

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
December 21, 2000

AGENDA

- 7:10 James Bioteau – Lot Line Adjustment - Discussion
- 7:15 Paul Masoni – 203 Havdill Road Site Plan Review – Continued Public Hearing
- 7:45 David & Patricia Morse– 40 Willow Road Subdivision & Site Plan Review – Continued Public Hearing
- 8:15 Jonathan Shafmaster – 60 Main Street/7 Freeman Street– Lot Line Adjustment– Public Hearing

Members attending: Richard A. Smith, Sr.– Chairman, John L. Fillio – Ex-officio, Beverly Fillio and Alternate David Morse (7:09 pm).

Absent: Edward Johnson – Vice Chairman, Dr. Robert Marston and Alternate Member Peter A. Riley.

Others attending: Maura Carriel – RPC Planner, John Krebs– RPC Planner, Roby Day – Rockingham Planning Commissioner, Lawrence K. Smith– East Kingston Conservation Commission Chairman, Paul Masoni, David Young, Lori Cashman, Dennis Quintal – PE, Kevin Murphy, Kent Shepherd– Deputy Building Inspector, Glenn Clark – Building Inspector, James Bioteau, Atty. Jackson Casey, Wayne Carroll, Richard Marcella, Susan Jordan, Jeff Towers, and other members of the public who did not address their concerns.

Chairman Smith opened this December 21, 2000 planning board meeting at 7:02 with the role call.

Planning Board Minutes: The Board reviewed minutes dated November 16, 2000.

MOTION: Mr. Fillio motioned to approve the Planning Board minutes dated November 16, 2000 as written. Mrs. Fillio seconded. With no further discussion, the motion carried 3-0.

The Board reviewed work session minutes dated December 7, 2000.

MOTION: Mrs. Fillio motioned to approve the Planning Board minutes dated December 7, 2000 as written. Mr. Fillio seconded. With no further discussion, the motion carried 3-0.

South Hampton Subdivision: As noted at the last regular meeting, a subdivision plan was approved by the South Hampton Planning Board for property owned by Guy W. and Carol A. Smith and located in both the towns of East Kingston and South Hampton (EK MBL# 12-01-02). The actual subdivision was conducted in South Hampton though the parcel in question was a contiguous piece of land in both towns. One of the conditions set by the South Hampton Planning Board was that the East Kingston Planning Board sign-off on the plan. At the last meeting RPC Senior Planner Ms. Carriel was asked to investigate whether or not a public hearing would need to be conducted by the East Kingston Planning Board in order for them (EK) to sign-off. She reported that one was not necessary and for the purpose of recording into the minutes, Chairman Smith applied his signature to the subdivision plan as described above. The plan was then turned over to Dennis Quintal, PE to be presented to the South Hampton Planning Board.

James Bioteau –Lot Line Adjustment– Discussion: Chairman Smith opened discussion with James Bioteau regarding his proposal for a lot line adjustment between MBL#’s 16-04-04, 16-04-10 & 16-04-11 all located on Giles Road. Mr. Bioteau presented the board with an old recorded plan showing the parcels in total and what lines would be created and abandoned.

At this time, Mr. Morse entered the meeting and Chairman Smith designated him to participate in any voting matters before the board.

He stated that the existing conservation easement strip would remain. At the inquiry of board members he stated that he is putting all the back farmland together and that any future plans he had for that parcel were not the business of the board. He stated that if he meets all the criteria for a lot line adjustment, then the board must approve it. He further stated that he is not creating any new lots and that perc tests were conducted on the parcels at earlier dates. He said he just wanted to let the board know of his plans before his scheduled public hearing next month.

Paul Masoni– 203 Haverhill Road Site Plan Review – Continued Public Hearing: Chairman Smith opened the public hearing for Paul Masoni's site plan review application at 7:15 p.m. for MBL# 11-2-16 & 17. Dennis Quintal, PE would be representing Mr. Masoni this evening.

