



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2006-2007:
James Roby Day, Jr., Chairman
Catherine Ellen Belcher, Vice Chairman

MINUTES

(Regular Meeting of 21 September 2006)

AGENDA:

- 7:00PM – **Board Business**
7:05PM – **Continued Public Hearing** in regard to a change to the Subdivision Regulations (Section VII.K) (NH RSA 676:4), general requirements for the subdivision of land.
7:15PM – **Continued Public Hearing** for Jeffrey & Susan Marston (MBL 16-4-1) and Industrial Tower and Wireless, LLC regarding a site plan proposal to build a communications tower (EKP#06-OC)
8:00PM – **Public Hearing** for Barbara Binette and Michael White, 38 Giles Road (MBL 16-03-08) in regard to a proposed home occupation involving general carpentry.
8:45PM – **Adjournment**

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

ROLL CALL: Mrs. White called the roll.

Members present – Vice-Chairman CE Belcher, Mr. R Caron, ex-officio alternate, Chairman JR Day, and Mr. RA Smith, Sr.
Alternate members present – Mr. EA Lloyd, Jr.
Advisors present – Jill Robinson, PhD, Senior Planner, Rockingham Planning Commission (RPC)
Mr. LK Smith, Chairman, East Kingston Conservation Commission Chairman (CC)
Mr. RR Donald, East Kingston Building Inspector
Mr. A Conti, East Kingston Fire Captain

Voting members – Chairman Day noted that Dr. Marston was not in attendance and announced that Mr. EA Lloyd would be a voting member this meeting's proceedings.

BOARD BUSINESS:

Minutes. Mr. Day entertained a motion for approval of the August 17 Regular Meeting minutes.

MOTION: Mr. Lloyd **MOVED** the Planning Board accept the minutes of the 17 August regular meeting as presented. Mrs. Belcher seconded, and the motion carried. Mr. Day abstained from the vote, as he was not present at the August meeting.

Cover Sheet – Mr. Day passed around the cover sheet for Subdivision Regulations (SDR) Article VI, Section R change proposal heard on 17 August 2006 for Board member signature. He noted that it shall be presented to the Town Clerk, and explained the change would not take place until she had received the signed sheet.

Board materials - Mr. Day went over tonight's materials with the Board. Included are the change recommendation for SDR Section VII.K., a recommendation for a new paragraph to SDR Section VII .Y, and recommendation for a new paragraph to SDR section VII lettered Z. Also a Growth Management Ordinance Proposal, Coastal Conservation Overlay District Draft, Planning Board Calendar, and a Field Trip Summary.

Coastal Conservation Plan – Dr. Robinson, RPC Senior Planner, explained that the Land Conservation Plan for the Coastal Watersheds of New England was a misnomer since the area extends from the Salmon River watershed to as far west as Deerfield. The plan has been printed and will be distributed within the next two weeks. Each Planning Board will receive a CD and each Conservation Commission will receive a hard copy. The project was completed with three partners: the Strafford Regional Planning Commission, the Nature Conservancy, and the Society for the Protection of New Hampshire Forests. In addition to the partners, the RPC worked very closely with several natural resource scientists and others to develop and review the plan. The RPC is now in the phase of approaching communities who are interested in possibly adopting a portion of the plan into their Master Plan and/or using some of the suggested implementation tools and East Kingston has expressed an interest in doing so. Dr. Robinson provided the Board members with a model of the ordinance to review. The process would involve a series of discussions, taking into consideration the Regional Plan and also looking at existing data such as East Kingston's Natural Resource Inventory and information from the Conservation Commission.

Dr. Robinson announced that another Outreach Meeting, open to anyone interested in learning more about the Land Conservation Plan, would be held on Oct. 12 at the Rye Public Library. At 6:30 PM, all the maps will be available for review, and the presentation from some of the partner organizations will begin at 7:00 PM.

Dr. Robinson also announced that on *Watershed Weekend*, October 14 and 15, the partners would be hosting a series of hikes, which are free and open to the public. The public would have the opportunity to hike in different areas and someone from UNH or a natural resource scientist would lead the hikes.

CIP Update – Mr. Day reported that he had received more input for the CIP from the SAU and the Cemetery Trustees. With receipt of this new information, and follow-up with remaining department heads, he hopes to have the material ready for public presentation by the Board in October.

CONTINUED PUBLIC HEARING FOR JEFFREY & SUSAN MARSTON (MBL 16-4-1) AND INDUSTRIAL TOWER AND WIRELESS, LLC REGARDING A SITE PLAN PROPOSAL TO BUILD A COMMUNICATIONS TOWER (EKP#06-OC) AT 36 GILES ROAD, EAST KINGSTON

Mr. Day opened the Public Hearing.

