



PLANNING BOARD  
TOWN OF EAST KINGSTON  
NEW HAMPSHIRE

2003-2004:  
James Roby Day, Jr., Chairman  
Richard A. Smith, Sr., Vice Chairman

MINUTES

(Work Meeting of 6 November 2003)

**ORDER OF BUSINESS:**

7:00PM- Board Business

Work subjects:

BOCA update

Subdivision Appendix I (pg 36)- Certificate of Monumentation

Ordinance change recommendations

Subdivision change recommendations

Site Plan Review change recommendations

Article XIII - GROWTH CONTROL annual review

Capital Improvements Program update

Current application materials discussion

10:00PM- Adjournment

**CALL TO ORDER:** Chairman Day called the work meeting of the East Kingston Planning Board to order at 7:05PM, noting he will take notes for recording the minutes.

**ROLL CALL:** Mr. Day called the roll.

Members present - Mrs. CE Belcher, Chairman JR Day, Mr. JL Fillio, ex-officio, Vice Chairman RA Smith, Sr.

Members absent - Dr. RA Marston, DVM

Alternate members present - Mr. EV Madej

Alternate members absent - Mr. JD Burton

Advisors present- Ms. Maura Carriel, Rockingham Planning Commission (RPC) Senior Planner

Mr. Day noted that Mr. Madej shall vote on all questions to constitute a full Board.

**BOARD BUSINESS:**

**Minutes-** Mr. Day asked for a motion and any discussion to approve the minutes of the Planning Board regular meeting of 16 October 2003.

**MOTION:** Mr. Smith **MOVED** to accept the minutes of the 16 October 2003 Planning Board regular meeting as written, and Mr. Fillio seconded. The motion carried unanimously.

**Correspondence-**

Mr. Day asked the Board if there was any correspondence in addition to materials already acknowledged. Mr. Smith presented a *Union Leader* newspaper article dated 22 October 2003 entitled "Benson: Affordable housing key to economy." After a brief discussion as to exactly what is affordable housing, Mr. Day suggested he would distribute copies to Board members. Ms. Carriel observed that affordable housing is considered to be a function of a percentage variation from a region's mean income, and the ability of someone earning that income to buy a house in the local area.

Ms. Carriel distributed packets from the RPC outlining the important deadlines before Town Meeting 2004 for planning boards. The Board noted that 9 January 2004 was the last day to publish notice for a zoning ordinance

change recommendation hearing if a second hearing is anticipated. Final public hearings must be held by 3 February 2004.

#### **Notes & Asides-**

**NH OSP Smart Growth audit.** Mr. Day noted that the report done by Mr. Charles Lawton was completed and distributed to members. He briefly described his impression of the report's findings, to wit: East Kingston's biggest impediment to achieve smart growth may be the 2-acre requirement for individual residential building lots. Another primary observation of Mr. Lawton's appeared to be that there is a marked discrepancy between what our Master Plan states as goals for the long term, and what the citizens' present desires appear to be.

Mr. Lawton's recommendations focused on a process whereby the public are involved in discussion forums to establish what today's development priorities are, and how the citizenry want to achieve long-term goals. Mr. Day suggested that, although he agreed with the recommendations, the process would take a great deal of time and effort, and would not be concluded in short order. An attempt to act on the report by Town Meeting 2004 would be reactive and premature, rather than proactive. He suggested we look for outside help, and perhaps funding as well to do the job right.

**PB/ZBA Recording Secretary.** The last application period was concluded 15 October, and two very good candidates were identified. Mr. Day noted an offer was made to both candidates in succession, and both declined for personal reasons. Mr. Fillio confirmed that we are once again advertising in the *Exeter News Letter*.

**PB budget.** Mr. Day noted that he has been trying to track expenses in a way to better prepare a budget for 2004. He felt we can maintain a clearer picture of true costs by applying more discreet accounting practices.

**BOCA UPDATE.** The Board noted that the current Building Code portion of the ordinances states that the Town has adopted the Building Officials and Code Administrators 1996 Edition as its Building Code. Ms. Carriel indicated that as a result of legislative activity there may be a need to review exactly what we can adopt, and what we may have to create ourselves. She suggested she would enquire further into the question.