Mr. Quintal reviewed this case by stating that Mr. Masoni has purchased the MSK Lumber complex that was previously owned by Chuck Woodlands Realty Trust located at 203 Haverhill Road. Mr. Masoni's intent is to construct one 100x100 ft. building, modify an existing building and construct a new state-approved driveway.

He continued to say that the new driveway would match up into the existing driveway. The setbacks for the 100x100 ft. building have all been met and the modification of another building will be to even up the sides of the existing sawmill building as it has multiple jogs coming out of it. The new building will be serviced by the existing septic system. Should the business grow, there is ample room to increase the septic system size.

Mr. Quintal outlined the wetlands on the plan and noted that a silt barrier would be installed to protect the wetlands. He also stated that a berm would be constructed to shield the view of the business from the abutters. He reminded the board that he submitted a waiver request last month – a waiver from HISS mapping.

At the inquiry of Mr. Fillio, Mr. Masoni stated that the electrical service would not increase from its current service of 110 to 220 volts (no three phase). Regarding Mr. Fillio's concerns about the removal and reclamation of the driveway, Mr. Masoni stated that the old driveway area will be dug up, landscaped, and blocked so it can't be used anymore.

Mr. Fillio recommended the asphalt be removed and the area be reseeded.

Mr. Kevin Murphy of 201 Haverhill Road stated that this plan has not changed since last month – the proposed driveway is still across his property.

Mr. Quintal replied that there is no boundary line dispute here as he has taken the information from Mr. Murphy's deed, tied it into the bounds and then transposed this property lines onto this plan. Mr. Murphy's boundary lines do not interfere with the newly proposed state-approved driveway. This was shown to the board at their work session meeting. He stated that the intent is to move the driveway off Mr. Murphy's property to another area. This would minimize the impact to the Murphy property. Furthermore, reclamation can be conducted to his (Murphy's) approval as Mr. Masoni is willing to remove the pavement, re-loam and reseed the area to turn it back into a grassy area.

Mr. Quintal continued to say that the state looked at the site's driveway visibility and required a breakdown area (deceleration lane). This driveway must be designed according to state specs. There is no dispute with the property lines here.

Mr. Murphy argued that according to his deed, he owns the area where the new driveway would be installed.

Mr. Quintal reiterated that he transposed Mr. Murphy's lot into this plan where it showed the center of the right-of-way – there is no dispute.

Mr. Murphy stated that the state doesn't care who owns the property as long as the design regs are met – that is why it is okay with the state.

Mrs. Fillio stated that Mr. Murphy's claims are of a civil nature and should be addressed in court – it is not an issue for the board.

Mr. Masoni responded that the previous owner of the property (Chalie Marden) spent \$30,000 in court fees to prove that Mr. Murphy does not own the area in question. What Mr. Murphy is saying is not true.

Mr. Fillio stated that this boundary matter is not a planning board issue. The state issued an access permit.

Mr. Quintal added that the old access would need to be abandoned. The intent is to make one state-approved driveway. He then pointed out the location of the proposed new building, the proposed modified building and the traffic pattern.

Ms. Carriel stated that the driveway permit number should be added to the plan.

Mr. Quintal replied that he would do so. The permit number was then noted (# 06-135-179 issued 1/11/00).

Regarding the request for waiver from having to have HISS mapping conducted, Mr. Larry Smith, Conservation Commission Chairman stated that he has no problem with the board granting the waiver as no additional impacts are proposed. He further stated that the term HISS is no longer applicable since the board adopted the state's new soils and data language. The proper term is site specific soil survey (SSSS).

Deputy Building Inspector Kent Shepherd stated that as a direct abutter to the proposal he finds it amazing that the state hasn't contacted him regarding their plans to install a deceleration lane across the front of his property. He said he doesn't want to see his frontage more deteriorated after the pipeline construction. He said he doesn't want the lane put there.

Chairman Smith suggested Mr. Shepherd contact the state and complain – maybe they will do away with it.

Mr. Quintal stated that the state owns the right-of-way so they don't normally contact abutters unless additional fill and grading is needed. Despite the close proximity of the proposed deceleration lane, it is still located within the state's right-of-way.