Mr. Day recapped to the public where the process for the cell tower had started and what stages it had gone through to this point. He pointed out the application for the cell tower had been brought before the Planning Board on 20 April 06 and the application was denied because the ordinance specifically prohibits telecommunication towers in residential zones. The applicant appealed that denial to the Zoning Board of Adjustment (ZBA) at a public hearing on 25 May 06, where it had to meet five criteria in order to receive the variance. Those five criteria are: 1. No decrease in value of surrounding properties would be suffered; 2. Granting the variance must not be contrary to the public interest; 3. Denial of the variance would result in unnecessary hardship to the owner seeking it; 4. By granting the variance, substantial justice would be done; and 5. The use must not be contrary to the spirit and intent of the ordinance. The applicant and abutters tendered information at the hearing. All five criteria having been met in the ZBA's eyes, the ZBA granted the variance. On 18 July 06, the ZBA considered a Motion for Rehearing of the variance decision and found no error with it.

Mr. Day observed that we live in a civil society where we have chosen to be governed by the rule of law. Therefore by granting this variance, the ZBA removed the Planning Board's objections to this particular application and the cell tower in a residential zone. The ZBA took the matter off the table for any further deliberations of the Planning Board, and it is no longer an issue that the Planning Board can or will address.

On 20 July 06 the applicant came back to the Planning Board and the Board found that the application was complete and took jurisdiction. The statutory 65-day clock started, and shall run out in two days (23 September 06), before which the Planning Board is required to reach a decision. The applicant can request an extension of the application for a given period of time, and upon consideration, the Planning Board can grant or deny that extension. Mr. Day explained that if this application were to be continued this evening, the applicant would need to request such an extension.

On 27 July 06, a Balloon Test was conducted and the results were discussed at last month's hearing. On 17 August 06, the Planning Board discussed with the applicant erosion controls, road grade and surface, site preparation, equipment building construction, tower height and antenna array sizes among other things. Abutters expressed concerns with the tower's visual impact and the possible effect on property values.

Mr. Day opened the floor to the applicants, Mr. Donald Cody, Director of Operations for Industrial Communication (parent company of Industrial Tower), and Mr. Rick Voci, Industrial Tower.

Mr. Cody presented updated plan pages to the Board of the revised site plan, and a set of detailed plans of the shelter buildings.

Mr. Cody explained that the site plan had been revised with Town Engineer Stephens's concerns addressed, and a copy of the detailed plans of the facility had been submitted to East Kingston Fire Chief Mazur. Mr. Voci would speak to the Board concerning the 19 September 06 memorandum from Mr. Stephens.

Mr. Cody stated he thought the only issue left before the Board was the details of the road, such as the size of the rocks and erosion prevention, and that all other matters had been presented to the Board to their satisfaction. He stated he would be glad to answer any further questions the Board had.

Mr. Voci explained there was some erosion control concerns brought up at the last meeting. To satisfy those concerns, he had added some swales to control runoff coming off the hill and added silt fencing in addition to the mulch barrier on the upside slope. They had also addressed all the comments of Mr. Stephens's September 8 memorandum and incorporated them into the plans. The concerns in Mr. Stephens's September 19 memorandum were also addressed and are incorporated into the plans distributed this evening. Those plans would be submitted to the Town Engineer for his comments.

Mr. Voci went down the list of Mr. Stephen's comments and noted the changes made.

1. **No grading shown in the compound area.** Mr. Voci explained that there were no proposed contours since the compound area was a flat site.
2. **Denote sizes of stone and depth of rip-rap, add filter fabric between stones and natural ground, add water bar spacing to plans.** All details were changed to read that the depth of swale (stone rip-rap) would be 12" and the sizes of stone were denoted as 8-12" diameter. Filter fabric was also added between the stones and the natural ground in all three places. The depth of the swale was changed to read 2'6". The angular stones reference at the pipe outfall was changed to read 8-12" diameter and all water bars on Page A1 were denoted by the use of call-out boxes.

3. **Storm water issues.** These issues were addressed with the Planning Board at the last meeting and erosion control is considered adequate.
4. **Sound buffering.** This issue was addressed at the last meeting with the addition of a hospital-grade silencer on the emergency generator.
5. **Viewshed plan.** This was accomplished with the balloon test.
7. **Tower foundation installed per manufacturer's specifications notation.** This was discussed at the last meeting with the Building Inspector. This notation was added to the plans and will be followed up by the Building Inspector when completed.
9. **Not sure what a "dewatering basin" is.** This was discussed at the last meeting also. This is a standard detail added to all plans in case high ground water is encountered. High ground water is not anticipated on the top of the hill.
13. **Title sheet needs to be corrected to reflect all sheets included, revision numbers, and spelling of the word aerial throughout needs to be corrected.** All items on the title sheet have been corrected and the word aerial has been corrected.

