

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
November 16, 2000

FILE

AGENDA

- 7:15 David Baker/Apple Hill Golf Club - Discussion
7:30 Monique Waldron – East Kingston/Kensington Subdivision – Continued Public Hearing
8:00 Paul Masoni – Haverhill Road Site Plan Review – Public Hearing
8:30 Gary & Katherine Tuck – Forest Drive Subdivision – Public Hearing
9:00 David & Patricia Morse– 40 Willow Road Subdivision & Site Plan Review – Public Hearing

Members attending: Richard A. Smith, Sr.– Chairman, John L. Fillio – Ex-officio, Dr. Robert Marston, Beverly Fillio and Alternate David Morse.

Absent: Edward Johnson – Vice Chairman and Alternate Members Peter A. Riley and Robert Nigrello.

Others attending: Sarah Campbell– RPC Planner, Maura Carriel – RPC Planner, Fire Chief Alan Mazur, Fire Department Lieutenant Andy Conti, Roby Day – Rockingham Planning Commissioner, Paul Masoni, Mike & Gail Andersen, Brenda Grant, Monique Waldron, Dana & Deborah Merchant, Robert Coughlin, Wayne Ewald, Ann O'Bara, David Young, David Baker, Steve Linquist, Architect Brad Booth, Atty. Sharon Somers, Atty. Herbert Phillips, Ron Vars, Lori Cashman, Dennis Quintal – PE, Kevin Murphy, Kent Shepherd– Deputy Building Inspector, John McCarthy– Real Estate Agent, Gary & Katherine Tuck, Scott Ratta, Kevin Frye, Bill Doucet – LLS, and other members of the public who did not address their concerns.

Chairman Smith opened this November 16, 2000 planning board meeting at 7:01 with the role call. Noting the absence of one regular member (Mr. Johnson), he designated Alternate David Morse to participate in any voting matter before the board.

Planning Board Minutes: The Board reviewed minutes dated October 19, 2000.

MOTION: Dr. Marston motioned to approve the Planning Board minutes dated October 19, 2000 as written. Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

Work Session: Chairman Smith announced that a work session has been scheduled for Thursday, December 7, 2000 at 7:00 p.m. at the Town Hall. The agenda will include discussion with Sukey Farmer regarding a home occupation request, discussion on proposed zoning, subdivision & site plan review amendments, and discussion on the Elderly Housing Ordinance.

Incoming Correspondence: Chairman Smith acknowledged the following incoming correspondence:

1. Environmental Protection Agency - Stormwater Trade Show to be held November 30, 2000 in Manchester.
2. Community Heritage Investment Program (LCHIP) – Meetings to be held November 28, 29, & 30.
3. NH Dept. of Transportation – Driveway permit for Monique Waldron at 191 North Road.
4. Rockingham Planning Commission & Strafford Planning Commission – Bike Planning Workshop to be held December 5, 2000 from 7-8:30 p.m. at the Newmarket Town Hall.

David Baker/Apple Hill Golf Club – Discussion: Chairman Smith opened discussion with David Baker at 7:09 p.m. He announced that this was only a discussion and that anyone wishing to speak must raise their hand, wait to be called on by the chairman, and then identify themselves and where they live. He also ordered that no one interrupt while another person is speaking.

Mr. Baker identified himself as the owner of Apple Hill Golf Club on East Road and then read a prepared statement into the minutes as follows:

Gentlemen and Ladies of the Board, so there will be no question of what our intent is we have put everything in written form. The purpose of the driving range is to practice to improve your game so that when you play the regular course you will hopefully do better.

The chip and putt is exactly for the same purpose: to practice your chipping and putting. There is a similarity of use. This is not different from a practice area that has target greens.

On April 1, 1986 the East Kingston Board of Adjustment granted a request from Frank and Barbara Colanton to "extend golf course and establish a golf practice driving range". That request was granted subject to the following five conditions which we intend to comply with.

Members acknowledged the five conditions set in 1986 as : 1) night operation will not be permitted; 2) lights and other forms of artificial illumination will not be permitted; 3) access will be subject to approval by the State Highway Department; 4) public parking will be limited to 10 vehicles at any one time; and 5) there will be no signs advertising the driving range.

Mr. Baker continued to read:

It is also our contention that a chip and putt is a practice area. There is definitely a similarity of use.

We proceeded to start construction on our chip and putt after conferring with Glenn Clark, the Building Inspector about a permit. After discussing it with the Selectmen, he informed us that a site specific was all we needed as there was a similarity of use. Based on that information, we proceeded to get our site specific, which we submitted to the Town and we signed a contract to construct the chip and putt for \$221,000. Our contractor, Joseph Freeman took our job over others and we are responsible for that commitment we signed. Time is of the essence. It is important that we proceed immediately or face a huge financial loss.

We at Apple Hill Golf Club have been good neighbors and generous members of the community. We employ many East Kingston residents as rangers, starter, clubhouse employees, cart-boys and greenskeepers. When the Town asked us to contribute towards a defibrillator we gladly assumed the full cost. When Sanborn School asked us for a place to practice and play their matches, we gladly let them use our practice area and golf course with no charge for all their matches. We are trying to emphasize junior golf programs in a large way, and after discussing with many golf professionals and parents the methods which we could employ, we decided the chip and putt was the best way to introduce the game to children. We have golfers as young as eight in our junior lessons program. We know what we are doing is not only similar in use but is also good for the community.