Chairman Smith recalled that the state refused to put in a lane at Brandywine. Discussion on deceleration and acceleration lanes transpired.

Mr. Quintal stated that he didn't have any control over the driveway specifications and when the project is finished the state will come and inspect it to see if it was done correctly.

Mr. Murphy then stated he had a problem with abandoning the existing driveway. He said he uses it to access his back yard and that he should have a say in its future.

Mr. Quintal stated that they could work something out.

Ms. Carriel then noted the three outstanding issues to be addressed: 1) the reclamation and reseeding of the driveway area to be abandoned, 2) the DOT permit number be put on the plan, and 3) action required on the waiver request. She then suggested that all building permits not be issued until the driveway reclamation is complete or require the applicant to put up a performance bond to ensure the work is completed.

Mr. Masoni stated that he had no problem with putting up a performance bond.

Mr. Morse stated that Mr. Murphy wants the old driveway to stay.

Mr. Quintal responded that Mr. Murphy has his own driveway. The access from the site to his property will be blocked off and moved – unless he works out something with the state.

Mr. Fillio stated that the state won't allow two driveways that close. The board can't allow something illegal. The old driveway must be abandoned in total. The rights to the old driveway must be given up to get rights to a new driveway.

Mr. Masoni agreed and stated that if Mr. Murphy wants the old driveway he can keep it on his property, but the rest of the old driveway (up to where it will tie into the new driveway) will be removed, re-loamed and reseeded.

RPC Senior Planner John Krebs stated that the old driveway in its entirety must be removed – that includes the portion on Mr. Murphy's property.

Mr. Wayne Carroll of Willow Road asked if Mr. Murphy would be able to access his backyard off of the newly proposed driveway.

Mr. Masoni stated that he wouldn't have a problem with that.

MOTION: Mr. Fillio motioned to grant the request for waiver from the site specific soil survey requirement as recommended by the Conservation Commission Chairman. Mr. Morse seconded. With no further discussion, the motion carried 4-0.

Discussion on the cost of removing the old driveway, re-loaming and reseeding the area transpired. It was agreed that \$2,500 would cover its costs and that the re-loaming would be to bring the area back up to its natural grade.

MOTION: Mrs. Fillio motioned to grant approval of the site plan for Paul Masoni (MBL# 11-2-16 & 17) as presented with the following conditions:

1. A \$2,500 performance bond be coordinated with the town for purpose of reclaiming the driveway area;
2. The Dept. of Transportation driveway permit number be noted on the plan.

Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

Mr. Masoni was then advised to contact the Selectmen's Office to set up the performance bond.

David & Patricia Morse – 40 Willow Road Subdivision & Site Plan Review – Continued Public Hearing: Chairman Smith opened the public hearing at 7:46 p.m. for David and Patricia Morse's application to subdivide 20.29 acres into three lots and to develop an elderly housing community on Willow Road, MBL# 08-02-19. He noted that this meeting was a continuance from November 16th.

Mr. Morse recused himself from the board for this hearing and reported that his engineer's computer crashed last night, thus he does not have an updated set of plans for this meeting. He stated that perc test were completed and witnessed by the building inspector. He received a refusal from the state regarding his proposed driveway. He was ordered to move the driveway over 14 feet toward the Mitchell property. He then asked the board for a continuance until next month when he could be more prepared.

Chairman Smith opened the meeting to questions from abutters. Mr. Morse displayed his preliminary plan and outlined the wetlands. He reiterated that the state wants the access moved over 14 feet toward the Mitchell property and keeping all the trees intact in between. This was ordered to reduce the impact to the wetlands.

Conservation Commission Chairman Larry Smith commented that the state Wetlands Bureau does not seem know the difference between the right-of-way and the road prism – the original layout won't touch the wetlands.

At member inquiry, Mr. Morse stated that there would be a distance of about 35 feet from the newly proposed driveway location and the Mitchell's boundary line. Noting the location of the existing well being used by the Mitchell's, he stated that once the project is developed he will drill a new well for Mr. Mitchell. He continued to say that the state wants the roadway moved – not the right-of-way.

