

# TOWN OF EAST KINGSTON PLANNING BOARD

## MEETING MINUTES

September 21, 2023

East Kingston Elementary School  
5 Andrews Lane  
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, Ellie Cornoni, Bob Nigrello – Ex-Officio, and Janet Smith (7:08pm).

Others Present: Victoria Healey – RPC Planner, Dan Bodwell, Christian Smith – PE, Peter Brown, Jeff Brown, Mike Seekamp, Atty. Josh Lanzetta, Marc Jacobs – Soil Scientist, Julie LaBranche – Grant Planner, Sally & Denis Hamel, Keith Reynolds, David Toothaker, Kip Kaiser – Building Inspector, Police Chief Michael LePage, Town Administrator Grace Ruelle, Kelly Gannon, Richard Leith, Jason Haley, Kelly Marton, Andy Herum, 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

Planner LaBranche spoke to the NH Housing Needs Assessment Grant project noting it was a state funded project to address housing needs by taking into consideration the demographics, economics, and land use of NH cities and towns and utilizing that data to encourage communities to adopt regulatory standards to increase the availability of workforce (affordable) housing. She indicated she is still working on the draft report which is not yet ready for board review. She would like to schedule a work session to finalize the draft in time for the next regular board meeting in October. The land board secretary will poll the board for a suitable date.

She spoke about case studies for inclusion in the report noting some were NH case studies and others from Massachusetts (MA). Board members were in agreement that case studies from MA could be included in the report as those studies would serve as additional data points. She then spoke to the options for addressing workforce housing which would be included in the report: 1) substantial regulatory changes made at the local board level and 2) changes made on the state level.

Board members opined that changes the board can affect locally would be their first option in the process to increase work force (affordable) housing opportunities; statute-based changes may also be included as secondary.

Planner LaBranche stated the draft report she will share with the board would be a basic draft with placeholders for other items totaling upwards of 100 pages including addendums and resources. She indicated she would create an online document using a google docs platform to circulate the document and solicit board feedback taking into consideration the provisions of RSA 91-A. The draft will be made available to boards members by the end of next week (October 9<sup>th</sup>) to allow for review prior to a work session to be scheduled for the second week in October.

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

Chairman Bath opened the public hearing at 7:14pm 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. He announced the

applicants have requested a continuance to the October meeting. It was noted the board has not yet taken jurisdiction on the application.

**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 October 19, 2023 at 7pm; seconded by Vice Chair Allen. The motion passed 5-0-0.**

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

Chairman Bath opened the public hearing at 7:15pm 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.

**PRESENTATION BY THE APPLICANT**

Attorney Josh Lanzetta of Bruton & Berube PLLC in Dover, NH introduced applicants Jeff and Peter Brown, Professional Engineer Christian Smith of Beals Associates, and Soil Scientist Marc Jacobs. He then presented a slideshow depicting images from Google Maps, Google Earth, the NH Tax Maps, and the mulch production process noting the processing is done outside, there is no harvesting of timber, only wood by products are brought on site which are ground and stored on pads. Colorants are added (red and black) which are designated as nonhazardous and in compliance with the Clean Water Act. Colored mulch is then put into piles utilizing a stacker and product is trucked on and off the site by tractor trailer trucks. He stated the applicants are asking for approval of the site plan this evening as substantial revisions were made to the plans resultant of the Town Engineer's first review. The revised plan no longer requires the need for state wetlands approval. Additionally, some phases have been eliminated. The applicants are requesting a waiver from the boundary line survey requirement as the property was surveyed in 2005 and recorded at the registry of deeds. The Town Engineer was the professional engineer who drafted the 2005 plan and nothing has changed that would warrant the extensive expense to re-survey the property.

Professional Engineer Christian Smith of Beals Associates clarified the colorants used to dye the mulch are made of iron oxide (red) and carbon black (black) which are powders fed into the grinder. The colors are absorbed into the wood fibers, are nontoxic and nonflammable. The MSDS sheets provided report the product is innocuous and should not be eaten.