We know there are other uses for the land. In March this year, the Town adopted a provision (Article XII) for Elderly Housing. It would certainly be more financially feasible for us to go that route but considering the neighbors' interest, we chose the chip and putt.

I respectfully request that you lift your cease and desist order immediately and let us proceed before we suffer any further financial losses. In conclusion, what I am asking you to do is to let us resolve this problem with our neighbor. If we cannot, we still believe we are proceeding legally. Let the neighbor get a cease and desist against us. Not the Town vs. Apple Hill Golf Club. At that point, we will determine whether to seek an alternate use for the land.

Mr. Baker went on to say that both his attorney and architect were present this evening. He said the chip and putt was designed to hit almost all of the balls away from the abutting properties – only one hits towards a neighbor's property (hole #4). The holes are 80 to 90 feet away from the property lines. His architect, Brad Booth has specific standards he adheres to. He has extensive experience in the layout of a course that exceeds liability and safety issue standards. Pitch and putt is not a full course and there is considerable elevation between the abutters' houses and the course. He said he received all the State permits that were required.

Atty. Sharon Somers of the Donahue, Tucker & Ciandella stated she was present to represent her client Brenda Grant, a direct abutter to the golf course. She also brought copies of a Superior Court case that came out yesterday regarding a golf course that proposed to add an additional nine holes. A site plan review was sought for that case – Apple Hill Golf Club is adding here, too, thus a site plan review is warranted.

Mrs. Fillio stated that the issue before the board is to decide whether they need a site plan review – not to approve one.

Chairman Smith added that this appointment was for discussion only where the board will make the determination of whether or not the golf course needs a site plan review or not– they are not here to have a site plan review hearing.

Atty. Somers stated that she urges the board to conduct a site plan review now as when this was before the ZBA in 1986 to establish a driving range, a site plan review was not conducted. Now another portion of that land that was vacant since 1986 is to be developed. She recommended the board to look at the Site Plan Review Regulations, which state:

...the Town of East Kingston Planning Board adopts the following regulations governing the review of site plans for multi-family dwellings (in excess of two units), whether or not such development includes a subdivision or resubdivision of the site. All changes and expansions of use – including change of tenants – require written notification to the Planning Board (or its designee), who will determine whether the proposal shall be required to undergo the full Site Plan Review and public hearing processes. The Board shall have the authority to waive any of the requirements herein if justification is shown...

Attorney Somers stated that it is under those regulations where the items that concern her client, Mrs. Grant, can be addressed. Mrs. Grant is concerned about buffers, privacy, noise, and aesthetics – all within the site plan review analysis. She wants to see the plan carefully scrutinized to see what effects it will have on the abutters and what protective action can be taken. Buffers, fencing, etc... She said that the Planning Board does have the jurisdiction to conduct a site plan review of this project and they should do so.

She went on to say that the cease and desist order should be kept in place until the Planning Board has reviewed and addressed the concerns of Mrs. Grant to provide protection to all of the abutters.

Attorney Herbert Phillips representing David Baker and the Apple Hill Golf Club stated that he was involved when Mr. Baker originally purchased the golf course. He said the complainant here is the daughter of the previous owner of the golf course. He said this issue is very sad and it doesn't belong here. Mr. Baker has remained low keyed – he does not want a fight. He said that a site plan review does not belong here as this is not a change or an expansion – it is a continuance of the same use. They are not changing or expanding anything – they are just continuing the operation of a practice range.

He then went on to say how popular a sport golf was and that placing the chip and putt in the driving range area is very normal for a golfing operation. They have been very careful in its design as to not interfere with the neighbors– there is no noise, smell, and balls into windows – if those types of interferences had been occurring then they'd have to close, as it is illegal to create a nuisance. He stated that history shows a variance was granted. His client spoke to town officials who indicated a site plan review was not required. The statement made by co-counsel that a cease and desist order was issued is not true. The Building Inspector requested Mr. Baker to stop construction until the issue was resolved and Mr. Baker agreed.

He continued to say that this issue should be resolved as a civil matter – the town doesn't pick up the battle of the neighbors. Mr. Baker agreed to stop construction and meet with this board to work things out. He said he (Phillips) doesn't understand why he stopped as he has filed for a site plan review though he does not feel one is warranted.

Attorney Phillips elaborated on the variance granted in 1986 by noting it was to extend the golf course and establish a golf practice range. Mr. Baker is only "extending" the golf course as allowed. If there was ever a legal non-conforming use – this is it. There is no jurisdiction for the Planning Board here. Mr. Baker wants to be a good citizen to the town. He is not looking for a fight. There is no need for a site plan review.

He said the case quoted by Atty. Somers is a brand new situation – this is an existing situation. Mr. Baker got the necessary permits from the State. He got permission from the Building Inspector to go ahead. Attorney Phillips asked that the board not take up any more town time on this civil issue.

Attorney Somers responded that two points need to be considered. 1) Mrs. Grant is looking for part of the process to be conducted to address her concerns about screening and buffer areas. The only people out on that part of the parcel are the maintenance people – there is nothing there right now. Once in place, golfers (children and adults) will have an impact on her enjoyment of her property. There will be noise, people, trespassers, etc. to contend with. This could be worked out as part of the site plan review process where the property owner can conduct business and also allow Mrs. Grant to be a part of that process. 2) This driving range use did not go through the site plan review process to begin with – it is a good time to do it now. This land's back corner has not been used as a golf course – only a driving range since 1986 and this does constitute a change of use. A case in Seabrook covered this very issue.