Mr. Day asked when the Town Engineer would have the latest version of the plans and Mr. Voci replied he would have them Friday.

Mr. Day inquired of Mr. Cody what drainage easement was considered in reference to the last paragraph in question 2. Mr. Cody answered that no drainage easement was necessary as water was dispersed naturally. Mr. Day said the Planning Board would address this issue with Town Council before signing off on the plans.

Mr. Lloyd asked Mr. Cody to clarify the diameter the array, as he could not find it denoted. Mr. Voci pointed it out on page A3. Mr. Lloyd verified that the diameter was 12'6" and Mr. Voci agreed. Mr. Lloyd noted that the pole was 64" in diameter at the ground and 19.2" at the top. Mr. Cody noted that he had previously told the Board the pole was 3' diameter at the top, which was in error.

Mrs. Belcher stated that at the last meeting, the Board had talked about water velocity and the natural berm, and she noted that the Town Engineer had not been satisfied with the original proposal and had suggested something in addition to be added. She asked Mr. Voci to show her on the plans what they proposed. Mr. Voci showed her on page A1 that silt fencing was to be installed in addition to the berm.

Mrs. Belcher also referred to the Town Engineer's comment of the tower and land contours on page A1. Mr. Voci explained that the original plans had shown the compound in the wrong location, and the corrected plans showed the compound in the correct location.

Mr. LK Smith, Conservation Commission, referred to the Water Bar profile on page A1.1 and suggested that a rolling dip that would be entirely below grade be used instead to alleviate erosion of the water bar. Mr. Voci answered that a rolling dip would be do-able.

Dr. Robinson referred to the mulch berm and silt fencing and asked if there was a plan for periodic maintenance. Mr. Voci explained that they would check the road on a monthly basis. Mr. Cody explained that Industrial Tower employs a person who lives in New Hampshire to maintain their roads on a regular basis. He would perform maintenance and clean up as necessary. Dr. Robinson was concerned with weather impacts on the road and recommended that road maintenance be added to the detail sheet. She also suggested that perhaps a small bond would be appropriate in the case of a road washout. Mr. Cody suggested that road maintenance be added to the conditions.

Mr. Cody pointed out that all the pages of the plans would not be recorded. Mr. Day advised Mr. Cody that one of the conditions of approval would be to make reference on the sheets(s) to be recorded of all the notes and other pages on the complete plan that the town holds.

Mr. Conti, East Kingston Fire Captain, stated that the Fire Department had received the building structure plans and was comfortable with the proposal offered by Industrial Tower.

Mr. Day explained the abutter notification process to the public, noting who were identified by statute as abutters for notification purposes, and who were abutters for purposes of submitting testimony. He explained that there are three types of abutters: 1. for the purposes of receiving testimony; 2. for the purposes of East Kingston's requirement to notify; and 3. anyone who can demonstrate that his/her property would be affected. According to RSA 672:3, "*an abutter is any person whose property adjoins or is directly across the street from the land under consideration.*" East Kingston goes one step further by notifying any person within 200' of the aforementioned property. The Planning Board is obligated to hear the testimony of anyone who can show their property would be affected, but is only obligated to notify those as referenced in RSA 672.3. All notices to abutters are sent to the addresses listed on the Town's tax bills. In the case of telecommunications towers, the Town is also required to notify the Office of the Selectmen of the towns within a 20-mile radius and it is their responsibility to notify their residents. The Planning Board's agenda is posted at the Town Offices and the East Kingston Post Office, and published in the Exeter Newsletter.

Mr. Day also asked the abutters to identify themselves by name and address for the record, and address all comments to the Chair. He explained that given the number of attendees, the time to speak would be limited to five minutes and only new information would be heard.

Mr. Donald asked to be excused at 7:55PM as he was not a voting member of the Board. Mr. Day excused Mr. Donald.

Mr. Day opened the floor to abutters.

Greg Erkhart, 1 Bioteau Road – Mr. Erkhart asked what the environmental impact on wildlife would be as he has noted large birds of prey and perhaps ospreys in the area. He has contacted both the State Conservation Department and the Audubon Society who will send

someone to investigate whether or not there are endangered species in the area. Mr. Cody answered that ospreys tend to nest in the towers. Mr. Day asked Mr. Jeffrey Marston, as Fish and Game Officer, what types of birds were in the area. Mr. Marston answered that he had seen vultures and hawks in the past few years, but no eagles or osprey.

Matt Blunt, 22 Joselin Road – Mr. Blunt reported that ospreys were always eating the fish in his pond.

