



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2007-2008
David F. Sullivan, Chairman
Edward Warren, Vice Chairman

MINUTES

(Public Hearing of 20 November 2008)
6:00pm

AGENDA:

- ◆ Call to Order
- ◆ Review of the Workforce Housing Ordinance
- ◆ **Public Hearing** for a site plan review for Grant Carter, 68 South Road, East Kingston MBL 13-02-01 (PB #08-OB), regarding a golf driving range.
- ◆ **Public Hearing** for Diana Whitmore, 108 Depot Road, East Kingston, MBL 04-02-11, regarding a Home Occupation involving doggie day care and boarding.

CALL TO ORDER: The regular meeting of the East Kingston Planning Board was called to order at 6:00PM.

ROLL CALL: Mrs. White called the roll.

Members present – Dr. RA Marston, Mr. R Morales, Mr. D Sullivan, Mr. E. Warren and Mr. D Pendell, ex-officio.

Alternate members present –Mr. J Cacciatore and Mr. R Forrest were not present.

Advisors present – Dr. Jill Robinson, PhD., Planner, Rockingham Planning Commission (RPC)
Raymond R. Donald, Building Inspector

Voting members –Chairman Sullivan noted there was a full voting Board present.

Review of the Workforce Housing Ordinance

Mr. Morales stated that when he had reviewed the ordinance, he felt it was confusing. It was hard to interpret what the dos and don'ts were, and he felt it was a more difficult ordinance than the Town's ordinances usually read.

Dr. Robinson asked if the problem was that it was a long ordinance. Mr. Morales explained that their ordinances usually have bullets, which made them easier to read and understand. Could Dr. Robinson revise it to a bullet format? She said she could. Dr. Robinson asked if it would be helpful if the Board walked through it, and they could ask questions as they went along. The Board agreed it would be helpful to do that.

Dr. Robinson explained that part of the length was the fact that the ordinance was being used for all the towns that want to put together a workforce ordinance and there are many notes included.

Purpose and Authority sections. These are standard issue section you would most likely have in any ordinance. These would be good places to use bullets. Language from the new law has been added, especially in the Authority section.

Applicability. Dr. Robinson directed the Board's attention to the long note on page two. To summarize it, the town would need to decide where they were going to allow this kind of housing. The law says you need to allow some kind of workforce housing in 51% of your land area that is zoned residential. This does not mean that multi-family housing has to be allowed everywhere; that just needs to be allowed somewhere.

The note speaks to how to decide where to put it, if you want to exclude conservation areas, do you want to allow it in all residential areas. Once you make those decisions, that paragraph will be pared down to your decision of where you will allow it.

Appeal. This is a new requirement of the new law, and lets you know what could happen if this type of application were to be denied.

Section IV. Procedural Requirements. Bullets could be added here also. The basic concept is that the new law adds these requirements for how you go through the new procedure. To summarize, the applicant has to state up-front that this is a workforce housing development. If they don't say that, they cannot avail themselves of the builder's remedy later on if things happen to go bad. The rest states that you go through your normal procedures.

Mr. Pendell asked if it were true that with the first meeting with the builder, the Board should know if they are intending on it being workforce housing. As part of the application, there should be a statement of intent and it is up to the builder to do that. Mrs. White asked if when she accepts an application, should she ask the builder at the time they are applying if it is for workforce housing?

Dr. Robinson stated that the burden would be on the applicant. They would file a written statement of intent when the application is initially submitted. The applicant might state the fact at the first hearing, or it might be obvious from the plan.

Part V. Procedural Requirements/Planning Board.

Paragraph A. This is what happens when you are just about done with the application, when you are doing your conditions of approval. This includes monumentation, bonding, etc. You would notify the applicant of the conditions, and then give the applicant a chance to ascertain what the costs of complying with those conditions would be. Under the law, the applicant can say the conditions placed on them make the project economically unviable and they cannot complete the project with those conditions.

Paragraphs B, C and D. This is the process through which the Board and the applicant try to agree on what conditions would make the project viable. When the final decision is reached, if the applicant still does not like it, or if they are denied, then they have an opportunity to go through the appeals process, which is called the Builder's Remedy. Dr. Robinson agreed that Part V could be put into bullet format as well.