Chairman Smith stated that it appears Mrs. Grant does not like to see people have a good time and that is too bad. There have been numerous neighbor conflicts; neighbors complain about airfields, plowing fields, chainsaws – everyone seems to be complaining about what their neighbors are doing. Where are the property owners' rights? These types of complaints are getting out of hand.

Attorney Somers replied that she agrees that some people do complain too much about what their neighbors are doing, but that this case is different. Mrs. Grant should have a say here as there are visual impacts to her.

Chairman Smith stated that Mrs. Grant does not have the right to tell other people what to do on their own property – this is not her and.

Attorney Somers stated that the site plan review talks about buffers and that needs to be taken into account.

Mrs. Fillio stated that the only thing before the board is to determine whether the pitch and putt is considered the same use as a golf course and driving range. The use of that land was taken care of in 1986.

Mr. Baker stated that Mrs. Grant wanted certain things done – prior to her going to the town, she met with me and asked me to plant trees and create a buffer. She indicated that she wanted to work things out between ourselves. The next thing he knew she went to the town to get a cease and desist order against him.

Mrs. Grant replied that she went to the town because she was told a plan of the project was there for inspection.

Mr. Baker continued to say that he showed her the plan – there was no sense in going to the town for it. She indicated that things were okay between us.

Robert Coughlin of 56 East Road stated that he is an abutter who lives directly across the street from the driving range area – he views down at the property. He said he bought his property five years ago because of the view. He strongly opposes the proposed pitch and putt project.

He went on to say that the Chairman's comments about chainsaws are corrupt. The driving range has attracted five to six cars on Sundays – and that is okay. Baker's new plan to construct a new pitch and putt would allow parking for up to forty cars. He said that it is his understanding that Mr. Baker also has plans to build a new clubhouse and restaurant. This is all detrimental to his (Coughlin's) property value. If Mr. Baker wants to do all these things, then he can buy his house because he is moving.

He reiterated that he purchased his house five years ago and he has improved it. With all this expansion going on across the street are all they going to allow a McDonalds to go in? Is that next?

Attorney Phillips stated that when Mr. Coughlin purchased his house there were several commercial businesses on the road: Carmens, the golf course, welding (across the street), etc. He said Mrs. Grant lived next door to the golf course for many years as her parents owned it – they now own one (golf course) down the street. This project is not anything new – the neighbors always knew there was a golf course here and it has a right to stay as one. This is a clean group of athletes – a prestigious type of operation where very little noise is generated. He then compared golfing to other sports such as football, baseball, etc. He said his experience with golf courses is that golfing is a gentle sport and that he is amazed about all this talk about noise the neighbors think it would generate. He said Mr. Baker wants to be neighborly – he and Mrs. Grant should sit down and work this out.

Mr. Coughlin stated that no decision could be made tonight as that he only got notification of this meeting on Monday. His experience with other boards in other towns would require "certified" notification to all abutters. Why wasn't he notified this way? He stated he put his whole life's savings into this house. Should he have requested his lawyer to be present?

Mrs. Fillio replied that no decision on the site plan review would be given tonight, as this was only discussion.

At this time the recording secretary informed Mr. Coughlin and other abutters present that this was not a public hearing thus certified notices were not a requirement of the statutes. The letters of notification abutters received were at the request of the Planning Board Chairman as a courtesy only. There are no statutory requirements to notify abutters for discussion appointments.

Mr. Baker then stated that he wanted to address the comments made by Mr. Coughlin. A forty car parking area is only a rumor. The variance conditions must still be met – only ten cars may be parked at that area at any one time. As far as building a new clubhouse, those plans are to expand the existing clubhouse in the future – not build a new one. He said that he doesn't need a hearing to expand it.

Wayne Ewald of 14 Tilton Lane stated that he has no problem with the project, as his property is located farther away however, he was only made aware of this issue by talking to Mrs. Grant. He said he should have been made aware of this by the town. He further

stated that this type of golfing activity is more like an amusement park than golf. Rowdy customers would come in and disturb the area with their drinking and improperly disposing of their beer bottles. Plus all that dirt has been moved around in the wetland area.

It was noted that Mr. Baker received a wetland permit from the State for the project.

Mr. Coughlin stated that the black plastic surrounding the pond did not go up until after the bulldozers went through— that should have been installed first.

Mr. Baker stated that if it had gone up first then the bulldozers would have hit it while they worked along that edge.

Mrs. Campbell reminded the board and public that the purpose of this discussion was for the Planning Board to decide if the proposed activity meets the regulations as a site plan review and if it requires a site plan review application and public hearing as outlined in the regulations. The regulations state:

All changes and expansions of use – including change of tenants – require written notification to the Planning Board (or its designee), who will determine whether the proposal shall be required to undergo the full Site Plan Review and public hearing processes.

She stated that in her professional opinion, if you add another nine holes to a golf course, then it meets the definition of an expansion. However, the applicant did go to the town first and was told by the Building Inspector a local permit was not needed. The Planning Board needs to decide if adding holes to a golf course requires a site plan review. What needs to be done to address what the applicant has been told by the town?

