



7
PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2007-2008
James Roby Day, Jr., Chairman
Catherine Ellen Belcher, Vice Chairman

MINUTES
(Regular Meeting of 18 October 2007)

AGENDA:

7:00PM - **Board Business**

7:05PM – **Discussion with John Mulvey and prospective tenant**

7:15PM – **Continued Public Hearing for Design Review with Julie Turner**

8:00PM – **Continued Board Business**

8:01PM - **Adjournment**

CALL TO ORDER: Chairman 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 –Mrs. CE Belcher, Vice-Chairman; Mr. R Caron, ex-officio, Mr. JR Day, Chairman; and Dr. RA Marston

Alternate members present –Mr. EA Lloyd, Mr. RF Morales. Mr. Sullivan was noted to be gone hunting.

Advisors present –Mr. RR Donald, Building Inspector

Mrs. Julie A. Urwick – EMS Lieutenant of the Fire Department

Mr. Eric “Schnitzel” Steltzer, Planner, Rockingham Planning Commission (RPC)

Mr. LK Smith, Conservation Commission Chairman

Voting members –Chairman Day appointed Mr. Morales as a voting member for this meeting until Mr. RA Smith arrived.

BOARD BUSINESS

Mr. Day reviewed the agenda for the evening with the Board.

Fire Department advisor representative. Mr. Day welcomed Mrs. Julie A. Urwick to the meeting. She will be attending meetings for Chief Mazur when he cannot be present.

Continued Design Review with Julie Turner. Mr. Day announced that Mr. Quintal had requested a continuance of the Design Review with Julie Turner. Input from Jay Stephens, Town Engineer has also been received. Mr. Stephens has deep concern in regard to the slopes, and has recommended that the applicant provide a cross-section of the site to help conceptualize the magnitude of the proposed excavation, and a report by a Geotechnical Engineer addressing slope stabilization. Mr. Stephens also recommended that the designer of the storm water plan review two noted areas of concern in the event that those concerns might change the results of the report.

Master Plan Agriculture Chapter. As of yet, Mr. Day had not received an answer for Mr. Lloyd’s question from the Work Session from Dr. Robinson, RPC. He will incorporate the revised numbers into the chapter when he receives them.

Fire Suppression question regarding Joanne Brandt’s 2-lot subdivision. The Board received a letter from the Fire Chief in reference to the distance from the fire suppression system at the Clark Road subdivision to Mrs. Brandt’s property. The Board will discuss what might be done to change Mrs. Brandt’s Conditions of Approval later in the meeting.

DISCUSSION WITH JOHN MULVEY AND PROSPECTIVE TENANT, HUSAM (SAMY) MOUSSA, IN REGARD TO A PROPOSED USED CAR SALES BUSINESS AT 17 HAVERHILL ROAD, EAST KINGSTON (EKPB #03-OE).

Mr. Day opened the discussion.

Mr. Day welcomed Mr. Mulvey, Mr. Husam (Samy) Moussa and Mr. Moussa's fiancé Heidi to the meeting. He explained that this meeting was for the Planning Board to ascertain if a full site plan review would be necessary for the change in tenancy, and asked Mr. Mulvey to review why they were there tonight.

Mr. Mulvey stated that he was interested in leasing an area to Mr. Moussa for the sales of used cars. There has previously been a used car sales business at the 17 Haverhill Road location. He would provide Mr. Moussa with 1,200 sf inside the building, and four parking spaces outside, with an option of 10 additional spaces in the rear of the building if requested in the future. He stated he would allow a 20' square sign at the road, and an 8' square sign on the building. No vehicles for sale were to be parked in front of the fire hydrant, and that hours of operation would be 7am to 7pm. There would be no additional lighting installed.

Mrs. Belcher had several questions for Mr. Moussa. She asked the maximum number of cars Mr. Moussa intended on having on the property at any one time, and Mr. Moussa replied that 7 to 8 cars would be the maximum number. She asked Mr. Moussa if he had a previous business address. Mr. Moussa stated that he runs a 7-11 in Haverhill; this would be his first business selling used cars. Mrs. Belcher asked how Mr. Moussa intended on advertising, and Mr. Moussa responded he would advertise in auto books and on the Internet. Mrs. Belcher also inquired how many employees Mr. Moussa intended on having, and he stated he thought it would be himself and only one other person, as he wanted to keep the business small. She asked if Mr. Moussa had acquired his dealer's license from the State, and he replied that he was in the process of acquiring the license, but did not have it yet.