He went on to say they no longer require a wetland permit or AOT permit; but will need a minor shoreline protection permit for the area within 250 feet of the shoreline.

The revised layout was reviewed, noting one area completely removed. The applicants may or may not move forward with additional phases – they are only focusing on the proposal in front of them at this time. Should they wish to expand in the future, they know they will need to come back before the Planning Board.

Changes were made to the stormwater pond per the Town Engineer's recommendations, the pond to the east has been elevated to show a greater separation to the water table, and the other pond has been altered. He then ran through the Town Engineer's latest comments from the September 14<sup>th</sup> memo that were still outstanding:

*3. My (D. Quintal) 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.*

*Beals Associates' Response: The copy of the Site-Specific Soil Survey (SSSS) prepared by Marc Jacobs is included as part of this submittal response. 10 test pits in total were performed by Marc Jacobs as part of the SSSS, but only two were logged as relevant based on the proximity to the proposed drainage facilities.*

*Town Engineer's Response: If test pits were done, why would the results not be presented to the board for review? Relevant or not!*

Mr. Smith stated the test pits that were done at the site were different from the test pits conducted for a septic plan – they could put something together, but the information may not be useful to the board. Further discussion with the Town Engineer is needed.

*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.*

*Beals Associates' Response: The area of disturbance for the proposed project was designed to remain below the 100,000-sf threshold (actually below 50,000 s.f.) and therefore does not require an Alteration of Terrain Permit (AoT) for this phase of construction. Future phases will require an Alteration of Terrain Permit as they are planned and approved.*

*Town Engineer's Response: The topographic plan shows contiguous upland inside the 15' buffer equal to 5.65 acres. The plan needs to clearly show the square footage of the disturbance area.*

Mr. Smith stated they can do this and will label the area appropriately.

*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.*

*Beals Associates' Response: Based on input from our environmental consultants, a Shoreland Protection Permit will be required for the proposed work within the 250-foot reference line from the Powwow River.*

*Town Engineer's Response: This permit should be provided prior to final approval.*

Mr. Smith stated the applicants agree with this.

*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.*

*Beals Associates' Response: As demonstrated by the aerial photographs these improvements were completed prior to 1998. Recent upgrades to the roadway were limited to overtopping of the existing gravel.*

*Town Engineer's Response: Clearly fill was added close to the edge of wetlands as noted during the department head's site walk and should be removed. The board may wish to conduct an additional site walk to verify this point.*

Mr. Smith stated they will discuss this with the Town Engineer as when they were constructing the road, they were keeping 15-feet from the wetland flags. They have photos showing this.

*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.*

*Beals Associates' Response: Safety Data Sheets are included with this submittal response to show that the red and black color versions of the mulch use non-contaminant powered colorants rather than dyes.*

*Town Engineer's Response: Monitoring wells and testing of groundwater would document and verify that no environmental affects to the site.*

Mr. Smith stated the MSDS sheets list the materials as safe under the Clean Water Act and he does not believe this is necessary.

*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.*

*Beals Associates' Response: Doucet Survey referenced the January 2005 "Subdivision Plan of Land Tax Map 11, Block 2, Lot 11" plans prepared by Civil Construction Management, Inc. and recorded in the RCRD as Plan D-33201. Those two plans were included as part of the original submittal. Additionally, Doucet Survey verified the subject property boundary utilizing the Quitclaim Deed recorded in the RCRD in Book 5927 Page 2927 on July 6, 2018. This deed was included as part of the original submission. The property had wetlands delineated in 2023, was field surveyed in 2023, has been walked to verify no abutter encroachment, and the proposed improvements are well outside of the limits of the Powwow River.*

*Town Engineer's Response: If the site plan is approved, I believe a survey stamped plan must be provided showing proposed construction work & use of the property and include notes certifying all bounds are in place and there are no encroachments. This plan will need to be recorded in the registry of deeds.*

Mr. Smith stated the applicants will seek a waiver from this requirement.