Dr. Robinson explained that these procedural requirements are the major part of the new law.

Paragraph VI – Definitions. This explains the terms. For example, it explains the reasonableness standard, exactly what is workforce housing, the fact that it is different for owner housing (housing for a person who makes a median income) versus renter workforce housing (which is housing affordable to someone who makes 60% of the median income).

Page 5 goes into detail of how you are going to get builders to do this. The traditional approach to inclusionary housing is to acknowledge you realize the builder won't be able to sell the unit at the market rate, so you give some sort of cost-lowering incentive to build this type of housing. There are many ways to accomplish this, and the ordinance uses some of the more standard ways, including density bonuses and reducing the lot size. Mr. Morales noted these types of incentives were used for cluster housing. Dr. Robinson reported that Atkinson decided to fold this into their cluster ordinance. Perhaps East Kingston would want to do this also, or decide to allow it in any zone. That would be up to the Town.

This does not predict whether it would make people come and want to build workforce housing. She would recommend that they look at it each year and see if they got any developments. Did they not get any because of the market or the ordinance?

Mr. Pendell asked if this ordinance as presented was what the RPC was starting all the towns at. Dr. Robinson answered it was the standard they saw. The State had had model ordinance that was written before the new law that had had a tiered model which included many types of housing. The RPC decided since the law was only about workforce housing, they would keep it simple and only focus on that.

Mr. Morales asked Mr. Donald if the density bonus for cluster housing was 10%; Mr. Donald replied he did was not sure.

Dr. Robinson stated she would look at other sections of the ordinances to make sure there was nothing that was a gross inconsistency.

Mr. Sullivan asked if it would be more viable to go with cluster housing in order to make it work. Dr. Robinson agreed it would.

If you think about it, what you are really trying to do it to get the developer to build units that they can't sell at the market rate. In order for them to do that, you need to give them some cost savings. Cluster does that by smaller lots or reduced set backs. Some people even do narrower roads to cut back on costs. There would be a line where you would be giving too many incentives.

Mr. Pendell stated there were no penalties for not meeting the quota, but on down the line if all the land was used up and the Town could not meet their fair share, he did not want to see them get hit with penalties each year like education and donor towns. He opined for example that in 10 years time, in looking at workforce housing, if towns do not have enough they could have to pay the state. Mr. Pendell was afraid if they trickled it in, they would not have enough to meet their share.

Mr. Morales was afraid for it to happen as quickly as the elderly housing did. When the Town voted it in, there was 10% per development, with no cap. By the time they realized what was happening, it was too late. Maybe the solution was to say wherever it was zoned residential, it should be allowed. Mr. Pendell was concerned with higher end developments.

Mr. Donald reminded the Board they already had workforce housing with the Brandywine development, and it was relatively well maintained. You would not want to put the Town in a position that would end up with a cluster development that was a slum. Dr. Robinson stated that a \$250,000 house could not be considered a slum, and if a person had that house, they would most likely take care of it. Mr. Donald stated that for the most part, the community as a whole is comprised of people who care about their homes.

Dr. Robinson thought that the development could be comprised of both affordable housing and some that is not. Mr. Morales thought if a house were built on a slab, it would automatically save some money on the building.

The Board discussed that the minimum lot size was 2 acres, but it was less for a cluster development as long as they set aside some uplands. Mr. Warren asked why would they *not* want it to be open to build where other residential building is allowed.

Mr. Morales thought they might want to do that, but would need to look at a topographical map of where things were now so they could decide if that was what they wanted to do.

Mr. Pendell's concern was that where the more expensive homes are built (\$750,000), all of a sudden these less expensive homes (\$250,000) could be built and it would bring the worth of the more expensive homes down. They might not be able to do anything about that, but they could take a look.

Mr. Morales agreed that it would be good to know what the Town already has that would qualify as workforce housing. Dr. Robinson thought it would be a good exercise, but was completely separate from the ordinance. You would not need to do that inventory to comply with the law, but if your ordinances are a barrier, you would be in trouble.