Mrs. Belcher asked if Mr. Moussa intended on performing repairs at the sales location, and he replied that he was not a mechanic. If any vehicles needed repair, he would have that done elsewhere at the same place that would perform the inspections. He would be showing vehicles at the location only. She asked what hours and days he intended on having his business open, and suggested that even if Mr. Moussa did not intend on being open the entire time, it would be to his benefit to ask for the most now rather than coming back if he wanted to change it. He could always work shortened hours, but would have the fully approved hours as an option if he wished. Mr. Moussa replied that he would like to request the hours of 7am to 7 pm, 6 days a week.

Mr. Donald stated that the conditions should state that no cars, for sale or otherwise, should be parked in front of the hydrant. Mr. Day stated that in the lease it stated that all cars were to be parked on the macadam, which meant that parking in front of the hydrant should not be an issue.

Mrs. Belcher asked if Mr. Moussa had a name for his business, and he replied it was S&M Auto Sales. She asked about a sign, and Mr. Moussa replied that he would conform to whatever the city guidelines were for the sign. Mr. Day advised him he would need to go before the Board of Selectmen for approval of the sign.

Ms. Urwick stated if there were to be flammables and/or hazardous materials on site, they would need to provide MSDS sheets to the Fire Department, and that those materials would need to be kept in a fire proof locker. Mr. Moussa stated there would be no flammables or hazardous materials, as he was not going to perform repairs. Ms. Urwick also stated they would need to conform to Fire Department inspections twice a year; Mr. Moussa agreed to conform to the inspections.

Mr. Lloyd inquired if there were any proposed changes in the lighting. Mr. Mulvey stated there were no proposed changes, but he knew he would need to come before the Board should he want to change the lighting in the future.

Mr. Day reviewed the proposed Conditions of Tenancy:

1. Hours of operation will be 7am to 7pm, Monday through Saturday
2. There will be no automobile maintenance performed on the premises
3. There shall be no flammable fluids or other hazardous chemicals stored on site
4. Any flammable fluids or other hazardous chemicals to be used will necessitate the submission of MSDS forms to the Fire Department
5. Business shall conform to a bi-annual Fire Department inspection
6. Mr. Mulvey shall provide a copy of the lease agreement to the Planning Board
7. There shall be no additional lighting
8. No vehicles of any kind shall be parked in front of the fire dry hydrant
9. The Board of Selectmen shall approve any signage

Mr. Day asked the Board if they had any further questions or concerns.

Mrs. Belcher asked how many vehicles they proposed to have at any one time, including Mr. Mulvey's business. There was Board discussion and it was ascertained that Mr. Mulvey's conditions of approval stated he could have up to 20 cars, total. Mr. Day stated that that was a concern for Mr. Mulvey, and not his prospective tenant.

Mr. Donald enquired if a stipulation for the New Hampshire State Dealer License to sell used cars should be added to the Conditions of Approval. Mr. Day stated Mr. Moussa could not sell cars without it, and did not feel it would need to be included in the conditions. Also, when Mr. Moussa applies for his license, the Board of Selectmen will get a letter from the State asking if they have any objections.

Mr. Day asked if the Board felt they had enough material to make a decision; they responded that they did.

Mr. Day entertained a motion.

MOTION: Mrs. Belcher **MOVED** the Planning Board waive the requirements for a full site plan review for *S&M Auto Sales* based on the information provided, and approve the tenancy for Mr. Moussa with the nine conditions of tenancy as noted. Mr. Caron seconded, and the motion carried unanimously.

Mr. Day informed Messers Mulvey and Moussa they would be receiving a letter and the conditions of tenancy in the mail.

Mr. Mulvey and Mr. Moussa thanked the Board for their time.

DISCUSSION WITH MR. DAVID PENDELL REGARDING THE EAST KINGSTON LIBRARY WATER SUPPLY ISSUE.

Mr. Day explained that Mr. Pendell had asked to speak to the Board about an issue regarding the water supply for the library. Mr. Day turned over the floor to Mr. Pendell.