Christine Cameron, 105 Giles Road – Mrs. Cameron stated that she had to get a building permit and pave her driveway before she could move into her home, and wanted to know why the cell tower people did not need to pave their road. Mr. Day answered that in the case of her driveway, Mrs. Cameron's house was located behind the Terrill's and the Fire Department had concerns with the grade of the driveway and fire equipment being able to get to the residence. Mr. Conti explained that life safety was the issue in the instance of her driveway, and there are no residences at the tower site. Mrs. Cameron asked what if someone got injured at the cell tower site and Mr. Conti explained that no one lived there on a permanent basis, as was the case for a residence.

Reid Simpson, 35 Giles Road – Mr. Simpson asked what the tax impact was going to be and wanted to know if the cell tower people were going to subsidize the town for the loss of tax revenue. He stated that there was a distinct possibility the property values could change and wanted to know if the cell tower people would be paying the difference to the town between what the present tax rate and the reduced tax rate would be.

Mr. Simpson referred to a conversation he had had with Mr. Day on property values, and Mr. Day declined to comment as that conversation had been outside the forum of a public hearing and he considered it to be hearsay information.

Mr. Simpson also asked how much tax revenue East Kingston was going to receive from the cell tower. Mr. Cody answered that it would be assessed as personal property and the value would be several hundreds of thousands of dollars and taxes would be on that amount. He did not know the final amount.

Mr. Simpson asked a question in reference to taxes on Verizon's unmanned telephone switching utility, and Mr. Cody answered that telephone switching was a public utility and cell towers were not under the same guidelines as they were not considered a public utility.

Mr. Simpson asked Mr. Cody if in his experience, the tax coming into the town of East Kingston would be greater or less than what would be taken away from the town in decreased property values.

Mr. Day stated that Mr. Simpson was making an assumption and reminded Mr. Simpson to address his questions to the Chair.

Mr. Simpson asked if Mr. Day could answer his question. Mr. Day answered with the observation that the Zoning Board of Adjustment heard evidence to show that there does not appear to be any link between cell towers and property values.

It was Mr. Simpson's opinion that as Chairman of the Board, if Mr. Day knew that there was an error in judgment of the ZBA, he should stop the hearing at the present time and turn it back to the ZBA.

Nancy Howaniec, 24 John West Road – Mrs. Howaniec stated that a commercial, industrial use should not be permitted in a residential zone and believes that the cell tower will have an adverse impact on property values. She referred to a view tax and suggested a discounted value or rebate for what she called a *negative view*. She has what she considers clear evidence for the Planning Board to refute the cell tower and offered that evidence and petitions to the Planning Board. She also has additional evidence she will send to the Planning Board. Mr. Day thanked Mrs. Howaniec and said the Planning Board would take the information under consideration.

Scott Ratta, 128 Rowell Road – Mr. Ratta asked for an explanation of what the ZBA was and asked if the Mr. Day could go over the criteria. Mr. Day explained that the ZBA is a body that the State has put into place to deal with ordinances that in a particular instance might be too restrictive, and five criteria must be met before a variance can be granted. The five criteria are: 1. No decrease in value of surrounding properties would be suffered; 2. Granting the variance must not be contrary to the public interest; 3. Denial of the variance would result in unnecessary hardship to the owner seeking it; 4. By granting the variance, substantial justice would be done; and 5. The use must not be contrary to the spirit and intent of the ordinance.

In this particular instance, the ZBA's assessment was that it was within the spirit of the ordinance. There was a motion for rehearing and the ZBA determined their decision was not flawed. A judge will decide now that there is a lawsuit. A condition of approval will be that there be no legal impediments to the plan's implementation.

Mr. Ratta asked if the spirit of the ordinance was not to allow cell towers in residential areas and the cell tower people had the right to seek the variance, didn't the people have the right to go back to the ZBA and ask them to review the issue? Mr. Day answered that there was a motion for rehearing and the ZBA had determined that their decision was not flawed in any procedural way.

Mr. Day stated that there was presently litigation in the matter and a judge would decide if the ZBA did their job. He also stated that one of the conditions for final approval would be that there are no legal impediments.

Mr. Ratta asked if the ZBA was a State Board and Mr. Day answered that it was a local Board and that every town that had a Planning Board has a Zoning Board of Adjustment as well. The ZBA consists of residents of East Kingston.

Mr. Ratta referenced a cell tower in another town where he had lived previously and stated that the strobe light on the tower had shined into his bedroom window all night. Mr. Day stated that there would be no light on the tower as the FAA height requirement for a light was 200' and the proposed cell tower was 180".

Mr. Ratta also spoke about a cell tower he had seen disguised as a pine tree and inquired if the same could be done with this tower. Mr. Day stated that the Planning Board would consider that request.

