



PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

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

MINUTES
(Regular Meeting of 19 October 2006)

AGENDA:

- 7:00PM - BOARD BUSINESS
7:15PM - PUBLIC HEARING for a Zoning Ordinance change proposal to Article XII – ELDERLY HOUSING, Paragraph B.6.
7:45PM - CONTINUED PUBLIC HEARING for Jeffrey and Susan Marston, 38 Giles Road (MBL 16-4-10, and *Industrial Communications Engineering*, Marshfield, MA in regard to a site plan proposal to build a communication tower (EKP#06-OC).
8:30PM PUBLIC HEARING for a Subdivision Regulation change proposal to Section VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND, new Paragraph V.
8:35PM PUBLIC HEARING for a Subdivision Regulation change proposal to Section VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND, new Paragraph W.
8:40PM CONTINUED BOARD BUSINESS
8:50PM - ADJOURNMENT

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

ROLL CALL: Mrs. White called the roll. Members present were Vice-Chairman Mrs. CE Belcher, Chairman JR Day, Mr. RA Smith, Sr., Mr. EA Lloyd alternate, and Mr. RF Morales, ex-officio.

An update on the condition of Dr. RA Marston was reported by Chairman Day.

Voting Members – Chairman Day noted that Dr. Marston was not in attendance and announced that Mr. EA Lloyd would be a voting member for this meeting's proceedings. Chairman Day also noted that Mr. RA Donald, Building Inspector, was absent.

Also in attendance were Dr. JR Robinson, Rockingham Planning Commission (RPC) Senior Planner, Mr. LK Smith, Conservation Commission Chairman (CC), and Fire Captain A Conti.

BOARD BUSINESS:

Minutes:

September 21, 2006 - regular meeting minutes. Mr. Day asked for a motion.

MOTION: Mr. Lloyd **MOVED** to accept the meeting minutes from September 21 as presented. Mrs. Belcher seconded, and the motion carried with Mr. Morales abstaining, having not been present at the meeting. The motion passed.

September 28, 2006 - work session minutes. Mr. Day asked for a motion.

Mrs. Belcher and Mr. Day offered changes to page five to be incorporated. Mrs. Belcher and Mr. Morales questioned the 7% figure on page six in relation to growth rate, and after discussion, the sentence was changed to read "in the neighborhood of 2%".

MOTION: Mr. Morales **MOVED** to accept the work session minutes from September 28 as amended. Mr. Lloyd seconded, and the motion passed unanimously.

Mr. Day directed the public's attention to an updated agenda on the information table. He explained that the updated agenda served to inform the Board and any interested parties that the applicant for the cell tower had requested a continuance and would not be present that evening. For that reason, and with the concurrence of Counsel, no comment from the floor would be accepted. He explained that the only action the Board could take this evening was to decide whether or not to grant a continuance.

Board materials: Mr. Day went over tonight's materials with the Board.

Application materials for the cell tower – for the applicant and interested parties. Included was a request to move tonight's meeting to the elementary school. Mr. Day explained to the public that when the request was received, the Board was out of the window of time in which to notice the move. He stated that a change of venue could be considered for a subsequent meeting. Mr. Day had also received

a request that the hearing be recorded, and informed the public that any and all public meetings could be recorded as long as it did not disrupt the proceedings of the meeting in any way.

Mr. LK Smith's Conservation Commission's efforts—Mr. Day asked Mr. LK Smith to report to the Board and the public on the status of conservation easements in East Kingston. Mr. LK Smith summarized the status of all conservation easements since the bond was passed in 2003. There were a total of ten projects; nine have been closed and one will be closed within the next few months. He reported that there was presently a total of 432.78 acres of protected land with a total appraised value of \$3,791,571; \$1,032,750 in matching funds from the Farm and Ranchland Protection Program has been received; \$378,571 in East Kingston Conservation Funds has been expended; and the total Town Bond was \$2,154,000. Mr. LK Smith reported that the impact of this would not show up on taxes until 2007. Mr. Day stated that Mr. LK Smith and the Conservation Commission were owed much thanks for their efforts.

Planning Board Budget—Mr. Day explained that it was again budget time. He reported that the Planning Board's expenses had risen by 5% over last year due to newspaper noticing charges, advisor support (RPC) fees, and postage, etc., and therefore he had submitted a 10% higher budget than last year. Mr. Lloyd asked what that figure was in relation to other Town expenses, and Mr. Day replied it was relatively small at \$34,000, which was up by \$3,400 from last year.