Ms. Carriel stated that she had some concerns about the application process. Mr. Morse has both a subdivision application and a site plan review application before the board, yet there isn't adequate information to review the site plan review. She asked how the board wanted to handle this, as there is the issue of pending amendments to the Elderly Housing Ordinance.

Mr. Morse replied that the board agreed last month not to take jurisdiction on the plan yet. He asked how he was supposed to present a detailed layout of the buildings when the board hasn't even agreed on how big they can be or how many units can be serviced by one building.

RPC Planner John Creb stated that the issue is whether the board should continue on that site plan review application when no actual site plan was submitted. Submitting the application as it was done looks as though it was done only to protect the applicant from having to comply with the newly proposed changes. It is not fair to the process. He recommends the application be denied and resubmitted when complete.

Mr. Morse stated that he cannot have more than eight bedrooms on a single acre and he cannot submit a complete plan until the board approves of the number of units they will allow in a building.

Mr. Creb stated that they haven't actually seen any site plan layout and that there is no sense in continuing if no plan has been submitted. He said that maybe this should be at the discussion level.

Mr. Morse stated that he has already spent thousands of dollars on this project. When noted that his plan does not include building layout, he responded that building footprint sizes have not yet been agreed on by the board.

Mrs. Fillio stated that Mr. Morse, as a board member, needs to step away from the member table once the public hearing begins. She further stated that if he can't go step by step with his application then the board should kick it out and he should reapply when he is ready.

Mr. Morse responded that he told the board at the last meeting that he would just address the subdivision portion of his application first. He had the perc tests and drainage reports done. He stated he submitted a waiver from the SSSS mapping. The state told him on Wednesday (yesterday) that he has to move the driveway. The new plan will have all the subdivision information, and then once this plan has been approved he will re-notify the abutters and move forward with the site plan review. He said he is asking for a continuance of the subdivision plan.

Mr. Krebs stated that the correct procedure is to decide whether or not the application is complete. If not then it must be denied and re-applied for. Separate decisions must be made for the subdivision application and the site plan review application.

Mrs. Fillio noted that the proposed elderly housing amendments would then have an effect on Mr. Morse's site plan review.

Mr. Morse asked if he could withdraw his site plan review application but not have to pay the \$800 application fee again – he is willing to pay for abutter notification when the plan is complete. He said that he wants to move forward with the subdivision plan now and he would abide by whatever changes are made to the elderly housing ordinance.

Mr. Wayne Carroll stated that it looks like Mr. Morse is trying to get something by without spending the money for it.

Mr. Morse stated that he was not but that he needed more information to move forward.

Mr. Krebs stated that the board has the expressed authority to waive certain provisions of their Site Plan Review Regulations. As long as the administrative costs do not exceed the \$800 application fee, he sees no problem with the board waiving the application fee on the re-application of the site plan proposal as long as he withdraws the site plan now and agrees to pay for the re-notification to all the abutters.

Mr. Morse agreed.

MOTION: Mr. Fillio motioned to grant Mr. Morse's request for a continuation of the subdivision application public hearing until January 18, 2001 at 7:45 pm. Mrs. Fillio seconded. With no further discussion, the motion carried 3-0.

MOTION: Mrs. Fillio motioned to accept the applicant's withdrawal of the site plan review application for an elderly housing community to be located off of Willow Road and to apply the original \$800 application fee towards the anticipated re-application of the site plan. Mr. Fillio seconded. With no further discussion, the motion carried 3-0.

Jonathan Shafmaster – Main Street Lot Line Adjustment – Public Hearing : Chairman Smith opened the public hearing at 8:16 pm on Jonathan Shafmaster's lot line adjustment plan for properties located at 60 Main Street and 7 Freeman Street (MBL# 9-8-6:7 Freeman St. owned by Jonathan Shafmaster & MBL# 14-1-18:60 Main St. owned by Joy and Stephan Kushner). Representing Mr. Shafmaster is Jeff Towers.