**SUBDIVISION APPENDIX UPDATE.** Mr. Day noted that Appendix I - Certificate of Monumentation needs to be changed to reflect what we do in practice. The present form calls for the signature of a land surveyor, when in fact we ask the Building Inspector to confirm a surveyor's placement of monumentation. Ms. Carriel thought that such a change could be an administrative correction, and not require a hearing.

**ORDINANCE CHANGE RECOMMENDATIONS.** Mrs. Belcher asked if the Board had a plan to consider ordinance changes in a particular order. Mr. Day suggested that, given the requirement to put ordinance changes to the voters, we should address them first, and if time permits, subdivision and site plan review regulation changes. The latter can, of course, be publicly heard anytime, with changes taking effect immediately.

Mrs. Belcher expressed her desire to examine Article XIII - Growth Control first, given it requires an annual review. Discussion ensued about the effect Article XII - Elderly Housing has had on the demand for residential building permits. Mr. Day noted that we are working on either the fourth or fifth substantial elderly housing development, depending on how you count them, and it was generally agreed that development pressures have probably been diverted from residential construction as a consequence.

Mrs. Belcher suggested we consider a moratorium on Article XII - Elderly Housing until we can better understand the long-term effects such development will have. She noted the oft heard objections to multiple elderly housing developments which suggest the elderly will vote down expensive school issues, and place greater demand on municipal police and rescue services.

Mr. Fillio asked what percentage of the population in New Hampshire, or in East Kingston, are considered "old". How are we to know who is old? Mr. Fillio observed that he himself qualifies to live in our elderly housing developments, and how are we to know when the 'elderly vs. everybody else' portions of the population are in balance? He contended that such arithmetic is arbitrary, and we are making erroneous assumptions about the "old". Mr. Day agreed with both Mrs. Belcher and Mr. Fillio that questions about the efficacy of elderly housing swirl around us, but that there is no mechanism that he understood which would permit placing a moratorium on the ordinance as Mrs. Belcher suggested.

Mrs. Belcher asked when should we become concerned? Mr. Fillio observed that the information we have about elderly housing impacts on municipalities is minimal. We should be careful not to over-react. Mrs. Belcher suggested as a way to organize our thinking and planning that we conduct our reviews of Articles XII and XIII at the same time. Everyone agreed that it would make sense to do so.

Mr. Smith observed perhaps we should remove the elderly housing ordinance at Town Meeting. He noted that the concerns highlighted by Theresa Walker, RPC, regarding the quality and supply of ground water, and the diminution of natural resources from rapid development should give us pause. Mr. Fillio demurred, observing that elderly housing can be construed as smart growth, with dwelling concentrations and preserved open space.

Ms. Carriel referred to the Smart Growth audit, noting that if we are to preserve the "rural" areas in Town, we need to consider the placement of elderly housing developments. She also thought that to remove the ordinance would redirect development toward residential, bringing into focus the Growth Control ordinance and perhaps inviting litigation. Mr. Fillio countered with the suggestion that the Growth Control ordinance would be defensible in light of our permitting unrestricted growth in elderly housing. He noted that we presently have over 150 new doorsteps in town approved for construction, and the current Scapicchio application may add another 41.

Mr. Fillio recommended the Board reduce to 4 or 5% that ordinance provision which stipulates the elderly housing development density of any one project be no more than 10% of the current residential housing stock. He argued that, in reality, 5% is the highest proportion we have seen to date in the four presently approved developments.

Mrs. Belcher countered, observing that with such a restriction, a developer might simply subdivide parcels of land in such a way as to allow multiple elderly housing developments, and thereby circumvent the lower permitted density. She suggested instead that the Board recommend elderly housing zoning, thereby directing development onto preselected land, and protecting the Town from future attempts to develop the elderly housing open space.