*19. Long Term Inspection & Maintenance of the site and stormwater features should be provided for review and ultimately recorded upon approval.*

*Beals Associates' Response: An Inspection & Maintenance Plan for the project site has been provided.*

*Town Engineer's Response: Upon approval this document should be recorded in the registry of deeds.*

Mr. Smith stated they would take no exception to this recommendation.

*20. Additional Comment by the Town Engineer: Grading plan should be revised to show the minimum 4-foot-wide erosion control mix berm next to the 15-foot buffer.*

Mr. Smith stated they will add the line necessary to depict the actual berm width as recommended.

*21. Additional Comment by the Town Engineer: Note that all sediment control and stormwater features must be installed and inspected prior to any material processing on the site.*

Mr. Smith stated this would be added to the grading plan.

## BOARD QUESTIONS

At Vice Chair Allen's request, Mr. Jeff Brown provided a more detailed account of the mulch production process.

- Raw bark is purchased from saw and paper mills.
- Wood chips are purchased.
- The bark and chips are blended sometime adding coloring.
- The product is then grinded and stockpiled.
- The product then sits to mature over the winter months.
- Product is then shipped out.

He stated they don't do much with logs or brush; most of what they use is pushed through a 2-inch screen, and colorant (a dry pigment) is added prior to grinding. They count on the moisture in the dry wood to absorb the color as they pound the color into the material which does not allow for much runoff. However, if they get a 4-inch rainstorm in an hour they will have a bit of runoff. In such cases, they would avoid coloring the product during these times. The business is seasonal: From February 15<sup>th</sup> to March 15<sup>th</sup> they start sending product out, with this activity very heavy through the month of June, and then they start filling the pile back up, and letting them sit over the winter.

In response to Vice Chair Allen's questions, Mr. Brown stated:

- The business generates 65,000-70,000 cubic yards per season in which trucks can haul 80-100 yards each.
- There are 4,000-5,000 yards of mulch in each stacked pile totaling 60,000-70,000 yards in all piles.
- Trucks transporting the product in and out are owned by other companies.
- Raw products come from 600-700 miles north of the site.
- 1% of the product shipped onto the site will be logs (by way of logging trucks).
- The height of the mulch piles average 40-feet.
- The runoff is going to be contained on the site by a 4-foot berm as suggested by the Town Engineer to serve as filtration in addition to the 60,000 yards in piles as mulch is very absorbent. The pile itself will capture its own runoff, plus the area is very flat.

Mr. Smith spoke to the drainage design noting they regraded the area, elevated the pond above the water table, a split of water going to one pond or to another pond or to retention areas. The 4-foot mulch berm along with the regrading will prevent any stormwater from reaching beyond the immediate site.

Chairman Bath questioned the noise levels associated with the business stating the town's bylaws require the noise to be no louder than typical traffic noise.

Mr. Brown responded:

- The site consists of 28 acres of which they are only proposing to use 4 acres.
- There is plenty of natural buffer with the trees and leaves.
- The stockpiles will also serve as a noise buffer.
- Noise would not be an issue.

In response to Chairman Bath's questions about a year-round buffer between the site and the abutting properties, Mr. Brown and Mr. Smith stated:

- The natural tree line will serve as the landscape buffer between the properties.
- There is 500 feet between the stockpiles and the nearest residential property line.

Mr. Brown indicated he did not know the decibel level of the grinder/chipper equipment.

Vice Chair Allen spoke to the board's responsibility to evaluate the impact to the immediate neighbors as well as neighbors in a different district in the general area. This would include the impact to property values, the impact on roads, and the safety and health along those lines. Part of this evaluation will be to consider the operations of the business at its busiest times.

Mr. Brown stated:

- The busiest times run approximately 90 days with a slow build up to full operational capacity to slow down.
- There will be 25-30 tractor trailer trucks entering/exiting the property daily at its busiest time.

