

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
October 16, 1997

FILE

AGENDA

8:00 Edward M. Young, Jr. – 140 Depot Road – Home Occupation – Public Hearing  
8:30 James Bioteau – 22 Giles Road – Lot Line Adjustment - Discussion

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson - Vice Chairman, James Roby Day, Jr. - Ex-officio, Catherine George, and Dr. Robert Marston.

Absent: Alternates Beverly Fillio and Robert Nigrello.

Others attending: Lawrence K. Smith - Conservation Commission Chairman, Sarah Campbell - RPC Circuit Rider, Glenn P. Clark - Building Inspector, Mr. & Mrs. Edward M. Young, Jr., Attorney James Troisi, Cheryl DiNaido, David Whalen, Robin Ward, Mark Porter, Doug Sanville, Mr. & Mrs. William DiProfio, Attorney Jackson Casey and James Biotau.

Chairman Smith called to order this October 16th, 1997 public planning board meeting at 7:34 p.m. with the roll call.

October 2, 1997 Planning Board Work Session Minutes:

MOTION: Mr. Day motioned to approve the October 2, 1997 Planning Board Minutes as presented. Mrs. George second. The motion passed 5-0.

Correspondence: Chairman Smith acknowledged the following incoming correspondence:

1. RPC zoning amendment schedule;
2. RPC Planning and Land Use Regulations order form;
3. RPC notice of 1998 annual dues - \$1,290 calculated at .80 per person with an estimated population of 1612;
4. Rockingham Planning News:
  - A. New video available Community Growth Management. Mr. Day presented a copy for member viewing;
  - B. Transportation Improvements Program (TIP). The board had discussed at an earlier date the possibility of applying for the TIP to reconstruct the intersection at Willow Road and 107 and/or the sharp bend in the road in front of the church. It was noted that in applying for a grant to execute these projects, an accurate cost estimate must be provided in the application. It is not necessary to hire an engineer for the estimate. It was also noted that the CIP must be written prior to applying for the TIP;
5. OSP Corridor – Scenic Byways: OSP seeking a letter of town support to include in their application. In 1970 the Scenic & Cultural Byway was 107 (East Road) to 108 (North Road) and out of East Kingston. The OSP may be seeking a new route and would like input from the town of East Kingston.

Edward M. Young, Jr. – Public Hearing - 140 Depot Road – Home Occupation Permit: Chairman Smith opened the public hearing for Edward M. Young, Jr. Mr. Young is seeking a home occupation permit to operate East Kingston Well & Pump Company from the 140 Depot Road location, MBL# 04-02-02. Mr. & Mrs. Young are represented by Atty. James Troisi.

Atty. Troisi stated that he was not sure why the Young's were directed to file a Home Occupation application. He stated that for the record, the Young's reserve the right to assert their position that they do not need a home occupation permit.

He continued to say that the Young family purchased the property at 140 Depot in 1988. At that time and ever since, a home office has been operating from the premises. He stated that the garage, located behind the house was remodeled to accommodate an office and bathroom, and the roof was raised to allow the storage of well drilling equipment, all at the approval of the Building Inspector.

He added that the 6 x 10' office located in the garage consists of one telephone, a filing cabinet, and a desk. Office activity consists of billing and mailing. The two employees of the business are Mr. & Mrs. Young, (residents of the premises). There are no signs or public traffic. The property appears residential.

Atty. Troisi stated that since the Young family purchased the property, it has been greatly improved. The property is now nicely landscaped and well maintained.

He then presented five photos\* of the property, which demonstrate that the property still appears residential and is well maintained. He stated that most all of the abutters have no objections to its appearance.

He continued to say that the driveway has been modified at the request of the town. There is documentation that the business has been in existence for ten years. He presented Building Permit No. 197888 dated July 8, 1988, signed by Joseph Conti and issued to FMR Inc. to "take down 52' x 70' of Chamberlain barn."\*

He presented Building Permit No. 3092894 dated September 1994 issued to Michael Young Jr. to "construct office in barn w/toilet and heat, and stove in barn and vinyl side the east end of barn, toilet to pump into existing system"; and

Building Permit No. 279794 dated September 7, 1994 issued to Michael Young Jr. to "upgrade electrical service of house and garage."\*

Atty. Troisi noted that a golf course is located across the street from the Young's property.

He then quoted Article 10.7, which states:

*Any home occupation in operation at the date of the public posting of this ordinance (January 6, 1989) shall be required to comply with 10.4 of this section. Such occupations shall not be required to comply with the other provisions of this section. Provided, however, that any noncompliance in effect as of January 6, 1989 shall not increase. In addition, such occupations shall not be relieved from compliance with other state and local regulations.*

He stated that since the Young's business was a pre-existing non-conforming use prior to 1989, these provisions do not apply. He continued to say that the options of the board are to agree that the provisions do not apply, as the business was in existence pre-1989 or to measure the current provisions against the business.