Mrs. Fillio stated that Mr. Baker was told by town officials to proceed with his project without local permits – he went through the proper channels. He went to the town official that has authorization on permits and with the town's blessing he went ahead with his project. So now we are here to decide if it is okay as he was told or whether he has to go through the site plan review process – either way, the board must get on with it.

Mr. Fillio stated that in his opinion, this was not a change of use but an expansion. Mr. Baker was under the impression that it was okay to go forward with his project, which he did, then he was told to stop it, which he did – but there was no actual cease and desist order. He said that at this point he thinks the proposal should go through the site plan review process and at the same time, allow Mr. Baker to proceed with the project as not to impose a financial loss. It was through Mr. Clark (Building Inspector) that the Selectmen told Mr. Baker to stop construction.

Mr. Baker stated that Mr. Clark said he only needed a site specific permit from the State as over 10,000 square feet of wetlands would be disturbed. Mr. Clark also told him that he thought the pitch and putt was a similar use but would check with the Selectmen. Mr. Clark then came back and told him it was okay to proceed. He said he applied with the State and received a permit. He only started the project after he received approval from the State and the Town. He said only then did he sign a contract for \$221,000 to have the work done. The contractor gave up other jobs to do this one and if he does not come back in time, the project will be lost for the winter. The contractor also subcontracted a company from Ohio to do this. Not going through with the project at this time will cause and extreme financial hardship. He said he only did what he was told to do by the Town.

Mr. Fillio stated that if the temperature drops to twenty degrees tomorrow then he wouldn't be able to finish the project anyway.

Mr. Baker agreed and stated that he has lost two weeks of construction time due to this matter. He said he expected to get the course shaped and loamed now and seeded in early spring. The course would not be usable until the middle or end of July. Getting use for the latter part of the summer would pay for the cost of the loam.

Mr. Fillio asked Mr. Baker if the board requested changes in the location of some of the holes and screening be put up, would that interfere with the continuation of the project?

Mr. Baker stated that it would not, however, Mrs. Grant told him she didn't want screening or netting. He said he is only limited to ten cars for parking, as he must still abide by the variance conditions set in 1986. He said he has not yet applied for a permit to construct a small building there to be used by an attendant and to house bathrooms. Additional parking would be up at the clubhouse and a shuttle would be available to transport golfers to the practice range.

Mr. Fillio recommended the board move forward with a site plan review but also allow Mr. Baker to proceed with the construction as Mr. Baker agreed to amend the plan as requested.

Mr. Baker stated that he still maintains he does not need a site plan review but would be willing to do it anyways.

MOTION: Mrs. Fillio motioned to move this discussion to the end of the meeting as the board had other business to tend to. Dr. Marston seconded. With no further discussion, the motion carried 5-0.

Monique Waldron – East Kingston/Kensington Subdivision – Public Hearing: Chairman Smith opened the public hearing for Monique Waldron's plan to subdivide land in East Kingston and Kensington on North Road (Route 108) at 8:05 p.m. He also announced that this hearing is a continuation from the October 19th meeting where Mrs. Waldron's proposal is to subdivide a contiguous piece of land that lies in both East Kingston and Kensington into three lots. The actual subdivided pieces would remain in Kensington and only an eight-foot lot line would be needed in the East Kingston. The three newly proposed lots would be as follows: 1) one parcel containing 9+ acres and the main house in Kensington; 2) one parcel containing 5+ acres and an in-law apartment in Kensington; and 3) one parcel containing 16+ acres in East Kingston.

The following five items were to be addressed from the last meeting:

1. State approval would be needed for a driveway to be located in the Town of East Kingston (at least 10 feet from the boundary line);
2. Test pits must were to be performed and witnessed by the East Kingston Building Inspector – they must be indicated on the plan as well as a 4K area to show the lot is buildable;
3. All new bounds were to be set and approved by the Building Inspector. The plan would show all bounds whether found or set;
4. A tieorreference to the town bound located on top of the hill would be shown on the plan.
5. A notation was to be put on the plan referencing the Kensington subdivision plan when it is recorded.

Mrs. Waldron stated that she did receive approval from the State and the Fire Chief about the location of the driveway. She had test pits done and submitted the data to support it, however, the test pits and 4K area is not indicated on the plan as requested. She stated that this was her error and would have that information put on.

Members stated that in order to approve the subdivision, the parcel must be deemed a buildable lot and doing so requires the parcel to meet septic system requirements, thus the test pit and 4K area information must be on the plan. The board continued to review the plan and noted that the southwest corner bound was not shown.

Mrs. Waldron stated that she just got the plan back from the engineer at 5:00 p.m. that evening and has not had a chance to review it herself. She would have that corner bound shown.

Chairman Smith opened the hearing up to abutter questions or comments.

Deborah Merchant of 179 North Road stated that she had some concerns about the parking issue. Since Mrs. Waldron has made it clear this parcel will be used to house a 22-stall horse barn, she questioned where parking will be. She felt this proposal should be required to go through a site plan review.

Mrs. Waldron responded that the proposed use of a horse barn falls under agricultural use and not commercial. She said this was clearly defined by the State. She also stated that there would be a 100-foot buffer between the clearing's edge of her property and the barn, giving the abutters a significant buffer zone.

She stated that parking would be made available at the barn – the flat part by the water hole, which is 300-400 feet away from the road and at least 100 feet from the Merchant's property.

