

# TOWN OF EAST KINGSTON PLANNING BOARD

## MEETING MINUTES

August 17, 2023

Pound School  
41 Depot Road  
East Kingston, New Hampshire

Josh Bath, Chair  
Tim Allen, Vice Chair  
7:00PM

### AGENDA

#### NH Housing Needs Assessment Project

Steve Morrison – 1 Main Street – Site Plan Review – Continued Public Hearing (Case# 2023-08)

Midnight Leasing LLC – 9 Bowley Road – Site Plan Review (Case# 2023-11)

Board Members Present: Tim Allen – Vice Chair, Josh Bath - Chair, Bob Nigrello – Ex-Officio, and Janet Smith.

Absent: Ellie Cornoni

Others Present: Victoria Healey – RPC Planner, Dennis Quintal – Town Engineer, Deputy Fire Chief Scott Urwick, Jaclin & Steve Morrison, Tim Bodwell, Dan Bodwell, Christian Smith – PE, Peter Brown, Jeff Brown, Mike Seekamp, Atty. Josh Lanzetta, Sally & Denis Hamel, Keith Reynolds, David Toothaker, George Whiteman and other members of the public who did not identify themselves.

Chairman Bath opened the meeting at 7:00pm followed by the roll call.

#### NH HOUSING NEEDS ASSESSMENT PROJECT

Chairman Bath announced there would be no NH Housing Needs Assessment update this evening as the Grant Planner was unable to attend the meeting due to medical reasons. The housing update will be rescheduled to the September board meeting.

#### STEVEN MORRISON – 1 MAIN STREET – SITE PLAN REVIEW PROPOSAL – MBL# 09-07-01 (Case # 2023-08)

Chairman Bath opened the public hearing at 7:01pm for Steve Morrison's proposal to operate a commercial business (Middleton Supply LLC) in the town center district located at 1 Main Street, MBL# 09-07-01. Mr. Morrison is seeking approval to operate a grain/feed/hay/shavings wholesale and erosion control supply company business from his residence utilizing the existing barn and a portion of the land behind the barn. Chairman Bath noted this was a continuation from the July meeting. He then took a moment to address the numerous attendees of the meeting pointing to the two fire exits should there be a need to evacuate the building.

Chairman Bath informed applicants Steve and Jaclin Morrison that the board was short one member this evening, thus they would be given the option to continue the hearing to the following month when a full board would be present. Both Mr. and Mrs. Morrison indicated they were fine with a four-member board and wished to proceed with their case. Mr. Morrison then went on to update the board on his plan to install a stone driveway around the barn to park the tractor trailer units. Mrs. Morrison spoke to the concerns about the driveway's location (shared with fire department) in relation to the three-way intersection stating they have received approval from the DOT which was provided to the board. She stated they would place cones at the other driveway so that vehicles will not exit the property directly into the intersection. She also stated they are only using a portion of the barn for the business.

At the request of the Chair, Town Engineer Quintal presented his written findings in reviewing the Morrison site plan as it relates to being in compliance with requirements of the Town's Site Plan Regulations and customary engineering practices. The review is only on the Sheet 1 – Site Plan for Steven & Jaclin Morrison, 1 Main Street, East Kingston, NH, Tax Map 9 Lot 7-1, by Edwards Survey & Design, dated August 6, 2023 received 8-7-23:

1. Site Plan Section IV.B.5 – A Mylar will be required for recording after final approval.
2. Section IV.B.9 – A topographic plan is required primarily along the frontage and in the area proposed for changes.
3. Section IV.B.11 – Soils and Wetland type and location information is required primarily in the area proposed for changes to verify any impacts to wetlands.
4. Section IV.C & Section VI.E.7 – Reviews & Site Inspections will be required during development to verify compliance.
5. Section IV.C.4 & Section VI.L – Escrow Account is required to reimburse the Town for review agents.
6. Section V.A – Additional natural features are needed on the plan. (Topography, wetlands, vegetation)
7. Section V.B – First Floor elevation.
8. Section V.F – Plan should show the location of existing water and sewerage facilities.
9. Section V.H – Location, elevation and layout of stormwater management infrastructures. In the area of proposed changes there needs to be designed to verify no impact to street or abutter's property.
10. Section V.J – Plan should show any landscape changes, addition or removal of trees and shrubs.
11. Section V.L – Plan should show Public Service locations on the site.
12. Section V.M – Any lighting changes if none than add a note stating the fact.
13. Section VI.A – More detail of the site development is required. Stripping and placing of topsoil for the gravel area, slopes grades, material specifications should be shown.
14. Section VI.D – Three parking spaces are shown. However, they do not meet requirements for turning and passing each space. If cars are parked in these spaces, there is no access to the storage trailers.
15. Section VI.E.1-4 – Erosion and Sediment Control must be shown on the plan with details to verify no impact to the Abutters or wetlands. Provide grades and contours.
16. Section VI.E.5&6 - Notes should be provided to address these requirements.
17. Section VI.F – Provide statements, notes, designs or reports to address stormwater management and erosion control on the site.
18. Section VI.H – Access to public streets must meet State DOT approval. NHDOT Permit is required. With access across the Town property a note or letter from the Selectmen should be filed.
19. Section VI.N – Review by the Fire Department is required.
20. Section VII.A. – Waivers may be submitted but not voted on until the Board has accepted Jurisdiction of the Application. This time is also the start of the 65-day decision review time period by the Board.
21. Section VIII.F.5 – Sign location and size must be provided if proposed.
22. Section VIII.H.9 – Snow Storage areas must be shown on the plans.
23. Will there be any employees. If so, parking for employees must be shown.