RPC Planner Healey noted her concerns associated with the traffic impact to the area, the conditions of the road, and the turn radius required for tractor trailer units. She suggested a traffic analysis be conducted or, at a minimum, the road agent and the NH DOT provide their input.

At the board's request, Police Chief Michael LePage spoke to traffic on Bowley Road noting there is no specific posted weight limit; however, the tractor trailer units when empty weight 26,000 pounds and when filled with product, likely to weigh substantially more than that. He also stated as the 911 representative to the town, the house numbers along Bowley Road will need to be renumbered to meet E911 requirements. Mr. Smith responded that the applicants wish to make their driveway a private road named "Mulch Lane" which was previously suggested by the Police Chief.

Responding to questions by Vice Chair Allen, Mr. Brown indicated a fully loaded tractor trailer truck weighs approximately 80,000-100,000 pounds. Vice Chair Allen stated he would like both the Town Engineer and Road Agent to weigh in on this.

The turn radius from Route 108 from the direction of Newton onto Bowley Road was discussed. Concern was noted about the possibility of tractor trailer units having to cross the yellow line into oncoming traffic on Route 108 to navigate the corner to enter onto Bowley Road, which would block both lanes on Bowley Road as well as block access to and from Sullivan Lane. Mr. Brown stated that as a driver himself, and regardless of whether one is driving through a rural or urban area, it is impossible to stay in one lane when navigating corners – trucks need to do what they need to do to get to where they deliver. He stated believes Bowley Road and Route 108 intersection are adequate for the tractor trailer trucks to enter and exit.

Ms. Cornoni spoke to the Town Engineer's comment #11 in that she supports the testing of surrounding wells and the river as there will be trucks with diesel fuel, oils, as well as the colorants. She requested the board talk more about this at the appropriate time.

Atty. Lanzetta responded that the applicants are guided by the state with respect to what is considered hazardous materials, and, in this instance, there are no hazardous materials. This would be an expense without a basis.

Chairman Bath stated to Ms. Cornoni's point, there are also a large number of trucks with petroleum products, equipment on site using petroleum products, and the refueling of that equipment on site. It is prudent to show the baseline for this.

Ms. Cornoni further responded that the MSDS sheet shows the colorant as a category 1 on health which is considered slight impact to health, but in this case, they are proposing stockpiles of the product.

Atty. Lanzetta stated that the slight is for inhaling the product and the federal Clean Water Act does not recognize these products to be hazardous. The colorant does not rise to the level of regulatory concern. They are strictly following the law in this matter.

He further stated there is a 500-foot buffer between the property line and the stockpile pad which is a really large distance. His experience with noise decibels in other cities and towns serves as a basis for his claim that the decibel level for the business operations will be quiet because there is a ton of space of linear footage to the property line from where the business is operating. Both the berm buffer and the 40-foot mulch piles will serve as noise buffers. He stated shooting ranges require a 16-foot berm buffer for noise of a higher decibel level, and the applicants will have 40-foot mulch stockpiles as a buffer for a much lower decibel level. Running the grinder and running the stacker will produce noise, but because it is located so deep into the acreage, there will not be a noise problem.

He stated the proposed use of the property is a permitted use of the property, thus the property value analysis is not what should be done through the site plan review process. The town has designated this property for light industry, which is what the mulch production company is.

The applicants are happy to accommodate whichever method is best for the E911 renumbering.

With respect to the curb cut and traffic, he stated that curb cut is over 24 feet and according to the MBTE (guideline used across the country), the curb radius is adequate. There is a statute in the state that limits the board's review of the weight of vehicles and their capacity. If the road is not limited by weight now, the board cannot impose a weight limit specifically to this application and proposed use. The gravel road that was in existence on the property that was recently topped by the applicant has been in existence since at least 1998. It is compacted and has been there with large vehicles entering the property.