Atty. Troisi addressed Article X as follows: (See East Kingston Zoning Ordinance)

- 10.1 – There is no question that the well drilling business is carried out from the office. The actual drilling is done at the job site.
- 10.3.1 – The business is located in the barn.
- 10.3.2 – No evidence of the business, not even a sign (although one is allowed.)
- 10.3.3 – Three commercial vehicles are owned by the Young's. One pick-up truck, one drilling rig, and one water truck. The drilling rig and water truck are 90% of the time located at other locations (job sites). When they are at the residence, they are kept in the garage.
- 10.3.4 – No public traffic. Driveway was modified as requested by the town.
- 10.3.5 – A resident of the property is conducting the business.
- 10.3.6 – Business does not emit smoke, noise, fumes etc.
- 10.3.7 – Already addressed traffic.
- 10.3.8 – The business does not use more than 50% of the gross floor area.
- 10.3.9 – Only two residents are employees of the business.

Although all the provisions are met, it is the opinion of the Young's and representation that a home occupation permit is not needed in this case.

10.4 Exceptions: - The residence is on a state road. As residents, the Young's have a greater right to operate their business.

10.5 Permitted Uses: The existing use of an office and occasional storing of commercial vehicles is much less intense than the uses outlined in the ordinance.

Atty. Troisi stated that the business has been in operation for ten years, the Young's are good citizens, they make their living in town, Mr. Young will be drilling a well, free of charge, at the ball field. Please balance the equities and allow the Young's to continue.

Mrs. George requested documented proof that the business was in operation at the 140 Depot Road location prior to January 6, 1989.

Mrs. Young stated that she would check her files at home for such proof.

Atty. Troisi stated that one of the reasons the Young family bought the property was because they needed the space in the backyard.

Chairman Smith addressed abutter's concerns.

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\* See attached

Ms. Cheryl DiNaido of Brandywine Drive, stated that Mr. Young is supporting his family via this business. She supports the operation of his business as do many other Brandywine Drive residents. Many have signed a petition requesting the Young's be allowed to continue their well drilling business.

Mr. William DiProfio of 139 Depot Road, stated that as a direct abutter of the property since 1975, he and his wife have been through all of the episodes of this business. If all of what their attorney has stated were true, he would not be here in opposition of the operation of the business.

He continued to say that Mr. Young has been a fine neighbor, however, he (DiProfio) has problems with the business. There have been large pieces of equipment at the 140 Depot Road location since at least 1990. For the past couple of years, a high volume of truck maintenance has been conducted at the premises. The Young's are overhauling big rigs, and there are more than just one. The daily testing of the vehicles is noisy.

Mr. DiProfio stated that he had asked previous Building Inspector Joe Conti what he was issuing building permits to the Young's for. Mr. Conti told him that the permits were for a "barn", not a maintenance building. For the past couple of years, the flow of vehicles to and from the premises is unacceptably high. The daily noise of vehicle maintenance is intrusive to he and his wife, as neighbors.

He added that this is a rural/agricultural community. Even the flow of traffic from the golf course next door cannot compare to the intense traffic generated by the Young's business. He stated that he strongly urges the board to deny this request for a home occupation permit.

Mr. Dave Whalen of 131 Depot Road, stated that he has been a resident of the town for eight to nine years. He owns and operates the Good Food Farm across the street. He has never had a problem with the business. He stated that the noise from his own farm tractor is comparable to the noise generated from the 140 Depot Road premises. He supports the continuation of the business.

Ms. Robin Lynn Ward of Brandywine Drive, stated that she feels the same as Mr. Whalen. The Mack trucks that use Depot Road on a daily basis are noisier than the noise generated at 140 Depot Road. She continued to say that only one time did she hear noise coming from the Young's property and it was not at an odd hour. She stated she could not understand how anyone could complain about the noise.

Mrs. Pam DiProfio of 139 Depot Road, stated that all the people at this hearing are friends of the Young's. There is indeed noise generated from the property. There is [sounds like] a steam machine that makes a horrible noise. The dirt driveway along the stone wall is dangerous.

Mr. DiProfio stated that the business has been in operation for a number of years. It wasn't legal then and it isn't legal now. He has spoken with the Young's several times about this. He added that he does not believe this is a home occupation, as it should be operated out of a commercial or industrial zone.

Mr. DiProfio continued to explain that if only the office was located at the premises and no trucks or truck maintenance, he (DiProfio) would not have a problem with the business. It is true that the Young's have improved the property. Mr. Young, Sr. purchased the property and relocated his business from Salem, NH here.