He completed the review summary stating if any of the items are not applicable, the plan or application should indicate so; otherwise, the items should be addressed.

Chairman Bath agreed and noted the purpose of the site plan review is to protect the public health, safety and welfare of the town which is why so much is required under the site plan review. The site plan as currently submitted, needs

more information to ensure those requirements are met. He advised the applicants to go back to their engineer and provide him/her with the Town Engineer's review letter so that the plan can be updated.

Mrs. Morrison responded they were expecting there to be plan revisions as their engineer had informed them that was the typical process. She noted they have submitted their escrow letter with funds, received written documentation from the DOT for the use of the driveway, and they do not plan to change the landscape of the property.

Vice Chair Allen noted they applicants had requested a waiver from the contour and finish grade at their last meeting. Mrs. Morrison added they have also submitted a waiver for the stormwater management, flood hazard, and performance bond requirements and that they wish to have the final plan recorded at the registry of deeds.

Discussion ensued on the fire ponds located at the back of the property, that the fire department would need to review the plan to ensure they can access the water and provide written findings to that end.

Town Engineer Quintal stated the plan should show the traffic flow of the tractor trailer trucks to ensure they can turn around on the property and if wetlands are nearby, they should be included on the plan. He then advised them that a recent lot line adjustment plan for the property would show the wetland's detail. The Land Board Secretary will forward a copy to the applicants to share with their engineer.

With respect to the location, elevation and layout of stormwater management infrastructures, Vice Chair Allen noted the gravel turn around may change the water flow on the property resulting in runoff to an abutter's property. Sediment control can be used to ensure there is no impact to abutting properties or the railroad.

Chairman Bath opened the hearing to public comment; there was none. He then noted the plan was still not complete enough for the board to take jurisdiction and further recommended the hearing be continued to next month.

**MOTION: Chairman Bath motioned to continue the public hearing for Steve Morrison's site plan review proposal for property located at 1 Main Street, MBL# 09-07-01, to September 21, 2023 at 7pm; seconded by Vice Chair Allen. The motion passed 4-0-0.**

The applicants were then instructed to submit their revised plan by September 11<sup>th</sup> so that adequate time would be given for review and preparation for the September 21<sup>st</sup> meeting. There being no further discussion, Chairman Bath closed the hearing at 7:19pm.

#### **MIDNIGHT LEASING LLC SITE PLAN REVIEW PROPOSAL – MBL# 11-02-11 (Case # 2023-11)**

Chairman Bath opened the public hearing at 7:20pm for Midnight Leasing, LLC's proposal to operate a mulch production company located at 9 Bowley Road, MBL# 11-02-11. The applicant is requesting a waiver from Site Plan Review Regulations Section V – Required Exhibits and Data which requires a boundary plan of the property.

Representing the applicant's, Christian Smith of Beals Associates introduced the business owners Jeff and Peter Brown, their attorney Josh Lanzetta, and Wetlands Scientist Michael Seekamp. Noting the lack of a full board, he requested a continuance to the September meeting.

Chairman Bath concurred noting the board had received more information about the proposal earlier in the day and had not yet had enough time to digest it. So as to not waste the time of the numerous abutters present at the meeting, he suggested Mr. Smith provide an overview of the project.