Mr. Pendell explained to the Board that the library had gone ahead with their original plans to have a drilled well and a dry fire hydrant versus hooking up to the local water supply when they had found out how much hooking up to the local water supply would cost. Mr. Mazur had indicated that a dry hydrant would meet present requirements. They had reallocated the money that was to have been used for that project to extending the skylight, changing the type of insulation, expanding the parking area (as per the Planning Board's recommendation), and creating an area in front of the library for overflow parking. After all that had been completed, the Fire Chief had come to the Library Committee and explained that there were changes coming to the National Fire Protection Association standards, and within two years they might have to change to a wet sprinkler system. They now do not have enough money to change to a wet system.

Mr. Hirsch had approached the Library Committee and wanted to know when they intended on hooking up the sprinkler system since it entailed digging up the road and then patching it. Mr. Hirsch explained that he wanted to put the finish coat on the road so as to begin the 2-year waiting period for road acceptance. Delay would mean delay in recouping his bond money held by the Town, but he would rather the Library Committee finish with whatever they needed to do. The Library Committee had informed him because of budget constraints, they would need to wait for another time to hook up to the water.

Mr. Hirsch then offered the Library Committee a compromise. He would dig the trench and lay the 4" water main line across the road, hook up the water supply to the sprinkler system, and either pay the two tap fees or have Mr. Lewis waive that fee. This would be approximately an \$18,000 benefit to the Library, and money the Town would not need to pay out-of-pocket. Then he would put the finish coat on Maplevale Road, which was a condition of the Town accepting the road. What Mr. Hirsch asked in return for his services to the library was some consideration for the acceptance of Maplevale Road from the Town. Mr. Hirsch was hoping the Town would take over the road as soon as the finish coat was applied, even though the two-year timeframe was not up. He would like to get some of his bond money for the road released.

Acting as the middleman, Mr. Pendell was asking since the Planning Board had made the recommendation for the bond conditions for the road to the Board of Selectmen, would they consider making a recommendation to the Selectmen for some compromise so that the water supply work could be completed for the library and Mr. Hirsch could get his bond money returned?

There was much Board discussion about the feasibility of such an arrangement, and there was discussion pro and con for many scenarios. It was ascertained that Mr. Hirsch's bond with the Town for the road was approximately \$36,000, and that it would be too great a benefit to him for the Town to release all of the bond money for a "donation" that totaled half

that amount. It was also ascertained that the Town would lose a great deal of money in services by releasing the road bond before the two-year timeframe was up.

Mr. Day polled the Board on how they wanted to recommend in this matter. Mr. Lloyd abstained as he is a Library Trustee. The consensus was that the Planning Board would recommend to the Board of Selectmen to release an amount of money from the road bond equal to the amount of money Mr. Hirsch would spend on providing the construction and waiving the fees for the water system for the library. This would provide an offset for Mr. Hirsch. The Board would make the recommendation, and it would then be up to the Board of Selectmen to make the final decision.

Mrs. Belcher wanted both Boards to be assured that no matter what decision they came to, Mr. Hirsch would still build the road to code, and she was comfortable letting the Board of Selectmen make whatever decision they felt was in the best interest of the Town.

Mr. Caron commented that the Board of Selectmen would need to see some sort of written proposal for clarification from Messers Hirsch and Lewis detailing just what would be “*donated*” to the library in terms of services and actual construction before they could think about proceeding. It was also suggested that perhaps Mr. Caron could ask the Board of Selectmen to act as quickly as they could since both Mr. Lewis and Mr. Hirsch would need to agree to the “*donation*” to the library, and Mr. Lewis was quite ill at the present time.

Dr. Marston asked what would be happening with the well if they were hooked up to the domestic water system. Mr. Pendell answered that they would prefer to be hooked up to the domestic water supply because of the manganese and the arsenic in the well water, and they did not have very much room for the filters that would be needed for the well. Mr. Caron suggested they could use the well water for irrigation lawn. Mr. Pendell answered that they had bowed to the Energy Coalition and agreed not to sprinkle the lawn.

Mr. Donald reminded the Board that Mr. Hirsch had several lots still under construction, and asked that they remember that trucks completing that construction would be traveling back and forth on the road that Mr. Hirsch wanted the Town to accept prematurely. That is why bond money normally is not released before all construction is complete and the final coat is on the road.

