

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
December 17, 1998

FILE

AGENDA

- 7:45 Citizen's Petitions – Public Hearing  
8:15 La Noria Dev. Corp./Thomas Gage – Powwow River Road Subdivision Proposal – Public Hearing  
8:30 Joseph O'Sullivan – 1 Depot Road Site Plan Review Proposal - Discussion

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, John L. Fillio – Ex-officio, Dr. Robert Marston, and Alternate Beverly A. Fillio.

Absent: Alternates Robert Nigrello and Peter A. Riley.

Others attending: Sarah Campbell – RPC, Lawrence K. Smith – Conservation Commission Chairman, Glenn P. Clark – Building Inspector, Thomas Gage, Gerry Miller, Kenneth Kuster, Dennis Quintal, James Roby Day, Veda Paoletta, Nat Rowell, Chip Dodge, Joseph and Mary O'Sullivan, Elaine Bean, Larry Bean, Steve Wilson and several other members of the public who did not address their concerns publicly.

Chairman Smith called to order this December 17<sup>th</sup> public planning board meeting at 7:32 p.m. with the roll call. He then designated Alternate Beverly Fillio to participate in voting matters before the board.

November 19, 1998 Planning Board Minutes: The Board reviewed the minutes dated 11/19/98 and noted corrections.

MOTION: Mrs. Fillio motioned to accept the November 19, 1998 Planning Board minutes as corrected. Mr. Johnson second. With no further discussion, the motion passed 5-0.

Planning Board Vacancy: Chairman Smith announced a vacancy in the Planning Board member status in lieu of the recent passing of long-time member Cathy George. He stated that a letter of interest [to fill this position] has been submitted by Alternate Member Beverly Fillio. Discussion transpired resulting in the order that the Planning Board advertise for a new alternate member and that alternate members Robert Nigrello and Peter Riley be afforded an opportunity to state their position about this new regular member vacancy prior to the board's recommendation of the regular member appointment.

Incoming Correspondence: Conservation Commission Chairman Lawrence Smith submitted two videos from the Office of State Planning (RSA 155E: Excavation and Erosion and Sediment Control). He noted that these videos are provided to the town at no additional cost.

Work Session: The Board scheduled a work session to be held on Thursday, January 7, 1999 at the Town Offices at 7:00 p.m. The agenda will include discussion on zoning amendments, density bonuses to cluster development, and impact fees.

Zoning Amendments: The board discussed to need to hold a public hearing on the proposed 1999 zoning amendment prior to the next regularly scheduled planning board meeting.

MOTION: Mr. Johnson motioned to post and hold a public hearing on the 1999 Proposed Zoning Amendments on Thursday, January 14, 1999 at the Town Hall at 7:00 PM. Dr. Marston second. With no further discussion, the motion passed 5-0.

Citizen's Petitions: Chairman Smith opened the public hearing at 7:45 PM on three citizen's petitions pursuant to RSA 675:4. The first petition was submitted by Elaine Bean, which proposes the *enlargement of the commercial district* by extending the district to include MBL# 10-03-09, 14 Powwow River Road. Members located the parcel on the town map and noted buildings, lot size and frontage.

Mr. Larry Bean stated that the commercial district currently abuts the proposed parcel.

Mrs. Elaine Bean stated that there is no residence on the parcel and there is limited use of the property. She said that because the property is not used residential and cannot be used commercially, she cannot sell it. She went on to say that this proposal will only add a few hundred more feet to the existing commercial zone.

Mr. Chip Dodge stated that he uses one portion of one of the buildings for his carpentry business and that he would like to see this property zoned commercial.

Mr. Fillio questioned Mr. Dodge's commercial use of the property when the land is currently zoned residential.

Mr. Dodge responded that he got permission from the building inspector to use a portion of a building for his business. He stated that the building inspector advised him that as long as there is no noise, dust, traffic, etc, it is okay.

Mr. Fillio asked that as long as someone violates the zoning ordinance quietly, it's okay? He went on to say that the town's citizens establish the rules and that those rules are not being adhered to here. This is against the zoning laws.