Mr. Morales noted they could count the number of units at Brandywine and ascertain how many more units they needed from that number. Dr. Robinson clarified that the law approaches it in terms of the percentage of your land area and not units. Ultimately, the ordinance had to be set up to allow workforce housing in 51% of the residentially zoned land in Town. Conservation land will be used towards calculating the 51% of buildable land, but cannot be built on. If there were more commercial areas, that would knock down the percentage since it would not be zoned residential. Dr. Robinson stated that the intent is to avoid having a town state that they do not allow this type of housing anywhere in their town.

Provision VIII. General Requirements for Workforce Housing Units.

A. Architectural compatibility of all units. This section is in line with Mr. Donald's comment on avoiding the look of a slum. If the Town is going to allow a development with some market rate houses and some are not, they are not able to segregate and stipulate that type of housing can only be built in certain areas. The houses could look the same on the outside, but have upgrades inside that made them worth more. This is not a requirement of the law, but came from state law. It is a Planning Principle and Dr. Robinson opines it is a good provision and would make for a better development. If the Board does not like it, it can be taken out. Mr. Warren agreed in would be appropriate to have it mixed.

B. Phasing. This is so a developer could not build all his market rate houses first and say he ran out of money. You would have a 1:1 situation of market rate and workforce houses being built. The builder may want to build some market rate unit sto make enough money to build the workforce units. Mr. Pendell stated he would have more of a problem with a builder trying to dupe buyers by building and selling all the market rate houses first, and then building workforce housing units which upsets the people who bought the market rate houses.

IX. Affordability. The RPC worked with New Hampshire Housing Finance on this. The main gist is that you have to certify that the person purchasing the house is making the income they are representing.

X. Administration, Compliance and Monitoring. The good thing is that the Town does not have to take this on in terms of managing the continued affordability and handling some of the more onerous monitoring provisions. New Hampshire Housing Authority can administer this ordinance. There are some provisions on pages 7 & 8 showing there are provisions in the deed, and it limits the amount of equity over time they can make on the house when they sell it. Dr. Robinson iterated that it stated: "*not to exceed 25% of the increase of the unit's value.*" Mr. Pendell thought 25% was too high a number and asked if the Board could make that number lower if they wanted to? Dr. Robinson stated they should find a number they are comfortable with, taking into consideration that they wanted to make the number one such that a person would still want to purchase the house.

Mr. Pendell stated an example. A house were bought at \$200,000 and the owners lived there for 5 years. The market went up enough so they could sell the house for \$250,000. The next person purchases the house for \$250,000 and lives there for 5 years, and the market goes up again. Now they can sell it for \$275,000. Within a period of 10 years, you have taken that affordable house and bumped it up to a non-workforce house price. Mr. Morales opined that the indexing would go up with inflation, and he figured just the CPI could go up 35-40% in 10 years. Dr. Robinson referred to page 6 with the provision that the municipality has a lien, which is how you keep the continued affordability; she was not an expert on the subject. Mr. Pendell had some questions and asked if she could look into this and explain it to them at the next meeting, and Dr. Robinson agreed to do that.

She did state that the last sentence on paragraph IX.B. stated it pretty well, but she would do some research on it for the Board. "*Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipalities lien and adherence to this Article's definition of affordable housing for a period of 30 years.*"

To get the future maximum resale value, you take the fair market value minus the lien value. The lien is equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The lien will be indexed to the same rate as the CPI. The lien functions to temper the increase you would make. Mr. Sullivan remarked it worked as a control so it would not get out of hand.

Mr. Donald wanted to know how the Town could go about controlling the lien and making sure it is handled properly. That would increase the cost of Town Government.

Dr. Robinson stated that the Town could choose to administer it on its own, or have the New Hampshire Housing Finance Authority administer it. The Town would be the lien holder, but the Housing Authority would keep track of it. Mr. Morales asked if there was a cost to the Town to have the Housing Authority administer it, and Dr. Robinson stated they said they would do it for free as long as you use these tools and you use their method. That is the mission of their organization.

Mr. Morales was concerned that the cost could come back onto the Town in a big way if the Housing Authority decided all of a sudden that they needed to start charging for the service. He thought the annual review process would help in tracking what was happening. Dr. Robinson thought that if they wanted, the Town could budget in some small amount each year towards future administration.