Mr. Day entertained a motion.

MOTION: Mr. Day **MOVED** the Planning Board recommend to the Selectmen, contrary to the conditions of approval, that they reduce the remaining bond for Maplevale Road by an amount equal to the value of the gifts Mr. Hirsch and Mr. Lewis are proposing to make towards the library water supply system, with the remainder of the bond for Maplevale Road continuing for the 2-year waiting period. Dr. Marston seconded, and the motion carried unanimously.

Mr. Pendell thanked the Board for their time.

CONTINUED DESIGN REVIEW FOR JULIE TURNER AND A PROPOSED SUBDIVISION AT 87 HAVERHILL ROAD, EAST KINGSTON (MBL 10-04-04)

Mr. Day opened this public hearing.

Mrs. White reported that a request for continuance had been received Thursday from Mr. Quintal. Jay Stephens, Town Engineer, had responded to the Board’s request to review the materials submitted by Mr. Quintal in reference to this subdivision, and he had some concerns that he reported to the Board and to Mr. Quintal. Mr. Stephens has recommended that the applicant provide a cross-section of the site to help conceptualize the magnitude of the proposed excavation, and a report by a Geotechnical Engineer addressing slope stabilization. He has also recommended that the designer of the storm water plan review two noted areas of concern in the event that those concerns might change the results of the report.

Mr. Day entertained a motion for continuance.

MOTION: Mrs. Belcher **MOVED** the Planning Board continue the scheduled public hearing under the Design Review phase for Julie Turner as requested by the applicant until Thursday, November 15 at 7:15pm. Mr. Caron seconded, and the motion passed unanimously.

Mr. Day opened the floor to abutters; there being none, he closed the floor to abutters.

Mr. Day closed the public hearing.

CONTINUED BOARD BUSINESS

Law Lectures. Mr. Day reported he had attended the first of 3 law lectures in a series, at which the speakers had stated that everything town boards do may eventually be usurped by the State. There are questions regarding growth management practices, and Mr. Day opined that East Kingston's growth management is defensible. It appears the State wants to become more directly involved in town planning, and wants to direct towns how to do their business.

Joann Brandt's water supply question for her 41 Burnt Swamp Road subdivision (EKPB #03-13) MBL 10-05-01. There had been previous discussion by the Board in regard to this situation, and they awaited a communication from the Fire Chief in regard to the water source. Mr. Day acknowledged receipt of that communication in which Mr. Mazur acknowledges Mrs. Brandt is no longer required by current regulation to install a dry hydrant for her property, and that there is a fire pond located 1,100 feet from Mrs. Brandt's property at the Clark Road subdivision. The fire pond would meet the current fire suppression regulations for Mrs. Brandt.

Mr. Smith asked if the Planning Board could not simply allow Mrs. Brandt to move ahead with her subdivision without any action as the subdivision requirements had changed. Mr. Day explained that since the requirement for fire suppression had been one of the conditions of approval, he felt they needed to do something more official than to just allow her to proceed, and the suggestion was to eliminate that particular condition of the original approval.

Mr. Day read the condition of approval as originally stated for Mrs. Brandt's subdivision:

2. "Fire Department approval and acceptance of fire suppression system in the form of a dry hydrant to reach Green Brook on the property of John F. Melanson, 44 Burnt Swamp Road (MBL 10-6-8)."

Since the condition of approval explicitly stated that a water source was needed for her property, the Board agreed a motion for removal of that condition was necessary, and Mr. Day entertained a motion.

MOTION: Mrs. Belcher **Moved** that in light of the changed subdivision regulations regarding fire suppression requirements for 2-lot subdivisions, and the fact that a newly-constructed fire suppression system is now located within 1,100 feet of Mrs. Brandt's property, the Planning Board amend its original Notice of Decision dated February 19, 2004, for MBL 10-05-01 and remove condition #2 (fire suppression). Mr. Caron seconded, and the motion passed unanimously.

Minutes. Mr. Day entertained a motion to approve the 9 October 2007 minutes. Mr. LK Smith and Mr. JR Day had previously submitted changes to the minutes.