Mr. Dodge reiterated that prior to moving into the building, he asked the building inspector who said it was okay.

Building Inspector Glenn Clark responded that Mr. Dodge told him he needed more space, but that he was not running his business from that location.

Mr. Dodge again stated that the building inspector stopped into the premises himself and nothing was said.

Mr. Larry Bean stated that as an abutter, and with no vested interest in the property, this proposed commercial zoning of the parcel is in the best interest of the town.

**MOTION: Dr. Marston motioned that the Planning Board approve this citizen's proposal to enlarge the commercial district as presented and to note it in the notation on the ballot in accordance with RSA 675:4. Mrs. Fillio second. With no further discussion, the motion passed 5-0.**

The second citizen's petition was submitted by Catherine Belcher, which proposes that *septic system replacement for septic systems in existence prior to March 1999 be required to meet the State's minimum required setbacks*. It was noted that the town's setbacks for septic systems are 100 feet from Hydric A soils and 75 feet from Hydric B soils, both measuring 25 feet more than the state's setbacks.

Mr. Larry Smith stated that the Conservation Commission has reviewed this petition and has no problem with it. He stated that when this provision was originally written, the Conservation Commission felt the town's setbacks should be in line with the state's. He further stated that there is no scientific data to support the additional 25 feet required by the town.

Mrs. Belcher stated that she is proposing this amendment to relieve some of the burden placed on property owners who wish to replace their old or failed systems. She said that being the recording secretary for the Zoning Board of Adjustment has had an impact on this proposal as she has seen several property owners needlessly pay more fees, and wait longer to get approval for their septic systems when state setbacks could be met. She further stated that she has no personal interest in this amendment.

Mr. Fillio inquired as to what was the town's intent to require an additional 25 feet to the setback.

Mr. James Roby Day stated that when he sat on the Planning Board, the reasoning revolved around the town retaining its options to control local conditions. He stated that although there is no data to support having a larger setback, there is no data to say otherwise. He said that the board thought that larger setbacks would be better for the town, however, the board was only looking at septic systems as a whole, not replacement systems.

**MOTION: Dr. Marston motioned that the Planning Board approve this citizen's proposal to relax septic system replacement setbacks as presented and to note it in the notation on the ballot in accordance with RSA 675:4. Mrs. Fillio second. With no further discussion, the motion passed 5-0.**

The third citizen's petition was also submitted by Catherine Belcher, which proposes the town relax its setbacks for permanent facilities (excluding septic systems) from 100 feet from Hydric A soils to 30 feet, and 75 feet from Hydric B soils to 15 feet.

Mrs. Belcher went on to explain that since much of East Kingston is made up of wetlands, her parcel included, residents' use of their property is unreasonably restricted. She stated that she contacted Ken Kettering of the Wetland's Bureau who advised her on current permanent facility setbacks and recommendations supported by the Wetland's Bureau. She said that there are no state setbacks on permanent facilities (excluding septic systems) and that the town's setbacks cause unnecessary hardships to property owners. She

went on to say that she does have a personal interest in this proposal as someday she may want to add on to her house and/or her garage, but given the proximity of the Hydric B soil on her land, this would be impossible.

Mr. Larry Smith stated that once again the Conservation Commission has reviewed this proposal and supports the state's recommendation of 30 feet from Hydric A and 15 from Hydric B.

Mr. Bean stated that he also has a personal interest in this proposal. His son will be building a house in the near future and this proposal will allow him to relocate his proposed home and also build a small barn.

Mrs. Belcher further added that this proposal will not create new house lots as 2-acre parcels with 200-feet of frontage and ¼ acre dry is still required. This only gives more options to house and building placement.

**MOTION:** Dr. Marston motioned that the Planning Board approve this citizen's proposal to relax permanent facilities' setbacks as presented and to note it in the notation on the ballot in accordance with RSA 675:4. Mrs. Fillio second. With no further discussion, the motion passed 5-0.