Fire Chief Alan Mazur stated that the distance was more than 100 feet as it was another 80 feet to the barn from the 100-foot buffer.

Mrs. Waldron continued to say she wanted the vehicles parked behind the barn and that she did not touch the trees between the rock wall and the Merchant' (about 99 feet). She indicated that she may put in a horse trail in that 100-foot buffer area.

Mrs. Campbell stated that the only issue before the board is the subdivision issue. Any future use of the parcel cannot be considered as only a subdivision application has been submitted. If all the setbacks and requirements are met, the board must approve the plan.

MOTION: Mr. Morse motioned to grant approval of the subdivision plan for MBL# 16-04-08 as presented with the following conditions:

1. **The NHDOT permit number and the driveway location be shown on the plan;**
2. **The 4K area and test pits be shown on the plan;**
3. **The southwest corner bound be shown on the plan; and**
4. **Verification that all new bounds have been inspected and approved by the Building Inspector be received and the Certificate of Monumentation form be submitted.**

Dr. Marston seconded. With no further discussion, the motion carried 5-0.

Paul Masoni – 203 Haverhill Road Site Plan Review – Public Hearing: Chairman Smith opened the public hearing for Paul Masoni's site plan review application at 8:27 p.m. for MBL# 11-2-16 & 17. Dennis Quintal, PE would be representing Mr. Masoni this evening.

Mr. Quintal stated that Mr. Masoni has a purchase and sales agreement to purchase the MSK Lumber complex that is currently owned by Chuck Woodlands Realty Trust located at 203 Haverhill Road. Mr. Masoni's intent is to purchase the property and construct one building and modify an existing building. He is here to present the site plan review. He stated that Mr. Masoni has applied to the town and has submitted copies of the property deed as well as applied for a new driveway permit from the State. This new driveway will change the existing access with a new State-approved entrance as shown on the plan.

Mr. Quintal then outlined on the plan the total acreage, wetland areas, which were flagged by NH Soils Consultant, and building setbacks (200 feet from the residential zone). He also noted the footprints of the proposed new building and modified building. The existing building would be modified to square off with the rest of the building as it has many jogs on it. He outlined the traffic pattern and parking areas as well as the septic systems and wells servicing the existing buildings. He showed snow storage areas, lighting at the front and back of the buildings, and erosion sediment control plans. Since the area was already cleared and previously used for stockpiling lumber and heavy equipment, there would be no change in the slope, just minor grading. Silt fencing would be used in the erosion sediment plan along with plantings intending to protect the wetlands.

He went on to explain that the existing entrance would be abandoned and a new one created. Old concerns of the property were from the Murphy abutters who were unhappy with the visual aspect of the site. To address this concern an earth berm would be constructed with evergreen plantings along the Murphy boundary – this would help create less impact of the project.

Mr. Masoni stated that the name of his company is called "Granite State Cover Corporation" and it manufactures tarp and canvas products like mooring covers, boat tops, mesh tarps, mesh covers, solid covers, tarps for tractor trailers, vinyl lettering, fence coverings, tents, awnings, etc. The money is in the big tarps.

He went on to say that he employs six, steady employees – he likes to keep it simple – he doesn't want too big of a business. At this time he plans to occupy the building currently occupied by Granite State Trucking (autobody shop) but will plan to move into a newly constructed 100'x100' building in the future. The other building once occupied by ADMAT Trucking would be used to fabricate small steel products used with the canvas products (i.e. awnings, pipe systems for installing tarps on trucks). ADMAT is no longer located on the premises. He stated that he would mount tarp and canvas products on tractor-trailer trucks and other types trucks on the premises though only about 10% of his work entails this. The other 80 to 90 percent is in canvas and vinyl manufacturing.

Mr. Quintal stated that as far as the development of the site there would be very little change in the grade – the drainage system pattern wouldn't change. He noted the parking area on the plan and stated that more parking is available down in back – there will be no trucks parked in the front section.

Mr. Masoni informed the board that he has partially moved in because he is selling his property in Atkinson and is repairing the floor there. He invited any member of the board to visit the site and see how he operates. He is operating half of the business in Atkinson and the other half in East Kingston.

At the inquiry of the board, Mr. Quintal stated that the building setbacks from the Shepherd property are 200 feet, as it is from the Murphy property as well. He then noted the well location.

Chairman Smith opened the hearing up to abutter comments and questions.

Kent Shepherd of 217 Haverhill Road stated that in viewing the State approved new driveway, he does not like the deceleration lane running across the front of his property.

Mr. Quintal responded that the deceleration lane is located on State property and is required by the NHDOT.

Mr. Shepherd reiterated that he does not like it at all.

Kevin Murphy of 201 Haverhill Road stated that proposal has a discrepancy in the plan – the marks do not match his plot plan. He stated that in March the town voted to close the abandoned road and give all rights to the abutting properties. He then presented a plot plan of his property and a copy of his property deed. He then stated that he doesn't know how they got a 400-foot sight distance from the driveway.

He said the property line on his plot plan is different from the lines drawn on the site plan. He stated that the Planning Board does not have the right to supercede his deed. In order for the new driveway to be constructed, part of his land was removed from the plan.