Mr. Ratta asked how the Planning Board could make a decision if the ZBA was in litigation for the cell tower issue and Mr. Day answered that Town Counsel had advised the Planning Board that they could move forward with the application, but any final approval would need to be conditioned on legal questions being clarified.

Kim Casey, 109 Giles Road – Ms. Casey stated that she understood the ZBA made a determination based on the five criteria, and therefore the Planning Board had no jurisdiction to deny the application based on the ZBA's decision. She asked if the Planning Board had any discretion over the height of the tower and if they had considered a smaller tower. Mr. Day stated that ultimately the Planning Board did have jurisdiction over all the factors and that the Conservation Commission had asked that very question about a smaller tower. Mr. Day answered that during the last discussions, it was ascertained that reducing the pole height by 30' would severely restrict the number of carriers that could be placed on the pole.

Ms. Casey asked how the impact of a company's ability to put something on a pole figured into the Board's discussion, given that many of the abutters and people in the area don't want something that high. Ms. Casey stated that there were a lot of people at the meeting who don't want the tower and there was a law suit that was going to cost the Town a lot of money,

Ms. Casey asked that in light of the lawsuit and the number of people who did not want the tower at all, wouldn't it seem reasonable, even given the limitations of a shorter tower, to seriously consider reducing the tower height. Mr. Day asked Ms. Casey if she thought that by reducing the height she would not see the tower, and she answered that she would like to see the height of the tower reduced to just slightly above the tree level.

Tim Berry, 285 North Haverhill Road – Mr. Berry inquired if the Board was working with a conditional use permit in this case. He cited that the ordinance stated that a cell tower could be put into an industrial zone with a site plan review, into a commercial zone with a conditional use permit, and that they were not allowed at all in a residential area, as voted on by the Town 176 to 33. Mr. Day agreed that by Mr. Berry's definition, the Planning Board was working with a conditional use permit. In Mr. Berry's opinion, since the ZBA had overruled the spirit of the ordinance, it was up to the Planning Board to maintain some semblance of fairness in dealing with the community.

Mr. Berry cited that a conditional use permit should minimize any adverse effect on adjoining properties and preserve the intent of the ordinance. He stated that since the cell tower people said they did not want to use a shorter tower, he felt the Planning Board was not hearing the voice of the people in that instance. Mr. Berry felt that all the factors in approving the cell tower were not met and thanked Mrs. Belcher for her question to the applicant for the proximity to the adjacent buildable lot.

Daniel Bodwell, 79 North Road – Mr. Bodwell stated as he looked out the window of his house, he could see cattle grazing in the field. Also in his view were five assorted lines – electric, cable and telephone. He referred to the statement that the cell tower would lower property values. Mr. Bodwell stated he still saw the cattle along with the lines, but in his opinion, if those lines did not go by his house, he felt his property would not be worth a cent. He stated that he, his neighbors, and people he would never know, accessed the use of those wires, and he felt strongly that all the fuss over the cell tower was {nonsense} (*ed. Mr. Bodwell chose to use a stronger descriptive term*).

At this point in the hearing, Mr. Day announced that the hearing would need to be continued due to new material received and changes the applicant needed to make. He said two more abutters would be heard before he closed the floor to abutters.

Michelle Larson, 73 Giles Road – Ms. Larson asked what the purpose of the balloon test was and Mr. Day answered it was conducted to provide a visual data point as to where the pole would be, how tall it would be, and who it could be viewed by. Ms. Larson asked if the reason for the balloon test was to see if the balloon could be seen from historical buildings. Mr. Cody responded that an archeological dig of the site by the State Historical Commission was part of the process.

Ms. Larson also stated that in the last Planning Board minutes, it was stated that the balloon could not be seen from Giles Road and wanted the minutes to be changed to reflect the fact that the balloon had indeed been seen from Giles Road. Mr. Day stated that previous minutes would not be changed, but that her comments would now be on record.

Mr. Cody stated that they dealt with other issues with the State Historic Commission, which was separate from their dealings with the Town. Ms. Larson asked if a copy of that report would be available to the public, and Mr. Day answered that that was a reasonable request and asked the applicant to supply a copy of that report to the Board. Mr. Day asked Ms. Larson to facilitate the Board's getting that information.

Ms. Howaniec interjected that she had talked to the State who indicated that another balloon test would be conducted. Mr. Day thanked Ms. Howaniec for that information.

Ms. Larson referred to an article about a cell tower being denied by the ZBA in North Hampton because they acknowledged property values would decrease. She inquired about a small antenna system she had heard about. Mr. Cody replied that what she was referring to was a distribution antenna system, which is not practical due to cost factors, and is only effective for a distance of a few hundred feet.