**Thomas Gage/La Noria Development Corporation – Powwow River Road Subdivision Proposal – Continued Public Hearing:** Chairman Smith opened the public hearing at 8:16 p.m. for La Noria Development Corporation/Thomas Gage's proposal for subdivision on property located on Powwow River Road, identified as MBL# 3-2-2. This hearing was continued from November 19, 1998. Representing La Noria Development Corporation is owner Thomas Gage, Jr. and Gerry Miller LLS, from Parker Survey.

Mr. Miller submitted updated plans for this 7-lot subdivision explaining that they are back to square one in regards to the access road. He stated that they have met with the state and the state decided that the only way they would approve a road in that location was if the grade was lowered on the other side of the road. This grade is located on property owned by Steve Wilson and Mr. Wilson will not give his consent. He stated that they have offered Mr. Wilson compensation for allowing them to lower the grade as well as take on all costs. Mr. Wilson has declined.

Mr. Miller went on to say that Mr. Gayland of the NHDOT has stated his support in relocating the road access down to the town line. This option will have a greater impact on the wetlands than what was originally proposed. He then asked if the board would be agreeable to this new road location. If so, they will apply for the dredge and fill permits.

Mr. Johnson inquired how long the newly proposed cul-de-sac is now.

Mr. Miller replied approximately 1,290 feet. He stated that another rendition of this proposal would move the first part of the road right up against the stone wall resulting in about 1,000 square feet of wetland impact. Furthermore, this new rendition creates a more serious and dangerous scenario.

At Mrs. Fillio inquiry, Mr. Miller and Mr. Gage stated that they did not see any standing water along the stone wall.

Mr. Gage went on to say that he has suggested to the DOT that the speed limit along that section of road may need reconsideration. He stated that in his opinion, the speed limit was set too high, regardless of his proposal.

Mrs. Campbell noted that at the last meeting, the board didn't have an accurate measurement of the proposed cul-de-sac prior to waiver consideration. She stated that this information should be provided before the board entertains another waiver.

Mr. Miller stated that the earlier discussion of the road's location and reasoning for it can also be applied to this proposal as well. He stated that in measuring the road, on a rough scale, and from the edge of the pavement, the road's length is about 1,280 – 1,290 feet long.

Mr. Larry Smith stated that he has concerns with the new proposed road location and the 8-foot cut banking. He then inquired why the previously approved site is not longer valid.

Mr. Miller stated that this will be moved along with the markers.

Mr. Gage stated that the previous road/driveway proposal was for one house. He stated that they will still require grading and they will have to relocate the town bound. All this will be required to obtain a permit and that the DOT feels this new road location has adequate site distance. He reiterated that the DOT offered two options:

1. grade Mr. Wilson's property, or

2. move road to new location.

He stated that if the board is agreeable to the road's new location and length, they will apply for the proper permits.

Board members requested that the new proposed cul-de-sac length be noted prior to waiver consideration.

Mr. Fillio asked what impact the new road proposal would have on lot #1.

Mr. Miller stated that there would be no impact on the building site as it is located to the rear of that lot.

Mr. Kenneth Kuster inquired about hardship and if it needs to be demonstrated for the board to consider a waiver.

Members advised that the Planning Board has the authority to waive regulations in the Subdivision Regulations.

Mrs. Fillio asked if the applicants could propose fewer houses and come up with a better plan. She stated that it looks like a lot of houses for such a small subdivision, especially considering the wetlands.

Mr. Miller stated that he thought this plan was the best layout for the property.

Mr. Wilson stated that allowing the proposed cul-de-sac's length is approving a length 30% over what is allowed, and all of this is done to maximize the number of house lots. He stated that this property is not prime development land and that allowing a 300-foot extension to the cul-de-sac limitation is too much.

He went on to say that he does not want to grade his front yard and he also doesn't want to see a 1,300-foot cul-de-sac. If the plan doesn't meet the criteria then the board should not be compelled to grant it.

Mr. Kuster again inquired about hardship criteria.

Mr. Day stated that the town went to court over an issue of cul-de-sac length, along with the town of Kingston, and the same argument was applied then.

Mr. Gage stated that at the Planning Board's advice, he has had the fire chief out to make modification to the fire pond plan.