Mr. Smith presented a large plan of the property, located at 9 Bowley Road, MBL# 11-02-11 noting the existing roadway into the property has been improved somewhat as they worked with the utility companies for the pipeline crossings. The applicants are proposing a mulch processing operation with three phases to full build out. Phase I will consist of constructing a couple of drainage ponds and creating areas to stockpile the mulch. The following phases, I-A and 2 and 3, may all be done at the same time depending on how the business goes. The plan will include a proposed wetland

fill which will be avoided in the first phase, as there will be no wetland impacts associated with the initial proposal. Additionally, they have provided a drainage analysis report. He then asked if the board had any questions.

Chairman Bath turned the floor over to Town Engineer Quintal to present his findings in his review of the application and plan as presented.

Having conducted an engineering review of the Midnight Leasing LLC Site Plan, Town Engineer Quintal presented his findings as they relate to the compliance with requirements of the Town's Site Plan Regulations and customary engineering practices. His review is based only on the following document received 7-25-23:

- 6 Sheet Plan Set – Proposed Site Plan, 9 Bowley Road, East Kingston Tax Map 11 Bl 2 Lot 11, by Beals Associates PLLC, dated July 19, 2023.
- Site Plan Review Application & Checklist, Deed, Abutters List, Escrow Fund Agreement.
- Soil Survey Report by Marc Jacobs.
- Drainage Analysis & Sediment and Erosion Control Plan by Beals Associates dated July 24, 2023.
- Existing and Proposed Watershed Plans.
- Waiver Request for Boundary Survey.

His comments as listed are:

1. It would be helpful to obtain a copy of a plan showing the flags with numbers identifying the edge of the wetland. When conducting site walk or site inspections, this would assist with location on the site.
2. The proposed active area is very flat. Proposed grades are not clear and spot grade elevations would assist in determining the direction and slope of surface water runoff.
3. My copy of the Soils Report shows only a portion of the plan. A full copy should be provided. Also, soil test pits 2 & 4 were conducted and shown. All pits with the locations and data should be provided.
4. The proposed area inside the 15-foot buffer is 5.65 Acres. Disturbance of this much area will require a State Alteration of Terrain Permit as verified by Michael Schlosser at DES.
5. An area of proposed work will be within 250 feet of the Powwow River Reference Line. This would require a State Shoreland Protection Permit.
6. The proposed wetland impact or 1300 square feet will require a Dredge & Fill Permit from the State Wetlands Bureau.
7. I believe over time the silt fence proposed around the perimeter, if installed properly will not function long term for this proposed active site. I would recommend that a wood chip berm 3 feet high be designed to be installed inside of the 15-foot buffer along the perimeter of the active travel way. This berm is easier to monitor, maintain and helps to filter runoff and will divert runoff to the forebay areas.
8. A detail is provided for a Stabilized Construction Entrance. This should be located on the Site Plan.
9. Recently installed fill east of the gas line extends up to the edge of the flagged wetland. I recommend that the fill be removed and the 15-foot required buffer from wetlands be reconstructed and revegetated.
10. I recommend Refueling Area 1 be the only area for refueling. Remove Refueling Area 2 because of its location near the wetlands and Powwow River.

11. Since materials will be delivered to the site, the concern would be whether some form of contaminants would be delivered and then leach into groundwater. Perhaps strategically placed monitoring wells should be installed. Water testing should be conducted prior to operation for baseline data. Annual testing could then be required to verify groundwater conditions do not change.
12. Section IV.C & Section VI.E.7 – Reviews & Site Inspections will be required during development to verify compliance.
13. Section IV.C.4 & Section VI.L – Escrow Account is required to reimburse the Town for review agents.
14. Site Plan Regulations Section V.G – Provide type and location for solid waste disposal.
15. Section V.L – Public Service Connection. Will power be provided to the site for security lighting?
16. Section V.O – Surveyed Property Lines. A waiver has been submitted for this requirement. I believe it is important to resurvey and document property lines after many years. The resurvey would identify change of the edge of the Powwow River, encroachments from abutters, wetland impacts, check if monuments have been altered. A plan stamped by a surveyor is a requirement of the Registry of Deeds to record approved plans.
17. I reviewed the Stormwater Drainage Analysis. The soil test pit #4 is near the Bioretention Basin. It appears that the filter media is in the estimated seasonal water table. For it to function properly the media should be above the ESWT.
18. Soil test pit #2 is shown left of Station 11+00 in the proposed active area. The result of the test pit states that topsoil and part of subsoil were removed, and seasonal water table was at the surface. Existing and proposed grades should be clear.
19. Long Term Inspection & Maintenance of the site and stormwater features should be provided for review and ultimately recorded upon approval.