Mr. Morales asked if Dr. Robinson could address Upton and Hatfield's concerns when she comes back with the revised ordinance at the next meeting. She said she would. It was clear that they did not understand the fair share analysis.

XI. Relationship to other ordinances and regulations. These are most likely already in the Town ordinances. It says you can still have environmental, water supply, fire and life safety protection restrictions. If you put those restrictions on the developer, they are off the table for discussion.

Dr. Robinson stated that Board still had a lot of decisions to make such as making choices about where it would go, how much multi-family they wanted to allow, etc. She will clean it up some in the next revision with bullets, but some of the provisions are straight from the new law and do not have as much flexibility.

Mr. Warren asked about the affordability and certification of income levels on page 6. He understood that was to make sure the potential buyer meets the criteria. He does not see where it addressed, or do they care, if three months down the line the person gets a new job and now has doubled their salary. Dr. Robinson stated it would be dealt with through the Annual Reporting. She answered that in terms of the home buyer, there was not a good way to deal with it. It was easier to track for a renter.

Mr. Pendell stated this was one of the reasons he is for lowering the percentage they can make on the resale of the house. This should be for the person 2-3 years out of college, who is working their way up and needs a place to live to stay in Town. Dr. Robinson stated that the other part of that was that people usually worked their way up to a larger house through a series of smaller houses along the way.

Mr. Pendell asked how they could keep the affordable housing affordable so, for example, someone could not put a second level on a one storey house and now it was not affordable. Was there something they needed to write in the ordinance so they cannot expand? He felt if they were going to have an ordinance to allow affordable housing, there needed to be provisions to always keep it affordable. Dr. Robinson's will explain that in a clearer manner on the next revision. Mr. Morales agreed there needed to be some sort of checks and balances. Dr. Robinson stated she would do some research on how they would deal with improvements that could make a house *unaffordable*.

For the next review, Dr. Robinson will clarify the lien section, add more bullets, and look at the cluster provision.

Since East Kingston is now an SB2 Town, the first public hearing on this is in the beginning of January. If you don't make any changes, you could take it straight to the warrant article. If you do decide you want to make any changes, you will need to have a second public hearing in January or February. Work on the ordinance needs to stop around mid-February so it can make it on the ballot.

The Planning Board decided they needed to have a work session in December, and choose the 11th to meet.

Living Space Definition.

Mr. Donald brought up the fact that at the last meeting, the Board had had discussion on the living space definition and had not made any decision on whether to accept the new definition or not. Mr. Donald felt very strongly that it needed to be changed to prevent any problems with accessing values.

New wording would have the definition read:

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. Hallways, closets, storage space, bathrooms, lofts, bedrooms, and all other rooms or areas shall be included in living space. Unfinished basements and unfinished attics shall not be included as living space.

The Board agreed there would be no problems with this definition and agreed on it as read. This will be noticed as a public hearing for the work session on the 11th and voted on.

PUBLIC HEARING FOR A FOR A SITE PLAN REVIEW FOR GRANT CARTER, 68 SOUTH ROAD, EAST KINGSTON (PB #08-OB) MBL 13-02-01, REGARDING A GOLF DRIVING RANGE.

Mr. Sullivan opened the public hearing. Messers Grant and Lane Carter were present.

Mr. R. Morales recused himself and stepped away from the table for this hearing as he is an abutter.

Grant Carter explained to the Board that he and his brother Lane wanted to run a driving range business at their property at 68 South Road. Walter Carter, their father, owns the property. They wanted to take approximately 12 acres out of current use to be utilized for the driving range.

They would have no advertising signs for the business, only two silhouettes of golfers on the side of an existing building. Any advertising would be by word of mouth. They would have no electricity and no lighting, as they would not be doing business at night. They would have a porta-potty on the premises which would be emptied once a week.

Mr. Pendell asked if the parking lot was going to remain unpaved. Mr. Grant said they did not anticipate paving the parking area, unless the Board felt they wanted them to. And they were not sure if they would need to do something at the edge of the road that would lead into the parking area. Mr. Pendell asked how they were picking up the balls; Mr. Carter answered that he had a mechanism he attached to a tractor for picking up the balls.