Mr. Miller stated that because Mr. Wilson chose not to allow the grading of his property, the road needed to be relocated.

Mr. Wilson responded that he is not to blame for the road's relocation, it was a bad plan and as far as he is concerned, the new plan is not good either. This is an issue of meeting the state's and town's safety issues. He further stated that the Planning Board should require a written letter from the DOT stating this new proposal is okay.

**MOTION:** Mrs. Fillio motioned that the Planning Board not grant a waiver for cul-de-sac to exceed the maximum length of 1,000 feet as provided for in Subdivision Regulations IV.C. Dr. Marston second. With no further discussion, the motion passed 5-0.

Members advised the applicants that a new plan with a cul-de-sac's maximum length of 1,000 feet may be submitted for further consideration.

Mr. Gage stated that at the last meeting, there were several issues that needed to be addressed. He noted the following:

1. Dredge and fill permits— won't know until plan is acceptable;
2. Site distance of road – still working on;
3. Abutter property lines— will show on new plan;
4. Report from Police Chief – done;
5. Names on deed – done Richard, Robert, Roger and Rosemary (deceased— heir approval);
6. Fire pond easement – The town does want to have written and recorded easement.

Mrs. Campbell recommended the applicant run the easement location by the Fire Chief for his approval.

Mr. Gage stated that the fire chief's biggest concern was that there be enough room to plow the hydrant area out. He stated that this will be shown on the plan.

Mr. Wilson questioned at what point would the applicants need to re-advertise this project. He stated that some abutters are not present, and asked how many changes to the plan constitute a new submission.

Mrs. Campbell responded that the plan was complete enough at the last meeting for the board to invoke jurisdiction. The plan's description has not changed. It was verbally noted and recorded at the last meeting of this hearing's continuation.

**MOTION:** Mrs. Fillio motioned to continue this public hearing for La Noria Development Corporation's proposal to subdivide 25-acres into 7 lots, located on Powwow River Road to Thursday, January 21, 1999 at 7:30 PM at the Town Hall. Mr. Fillio second. With no further discussion, the motion passed 5-0.

**Joseph & Mary O'Sullivan- 1 Depot Road-Site Plan Review - Discussion** Chairman Smith opened discussion with Joseph O'Sullivan at 9:20 PM. Mr. & Mrs. O'Sullivan are proposing the operation of a coffee shop/luncheonette at their 1 Depot Road residence. It was noted that although the address is 1 Depot Road, driveway access and proposed luncheonette access would be located on Haverhill Road.

Mr. O'Sullivan explained that the extent of the proposed business is a coffee/bagel shop in the morning and a small luncheonette in the afternoon. Only a couple of patrons' seats and no fry-o-lator or grill proposed. He stated that he was originally interested in doing this at the video store, but the water and septic plan there is questionable.

He stated that he has over 400 feet of frontage to his property. He said that he is proposing to convert the old TV repair shop (size of a single car garage) and the existing carport into a small diner. He then submitted a small sketch indicating the building's location in proximity to the house and road. He stated that he would install a driveway and parking lot that could accommodate 6 to 8 cars.

When asked about accommodating trucks, Mr. O'Sullivan stated that he would erect a sign prohibiting large trucks. He continued to explain that the hours of operation would be from 6AM to 2PM serving coffee, donuts and bagels in the morning and homemade chowders and lasagna at lunchtime. Donuts and bagels will be pre-made and bought, while the chowders, sandwiches and lasagna will be made in the home. There will be no short order cooking. This operation will be similar to the Loaf and Ladle in Exeter.

He stated that he would need state approval for the food preparation, but that under 16 seats, he would not need to offer bathroom facilities. A triple sink for food preparation would be installed with a separate sink to wash floors. A plan will also be submitted to the Board of Health.

Mr. Dennis Quintal stated that a commercial change of use does not necessarily need a new septic system, but a plan for a new one must be placed on file.

Discussion transpired about the business' access from the road. Mr. O'Sullivan proposed parking on the south side with entrance on the south. Members questioned the close proximity of the diner's entrance and the junction of 108 and 107. Concerns of congestion at this intersection were discussed. Mr. O'Sullivan stated that he would designate a separate entrance and exit to help alleviate any traffic concerns.