Mr. Towers began his presentation by displaying a copy of the lot line adjustment plan for the board and public. He noted ownership of the properties as well as five-year-old plans of when the two parcels were involved in an earlier lot line adjustment. Back then Mr. Shafmaster's daughter, Amy, owned 60 Main Street and 7 Freeman Street and still is owned by him (Shafmaster). Five years ago Amy's parcel consisted of 33 acres and she conveyed 28 of those acres to her father's parcel reducing her total acreage to 5.

He continued to report that within the past three to four months Amy's property has been conveyed to a third party (Stephen & Joy Kushner) who wants more land with the house. They are interested in purchasing back the 28 acres that were originally conveyed from their parcel. The outcome of this proposal would bring the lot lines and acreage calculations of both parcels back to the 1995 figures. He pointed out the lot lines to be reinstated and those to be removed – this is an exact reversal of the lot line adjustment conducted in 1995.

Ms. Carriel asked Mr. Towers to double check the math on lot 9-8-6 as she gets 169.211 acres and he has it shown as 169.216. He stated that he would recheck the math and make the appropriate changes.

Mr. Stephen Kushner, current owner of 60 Main Street, stated that it is his intentions to keep the land in current use as it is now. He has no plans to develop it.

Mr. Day noted that there is an issue of quorum raised and then asked how so.

It was noted that both board members Mr. & Mrs. Fillio are abutters to the proposal as their property lines lie within 200 feet of the 7 Freeman Street parcel. That leaves voting matters to Chairman Smith and Mr. Morse – three voting members are needed to fulfill voting requirements.

Chairman Smith then announced that this public hearing would be continued to January 18, 2001 at 7:15 pm and noted that this announcement would serve as notification to all abutters.

Zoning, Subdivision & Site Plan Review Amendments: The board reviewed the following amendments to be considered for the March 2001 Zoning Ballot as well as amendments to be considered for Site Plan Review and Subdivision Regulations.

ELDERLY HOUSING: At the last meeting (December 7th) the board agreed that they needed to establish a maximum number for footprint size on an elderly housing building. Ms. Carriel was charged with reviewing other town's elderly housing ordinances regarding this. She reported that out of the five or six towns reviewed by her predecessor (Tracy Degnan), none used maximum building size restrictions. She also reported that there are not a lot of strong, well-crafted elderly housing ordinances. Two ways to address building size restrictions are to 1) put a cap on the number of units allowed per building, and /or 2) restrict a maximum footprint size.

It was noted that earlier discussion resulted in unanimous agreement of any building not having over a 12,000 square foot footprint or more than 14 units per building. Members were agreeable to consider regulating the number of bedrooms and/or number of units per building.

Mr. Quintal stated that he is working on a similar project in another town and that regulating the number of bedrooms or units per building might be too restrictive. The board wants to encourage this type of development – the developer must be given some sort of flexibility in the project's design. It is easier to build a single-family home than to develop a project like this. He recommended regulating building size, but not the number of units per building.

Mr. Krebs agreed saying that regulating square footage is more appropriate especially when the density bonus is two times the conventional standards. He did recommend that the board consider regulating the size of a detached single-family home as well. Giving examples of North Hampton's elderly housing regulations he stated that the best approach would be to limit the footprint size of a multifamily building as well as set maximum footprint regulations for single-family houses located in elderly housing communities. Not doing so would increase the potential for a sleazy developer to build a four-bedroom trophy house within an elderly housing community thus running the risk of encouraging child residents.

After discussion it was agreed that no one single-family unit or multifamily unit should exceed a 1,500 square foot footprint. Members then discussed single or multi-story designs as well as snob housing. It was agreed that the 8-bedroom reference in Article 12.2.3 be removed and that a new number 12.2.4 be added to read "individual unit shall not exceed 1,500 square feet in footprint" and "no structure shall exceed 10,000 square feet in footprint."

The board also agreed to amend the fee structure on pages 2, 14, & 19 to include a line that states elderly housing fees shall be set at \$20 per bedroom.