CIP Improvements—Mr. Day stated he had promised the Selectman he would have the information for them by the end of the month.

PB Calendar—Mr. Day stated that in November, there were several possible ordinance or regulation hearings and some might need to be postponed until the December meeting so as not to make the calendar so tight.

OEP Conference—Mr. Day reported that Friday, October 20 was the deadline and said he could still get someone who was interested in. No one expressed an interest and Mr. Day stated he would not be able to attend.

Growth Management Ordinance—Mr. Day stated that the Board had discussed at the last work session to put the proposed growth management ordinance article on tonight's agenda for a public hearing. Due to unforeseen pressures, it was not on the November 16 agenda.

If the Board waited until November's meeting, such a hearing would be 2 days past the 120-day window for a zoning proposal taking effect prior to Town Meeting. Mr. Day's preference was to have a combined Work Session/Public Hearing meeting and the earliest date for that would be November 9 at 7:00 PM. Everyone agreed on that date, and Mr. Lloyd stated he would not be able to make the meeting. He acknowledged Mr. Day's request that he provide his input to Mr. Day regarding the proposed Town Center District ordinance article in anticipation of a public hearing on 16 November.

Environmental Impact Statement—An Environmental Impact Statement draft was received from the DOT, regarding the Newington-Dover stretch of the Spaulding Turnpike and widening part of the highway. Mr. Day stated it would be in the office "library" should anyone be interested in reading it. Mr. LK Smith interjected that it was not the entire report, only the Executive Summary. Mr. Day concurred.

PUBLIC HEARING FOR A ZONING ORDINANCE CHANGE PROPOSAL TO ARTICLE XII—ELDERLY HOUSING, PARAGRAPH B.6.

Mr. Day opened the public hearing.

Mr. Day deferred to Mrs. Belcher and asked her to read the new language for the proposed change. Mrs. Belcher read the existing paragraph 6, and then the amended paragraph 6 and new paragraph 7 of the subdivision regulation.

Existing paragraph 6:

6. Dwelling units shall be specifically designed to provide housing for elderly residents. Units shall have a maximum of two bedrooms, may not exceed thirty-five feet (35') in height, and may be either one or two stories. Buildings shall be separated by a minimum space of thirty-five feet. No individual unit shall exceed 1,500 square of living space. (Amended 3/01, 3/04)

New revised paragraph 6 and new paragraph 7:

6. Dwelling units shall be specifically designed to provide housing for elderly residents. *Individual* units shall have a maximum of two bedrooms, and may not exceed ~~thirty-five feet (35')~~ in height, and may be either one and one-half or two (1½) stories. Buildings shall be separated by a minimum ~~space~~ distance of thirty-five feet. ~~No individual unit shall exceed 1,500 square of living space.~~ (Amended 3/01, 3/04, 3/07)
7. *No individual unit shall exceed 1,500 square feet of living space. Living space shall be defined as any space in the unit which could be used for sleeping, working, dressing, cooking, dining, or other normal life activities, and shall include unfinished as well as finished space. Hallways, closets, storage space, bathrooms, lofts, bedrooms, and all other rooms or areas shall be included in living space. Attic storage spaces with a ceiling height lower than five (5) feet as measured from floor to ceiling shall not be included as living space. One-storey garages shall not be included as living space. Second floor areas above garages or garage lofts that may be converted to living space shall be considered living space.* (Adopted 3/07)

Subsequent paragraphs would be re-lettered.

Mrs. Belcher explained that the purpose of this change was to clarify the 1,500 sf of living space definition. The definition of living space had not been defined clearly enough. In an approved elderly housing project, there had been concern over proposals to build one or more bedrooms on the second floor. To do so would be contrary to the intent of the Planning Board and the ordinance article to provide for reduced elderly living space. Such construction would bring the total living space above the allowable 1,500 sf.

Mr. Day explained that one of the Planning Board's main responsibilities was to craft ordinances and regulations, which the legislative body will accept as local laws. He likened it to making sausage wherein one hopes the outcome is tasty. He suggested that ordinances were not always perfect the first time, and planning boards must continually refine them as shortcomings are identified.

Mr. Day opened the floor for comment.

Jan Terrill, 101 Giles Road – Ms. Terrill asked if the term “elderly” was perceived as politically correct.

Mr. Day explained that the definition had come from the State and Federal statute references. He further explained that when the ordinance was first designed, the question of whom they were trying to attract, and what they would be providing in such developments, came up. Health care and hospital care could not be provided by virtue of limited municipal services, but the target audience was people 55 and over could take care of themselves.