Mr. Quintal responded that the land was surveyed and the plan was recorded by a licensed land surveyor in June 1988. He then proceeded to show Mr. Murphy how the lines on his plot plan compared to the lines on the site plan. Mr. Murphy continued to disagree.

Mrs. Fillio stated that this boundary issue is not a Planning Board problem and that it should be taken up with the property owner.

Mr. Murphy disagreed.

Mrs. Campbell stated that the application is for the proposal of the operation of a business on the site, yet the applicant has admitted to moving in and operating the business already. This cart before the horse issue could be a problem.

When asked if any of the abutters had a problem with the proposed use, Mr. Murphy stated that he wants the hours of operation in writing.

Mr. Masoni stated that his hours of operation would be from 6 a.m. to 6 p.m.

Mr. Murphy stated he would like to see the hours be from 8 a.m. to 5 p.m. and that they be posted.

Mr. Morse stated that if the business changes in any way, expands or takes in tenants, the board must be notified and another site plan review might be warranted.

Mrs. Fillio asked what Mr. Murphy's hours of operation are for his silk screening business. He replied that they were 9 a.m. to 5 p.m. and that his business was different because it was a home occupation. Mrs. Fillio suggested that since Mr. Murphy's hours were not posted under his application then why should Mr. Masoni's be.

Mr. Murphy replied that no one has ever complained about his hours of operation.

Mr. Shepherd stated that he had to put up with heavy equipment noise at midnight before and that he doesn't want this to happen again. He still objects to the fact that his frontage has been taken from him even though it is State property.

At the inquiry of the board, Mr. Masoni stated that he does not own any trucks – only storage trailers and that Roadway, Red Star and JPS would provide transportation services once or twice a day – that's about six tractor-trailer trucks a week and that they only come in during their hours of operation. They are not open during the night – there is no midnight trucking.

When asked about the welding operation, he stated that there is one employee who welds and that it is just the service part of the business. He gave examples of the types of welding projects he would handle – awning piping, bows for tractor-trailer covering, etc.

Real Estate Agent John McCarthy who was listing the property stated that he wanted to make a couple of points. 1) The entry to the property is drawn by the State, on State property along a State highway. Tractor-trailer trucks drive on that road all the time. 2) The plan shows a 200-foot buffer to the residents' properties. This is a big setback. 3) The property is zoned light industrial and businesses are located in them. The truck autobody shop is leaving, the trucking company is gone – it is no longer an issue. This welding is just a small part of the process to Mr. Masoni's business. This is a clean and quiet business and it is located in a light industrial zone.

MOTION: Mrs. Fillio motioned to invoke jurisdiction of the site plan for MBL# 2-11-16 & 17. Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

When asked by Mr. Morse, Mr. Masoni stated that the timeframe he has set to build the 100'x100' building is in the spring.

At this time Mr. Quintal presented a written request for waiver from Site Plan Review Regulations Section IV, 2, (j) – High Intensity Soil Mapping. He explained that because the wetlands have been flagged, the area has already been cleared and in existence, there would be minor grading, and no other grading would be done, he does not believe there is a need for HISS mapping to be done.

Members stated that this request would be decided after consulting the Conservation Commission Chairman.

MOTION: Mrs. Fillio motioned to continue this public hearing to Thursday, December 21, 2000 at 7:15 p.m. at the Town Hall to allow the applicant time to resolve the boundary dispute with Mr. Murphy and to allow the board to consult with the Conservation Commission Chairman regarding the request for waiver from HISS mapping. Mr. Morse seconded.

DISCUSSION: It was noted the application was for the operation of a business, a new driveway, the construction of a new building and the modification of another.

The motion carried 5-0.

It was announced that this notice of the continuance of this case to December 21, 2000 would serve as notification to all abutters.

Gary & Katherine Tuck – 14 Forest Drive Subdivision – Public Hearing: Chairman Smith opened the public hearing for Gary & Katherine Tuck's application to subdivide property located at 14 Forest Drive, MBL # 07-03-66 at 9:08 p.m. Bill Doucet of Doucet Survey would be representing the applicants.

Mr. Doucet stated that the Tuck's are proposing to subdivide a six-acre parcel into two lots, located on Forest Drive. He stated that the parcels are shaped to allow access to the back of the pond. State subdivision approval has been applied for and received and a drainage report is being submitted to the town (drainage report was then submitted by Dennis Quintal).

Noting the application was complete,

MOTION: Mrs. Fillio motioned to invoke jurisdiction of the subdivision plan for MBL# 07-03-66. Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

Mr. Doucet then noted the lot size calculations.

Scott Ratta of 128 Willow Road stated that this property being subdivided was originally subdivided off of his parcel and when he bought his house from Charlotte Wall he was told the lot next door could not be re-subdivided. He said that he realizes if the plan meets all the subdivision requirements he cannot stop the subdivision but he does want it known that he objects to the plans positioning of the proposed house. Because of the elevation of the proposed home's location, the new house will have a clear view into his house as you can't plant trees high enough to block its view.

It was noted that the proposed house's location was about 300 to 400 feet away from the Ratta's house. Mrs. Campbell agreed that if that the plan meets all the requirements, they must approve it, but that the placement of the house on the plan is just a potential location.

Mr. Doucet stated that the proposed position is a fairly logical site for the house. He noted that the elevation might be a twelve-foot slope. The frontage on the new lot was 227 feet and that fire suppression requirements have also been met.

