments, and noted that the Planning Board must exercise its responsibility to apply the Town's own legislation (i.e. ordinances), all of which were approved by her fellow citizens and neighbors at Town Meeting. The Board would be remiss, therefore, and held to account by any number of agents, were it to ignore or contravene any ordinance. He suggested if East Kingston residents disagree with an ordinance, or a provision therein, there is a clear-cut process by which such questions can be brought to the legislative body at Town Meeting.

Mr. John Ryan, representing *Hoggs Hill Limited* (Mr. Thomas Dingman of Kensington), asked about access to the proposed plan materials, the proposed 2000 foot cul-de-sac, and site distances along NH Rte 107. Hereferred to NH RSA 354A:15, Section 302, in which he understood the state to require certain provisions be met for elderly housing projects before any discriminatory practice can be applied.

Mr. Ryan felt that allowing a 2000 foot cul-de-sac would require a waiver from the 1000 foot limit, and that a waiver amounting to 100% variation from the regulation was excessive. He further asked about maintenance of the private road, and whether the Town would eventually be ~~tated~~ ^{tated} with it.

Mr. Day responded for the Board briefly by stating that the application materials are available for all to see in the Town Offices during normal office hours, that the Board has stated unequivocally that the cul-de-sac length question must be satisfied by an acceptable form of emergency access, e.g. from Andrews Lane, and that the RSA requirements to which he referred had to be taken into account when the ordinance was written. In addition, the Rockingham Planning Commission, as well as Town Counsel, had also reviewed the ordinance before it was placed on the Town Meeting ballot.

Mr. Day closed the hearing to abutter comment.

In view of the plethora of unanswered questions, unfinished business, and applicant materials yet to be provided, Mr. Gregsak was asked if he would like the public hearing continued. He agreed to it.

MOTION: Mr. Filio **MOVED** the public hearing for the Scapicchio/Mower elderly housing development involving MBLs 13-3-1 & 14-4-2 (PB#03-OF) be continued until 16 October 2003 at 8:15PM. Mr. Smith seconded, and the motion carried unanimously.

Mr. Day closed the public hearing

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

The hearing was opened by Mr. Day who indicated that Mr. Tebo's original plan for a LLA had been resubmitted, and the abutter list had been completed satisfactorily. It was noted that Mr. Tebo's engineer was not present.

The Board examined Ms. Carriel's Senior Planner review memorandum dated 11 September 2003, noting her five comments. Item #1 indicated that the delineation of poorly drained soils and building setbacks appeared to be approximate. Mr. Tebo was assured by the Board that approximations are not acceptable on a plan, and a wetlands soils scientist stamp is required.

Item #2 suggested the plan be reviewed by the Town Engineer or Road Agent to ensure that any future access point from Greystone Road could be safely located. The Board noted that a driveway permit from the Town Road Agent for the newly created lot would be required before final approval.

Whether or not the data from test pits and perc tests done by Mr. Kent Shepherd, former Building Inspector, was complete and available was uncertain. The Board stated that the information should be placed on the plan.

The Board noted that the newly created lot boundary monuments must be placed using either granite or concrete pillars. Mr. Tebo asked whether drill holes in existing rocks would be acceptable. It was observed that rocks move, and an acceptable practice is off-set monumentation where terrain or topography necessitates.

MOTION: Mr. Filio **MOVED** the Planning Board take jurisdiction for the proposed lot line adjustment of Mr. Glenn J. Tebo involving MBLs 6-2-17 and 6-2-10 (PB#03-08). Mr. Smith seconded, and the motion carried unanimously.

Mr. Day opened the hearing for a butter comment-

Mrs. Jane Furfari, 13 Greystone Road, asked what the permitting process for a driveway or access road involves in this particular instance. Mr. Day suggested that because Greystone Road is a Town road, our Road Agent would review and approve any proposed road cut, be it a road or driveway. Such questions as sight distance and safety are considered equally for either proposal.

Ms. Rachel Williams, 21 Greystone Road, Kingston, asked how she might examine the application materials herself. She was informed that all such material is available for the public to see at the East Kingston Town Office during normal working hours.

Ms. Carriel noted that this particular application is only for a lot line adjustment, and Mr. Tebo's longer-term plan for a proposed subdivision is presently only speculation, although a plan was briefly reviewed, only for information purposes, at the Board's last meeting. Mr. Tebo has presented nothing for the Board to review formally.

Ms. Diane Hefford, 22 Greystone Road, Exeter, acknowledged that she was not technically an abutter, but asked how she might be informed of developments in this application. It was noted that noticing requirements call for posting the Board's agenda in two public places in Town, and publishing it in a local newspaper of general circulation.

Mr. Day closed the hearing to abutters.