Chairman Bath stated the curb cut concern is more about the intersection of Bowley Road and Route 108, not the gravel road on the property.

## BOARD QUESTIONS

Planner Healey noted the Fire Department has not yet weighed in and should be included in the review process.

Responding to questions about the transference of insects and vegetation from the materials being trucked onto the site, Mr. Brown stated there are no regulations that he is aware of to monitor this. The product is brought in, put through a 2-inch screen, its matured through a heat and compost process, which generally kills off any insects or weed seeds that may be there. For the most part, the product is bark and insects do not like bark; they like the wood. They don't buy wood that is infested; however, it is impossible to check every truck to ensure there is no infestation.

## PUBLIC COMMENT

Chairman Bath then opened the public hearing to public comment first providing ground rules (questions posed to the chairman and behavior expectations).

Sally Hamel of 2 Sullivan Drive spoke about the state's requirement of not permitting firewood to come into the state from other states and asked why this business is not subjected to the same standard. She stated the trees are not a good sound barrier as she can hear the activity of the light industrial park up the street. She then gave an account of a tractor trailer unit exiting Bowley Road blocking Sullivan Lane, both lanes on Bowley Road and taking up both lanes on Route 108. The cones that were placed along the curb of Bowley Road by the Police Chief were run over by the truck and crushed.

Building Inspector Kip Kaiser stated from a code enforcement perspective, he recommends the board set specific decibel levels that can be enforced. He also recommends the testing of surrounding well water as a baseline. With respect to Bowley Road itself, he inquired if the NH DOT (Region #6) has been involved as both they and the Fire Department should be included in the review.

Dan Bodwell of 79 North Road stated he generally favors the applicants as in this case, the town set aside tracts of land for light industrial use. He supports the idea of groundwater sampling so that they are not faced with a burden at a later date. He noted the hours of operation were not presented.

Kelly Gannon of 6 Ashlie Road stated she looked at the zoning ordinance which prohibits heavy commercial operations like manufacturing, trucking, and hauling and questioned how this proposal doesn't fall under any of those. Vice Chair Allen responded by reading Article V – Light Industrial/Residential District paragraph C. which states:

*The Light Industrial District is intended for but not limited to use and development of research laboratories, office buildings, selected light industries, warehousing, service or utility businesses, light manufacturing facilities, trucking companies, solid or liquid waste companies, excavation and heavy equipment operators, manufacturing industries, public utilities, service and repair of vehicles and equipment, auto-body, machinery sales/service/ repair, freight or trucking operations, contractor storage yards, contract cleaning companies, printing and shipping, industrial supply companies, telecommunication towers and facilities.*

Ms. Gannon then spoke about the trucks turning onto Bowley Road in that they cannot navigate the curb appropriately as she traverses this roadway regularly in her Rav4 and knows she must take the corner just right in order to take it safely. Additionally, she has two young children who ride their bikes along Bowley Road and this proposal will make this activity impossible. She also has concerns about the bus stop and keeping children safe as well as the noise and odor that typically comes from mulch plants citing the mulch plant in Peabody smells very bad.

David Toothaker of 10 Ashlie Drive stated back in the 90's they tried to develop this parcel but determined it would be detrimental to the surrounding property values based on noise and safety factors. In his opinion, this proposal is more impactful to the area with up to 30 trucks per day – 60 passes a day which equates to trucks coming and going every 10 minutes. There are safety factors and concerns with the number of trucks, with diesel sounds and smells. He doesn't

understand how an operation like the one proposed would even be allowed on that parcel given the previous proposal in the 90s was deemed not suitable. He stated this is like trying to fit a square peg into a round hole.

Chairman Bath stated the Planning Board did not solicit for the parcel to be developed, the applicants submitted an application on their own and the board will go through the appropriate due process allowing both the applicants to present, member of the public to opine, and then the board will work to come to an agreement or not, based on the site plan review regulations.