The board noted an emergency exit on the sketch and tables and chairs to accommodate 15 patrons inside. Mr. O'Sullivan proposes take out style dining - paper plates, no dishes to wash. He also noted a service window off of the proposed kitchen. He stated that his next stop was the building inspector and if this seemed like it was going to be a problem, he won't do it.

At member inquiry, Mr. O'Sullivan stated that trash removal would be executed via a dumpster located down by the existing woodpile.

Mr. Fillio stated that in discussion form, the proposal seems feasible, but this may change once the details of this project unfold.

Mrs. Campbell advised the applicant of the new site plan review aesthetic/standards adopted earlier in the year. She recommended Mr. O'Sullivan read the regulations carefully.

The board engaged discussion on the video store and its limitations for development by reason of the water and septic questions. Mr. Quintal stated that the state does not grant septic waivers for commercial uses, only residential. Members commented on the types of businesses that could be operated from the site, i.e., real estate, insurance, etc.

**Annual Review of the Growth Control Ordinance:** Mrs. Campbell read the GCO Sunset Clause, which states:

An annual November review by the Planning Board to determine if the population and growth data, in conjunction with the CIP, justifies the continued application of the ordinance. If, after making finding, the Board feels that this article is no longer appropriate, it is no longer effective. If, after making findings, the Board feels that this article is both appropriate and necessary to meet the purposes outline above, this article would be effective for another year, when another annual review shall occur. After making findings, the Planning Board may change the number of permits allocated annually based on data received during the year to ensure the purposes of this article.

The board discussed the new data calculated and submitted by Mrs. Campbell and noted that the growth trend has continued, similar to last year. Mrs. Campbell stated that she use the OSP's numbers to keep the source consistent. She also noted that she inquired three times to the Selectmen's office for the number of housing units in East Kingston, and three times she got three different answers. She recommended that an accurate figure be calculated and placed on town record for future inquiries.

Noted calculations:           housing units increased from 1997-1998 by 2.9%.  
                                  1996-1997 change in population – 1.4% increase  
                                  1995-1996 growth was 1.2%  
                                  13 permits allocated for 1998 – only 9 issued

It was noted that the number of homes determine the growth control – not the population. Mr. Day stated that the GCO was completed in this format to a) satisfy court requirements and b) justify not having a carry-over of building permits.

Mr. James Levelle stated that the strongest point here is that the town hasn't exhausted its allocated building permits for 1998. This indicates no need for a change.

Members reviewed the growth data of surrounding towns. It was noted that East Kingston share in the growth of the surrounding towns is 4.9%.

**MOTION:** Mr. Fillio motioned that in accordance with East Kingston Zoning Ordinance, and after reviewing the town's population and growth data for 1998, the board continue to implement the Growth Control Ordinance at a rate of 2%, (same as last year). Mrs. Fillio second. With no further discussion, the motion passed 5-0.

Mr. Levelle stated that he had questions regarding density bonuses in cluster development and would be happy to attend the Board's work session held on January 7, 1999. He continued to say that Mr. Dean Howard, developer proposing to subdivide a 100-acre parcel on Sanborn Road, would like to work with the town, possibly leaving areas for agricultural purchases. Further discussion is needed to acquaint him with open space incentives.

Mrs. Campbell stated that some could view that a cluster development with density bonuses would hasten the explosive growth of the schools.

Mr. Levelle responded that coupled with the GCO, it can't. He went on to say that Mr. Howard just finished up a 60-unit project in Hampstead with the majority of its resident's adult. A senior citizen complex/condos could be considered for Sandborn Road. He stated that he understands towns are trying to get the most houses with the least amount of children.

With no other business before the Board,

**MOTION:** Dr. Marston motioned to adjourn. Mrs. Fillio second. The motion passed 5-0 and this December 17, 1998 public planning board meeting ended at 9:50 PM.

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✓ Catherine Belcher  
Secretary  
Minutes complete and on file December 28, 1998.

Minutes approved on 1/14/99