Mr. Warren asked how close the nearest neighbor was, and worried about where the golf balls would land. Mr. Carter explained to him, looking at the large plan, that the land of either side of the proposed driving range was their land also and since there were not houses in the vicinity, the golf balls could not come near to anyone's house. There was a house across the road, but that was the opposite direction.

After discussion, the Board decided that the proposal was really for a business proposed in a residential area. It would not fit into a Home Occupation category either, as there was no house on the premises. They realized they could do nothing for the Carters, and would have to deny the site plan review. The next step would be for them to go before the Zoning Board to see if they could obtain a variance.

Mrs. Carter asked the Board if it would qualify as a home occupation if there were a house on the property, and they answered that it did not fit into any of the ordinances existing categories so it would not.

Mr. Sullivan entertained a motion.

MOTION: Mr. Pendell **MOVED** the Planning Board DENY without prejudice the application of Grant Carter, 68 South Road, East Kingston MBL 13-02-01 (PB #08-OB), regarding a golf driving range based on the fact it would be a business in a residential area. Mr. Warren seconded, and the motion passed unanimously.

Mr. Sullivan closed the public hearing. Messers Carter thanked the Board for their time.

Mrs. White informed Mr. Grant that he could pick up a variance application at the Town offices, and that the next Zoning Board meeting would be on Tuesday, December 30.

PUBLIC HEARING FOR DIANA WHITMORE, 108 DEPOT ROAD, EAST KINGSTON, MBL 04-02-11, REGARDING A HOME OCCUPATION INVOLVING DOGGIE DAY CARE AND BOARDING.

Mr. Sullivan opened the public hearing. Mrs. Whitmore and Dave Coleus were present.

Mrs. Whitmore had provided the Board with drawings of her proposed kennel, photos of the proposed location, and a detailed explanation of how she would run her business. She stated she wanted to run a doggie day care and overnight boarding facility at a location on her 46-acre lot. She, her husband and her daughter would run the business; they would have no other employees.

Mr. Warren asked about what road she would use, as he knew there was no road there. Mrs. Whitmore stated there was an old logging trail on her property and she would use that as a driveway.

Mrs. Whitmore stated she had read the home occupation section of the ordinance, and unless the Board could compare her proposed doggie day care to a child day care, she could find nothing else that would match her proposal.

Mrs. Whitmore asked if it could qualify as a home occupation if she added onto her house instead of constructing a separate building. The Board answered that the category she was proposing still would not fit under a home occupation. The Board agreed that her proposal did not match any of the Home Occupation categories, and that like the previous applicant, what she proposed was more of a business in a residential area. She also would need to approach the ZBA to obtain a variance.

Dr. Marston said that at one time someone had wanted to build a kennel in Town to breed Greyhounds and the Board had asked the Department of Agriculture if it would come under agriculture, and they said yes, it would. This is a gray area and Mrs. Whitmore would need to get some more information for the ZBA.

The Board informed Mrs. Whitmore that the entire Town is zoned agricultural/residential and if she could prove that dogs are considered livestock it might be that she was covered.

Mr. Sullivan entertained a motion.

MOTION: Mr. Pendell **MOVED** the Planning Board DENY without prejudice the application of Diana Whitmore, 108 Depot Road, East Kingston, MBL 04-02-11, regarding a proposed Home Occupation involving doggie day care and boarding, based on the fact it would be a business in a residential area. Mr. Morales seconded, and the motion passed. Dr. Marston opposed.

Mr. Sullivan closed the public hearing. Mrs. Whitmore thanked the Board for their time.

Mrs. White informed Mrs. Whitmore that she could pick up a variance application at the Town offices, and that the next Zoning Board meeting would be on Tuesday, December 30.

HANDOUTS TO THE BOARD

- **Planning Board Meeting Minutes** of November 13th.
- **RPC Memo** regarding energy grants.
- **RPC Memo** regarding available Planning assistance grant funds.
- **Wind Turbine** article
- **RPC Memo** re: reference materials to assist towns in response to SB342

Mr. Sullivan closed meeting at 7:55pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

David Sullivan
Chairman

Minutes approved January 6, 2009