Mr. Toothaker stated he does not fault the board; he is concerned about his quality of life in the neighborhood. He does not want to see East Kingston become East Boston. The neighborhood is full of kids, pets, walkers, joggers and bikes.

Denis Hamel of 2 Sullivan Drive spoke to sounds coming from the direction of the parcel in question this morning which were loud and intrusive even with their windows closed. It turned out to be another parcel, but this speaks to the transference of noise in the neighborhood. He then provided a lengthy review of the proposal citing his position as a retired professional engineer. His review included (in summary):

- He agrees the use is allowed but highlighted Zoning Ordinance Article V – Light Industrial/Residential District Paragraph C.6 regarding no use shall be offense, injurious, or noxious because of refuse, vibration, smoke, fumes, dust, odors, etc.
- He does not support granting a waiver from the surveying the property.
- The shoreline as depicted on the plan is not accurate as there are discrepancies between the 2005 plan and the current plan.
- The access gravel road to the Dewey property (easement) is not shown on the plan.
- Existing conditions noted on the plan are after the roadway and bridge were constructed. These improvements are new and are not to be considered existing conditions.
- The site was constructed illegally – no plans were submitted regarding the construction of the road or bridges.
- All the drainage calculations were based on existing conditions which are not considered existing conditions. His own calculations yielded 70,000 square feet of disturbance.
- The stormwater calculations are not valid and need to be corrected.
- All phases, both current and future, should be presented so that the board and public can know the full extent of the development of the property.
- The detail calculations of the 2005 plan do not match the proposed plan.
- All test pit data should be done and witnessed by a town official.
- No definitions of the soil mapping were provided.
- Detail on sheet #5 does not provide the width of the road.
- The Town Engineer requested a 3-foot mulch berm; the plan only shows 2 feet. They also need to show the full width of the berm.
- Traffic pattern needs to be submitted to show that 20-30 tractor trailer units can turn around on the site. This should include the hairpin turn onto Haverhill Road as the curve is 45-degree angle and the state will only allow no less than 60 degrees. DOT needs to be involved and a traffic study should be done.
- No lighting on the property is a concern with respect to safety.
- Mulch naturally composts, gets hot and can burn. There are no fire suppression plans noted.
- Several other permits should be required: general construction permit, EPA permit, Shoreline Protection permit, and well permit for water to the site.
- Stormwater should be inspected weekly during the construction period.
- Google maps were used as part of the presentation and that map can be 20-30 feet off.



- Mulch piles serving as a noise buffer will provide inconsistent buffer as the piles will be reduced as the product is shipped out.
- Trees serve as a visual buffer but not a sound buffer.
- Bowley Road is getting broken up at the corner already from the construction and logging vehicles.
- Concern about the bugs brought in on logs and in the bark. These materials are coming from out of state. Raw logs are not to be transported across state lines.
- Concern about the long-term effect of the colorants.
- There should be a spill prevention plan for the fuel stored on site for the equipment.
- The plan does not show where the employees will park.
- The plan does not show where the large quantities of dyes will be stored.

Keith Reynolds of 6 Sullivan Drive spoke to his concerns about the environmental impact, the diesel fuel from the large number of trucks which could end up in the Powwow River. Noting the business was affiliated with a mulch operation in Plaistow, he stated trash is typically in the mulch product to which he is not sure where the trash will end up. Police department access could be impacted when there is a back up trucks (25-30 a day). Visuals of the conveyor belt are concerning. The wood products will compost and omit an odor. There are too many bad things associated with this type of business and this is not a good place to put it.

Jason Haley of 170 Haverhill Road stated he has a friend who worked for ProBark in Plaistow who told him they constantly deal with fires from the composting materials. That gas and diesel fuel, hydraulic fluid, and oil are used in large quantities, and that the equipment leaks on a regular basis. He stated he was informed an agent is added to the mulch when it catches fire, and that the agent is hazardous. He is also concerned about the safety of kids on the roadway.