Fire Department Lieutenant Andy Conti reported that the cistern located on Forest Drive is within 1200 feet of the home.

Kevin Frye of 6 Forest Drive stated that he had a concern about the re-assignment of house numbers along Forest Drive and whether this proposal would cause another re-assignment.

It was noted that it was this proposal that prompted the re-assignment in the first place.

He stated that he thought the Tuck's might want a buffer as well. When he inquired about the status of the hay trail at the back of the lot. He was informed that it would stay.

Mrs. Tuck indicated that they have a potential buyer on the property.

Mr. Quintal stated that on behalf of the Tuck's he has submitted a drainage report that has not yet been reviewed by the Conservation Commission. In summarizing the report he stated that almost all of the site runoff drains into the wetland area. There is a slight increase runoff but it drains into the site's wetland and then into the pond. He concluded that there was an insignificant increase amount of runoff that would be of no impact to the wetland resource area.

MOTION: Mr. Morse motioned to grant approval of the subdivision plan for MBL# 07-03-66 as presented with the following conditions:

- 1. The Rockingham Planning Commission review the plan;**
- 2. The East Kingston Conservation Commission review the drainage report; and**
- 3. Verification that all new bounds (2) have been inspected and approved by the Building Inspector and the Certificate of Monumentation form be submitted.**

Mrs. Fillo seconded. With no further discussion, the motion carried 5-0.

David & Patricia Morse– 40 Willow Road Subdivision & Site Plan Review – Public Hearing : Chairman Smith opened the public hearing at 9:30 p.m. for David and Patricia Morse's application to subdivide 20.29 acres into three lots and to develop a elderly housing community on Willow Road, MBL# 08-02-19.

Representing himself, Mr. Morse recused himself from the board for this hearing and presented a plan reflecting a subdivision of land on Willow Road and a proposed road. He stated that he is proposing to subdivide 20.29 acres of land into three lots – one to be for a single family home, one containing his existing home, and the third to be developed into an elderly housing community. Based on the Elderly Housing Ordinance calculations he is permitted to have up to 42 bedrooms on the parcel. He is considering housing those bedrooms in four to five buildings that would be set far back into the woods. Residency requirements would be established and deemed to age 55 or older in an effort not to overburden the school and public services.

He stated that the existing driveway would be converted into a road and widened out into a cul-de-sac. He highlighted the boundary lines on the plan. It was noted that the cul-de-sac was one hundred feet too long and would need to be shortened.

He stated that he is looking for subdivision approval and approval of up to 42 bedrooms. When questioned as to where the housing designs were, he replied that until he gets approval for them he can't design them.

Members informed him that they can't approve the homes until they are drawn on the map. At this point they can only review the subdivision.

When inquired about the type of housing to be used, Mr. Morse stated that the ordinance says they must be rural in character and each unit must be at least 800 square feet. He could build one and two bedroom units in as few as two buildings or as many as he can fit on the area – there could be fifteen two-family houses, though he wants to do it in four to five buildings. Each building cannot be over thirty-five feet in height.

Ron Vars of 49 Willow Road asked if assisted living facilities would be allowed. He was told that they are not permitted in the ordinance – assisted living would change the use from a residential to a commercial use.

Mrs. Campbell stated that although she understands why two applications were submitted, the board can only act on one at a time and treat them as separate issues – invoke jurisdiction on one then settle it before the other is considered. She further stated that the statutes says the town's ordinance shall determine what constitutes a complete plan and this plan is missing many items (abutters, test pits, 4K areas, lot sizes, etc.

Mr. Morse stated that he just got the plan this evening. He also stated that he does not need State subdivision approval as each lot is over five acres in size.

Mrs. Fillio suggested this hearing be continued until the plan can be prepared enough to be deemed complete.

Ann O'Bara of 32 Willow Road stated that as a resident of twenty-five years she has two concerns. 1) How will these proposed buildings affect the area drainage? And 2) what can be done to address the anticipated increase in traffic on this already dangerous road?

Mr. Morse replied that Dennis Quintal is currently doing the drainage analysis.

Lori Cashman of 18 Willow Road questioned where the parking would be for this 42-bedroom community.

Mr. Morse replied that parking would be all along the cul-de-sac; over 800 to 900 feet back from Willow Road. There will be parking in front of houses. He then outlined the wetlands identifying the very poorly drained soils.

He agreed that the board should treat the subdivision separate from the site plan and then asked for an extension of the site plan review so he wouldn't have to re-submit almost \$1,000 in application fees.

Mrs. Campbell stated that the 90-day clock is for the benefit of the applicant, as long as the applicant continues to grant the board extensions. She said she has philosophical issues with combining the two applications, but she can understand why he did it that way. The subdivision plan should be addressed first and then the site plan review when the plan is completed. She suggested continuing the entire project for now and focusing in on the subdivision at the next meeting. If site plan review information is available then, it can be placed on the plan for review as well.

Mr. Morse stated the reason he does not have the buildings on the plan yet is that their designs are subject to change, though he could show the footprint. He can also submit photos of equal types of buildings.

Chairman Smith stated that the board needs an idea and proof that that many bedrooms can be placed.

Mrs. Campbell stated that the plan also needs to show elevation per the site plan review regulations. The board has two choices: 1) call the plan incomplete and not accept it, or 2) accept it with deficiencies.

Mr. Morse stated that the plan does show topography – the soil is shown.