**Article XIII – Growth Control annual review.** Ms. Carriel presented findings of fact information that compares East Kingston with surrounding towns, the Rockingham Planning Commission region, and New Hampshire. She noted that, in terms of residential growth since 2000 A.D., East Kingston appears to be in "the middle of the pack". Average annual growth rates for neighboring towns since 2000 vary from .40% to 7.04%, with East Kingston having experienced an average annual increase of the residential housing stock of 2.02%.

The Board noted that the relevant findings of fact for the 1990-2000 decade for East Kingston showed our Town growing in population and housing stock at consistently much higher rates than neighboring towns and regions. The conclusion that elderly housing development had diverted residential construction was inescapable.

Ms. Carriel suggested that, if the Board felt it appropriate to retain Article XIII – Growth Control for another year, there might be a way to diffuse objections to it. She proposed allowing carry-over of unused building permits from year to year which would acknowledge that the Town had not experienced the anticipated growth. Mr. Fillio argued against carry-over, observing that if as a consequence all building permits, the carry-over plus the annual, are ultimately issued, then the net result would be there is no growth control. In a given year, the Town might have to absorb the shock of a growth surge, the very phenomenon growth control was designed to alleviate.

Mr. Smith suggested that the Board recommend changing the allowed growth rate from 2% of existing residential units to 3%. Such an increase would not significantly alter our position when compared to our neighboring towns.

**Zoning Ordinance Worksheet.** Mr. Day referred the Board to a worksheet prepared with ordinance change recommendations listed, and discussion ensued:

#### ARTICLE II – DEFINITIONS.

##### Item #1. Zoning Ordinance Page 1:

The definition of "frontage" was discussed, acknowledging the dilemma of properties on road intersections. The Board understood that in those instances where development creates new frontage on a preexisting lot with a house, the lot's original setbacks should not be affected. Therefore,

**ADD** a sentence to paragraph entitled "FRONTAGE" to read:

*"Newly created frontage does not affect preexisting setbacks."*

Item #2. Zoning Ordinance Page 2:

Advice of counsel in the case of Article XII – Elderly Housing was to include a definition of "unit" as it is used generally, and in Article XII. Therefore,

**INSERT** new paragraph after paragraph entitled "STREET:" New paragraph to read:

*"UNIT: A structure, or part of a structure, intended to house a family group or similar body."*

ARTICLE IX – LOT AREA AND YARD REQUIREMENTS.

Item #1. Zoning Ordinance Page 16:

Discussion regarding the clarity of paragraph D. ensued in view of the implied blanket application to all zoning areas. The Board understood the intention of the paragraph was to apply to residential lots, rather than to commercial or industrial lots. Therefore,

**AMEND** paragraph D. which reads "A building lot shall have no more than one single family residence, commercial establishment or manufactured housing thereon. Multi-unit dwellings are prohibited except as provided in Section G. below" to read:

*"D. A building lot shall have no more than one single family residence or one manufactured housing unit thereon. Multi-unit dwellings are prohibited except as provided in Section G. below."*

ARTICLE XII – ELDERLY HOUSING.

Item #1. Zoning Ordinance Page 36:

Confusion in the application of Article XII with regard to allowable square footage of living space prompted the Board to establish clearly and succinctly its original intent. The Board agreed that when the ordinance was crafted, elderly housing was intended to accommodate those who wanted to downsize from larger homes and active life styles, benefiting from the consequent reduction in the requirement for upkeep. Therefore,

**DELETE** the last sentence of paragraph B.4. which reads: "No individual unit shall exceed 1,500 square feet of living space, and no single-family building shall exceed 1,500 square feet in footprint."

**INSERT** at the end of paragraph B.4. the following sentence:

*"No individual unit shall exceed a total of 1,500 square feet of living space"*

Item #2. Zoning Ordinance Page 39:

Upon the advice of counsel in the case of change recommendations to Article XII, the Board agreed on a definition of "unit" as it applies to elderly housing. Therefore,

**AMEND** paragraph G. to read:

"G. The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing ~~Regulations~~ **ordinance provisions:**"

**INSERT** new subparagraph G.3. to read:

*"Unit: A structure, or part of a structure, in the elderly housing development intended to house a family group or similar body; all members of whom are at least 55 years of age, and for which there is a single and separate deed."*

ARTICLE XIII – GROWTH CONTROL (adopted 3/98).