Kelly Martin of 181 Haverhill Road questioned how 25-30 tractor trailer units were expected to enter and exit the site in a single day (back up on Bowley Road or Haverhill Road, idling). She stated trucks have actually gone off the road onto her property leaving tire marks. She also asked how the police were to respond to emergency calls if Bowley Road is backed up with trucks.

Andy Herum of 1 Bowley Road stated the Zoning Ordinance for the light industrial district specifically states the use shall not be offensive, injurious, or noxious (noise, vibration, etc.). He believes the proposed use will be detrimental to surrounding property values. Trucks going in and out every ten minutes will interfere with students waiting for buses. He then asked if the parcel was zoned light industrial because of the industrial park up the street.

Chairman Bath responded the light industrial zone was created in 1989 which included the parcel in question. Given that the district is landlocked between the power lines and the gas lines, it seemed a good place for a light industrial zone.

Mr. Herum stated that the access to the parcel in question should be through the light industrial park up the street. There should be no heavy trucking activity through the Bowley Road neighborhood. He then went on to express his concerns about runoff ending up in the Powwow River. Additionally, there are trucks going in and out of the property now without the Planning Board's approval. Water quality is an issue, runoff will happen, and the product will need to be heavily watered. He asked where the water for this would come from.

Mr. Smith responded that there is no work going on at the site; only clean up of the site has been happening which includes culvert work. It may be that the abutters are mistaking the work going on at the property to the south of them.

Mr. Reynolds stated he built his house 15 years ago and that the green space buffer the applicants have referenced is not fully grown trees. The type of green space being referenced does not exist. The noise from the type of equipment the applicants are proposing cannot be absorbed by what exists for tree buffer. He also has concerns about the trucks

coming from 600-700 miles away needing to camp out in the neighborhood before they can access the plant. Kids play in the street all the time.

With there being no other public question or comment, Chairman Bath closed the public comment portion of the meeting.

#### BOARD QUESTIONS AND REVIEW OF APPLICATION

Vice Chair Allen noted a number of questions were raised during public comment that warrant responses from the applicants. A summary of those questions and responses given by Mr. Brown and Atty. Lanzetta included:

- Employee parking on site will be along the roadside of the access road beyond the pipeline crossing as the roadway is approximately 30 feet wide, enough to accommodate tractor trailers and parked vehicles.
- The busiest time of the season will render 25-30 tractor trailer units per day. By October that number will decrease to 4 units per day. During the winter months, 1-2 units per day.
- Hours of operation will be from 7am to 6pm, 5 days per week which will include the activities of grinding, loading, and trucking. Trucks typically arrive after 7am but could arrive as early as 5am. Night deliveries are also possible; thus, the trucking portion of the operation is 24 hours per day.
- Pursuant to the Town Noise Ordinance (601.4), exhaust, loading and unloading, etc. may not be conducted between the hours of 10pm to 7am, as the noise generated by this activity would be in violation of this ordinance (per Police Chief LePage).
- Mulch pile fires are not extinguished with water as this process will only create more heat and will fuel the fire. The burning material is fed back through the grinder with the bucket loader which extinguishes the fire. The piles typically emit steam; and will smoke if burning. There is a possibility that a fire will jump from a mulch pile to the surrounding area. Historically, this happens once a year between the two facilities owned by the applicants. Fire Department input on fire suppression is warranted.
- Traffic and turnaround pattern within the site to be further detailed which should include accommodating more than two tractor trailer units at a time. The proposed traffic plan is for tractor trailer units to wait on the access road (none on Bowley Road). Having more than 5 trucks on the site at any time is very rare. Trucks do not tend to sit at the same time as they do at gravel pits.
- The dye is stockpiled in waterproof bags on pallets and comes in 800 to 2200-pound bags. Typically they will stockpile 30 bags at a time. The dye is a nonflammable powdered substance.
- There is no proposed water for the site, portable bathrooms and cleaning wipes will be provided.
- Since there is no weight limit posted on Bowley Road, the applicants believe they are within their rights to utilize the roadway as any other vehicle without restriction.
- The odor/smell of pine and spruce bark would be generated from the operations.