MOTION: Mrs. Fillio motioned to continue this public hearing to Thursday, December 21, 2000 at 7:45 p.m. at the Town Hall
Mr. Fillio seconded. With no further discussion the motion carried 4-0 (Mr. Morse abstaining).

David Baker/Apple Hill Golf Club – Discussion: Chairman Smith re-opened discussion with David Baker at 9:58 p.m. Mrs. Campbell noted that the legal notice for the 1986 ZBA notice says “to extend the golf course and establish a driving range”. This was approved with five conditions. She said that the back nine and the driving range was added then.

Mr. Baker and Attorney Phillips maintained that the Par 3 mini golf (pitch and putt) course is the same as a driving range.

Mrs. Campbell went on to say that the board needs to decide whether the Par 3 is a change or expansion of use over the driving range.

Mr. Baker stated that the driving range is gone – this pitch and putt would be located in the exact same location the driving was.

Attorney Phillips stated that all the shots on the pitch and putt are wedge shots. He added that Mr. Baker would like to diminish Mrs. Grant's fears and put in a row of attractive trees on the Baker land completely around the boundary and place a chain link fence in front of the trees to be sure no one will go over to her property.

He said that they don't want to go through a site plan review because it's a matter of rights – who volunteers to set yourself to the jurisdiction of others who might not want to cooperate? Any one can file and appeal – that is their right.

Mrs. Fillio stated that there is another person here who is located across the street – will there be bushes there too? The board needs to think about protecting the Planning Board as well.

Attorney Phillips requested that the board allow them to continue and let the other property owners take them to court. They want to have piece with the town, not litigation.

Mrs. Campbell reiterated that the issue before the board is to take jurisdiction and they need to think about litigation – they can go through the site plan review process while going through the work. Continuing to construct the course and going through the site plan review at the same time is a good compromise.

Roby Day stated that the issue is to decide whether or not this is an expansion or change of use.

Mrs. Campbell replied that if there are bulldozers, then there is a change.

Mr. Baker responded that golf is golf. The course would be the same size of the existing driving range practice area – pitch and putt is also a practice area. He said he would even agree to sit with the abutters and work this out.

Mrs. Campbell stated that the Planning Board needs to be the impartial party.

Attorney Phillips reiterated that he does not think they need to go through a site plan review.

Mr. Baker pleaded that they would meet the same conditions set in the 1986 variance – doing differently would be a violation of the variance. He said they would plant trees for the abutters.

Attorney Somers stated that allowing Mr. Baker to proceed while undergoing a site plan review is okay with her client. However, she is not sure the same area would be used for a pitch and putt as with the driving range. She said that they don't believe anything is going on in that area of the parcel – this is a factual discrepancy.

Mr. Baker stated that the variance was allowed on an 8.36 acre parcel for a driving range – that is how big the entire parcel is.

Chairman Smith stated that he would like to see a motion now of whether or not the board thinks the proposed use requires a site plan review or not.

Mrs. Fillio inquired as to what the Selectmen told Mr. Baker.

Mr. Fillio replied that the Selectmen told him to stop and file with the Planning Board.

Mrs. Fillio stated that this was after the complaint and after they got State approval.

Mr. Baker asked if he would be allowed to continue construction – he does not see a difference – this is the same footprint as the driving range.

Mrs. Fillio stated that a golf course is a golf course – she agrees there is a change of use as far as the holes are concerned, but the board does not have the authority to define the change of use.

Mrs. Campbell disagreed – once there were flying balls, now there are people in that area.

Mr. Baker responded that there are people on the range all the time – there is no distinction.

Mrs. Fillio's motion to not require a site plan review based on the proposal being within the operations of a golf course failed for lack of a second.

Mr. Morse's motion to bring the issue back up for site plan review and allow the construction to continue also failed for lack of a second.

Dr. Marston asked if the area in question was vacant before.

Mr. Baker said it was not vacant – the abutters called it vacant. It has never been vacant; it has been used for the driving range. He said if the board needs testimony to that fact he would swear on the Bible. They use all of that land for the driving range – it was never vacant. The town said to go ahead and he made financial commitments. He said he is still responsible for that commitment.

Mr. Fillio asked Mrs. Grant if it was her intention to stop the process. She replied that it wasn't; she only concern is the buffer zone. Mr. Fillio stated that Mr. Baker said he would maintain one.

MOTION: Mrs. Fillio motioned that the Planning Board not require the applicant to apply for a site plan review for the construction of the pitch and putt golf course as presented. Mr. Fillio seconded. With no further discussion the motion carried 5-0.

Mrs. Fillio requested that the board be polled. Those in favor of the motion:

Chairman Smith - yes
John Fillio - yes
Dr. Marston - yes
David Morse - yes
Beverly Fillio - yes

Growth Control Ordinance: Maura Carriel distributed information on the board's annual review of the GCO. Members were requested to review the material and be ready to discuss it at the December 7th work session.

MOTION: Mrs. Fillio motioned to hold a public hearing on December 7, 2000 for the board's annual review of the Growth Control Ordinance. Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

With no further business,

MOTION: Dr. Marston motioned to adjourn. Mr. Fillio seconded. The motion passed 5-0 and this November 16, 2000 Planning Board meeting ended at 10:40 p.m.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file November 19, 2000.

Approved: _____

12/21/00