Mr. Mark Porter of 39 Brandywine Drive, stated that he owns a Harley Davidson which makes more noise than Mr. Young does all day. Even the train makes more noise.

Atty. Troisi reiterated that a similar type of business has been in operation at 140 Depot Road for nine years.

Mr. DiProfio argued that there are more vehicles going in and out of the premises than the three mentioned earlier.

Atty. Troisi rebutted Mr. DiProfio's earlier comment that when Mr. Young's drilling rig tipped over it was repaired at 140 Depot Road. That was the *only time* Mr. DiProfio talked with Mr. Young about the business. He stated that his clients have vested rights. They were given a building permit for an office in 1994. The Building Inspector had full knowledge that a business was being conducted there. The ordinance allows for commercial vehicles to be stored at the premises.

He again requested that his clients be permitted to continue to operate their well and pump company from the 140 Depot Road location.

Mrs. George inquired if Mr. Young owned all the commercial vehicles going in and out of the premises.

Atty. Troisi responded that Mr. Young has not conducted any maintenance on other vehicles, other than his own, this past year. The Board has the authority to stipulate such a condition in their decision.

Ms. Ward stated that she is a friend of the Young's and that although she has resided on Brandywine Drive for the past four years, she didn't know the Young's operated a business from their home until two years ago. She stated that she does not think the Young's should lose their "bread and butter" of the family.

Mr. Doug Sandville of Brandywine Drive, stated that he is new in town. Has the planning board received complaints about this business prior to now? He, himself, has not seen any rigs on the property.

Mr. Day responded that the Planning Board is not here to argue land use. They are here to discuss a home occupation. He stated that the application for this home occupation permit fails on two counts. Those being Article 10.3.6 in which noise is omitted from the premises; and Article 10.5, the proposed use is *not* a permitted use as defined in the ordinance.

He further stated that the well and pump business does not qualify as a home occupation. It must be considered a commercial business and it should be located in a commercial or light industrial district. Mr. Day stated that he himself has heard noise coming from the business. He reiterated that the business is a commercial one and it does not belong in a residential zone.

He continued to say that 140 Depot Road has been zoned residential since 1952 prior to all revisions and grandfathered issues brought before the Board. He again stated his position of disapproving the issuance of a home occupation permit for the East Kingston Well & Pump Company.

Mrs. George repeated her position that if the business has been in operation prior to January 6, 1989 then the business falls under the non-conforming grandfathered clause.

Mr. Day voiced his disagreement with Mrs. George.

Atty. Troisi stated that all well drilling takes place off the premises. In his opinion, all the businesses listed under Article 10.5 can be construed as commercial businesses.

Mr. Day responded that he cannot fit the Young's enterprise into the provisions of Article X.

Mrs. George repeated that this business might be a non-conforming grandfathered business. She gave examples of existing non-conforming businesses currently located and operating in residential zones.

Mr. Day disagreed.

Mrs. George read aloud Article 10.7 (as noted above by Atty. Troisi).

Mr. Day replied that this proposed use is not listed in the list of permitted uses. The application fails.

Mrs. George answered that the business may have already been established prior to 1989. The Board does not have the right to discontinue it.

Mr. Day reiterated that the business is a commercial business in a residential zone.

Atty. Troisi stated that the office is the business located at the premises.

Ms. Ward stated that no customers go to and from the office. It should be allowed.

Mr. Day responded that the Board has to look at the entire operation.

Atty. Troisi stated that although he can appreciate Mr. Day's position, he does not agree with it.

**MOTION:** Mr. Day motioned to deny the application for a home occupation permit predicated on Article 10.5, permitted uses. Mr. Johnson second. The motion failed 2-3. (Dr. Marston, Mrs. George and Chairman Smith opposed.)

**MOTION:** Mrs. George motioned to continue the public hearing for Edward M. Young, Jr. to November 20, 1997 to give the applicants the opportunity to provide satisfactory documentation that the business was in existence prior to January 6, 1989. Dr. Marston second. The motion passed 3-2. (Mr. Day and Mr. Johnson opposed.)

Chairman Smith ordered this public hearing continued as motioned by Mrs. George. The hearing will resume on November 20, 1997 at the East Kingston Town Hall at 8:30 p.m. This public hearing will serve as notification to all abutters.

**James Bioteau – 22 Giles Road – Lot Line Adjustment – Discussion:** Chairman Smith opened the discussion for James Bioteau at 8:55 p.m. Mr. Bioteau is proposing a lot line adjustment, which will convey 6 acres of Robert Hart's 12-acre parcel to himself. Atty. Jackson Casey will be representing Mr. Bioteau.

Atty. Casey stated that for information purposes only, he would like the Planning Board's input and instruction on the conveyance of 6 acres from Mr. Hart to Mr. Bioteau involving MBL#'s 16-4-7 (Hart's) and 16-4-3 (Bioteau's).