Susanna S. Farmer, 97 Giles Road – Mrs. Farmer stated that the residents of East Kingston expect the Zoning Board and Planning Board officials to take care of them to the best of their ability, and it is their job to ensure that the community will be better and healthier in the future. She stated she does not see sufficient information in the meeting minutes from both boards to warrant an informed decision regarding the cell tower. Health concerns, negative impact on property values, watershed impact, and impacts to the scenic/rural character of the community are the most important concerns, and any decision rendered would have long-lasting implications for the Town.

Mrs. Farmer is proposing a moratorium on cell towers until more information can be gathered. She also suggested a professional appraiser for land values, review by the Town Attorney on health risk information, a report from the Conservation Commission on the impact to the Great Brook watershed, and a new balloon test when leaves are off the trees. She wants the town to develop a telecommunication tower ordinance to address future towers, and asked what the costs of the lawsuit to the town would be.

Mrs. Farmer felt that the Zoning Board has set a risky precedent by granting the variance for the cell tower, and asks that the Planning Board listen to the people of the town.

At this point, permission was asked for one more abutter to be heard and Mr. Day acknowledged a final speaker.

Mr. Paul Kimball, 21 Kimball Road, Kensington – Mr. Kimball stated that his home abuts conservation land and as there are no houses between him and the proposed tower location, he considered himself a class 3 abutter. He stated he had served on both the Planning Board and the ZBA and reminded the people present that the people on these boards give their time to the community and are not paid; it is their job to have foresight for the Town. Members of the Zoning Board need to be versed in the aspects of the laws and the regulations pertaining to the cases they are hearing.

Mr. Kimball noted that he is putting his land into conservation, as he wants to preserve the rural nature of the land, and feels that the cell tower is not in keeping with what he wishes to do with Kimball Farms. Even though he acknowledges that technology is necessary, he is opposed to the tower and thinks the town should avoid it if they can. He suggests that the Board review more information before making a decision.

Mr. Day thanked Mr. Kimball, and closed the floor to abutters.

Mr. Day announced that all written comments would be accepted, considered by the Board, and made part of the record.

Mr. Day proposed the Board ask the applicant to request a continuance, and said if they declined to request that continuance, the Board would have no alternative other than to deny the application as the 65-day clock would have run out. Mr. Cody said, for the record that he took exception to the note that the Board would deny the application as they had given the Board every piece of material they had asked for. He wanted to know what else the Board needed before he entertained the motion to continue so they understood what was needed.

Mr. Day said that some items that immediately came to mind was: 1. The Town Engineer should make his final review of the changes presented this evening, 2. The Board needed to talk to Town Counsel about the drainage easement request, and 3. The Board needed to take into consideration the abutter's concerns and perhaps come back to the applicant for further information. Mr. Day informed the applicant that the information they had received from them was very well done. Mr. Cody requested that the Town Engineer address the changes in a timely fashion as he felt a 2-day turnaround time was unfair to them to make changes before the next meeting. Mr. Day ensured him that would happen.

Mr. Cody requested a continuance of the hearing

Mr. Day entertained a motion to continue this hearing until 7:45PM on 19 October 2006.

MOTION: Mrs. Belcher **MOVED** that based on the request of the applicant, the Board continue the public hearing for Jeffrey & Susan Marston (MBL 16-4-1) and Industrial Tower and Wireless, LLC regarding a site plan proposal to build a communications tower (EKP#06-OC), until 19 October at 7:45PM, and that this continuance would serve as public notice of the hearing. Mr. Lloyd seconded the motion and it passed unanimously.

Mr. Day closed this public hearing.

CONTINUED PUBLIC HEARING IN REGARD TO A CHANGE TO THE SUBDIVISION REGULATIONS (SECTION VII.K) (NH RSA 676:4), GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND.

Mr. Day opened the Public Hearing.

Mr. Day informed the Board he had submitted his new proposal for this SDR change to Town Counsel, incorporating his suggestions, and Town Counsel agreed on the verbiage as written, which included a new paragraph L in addition to the existing paragraph K.

Mr. Day read the complete proposed amendment to the subdivision regulation.

SECTION VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND

- K. Land of such character that it cannot be used for building purposes because of exceptional danger to health or peril from fire, flood or other menace, shall not be platted for residential occupancy or commercial use. **(Adopted prior to 5/76) (Amended 9/06)**
- L. Steep slopes are described in the East Kingston Master Plan Natural Resources Chapter Section 7. SLOPE (1995, and as amended). All development, and its associated infrastructure requirements, is prohibited on slopes of 15% or greater. The construction of roadways is prohibited on slopes of 10% or greater. **(Adopted 9/06)**

The Board agreed on the verbiage for the change.