Carrie Sullivan, 77 Giles Road – Ms. Sullivan asked if the Town was providing anything for the elderly housing units, such as trash pickup and plowing. Mr. Day replied that individual applications would have to be looked at to consider that question.

Mr. Day closed the floor for comment.

Mr. Day entertained a motion to accept the change recommendation to Zoning Ordinance Article XII – Elderly Housing to place on the warrant.

MOTION: Mr. Lloyd **MOVED** that revisions to Article XII – Elderly Housing paragraph 6 and new paragraph 7 and all subsequent paragraphs in the Zoning Ordinance re-lettered, be approved as read for placement on the warrant at Town Meeting next March. Mr. Morales seconded.

Mr. Smith objected to the last sentence, stating it was ambiguous. Other Board members disagreed, noting that it clarified the definition of living space; the rest of the Board agreed.

The motion carried (4-1), with Mr. Smith dissenting.

Mr. Day presented the change proposal signature sheet, and closed the hearing.

Budget expenses. Mr. Day polled those in attendance to see what newspapers they read. There were some hands shown for all the publications mentioned, and *The Atlantic News* seemed to have the most readers. Mr. Day explained that he asked since the Board was trying to contain budget costs. A suggestion from the floor was to increase the fees, which would be charged back to the applicants. Mr. Day explained that those particular costs were recovered from the applicants; it was the costs of noticing for work sessions and hearings on ordinance changes for which the Town incurred the total cost. The Board is statutorily required to meet once a month.

It was also suggested from the floor that a show of hands from 80-100 people might not be the most accurate way to decide which newspaper in which to publish. Mr. Day explained that the Board was confined by statute to publish in a newspaper of local circulation and to post in two prominent places in town. When asked what those places were, Mr. Day answered that the Post Office and the door of the Town Offices were used.

CONTINUED PUBLIC HEARING FOR JEFFREY AND SUSAN MARSTON, 38 GILES ROAD (MBL 16-4-10, AND INDUSTRIAL COMMUNICATIONS ENGINEERING, MARSHFIELD, MA IN REGARD TO A SITE PLAN PROPOSAL TO BUILD A COMMUNICATION TOWER (EKP#06-OC).

Mr. Day opened the public hearing and explained for all those who were not present at the start of the meeting, that there was an updated legal notice on the information table that indicated the applicant in this hearing had requested a continuance until the next meeting and would not be present. Therefore, with the concurrence of Counsel, no public comment could be accepted. The Board itself could not discuss anything that would lead to a decision, beyond the decision of whether or not to grant a continuance.

Mr. Day explained that the Board could discuss procedural questions, and he would be going through the official file to make sure the Board understood what materials they have to work with.

There was a question from the floor whether the Board was going to vote on whether or not to grant the continuance.

Mr. Day explained that the Planning Board's statutory charge includes: 1. The Master Plan; 2. Preparing ordinances; and 3. Conducting public hearings for land use applications. Within that framework, the Planning Board must accept and examine information presented from all interested parties and sift through the information, misinformation, and confusion that often accompany applications. The Planning Board relies on experts of all description and must consider their advice, as well as local by-laws and State and Federal statutes in order to reach a reasoned decision that will withstand legal scrutiny. The ideal outcome is that all parties will be satisfied, but there is never any guarantee of that.

Mr. Day explained that the Planning Board must consider the desires of the *entire* constituency, rather than only a part of it, *but at the same time*, all the deliberation and decision-making must remain within the framework of existing law. To do otherwise would be to abrogate the Planning Board's responsibility to the voters, parties who perceive, rightly or wrongly, that they are affected, and the applicant. Mr. Day stated that the only action the Planning Board could take this evening would be to discuss among themselves whether or not a continuance was warranted or appropriate.

Mr. Day addressed the Board members attention to their copy of the applicant's request for continuance. He stated that the Site Manager was concerned with the progress of the ZBA decision suit, and he (Mr. Day) felt it would be in all parties' interests to wait for the outcome. At the time the request was submitted, no one knew what the suit's court date would be. We now know a merits hearing is scheduled for 20 November, and the judge's decision could very well take another month or more.

Mr. Day stated that he thought the request for continuance was it not unreasonable, for it was still early in the course of the application. He noted that although the 65-day window was past, there have been other cases in which the application went on for a year or more to reach a proper decision.

Mr. Lloyd asked if there was reason to believe the applicant would be willing to meet in November since the letter did not state a specific date. Mr. Day said he had spoken to him and established the date to be November.

Mr. Day entertained a motion to continue or not to continue this hearing to November 16th.