He inquired whether this should be executed via subdivision or a lot line adjustment. Mr. Bioteau is not looking to do soil testing at this time.

The Board informed Mr. Bioteau and Atty. Casey that a lot line adjustment could be done with minimum soil testing. Six acres may be added to MBL# 16-4-3 as long as the remaining six acres (MBL# 16-4-7) meet the zoning ordinance. MBL# 16-4-7 must show ¾ acre dry soils as well as lot size and frontage requirements. The Board also stated that Mr. Hart's entire parcel must be shown on the plan.

Mr. Bioteau stated that he did not wish to incur survey and HISS mapping expenses at this time. He inquired if the Town had any soils maps that could be used to determine the soils on the parcels in question.

It was noted that the Conservation Commission Chairman could accommodate Mr. Bioteau's request using Town soils maps. Mr. Bioteau was also informed that Mr. Hart must be the one to apply for the lot line adjustment, as it is his land to be conveyed. Also, the formal application must be submitted to the Selectmen's Office 21 days prior to the next scheduled meeting.

**Growth Control Ordinance:** Mrs. Campbell presented the Board with a draft Growth Control Ordinance\*. The Board reviewed the draft and noted the following:

1. Item #7- reviewed school capacity and CIP input to assure consistencies between them;
2. Item #8 – since Town Roads have increased, the cost of their maintenance must have also. Mr. Day will request accurate road maintenance figures from the Road Agent;
3. Allocation of Permits – same as interim ordinance;
4. Item #D.2– permits will be available from January 1 to December 31 keeping with the calendar year;
5. Item #11 – carry-over of building permits will be reviewed by Town Counsel;

The Board discussed the purpose of a Growth Control Ordinance and its limitations.

6. Item # 12 & 13 – eliminate from draft.

Mr. Day stated that the GCO and the CIP go hand in hand. Both are living documents that must be updated on an annual basis. Keeping the GCO updated continually will allow for the Board to tailor it to the Town's needs. Should the GCO expire, and the Town experiences a huge growth spurt, the Board may not have enough time to implement a new ordinance.

Mrs. Campbell stated that the issuance of building permits and population should trigger the GCO. This should be discussed with Town Counsel.

Chairman Smith advised that if one large parcel in town should be developed, a growth control problem may develop.

**Capital Improvements Plan:** The Board reviewed Tables 8 & 9 of the CIP\*.

Chairman Smith stated that the CIP was discussed at the last Fire Department Officer's Meeting. He noted the following:

1. Ambulance – the FD may not acquire an ambulance for \$16,000. Must keep the capital reserve fund (CRF) going. May be an operating budget item – no tax impact.
2. Raise roof of fire station – remove item.
3. Upgrade base radio - \$10,000 over three years.
4. Replace engine 3 - \$250,000 for year 5.
5. Dry hydrants - \$15,000.

The Board will continue table #8 at the next work session.

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\* See attached

**Work Session:** The Board will hold the next Work Session on November 6, 1997 at 7:00 p.m. at the East Kingston Town Offices. The agenda will include the CIP and the GCO.

**Voluntary Merger:** The Board discussed two abutting properties located on Rowell Cove Road. Parcel A is owned by the wife, Parcel B is owned by the wife and husband. The property owners are seeking to merge their lots together. It was noted that both lots contain less than one acre and both have less than 100 feet of road frontage. The property owners are proposing to combine the lots in an effort to create a larger parcel to accommodate the replacement of an existing septic system.

Glenn Clark, Building Inspector stated that he denied the property owners a building permit to build a new septic system because they were two separate lots. (The house is located on one lot and the proposed septic would be located on the other lot.) Even combining the two lots, the septic system setbacks could not be met, (a six inch discrepancy.) He directed the property owners to merge their lots and then to apply for a variance from the septic system setbacks.

The Board reviewed RSA 674:39(a), which states:

*Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. Except where such a merger would create a violation of then current ordinances or regulations, all such request shall be approved, and no public hearing or notice shall be required. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the planning board or its designee, shall be filed for recording in the registry of deeds, and a copy mailed to the municipality's assessing officials. No such merged parcel shall thereafter be separately transferred without subdivision approval.*

The Board noted that even when combining the two parcels, the new lot could not meet lot size and frontage requirements. Although a violation exists today, creating a new lot would minimize the violation.

The Board directed that the Zoning Board of Adjustment be notified of the situation and that their advice on how to handle the issue be taken.

**MOTION:** Dr. Marston motioned to adjourn. Mrs. George second. The motion passed 5-0 and this October 16, 1997 public planning board meeting ended at 10:14 p.m.

Respectfully submitted,

Catherine Belcher  
Secretary

Minutes completed and on file October 21, 1997.