In his capacity as Chairman of the Conservation Commission, Mr. Quintal stated the Conservation Commission met earlier that week to review the plan and the Commission wishes to note their concerns for the record which include protection of the wetlands with an appropriate buffer, the preservation of the ground water quality, and concern about the disturbance of the wildlife along the Powwow River corridor.

He also noted that the contractor shall prepare, maintain, and execute a stormwater pollution prevention plan in accordance with federal EPA regulations. The contractor shall coordinate with the owner to submit an ENOI at least 14 days in advance of any earth work activities.

Vice Chair Allen stated that the board will not be proceeding with the public hearing this evening but continuing to next month, and that he found this informational session to be valuable. He went on to say that next month when they expect to have a full board, he recommended the applicants provide a more in-depth description of the proposal so the board and the public understand the full operations as being proposed on the site. The information provided during conceptual consultation that was held with the applicants months ago does not transfer to the public hearing process – it must be re-presented. This includes the full scope of business, the use of the land, the mulch processing operations, and any other information that would inform the board and the public on exactly what will be happening on site.

Mr. Smith responded they will present all of this at the next meeting as requested.

Discussion then ensued on allowing abutter comments at this time to which it was noted the full public hearing process will be continued to the next meeting at the request of the applicants when there is a full board at which point abutters will be given opportunity to voice their concerns and ask questions.

**MOTION: Chairman Bath motioned to continue the public hearing for Midnight Leasing LLC's site plan review proposal for property located at 9 Bowley Road, MBL# 11-02-11, to September 21, 2023 at 7pm; seconded by Vice Chair Allen. The motion passed 4-0-0.**

With no further discussion Chairman Bath closed the public hearing at 7:34pm.

## **OTHER BUSINESS**

### **APPROVAL OF MINUTES**

Board members reviewed the minutes from July 20, 2023 meeting.

**MOTION: Vice Chair Allen motioned to approve the July 20, 2023 minutes as published; seconded by Mr. Nigrello. The motion passed 4-0-0.**

### **TOWN HALL RENOVATION PLAN – SITE PLAN**

Town Engineer Quintal presented the first draft of the plan to relocate the town hall building ten feet or so back from the road and more centrally between the fire station and the side boundary. He spoke to the building stabilization plan that would be needed to ensure the building can be moved safely and to address potential snow load safety concerns, and to interior renovation ideas that included creating handicap accessible bathrooms, and an interior ramp and elevator system, creating meeting areas and addressing acoustics for those areas. He also proposed repurposing the granite slabs along the sides of the building to cover the concrete walls of the newly proposed foundation.

Discussion ensued on driveway site distance on the east side of the building and safety concerns about parking in front of the building, addressing town storage needs by constructing a full basement under the building, and getting more input from the town stakeholders.

The board will provide more comments later as the plan is finalized.

### **2024 SUBMISSION OF APPLICATION DEADLINES AND PUBLIC HEARING DATES**

The board reviewed the 2024 application deadline dates noting a new 10-day deadline reference for plan revisions as previously requested. The ZBA deadline dates are pending review by the ZBA later that month.

**MOTION: Chairman Bath motioned to approve the 2024 Submission of Application Deadline dates as presented; seconded by Mrs. Smith. The motion passed 4-0-0.**

### **MASTER PLAN STATUS**

PRC Planner Healey spoke to the status of the Master Plan noting a number of chapters are very old and that many of the chapters could be consolidated to allow for easier updates by the board. Chairman Bath offered to share his Master Plan documents from the 2017 Master Plan session with Planner Healey who would review the draft chapters and put an action plan together for board consideration. Planner Healey noted the vision and goals, and land use chapters would be considered priority in the action plan.

Planner Healey also noted the NH Housing Opportunities Grant has suspended its Phase III for now until the funds are re-appropriated. Phase III consists of ordinance changes which fall under the purview of the Circuit Rider (RPC Planner) and the ordinance updating season is approaching. It was noted the September agenda already includes discussion on proposed zoning amendments.

Land Board Secretary Belcher presented the following under other board business:

1. RSA HANDBOOK: Board members to provide preference of hardcopy or e-version of the handbook.
2. BODWELL GRANDFATHERED HOME OCCUPATION TRANSFER: Guidance is needed on the process to move forward with Mr. Dan Bodwell's request to transfer his grandfathered home occupation permit to a potential

new homeowner. Specifically, what scope of the business is being recognized as transferable. In 2019 the town required grandfathered home occupations to document a baseline scope of the business. In Mr. Bodwell's case, he submitted the baseline questionnaire (not all of the questions were answered) and provided photographs of some older equipment. The question is, how does this documented baseline affect his proposal to transfer the grandfathered home occupation to a fully operational excavation business. Clearly the photographed equipment does not represent an operational excavation business.