Mr. Day opened the floor to abutters. There being none, the floor was closed to abutters.

Mr. Day entertained a motion to accept the change recommendation to Subdivision Regulation Section VII.K.

MOTION: Mr. Lloyd **MOVED** the modified Subdivision Regulation Section VII.K., with new paragraph L, be amended and adopted, and all subsequent paragraphs in the section be re-lettered. Mrs. Belcher seconded and the motion passed unanimously.

Mr. Day passed around the cover sheet for SDR Article VII, Section K for signature.

Mr. Day closed this public hearing.

PUBLIC HEARING FOR BARBARA BINETTE AND MICHAEL WHITE, 136 NORTH ROAD (MBL 16-03-08) IN REGARD TO A PROPOSED HOME OCCUPATION INVOLVING GENERAL CARPENTRY.

Mr. Day opened this public hearing.

Mr. Day explained to the applicants that Home Occupation is a way the Town permits some very limited, otherwise commercial activities in residential zones with certain restrictions, and asked the applicant tell the Board their proposal.

Mr. White stated he was a self-employed contractor with a truck and equipment trailer for tools and a few ladders, which was hidden from view of the street as his house was 400' back from the road. He would have no employees other than himself and wanted to put a sign in front of his property with his company name and phone number. All his business would be conducted offsite and he would have no deliveries at his home. Mr. White said he wanted to use the sign as a form of advertising, since using the newspaper for advertising did not seem to work for him in his line of business. His business is based on the quality of his work and was mostly word of mouth advertising. He was hoping that the sign might generate some local work for him. Mr. Day suggested he could also advertise in the Fire Association's calendar. Mr. White thanked him for that information.

Mr. Caron asked if Mr. White might want to apply for an invisible business instead since the cost was less, and Mr. White replied that he thought he would not want to do that as he did want the sign in front of his house and if he was considered invisible, he would not be able to have the sign.

Mrs. Belcher reminded Mr. Day that similar to a previously-approved home occupation, the only part of this business that would be conducted on the premises would be the office business part, which would qualify under Article XVI, Sec. E 10 "*administrative support for businesses or services that are conducted off-site of the residential premises and which meet ALL the standards outlines under paragraph C...*"

Mr. Day listed the standards by which a home occupation must adhere, and suggested that Mr. White acquire a current copy of the Town ordinances from the Selectmen's office. He informed Mr. White that his application was a permitting process and the Planning Board would make a recommendation to the Board of Selectmen to approve his application. They would review the application and decide whether or not to approve it. It would be reviewed on an annual basis and there is a \$50 permit fee due each year.

After discussion of the Board, it was determined that Mr. White would qualify for a home occupation with the office part of the business being the only part that would be conducted on site, and installation of a permitted sign.

The floor was opened to abutters. There being none, the floor was closed to abutters.

Mr. Day entertained a motion for Home Occupation for Mrs. Binette and Mr. White.

MOTION: Mrs. Belcher **MOVED** that based on the presentation and the information before the Board, the proposal to operate the office portion of a general carpentry business at 136 North Road meets the permitted uses as outlined in Article XVI of the Home Occupation Ordinance, and further motioned that the Board make recommendation to the Board of Selectmen

for approval of this application, with the condition that an annual fire inspection be conducted. Mr. Lloyd seconded the motion and it passed unanimously.

Mr. Day directed Mr. White to the Selectmen's Administrative Assistant at the Town Offices to be placed on the agenda for their next meeting and explained to Mr. White that there is a permitting process for the sign from the Selectmen's office. Mr. Caron suggested that Mr. White bring the details of the size of the sign requested to present to the Selectmen for approval at that meeting.

Mr. Day closed the hearing.

Mrs. Binette and Mr. White thanked the Board for their time.

CONTINUED BOARD BUSINESS

Growth Management. Mr. Day stated that the Board was pretty much on schedule with what they mapped out for the year, but they needed to continue to make progress so they don't get bogged down.

Mr. Day stated he felt strongly that the Board needed to get the Growth Management on the books. Mr. Day stated he had changed some fundamental parameters, and asked the Board to take a hard look at the information. Previously growth rate was calculated by means of a house count. Now Mr. Day is proposing, as recommended, that the Town look at regional growth rates.

Mr. Day explained that growth management, according to statute, suggests that it makes sense for the Town to manage growth at such a rate that reflects the region's growth rate, which is a defensible device in court. He noted that East Kingston's dwelling count will have grown by 9.7% in 2007.

Mr. Smith asked if all the approved lots had building permits issued. Mr. Day stated that they do not, and Mr. Conti stated that he knew of at least six that did not. It was ascertained that there were several lots in town that still needed permits. Mr. Caron stated that once a building permit was issued, building had to start within 6 months.