MOTION: Mr. Lloyd **Moved** the Planning Board approve the 9 October 2007 minutes with the changes offered. Dr. Marston seconded, and the motion passed unanimously.

MASTER PLAN AGRICULTURE CHAPTER REVIEW.

Mr. Lloyd offered kudos to Mr. Day for reworking the information the Board had discussed at the last meeting and putting it in a form that now made sense. Mr. Day explained that he had not yet received an answer from Dr. Robinson regarding Mr. Lloyd's questions on the Agricultural Income numbers. When those questions were answered, he would amend the table.

Mr. Day reported that he had also updated the conservation easement information on pages 9 and 10. Mr. LK Smith noted there needed to be a change made on page 9; the parcel owner's name should be changed from Lawrence K. Smith to the heirs of FL Smith, the acreage was 5.93 acres, and the closing date was 10/16/07. Mr. Day will make the changes.

Since the Board had discussed this chapter at the last meeting, and now had the latest modifications to the proposal before them, Mr. Day enquired if in their opinion, it was ready for public hearing in November. Mr. Morales asked if they did not need to go to Town Meeting, and Mr. Day replied that a public hearing was all that was needed. It was the consensus of the Board that the proposed Agriculture Chapter of the Master Plan be presented at a public hearing on the November agenda.

Mr. Day thought the establishment a Farming Committee in East Kingston was a good idea, and suggested it might be proposed as a warrant article at the next Town Meeting.

MOTION: Mrs. Belcher **Moved** the Planning Board hold a Public Hearing for the proposed Agriculture Chapter of the Master Plan on November 15. Mr. Caron seconded, and the motion passed unanimously.

Septic Boundary question. Mr. Donald, Building Inspector, had provided a copy of a septic design to the Board members for their review. He explained that all the sources he had approached agreed that the measurement should start 5' from the side of the component, and that the leach field measurement started from the top of the 3:1 taper. Mr. Day did not understand for what purpose the clarification needed to be in the regulations, and Mrs. Belcher explained that it was for the benefit of the Zoning Board of Adjustment, who did not have the Building Inspector present at the meetings and who were not engineers themselves.

Mr. Day thought the Board could designate the amount of space needed between the boundary line of the property and a leach field construction, he suggested it should be a minimum of 5' plus a margin for error. Mrs. Belcher stated that in the case the ZBA referred to, the proposed septic system was 8' from the road. The applicant was measuring 8' from inside the leach field, but did not include the slope in that measurement. Mr. Donald stated they need a minimum of 5' of receiving soil.

There was Board discussion regarding where the measurement should begin, and the decision was made for Mr. Donald to check with the State and come up with better wording to add to the septic regulations. Mr. Smith suggested that they just let the Building Inspector do his job and inspect septic systems as they are installed.

Telecommunications Ordinance Question. Mr. Day noted he had asked Mr. Steltzer to examine the telecommunications ordinance in light of the ZBA's expressed concerns. As Mr. Steltzer understood it, cellular towers are limited to the light industrial and commercial areas, and there are gaps that need to be covered. He observed that towns may not prevent telecommunications companies from filling those gaps, and the federal statute is the Telecommunications Act of 1996.

Mrs. Belcher explained the Town had hired an RF Engineer to assess the situation, and he had identified that there were gaps that needed to be filled, and that towers in the permitted light industrial and commercial areas could not fill them. The problem was that antennas and towers are treated the same, and all need variances. This could be perceived as a flaw in the ordinance, since according to federal regulations cell companies were entitled to fill the gaps and towns were not permitted to prevent them from doing so. They could be vulnerable to a Federal override.

Mr. Lloyd thought perhaps the Board could add a provision to the telecommunications section of the ordinance in the case of an existing gap where there is no better place to put a tower. Mr. Steltzer will talk to the OEP, and will have some information for the Board by the next meeting.

Work Session. Mr. Day ascertained the Board needed to have a work session in November. The Board was polled and Thursday, November 8 was chosen. Mrs. White will ask to have the work session placed on the calendar.

RPC Commissioner. Mr. Day noted there might be a volunteer to serve as RPC Commissioner. He will report his findings to the Board when the party agrees.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Planning Board adjourn. Mr. Caron seconded, and the motion carried unanimously at 8:53 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

J. Roby Day.
Chairman

Minutes approved November 15, 2007.