The Board deliberated what remained for the applicant to do, or provide, in order for the Board to take a final decision on the lot line adjustment application. The Board identified the following conditions for approval:

- 1- The plan be reviewed by the Town Engineer.
- 2- Test pit and perc test data be added to the plan.
- 3- Wetlands be precisely demarcated and building setbacks exact.
- 4- A Certified Wetlands Soils Scientist stamp be included on the plan and signed.
- 5- East Kingston Fire Department letter of approval noting the accessibility of a fire suppression system.
- 6- Placement of new monuments made of granite or concrete where required, and a Certificate of Monumentation completed by the East Kingston Building Inspector.
- 7- Road Agent review of the plan and issuance of a driveway permit for the newly created Greystone Road lot.
- 8- Final plan mylar be submitted for signature by the chairmen of the Kingston and East Kingston Planning Boards.
- 9- All fees and charges due the Town in connection with the subdivision, including but not limited to Town Counsel, application review, and recording, be fully discharged.

MOTION: Mr. Fillio **MOVED** the Planning Board grant conditional approval for the Tebo lot line adjustment involving MBLs 6-2-17 & 6-2-10(PB#03-08). The conditions are:

- 1- The plan be reviewed by the Town Engineer.
- 2- Test pit and perc test data be added to the plan.
- 3- Wetlands be precisely demarcated and building setbacks exact.
- 4- A Certified Wetlands Soils Scientist stamp be included on the plan and signed.
- 5- East Kingston Fire Department letter of approval noting the accessibility of a fire suppression system.
- 6- Placement of new monuments made of granite or concrete where required, and a Certificate of Monumentation completed by the East Kingston Building Inspector.
- 7- Road Agent review of the plan and issuance of a driveway permit for the newly created Greystone Road lot.
- 8- Final plan mylar be submitted for signature by the chairmen of the Kingston and East Kingston Planning Boards.
- 9- All fees and charges due the Town in connection with the subdivision, including but not limited to Town Counsel, application review, and recording, be fully discharged.

Dr. Marston seconded, and the motion carried unanimously.

Mr. Day closed the public hearing.

CONTINUED BOARD BUSINESS:

Country Hills of East Kingston- For the applicants Caley and Densen: Dennis Quintal, P.E., and Attorney John Ratigan. Atty. Ratigan explained how he understood the confusion to have come about. He noted the wording in the Planning Board's minutes from December 2000 and January 2001 wherein "footprint" was used to the exclusion of "living space". He also indicated the Board had been presented with housing unit elevation proposals which clearly showed a house with a second storey. The resulting total living space was to be greater than 2,200 square feet, and there appears to be no evidence that the Board ever objected. As a consequence, Messrs. Caley and Densen have prepared their building plans for financial institutions and prospective buyers using house plans with more than 2,200 square feet of living space.

Atty. Ratigan asked the Board to permit him to speak directly with East Kingston Town Counsel about providing language for a "scrivener's correction notice" regarding the Board's assent to an administrative error. It would in turn allow the applicants to build the units using the submitted house plans. He stated he was willing to assume the cost of such dialogue with Counsel for the applicants himself.

Board discussion ensued about what the Board's planning intent had been, and how it was understood today. Mr. Fillio expressed his opinion firmly that 1,500 square feet of living space, in total, had to have been the Board's intent from the beginning. "Retired" people over the age of 55 were assumed to want to live less complicated lives in lower maintenance surroundings. More to the point, Mr. Fillio was very concerned that to allow roomy houses would lead to future owners and residents attempting to break the condominium age and population restrictions,

allowing school-aged children thereby, and defeating the very purpose of East Kingston's elderly housing development ordinance.

Mr. Day agreed with Mr. Fillio's concerns, and suggested that the ordinance's age restriction and population provisions are legally defensible. It could very well be that the Town will have to exercise very careful oversight.

Mrs. Belcher once again read the offending minutes notes from December 2000 and January 2001. She intimated that she did not disagree with Mr. Fillio's concerns, but the Board appears to have erred, and it might be difficult to deny the applicants' plea.

Mr. Day suggested that, regardless of the unfortunate fallout from an apparent Board oversight, he could never recommend the Board contravene an ordinance provision, and in this case, the idea of a retirement unit potentially having 3,000 square feet of living space was absurd. Mr. Fillio did not disagree, but argued that a mistake was made, and the Board would have to grant an exception somehow, or end up in court over it. Disagreeing strongly, Mr. Day polled the Board members for their opinion as to what to do.

Dr. Marston, Mr. Madej, Mr. Fillio, and Mrs. Belcher were of the opinion the Board would have to accommodate the applicants' plea for exception. Mr. Day remained against any such accommodation, and Mr. Smith abstained.

As a result of the poll, Mr. Day suggested Atty. Ratigan go forth to speak with Town Counsel about proper language for a note to be attached to the recorded plans addressing an ordinance exception. The note would be registered with the Rockingham County Registry of Deeds to remove any doubt from future sales transactions.

October meetings- Discussion ensued over whether to have a working session to address the CIP update, the Growth Control ordinance review, and ordinance change recommendations for the 2004 Town Meeting ballot. Mr. Day noted that, if the Board decides to meet, the posting of notice two days before is required.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Board adjourn. Mr. Smith seconded, Mr. Fillio thirded, and the motion carried unanimously at 10:55PM.

Respectfully submitted,

James Roby Day
Minutes approved *as corrected* 16 October 2003