Mrs. Belcher asked if the merit hearing was on the 20th of November, and the next Planning Board meeting was on November 16, could the Board anticipate the applicant asking for another continuance. She thought it would be a better use of time, for the Board as well as the interested parties, to continue the hearing to the December meeting. If the Board agreed, she would also like to require the applicant to re-notify direct abutters as the meeting would be more than 30 days from tonight's meeting. Discussion ensued and the Board agreed.

MOTION: Mr. Lloyd **MOVED** the hearing for *Industrial Tower and Wireless LLC* and Jeffrey and Susan Marston be continued until December 21th at 7:15PM and direct abutters would be re-notified. Mrs. Belcher seconded, and the motion passed unanimously.

There was a question from the floor if a person could address the Board if they stayed to hear the rest of the meeting. Mr. Day answered that questions and comments would not be taken in regard to the cell tower hearing that evening, but the interested party could address the Planning Board in writing at any time or in public comment at the next public meeting.

Mr. Day went over the contents of the official file with the Board members. The file included: the applicant's request for continuance; abutter input which includes a request for change of location, a note from Mrs. Debbie Marston expressing concern on the lack of cell phone coverage, a letter from Mrs. Howaniec, a letter from Tara Paige-realtor, a letter from Beverly George, a letter from Mr. and Mrs. Farmer requesting a moratorium on cell towers, a petition addressing a number of questions, a petition dated May 25 regarding concern for flight paths and property values, and copies of the minutes.

Mr. Lloyd interjected that there were also public comments contained only in the meeting minutes. Mr. Day agreed and stated the Board should consider those as well. Mr. Day stated there was also a summary of all public comments and concerns in the working materials provided to the Board

In addition, there was a letter dated August 21 from Richard Simpson; material from the applicant regarding FAA regulations; a comment sheet from the Conservation Commission; confirmation from the applicant that the balloon was 3 feet across; reports from Civil Consultants; a non-site specific real estate appraisal; the application itself; information regarding the Kohler power systems which is the emergency power system; information describing the broad band antenna; copies of the ZBA minutes dated May 25 and July 18; pictures of the pole presently in the industrial zone; an ATT wireless RF frequency exposure evaluation for the existing cell tower; a Technical Bulletin #14 "*Planning for Wireless Telecommunication*"; a copy of American Planning Association's Zoning News; information gleaned from Town records on abutter property values in the area of the existing pole; and structure information from the applicant.

Ms. Terrill asked if information could be submitted to the Board and Mr. Day stated that it certainly could be. He directed Ms. Terrill's attention to the notation at the bottom of all the notices and agendas which states: "*You are invited to attend and observe this regular meeting and public hearings, and if an abutter, you may make comment and ask questions of the Board and the applicants to whom you are an abutter in the course of a public hearing. You may submit written comments and questions at any time to the Board at the following: East Kingston Planning Board, 24 Depot Road, East Kingston, New Hampshire, 03827.*"

Ms. Terrill asked if she could submit information to the Board this evening, and Mr. Day answered it could not be submitted *within the framework of the public hearing* but could be submitted afterward.

Mr. Day closed the public hearing, and Ms. Terrill submitted her information to Mr. Day.

CONTINUED BOARD BUSINESS

Projects progress - Mr. Day reported to the Board that they were making good progress in their projects. It was clear that between the Board, Mr. LK Smith, and Dr. Robinson, they had committed themselves to some serious work. Mr. Day will meet with Dr. Robinson in

regard to how to implement the visioning portion of the plan. His thought the Board's decision to make the visioning a portion of the Master Plan made good sense and would let the Board better frame their perspective.

CIP– Mr. Day stated that the CIP was an elephant in the corner, and hoped to accumulate the balance of the information for submittal to the Selectmen by the end of the month.

Master Plan Community Profile chapter- Mr. Day will also touch base with Glenn Greenwood for the community profile chapter of the Master Plan to be ready for Town Meeting.

Conservation District – Mr. Day stated that the Board needed to decide what it wants to do with the conservation overlay information. Dr. Robinson offered it would be a good topic for discussion at the November meeting. Mr. Morales reported that other towns are also considering the overlay and stated it is a sound principle. Dr. Robinson purported Mr. LK Smith to be a visionary in that area. Mr. LK Smith suggested that the Board attend the November 6th Conservation Commission meeting in regard to information being presented about the watershed plan.

PUBLIC HEARING FOR A SUBDIVISION REGULATION CHANGE PROPOSAL TO SECTION VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND, NEW PARAGRAPH V.