HOME OCCUPATION: As discussed at the previous meeting a new requirement for all home occupation proposals would be added as Article 10.10 with the remaining text renumbered. The new 10.10 text would read that a detailed description of the business along with a photograph of the front and back of the property be submitted by the applicant along with a completed home occupation application. This requirement would also be placed on the home occupation application itself.

WETLAND ORDINANCE & GENERAL PROVISIONS: It was noted that distances from septic systems to wetlands were inconsistent throughout the ordinance. This was probably an oversight when the board agreed to adopt the state's new soils and data language in 1999. Discussion on town setbacks and state setbacks transpired. It was agreed by some that the town setbacks should be consistent with state setbacks as there is no scientific data to support the town's more stringent requirements. Others felt that the town has the authority to increase such measurements. It was noted that scientific data supports the concept that wetlands assist in the

filtration process of septic system leach fields. Further discussion resulted in members agreeing to change all references in the Zoning Ordinance to read that septic systems must be no closer than 75 feet to very poorly drained soils and 50 feet to poorly drained soils.

MOTION: Mr. Morse motioned amend all references of septic system setbacks to wetlands to read 75 feet from very poorly drained soil and 50 feet from poorly drained soil as recommended by the state. Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

Another correction noted was to Article VIII.B.2 to add "Version II, 1998" to its reference of the Field Indicators for Identifying Hydric Soils in New England.

MOTION: Mrs. Fillio motioned to hold a public hearing on the zoning amendments to the Elderly Housing Ordinance, the Home Occupation Ordinance, Wetland Ordinance, and General Provisions as described above on January 18, 2001. Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

SUBDIVISION REGULATIONS: As noted at the last meeting amendments to the Subdivision Regulations included 1) the requirement of an 11x17 inch copy of all plans to be submitted along with a completed application for the purpose of being able to distribute such copies to members prior to scheduled public hearings; 2) setting a minimum application fee of \$40 per application to cover administrative costs; and 3) amend the reference of town and state roads to service no more than 20 units to be exempt in elderly housing developments (Section IV.C – p.3) – (add a new D and renumber remaining text).

SITE PLAN REVIEW REGULATIONS: As described in the proposed amendment to the Subdivision Regulations, a similar amendment be made in the Site Plan Review Regulations to require an 11x17 inch copy of site plans to be submitted along with completed applications.

MOTION: Mr. Fillio motioned to hold a public hearing on above noted Subdivision Regulations amendments and Site Plan Review Regulations amendments on January 18, 2001. Mrs. Fillio seconded. The motion carried 4-0.

Planning Board Member Status: Noting the new vacancy in a regular member position (Ed Johnson resigned to fill an alternate position), Chairman Smith announced that any current alternate interested in filling that position submit a letter of interest to the board. It was noted that a new vice-chairman still needs to be appointed. At this time Mrs. Fillio submitted a letter of reference to the Chairman recommending the appointment of Roby Day to an alternate position on the board.

MOTION: Mrs. Fillio motioned to recommend the Board of Selectmen appoint Roby Day as a alternate member on the Planning Board. Mr. Morse seconded. With no further discussion, the motion carried 4-0.

It was later noted that Mr. Day currently holds a position on the Zoning Board of Adjustment, as does current alternate Peter Riley. RSA 673:7 states that planning board members may serve on any other municipal board or commission, provided that such multiple membership does not result in 2 planning board members serving on the same board or commission.

Rockingham County Conservation District: Chairman Smith acknowledged a sample warrant article from the RCCD regarding the appropriation of funds for future land use purchases (i.e. purchasing development rights, purchasing land to be placed in protection). Sample amounts were for \$50,000 and up. He asked that members consider this and discuss it at the next meeting.

With no further business,

MOTION: Mrs. Fillio motioned to adjourn. Mr. Fillio seconded. With no further discussion, the motion passed 4-0 and this December 21, 2000 Planning Board meeting ended at 10:05 p.m.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file December 27, 2000.

Approved: _____