Mr. Day asked the Board to take a hard look at the information proposed, and be prepared to discuss it at the work meeting next week.

Mrs. Belcher suggested that the final version of the ordinance use plain language everyone would understand and also suggested that the paragraph on page 4 referring to the high school be corrected, as the school was now completed and open. Mr. Day agreed.

Mrs. Belcher thought E.10. building permits was an excellent interpretation of the process. Mr. Day explained this was actually a version of Brentwood's ordinance.

Work Meeting Agenda - Mr. Day stated that this agenda was a high priority for him and hoped the other Board members agreed.

Town Center District - Mr. Day stated that the Town Center proposal was almost as great a priority. Mr. RA Smith responded that he thought we had put the matter to bed, and Mr. Day explained it still needed some holes patched to be ready for Public Hearing in November.

Conservation Overlay - Mr. Day stated that the longer he worked with it, the more confused he got. Mr. LK Smith stated that if they were going to tie it to the coastal watershed plan, they could only include small packets of areas. A scientific basis would be needed to include other areas.

Mr. Day stated that the original thought was the natural resources inventory the Conservation Commission had completed, and said that if it was not a valid data base around which to construct something, then the Board was barking up the wrong tree. Mr. LK Smith said it was an inventory and may not meet the other standards to be included in the watershed plan.

Dr. Robinson reminded the Board that part of the idea of the plan was for the RPC to make the canned ordinance, and the Towns would adjust it as necessary to fit with their own natural resource inventories. The RPC has stated in the plan that local studies would have equal weight and can be included on the watershed.

Mr. LK Smith requested that the Conservation Overlay discussion be put on the agenda first so he could attend. Mr. Day agreed.

Paul Masone building proposal - Mr. Quintal had approached Mr. Day regarding a proposal for Mr. Masone to build another building on his property where it borders Newton. The abutting land is conservation area. Mr. Masone wanted to know if it would be reasonable to request putting this industrial building in with regular setbacks instead of the 200-foot setbacks usually required in an industrial zone, as it did not abut residential property.

Mr. LK Smith thought it might be a wildlife refuge, and Mrs. Belcher offered in that case they might be more likely to restrict building. She was more inclined to keep the buffer up in light of the conservation plan they were in the process of putting in place. Mr. Day agreed it was very wet in that area. Mr. Masone had identified an upland space on which to build, but would need the set backs changed in order to build on it.

Mrs. Belcher thought the Board could be asking for trouble with the adjoining property being wetland. Mr. LK Smith thought Mr. Masone wanted to use the building for storage units, and Mr. Day stated that they would not know what would be stored there and how it could affect the wetland. Mrs. Belcher said in light of the potential problems, she thought the Board should stick with the 200-ft. setback in the ordinance. Mr. Smith said Mr. Masone could go to the ZBA for a variance if he felt strongly about it.

Define living space - Mrs. Belcher reminded the Board that since they were working on clarifying the ordinances, they should more clearly define *living space* in the ordinance so they would not have any more misunderstanding about the definition in the future.

Septic setback question – Mrs. Belcher referred to the last ZBA meeting in which the applicant had been denied because he cited the wrong ordinance. Her question was regarding septic system setbacks and she wanted to know where the measurement to the property boundary from the septic system began. She wanted to know precisely at what part of the septic design the measurement started from, as the plan the applicant had presented appeared to show it on the road border.

Dr. Robinson stated that the way that ordinance is usually set up, the measurement did not start from the actual system itself. The ordinance states you have to show the 4,000-foot block and isn't really saying measure from the edge of the last component. The block needs to be shown and you measure from there. Mrs. Belcher stated that in this particular case, it would not work like that since it was a pre-existing, non-conforming lot.

Mr. Day offered that that was a question for the RPC, and the Office of Energy as well. Mr. LK Smith asked if it was 250 feet from the high water mark and Mrs. Belcher answered she did not know that information.

Construction Observation for Taylor Way – Mrs. Belcher asked in reference to the statement on the Town Engineers correspondence of 10 July, *"The fire cistern has been installed, however, the location is not as shown on the approved plan."* Mrs. Belcher wanted to know whose responsibility that fell under. Mr. Day stated that he would need to check and see if there was a revised plan.

Mr. Day announced he would send a postcard to the Board members as to where their work meeting would be.

ADJOURNMENT:

MOTION: Mr. Day **MOVED** the Planning Board adjourn. Mrs. Belcher seconded, and the motion carried unanimously at 9:50PM.

Respectfully submitted,

Barbara A. White
Recording Secretary

James Roby Day, Jr.
Chairman

Minutes approved October 19, 2006