Mr. Day explained that this change would establish phasing of residential subdivision development as a factor to be considered in the approval process.

Mr. Day opened the Public Hearing. Mr. Day read the proposed new paragraph V. for the subdivision regulation.

- V. Phasing of residential subdivision developments may be a requirement for approval where the Planning Board deems the impact of such development may place undue pressure on municipal services and resources. Elderly housing shall not be exempt from this provision, and the Planning Board shall establish the timeframe for the phasing of a particular development. **(Adopted 10/06)**

Mr. Day opened the floor for comment. There being none, he closed to floor to comment.

Mr. Day referred the Board to a 1996 Handbook from the OSP. It stated that were the Board to change an ordinance proposal in the course of a public hearing in any significant way other than administrative, they would have to hold another hearing. The same did not apply with regulations; it was voted to adopt. He *quoted* "Comments made at the hearing should be discussed and changes made, as the Board thinks is necessary, in response to such comments. If major revisions are made that were not discussed at the public hearing, a second hearing must be held to inform the public." Mr. Day concluded that if major revisions were discussed at the public hearing, the change can still take effect without a second hearing.

Mr. Smith recalled that the Red Gate Farm subdivision had been completed in three phases. Mr. Day noted he lived in that subdivision and remarked that his section of the subdivision was in the last phase, and noted that only the first phase of the project had been built with underground utilities; phases 2 and 3 had poles and wires.

Mr. Day entertained a motion to incorporate Subdivision Regulation Section VII, new paragraph V.

MOTION: Mr. Morales **MOVED** to incorporate Subdivision Regulation Section VII, new paragraph V. as read. Mr. Lloyd and Mr. RA Smith seconded. The motion passed unanimously.

Mr. Day presented the change proposal signature sheet, and closed the public hearing.

PUBLIC HEARING FOR A SUBDIVISION REGULATION CHANGE PROPOSAL TO SECTION VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND, NEW PARAGRAPH W.

Mr. Day opened the public hearing. He explained that this change would clarify what is to be done to vest an approved development plan. Mr. Day deferred to Mr. Morales and asked him to read the new paragraph W.

- W. Active and substantial development, as described in NH RSA 674:39, shall be necessary within 12 months of the Planning Board approval and recording of a subdivision plan in the registry of deeds.
 1. Vesting. Approval of a subdivision plan shall indicate those threshold levels of work particular to the plan which will constitute active and substantial development. Evidence of such development shall establish vesting against change in ordinance or regulation, and specific actions shall include, but are not limited to,
 - a. Completion of roadway infrastructure to the satisfaction of the East Kingston Town Engineer and Building Inspector.
 - b. Electrical service to all proposed building sites.
 - c. Fire protection provisions installed, tested, and accepted by the East Kingston Fire Department.

2. Building Permits. No building permit shall be issued by the Building Inspector for any proposed dwelling construction in a new subdivision until fire protection provisions are satisfied, and roadway infrastructure and electrical service to the proposed building lot(s) are completed. **(Adopted 10/06)**

Mr. Belcher questioned what constituted an acceptance and suggested something in writing should be required. Mr. Morales said he assumed that everything would need to be in writing. Mrs. Belcher asked if the Board would consider amending the paragraph to include the phrase "in writing" or a notation to that effect, and thought it would assist future Planning Boards.

After discussion, it was concluded that the phrase "in writing" would be added to the second sentence in W.1. after the word evidence. The new second sentence would read: "*Evidence in writing of such development shall establish vesting against change in ordinance or regulation, and specific actions shall include, but are not limited to...*"

Mr. Day opened the floor for comment. There being none, he closed to floor to comment.

Mr. Morales suggested also adding the words "in writing" in the front section of the Subdivision Requirements, and the Board agreed. Mr. Day suggested Mr. Morales craft language to that effect.

Mr. Day entertained a motion to incorporate Subdivision Regulation Section VII, new paragraph W.

MOTION: Mr. Lloyd **MOVED** to incorporate Subdivision Regulation Section VII, new paragraph W. as read and amended. Mrs. Belcher seconded, and the motion passed unanimously.

Adjournment:

MOTION: Mr. Morales **MOVED** that the Board adjourn. Mr. RA Smith seconded, and the motion passed unanimously.

The Board adjourned at 8:50 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

James Roby Day, Jr.
Chairman

Approved: November 16, 2006

Distribution:

PB file(s); PB members; RPC Senior Planner; Board of Selectmen; ZBA members; Conservation Commission; Fire Department; Building Inspector.