Mr. Dan Bodwell stated that at one time, between his son Tim and himself, they had two 10-wheelers, two bulldozers, three excavators, and one backhoe and that he would think the baseline for transfer should be the scope of the business at the peak of his career. He spoke to his frustration when, after Bob Rossi had passed away and they went to sell his property, the new owners were denied the same use of the property that Mr. Rossi enjoyed.

Chairman Bath responded that one of the things the board had to work through was that in his time, Mr. Rossi had a number of different trucks; however, as he got older, he scaled down his business. The hearings on that case prompted the board to generate a grandfathered home occupation baseline inventory in 2019 to assist the board on future transfers of grandfathered home occupations.

Mr. Tim Bodwell noted the baseline was for 2019 only which may not have been fully representative of the scope of the business as a whole because the business can change from year to year.

Mr. Dan Bodwell added the natural progression of a business would be to increase.

Vice Chair Allen responded the grandfathered status is very powerful as the state has mandated a property owner has a right to continued use of their property after a new ordinance is adopted which would prohibit that use. The baseline questionnaire/survey was used to assist and support the grandfathered home occupation so as to protect the scope of the business in the event the homeowner wanted to sell his property and continue the vested use of the property. The state statutes also state the business cannot grow but can continue doing what was vested at the time of the ordinance change. Without the baseline survey, there is no documentation of the scope of the business to be transferred. In Mr. Rossi's case, there was no documentation of how many pieces of equipment he had – this prompted the baseline survey.

Discussion then ensued on the business operations at 10 North Road, the scope of that business and potential transference of their home occupation and on the burden of proof associated with the term abandonment of a grandfathered use.

Vice Chair Allen stated the baseline survey was completed and was supposed to be verified by the Selectmen so that there would be no contestation on what is permitted or not permitted as a grandfathered home occupation. This would allow for a clean transfer of the grandfathered home occupation to the next property owner. The grandfathered business and its scope are vested as long as the business remains in operation; should the homeowner give up the business or reduce it in nature, they cannot go back to its former status.

When asked what part or scope of the business Mr. Bodwell can carry forward to a new homeowner, he was directed to list out the items and equipment stated on his baseline survey (not his son's equipment or his son-in-law's equipment) as this would serve as the scope of operations that can be transferred. Mr. Dan Bodwell responded he does not agree with these limitations and that he may end up selling his property to the highest bidder. Mr. Quintal suggested he consider a conservation easement for the parcel.

Mr. Dan Bodwell then informed the board that he is in talks with Solar Solutions for the possible development of a solar farm on his 78-acre parcel. He spoke about the Master Plan work and inquired if there were any efforts to increase housing opportunities for young people. Chairman Bath informed him of the InvestNH initiative currently underway to address this matter. Discussion ensued on the Barton Trailer Park, its current conditions, and the recent change in ownership.

3. PLANNING BOARD RECRUITMENT – Mr. George Whiteman (present at the meeting) submitted a written letter of interest in serving on the Planning Board. He stated his recent interactions with the board prompted his interest in becoming more involved with the town. The board will consider recommending his appointment once his cases (both ZBA and Planning Board) have been adjudicated.
4. KINGSTON FAIRWAYS GOLF COURSE – A developer has reached out to the Land Board Secretary to gather information about the possibility of developing the 33-acre parcel located in East Kingston and the remaining 80+ acres in Kingston that comprise the golf course. With only 35 feet of road frontage in East Kingston, development of the East Kingston portion is limited. The developer is interested in a cluster development of sorts but understands there are wetlands, an aquifer, and concern about the chemicals used on the greens for decades to consider.

#### LIGHT INDUSTRIAL PARK UPDATE - 213 HAVERHILL ROAD – SITE WALK

Mr. Nigrello informed the board that they will need to restart the compliancy process on 213 Haverhill Road as the last two processes were never completed in a timely manner. This means the board will need to conduct another site walk and provide photos and documentation of any violations to the Selectboard for enforcement action. Chairman Bath directed this item be placed on the September agenda.

#### ADJOURNMENT

<b>MOTION: Chairman Bath motioned to adjourn; seconded by Vice Chair Allen. The motion passed 4-0-0.</b>
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The meeting ended at 8:36pm.

Respectfully submitted,

Catherine Belcher, Land Board Secretary

Minutes approved on September 21, 2023.