Item #1. Zoning Ordinance Page 42:

To clarify the Board's intent with regard to the question of unused residential building permits, and their carry-over, the following is recommended:

**AMEND** paragraph D.9. to read:

*"In the event that fewer than the **annually** allocated permits are issued, notwithstanding the percentage limitations above, the unused permits may be distributed. **Initially, they shall be distributed, one each, to applicants who submit complete applications during normal Town Office hours, and before the end of the current year. Distribution of permits shall continue until either all unused permits for the year have been exhausted, or the conclusion of the current year.**"*

and Item #2. Zoning Ordinance Page 43:

**AMEND** paragraph E. Sunset Clause:

**INSERT** new paragraph at the end to read:

*"By virtue of the Planning Board's annual review for the continued utility of this ordinance, and the consequent adjustment of residential building permits to be made available in the new year, any unused permits at the end of a calendar year shall expire. After 1 January, only permits for the current (new) year shall be issued."*

**Work meeting ordinance change recommendations.** In the course of this meeting's deliberations, three ordinance change recommendations were discussed and suggested for the Town Meeting 2004 ballot:

1. Article XII – Elderly Housing. **DELETE** the entire ordinance.
2. Article XII – Elderly Housing paragraph B.2. **CHANGE** the allowable density of 10% of current residential housing stock to 5%.
3. Article XIII – Growth Control paragraph D.5. **CHANGE** the percentage of residential units in Town by which the allowable number of annual building permits is calculated from 2% to 3%.

The Board took no action on these suggestions, but Mrs. Belcher suggested perhaps Article XII might be amended to include certain conditions as special exceptions. In the event, an applicant with an elderly housing development project would then have to satisfy the Zoning Board of Adjustment that the conditions were met before the Planning Board could consider the application.

**CONTINUED BOARD BUSINESS**

**Home Occupation.** Mr. Fillio referred to Ms. Valerie Edge's home occupation permit application the Planning Board had recommended the Board of Selectmen not approve. He noted she is now keeping a horse, in addition to her menagerie of dogs, cats, pigs, and birds, and asked whether there is any acreage requirements for keeping a horse.

Mr. Smith observed that horses generate manure, and it must be removed if the acreage is insufficient for pasture. He thought that, in this instance, pollution of the Powwow River could be a problem, given Ms. Edge only has about ½ an acre of land.

Ms. Carriel suggested there are standards for the keeping of horses that address health and exercise conditions, but did not believe there were any acreage requirements. Mr. Fillio wondered whether the Board should

recommend an ordinance provision of some kind, but that such could not preclude the present situation. He acknowledged that the health and welfare of the animal appeared to be the only addressable concerns.

**Ordinance change recommendation public hearings.** Mr. Day suggested the Board hold hearings on settled questions in December 2003.

**MOTION:** Mrs. Belcher **MOVED** the Planning Board public hearings for changes to Zoning Ordinance Articles II, IX, XII, and XIII at the December 2003 regular meeting. Mr. Madej seconded, and the motion carried unanimously.

**Capital Improvements Program (CIP).** Mr. Day noted that the Smart Growth audit described our CIP as a well crafted document, current until 2007. He further noted that, contrary to the audit's praise, the data, discussion, and conclusions date from 1997, and may not reflect today's realities.

Mr. Day observed that the last time the CIP was updated, the process was started in February 2001, and was not completed for many months. Mr. Smith suggested that getting inputs back from department heads had been fraught with difficulty, and Mr. Day thought perhaps a CIP update would be an appropriate project to involve outside help in the new year. No one disagreed.

**ADJOURNMENT:**

**MOTION:** Mr. Madej **MOVED** the Board adjourn. Mr. Smith seconded, Mr. Fillio thirded, and the motion carried unanimously at 9:55PM.

Respectfully submitted,

James Roby Day  
Minutes approved *20 November 2003*

encl: Growth Control findings of fact for annual review