For the purposes of determining the application as submitted is complete for the board to invoke jurisdiction, Chairman Bath ran through the site plan review checklist noting the need for more information on a traffic plan (accessing the property, adding curb cuts detail), work out the discrepancies between the 2005 plan and the current plan with respect to the location of the wetlands, documentation on the vibration, noise, and dust to be generated (more than just a comment), address discrepancies of the old road and the newly constructed road, dimensions of the berm need to be added to determine the impact of access around the mulch piles, and the test pit data for all the test pits to be submitted.

Soil Scientist Marc Jacobs spoke to the test pits noting they were not actual test pits but soil observation holes to which the data is included in the soils report.

Vice Chair Allen then provided a summary of all the concerns raised at the meeting along with the additional information that is needed with respect to the site plan:

1. Traffic Study/NH DOT input to be considered as recommended by Planner and Building Inspector. Specific concerns include radius of turns, access/egress onto Rte 108, bus stop and pedestrian safety.
2. Curb cut at Bowley/108 and within site to be added to plan to ensure tractor trailers can navigate.
3. Renumbering/E911 requirements to be met. Applicants request designation of private road to be named Mulch Lane.
4. Water testing of surrounding wells to be considered (TE note# 11).
5. Fire Department review required and fire suppression plan to be submitted.
6. Shoreline Protection Permit required prior to final approval (TE note# 5).
7. Decibel level standards to be determined as recommended by the BI.
8. Discrepancies noted between 2005 plan and current plan re: proximity to wetlands (TE to review).
9. Vibration, noise, dust data to be submitted beyond basic comments in application. Possibly demonstrate grinder for town officials to witness both noise and vibration.
10. Discrepancies noted between 2005 and the current plan to be reconciled regarding old road layout and new road layout.
11. Width of perimeter berm to be added to the plan (TE note# 20).
12. Wetlands infringement along the access road needs to be clarified.
13. Further discussion on long term impact of iron oxide to surrounding wells, wetlands, Powwow River corridor.
14. Emergency vehicle access plan to and from the site as well as out of Bowley Road when tractor trailers are standing and idling to exit or access the site.
15. Noise/fumes concerns when tractor trailer trucks are backed up to enter/exit site.
16. Employee parking to be added to the plan.
17. Lack of lighting concerns with respect to employee safety and navigation of site outside of daylight hours.
18. Cell service for emergency purposes should be confirmed on the site.
19. The location for the storage of dyes and dumpster to be added to the plan.
20. Addition of square footage of disturbance area to be added to the plan (TE note# 4).
21. Fill along the access road to be removed as TE cites too close to wetlands (TE note#9). Further discussion with TE required.
22. TE recommends site plan be recorded at ROD thus LLS stamp and survey would need to be completed. Applicants are seeking a waiver from this requirement. Board action required.
23. TE recommends the Inspection and Maintenance Plan be recorded at the ROD (TE note# 19).
24. TE recommends all sediment control and stormwater features be installed and inspected prior to any material processing on the site (TE note# 21). Board members noted concern about potential contaminated runoff from dyes, oil, petroleum, etc. TE to review.

25. Weight limit of Bowley Road to be researched and documented.
26. Concerns noted about invasive insects and vegetation brought onto site.
27. Concerns noted about 24/7 delivery schedule (actual bus operations 7am-6pm, M-F).

Chairman Bath stated there was still too much information needed for the board to take jurisdiction on the plan.

**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 October 19, 2023 at 7pm; seconded by Vice Chair Allen. The motion passed 5-0-0.**

It was noted this continued public hearing would be held at the East Kingston Elementary School.

With no further discussion Chairman Bath closed the public hearing at 9:44pm.

#### **OTHER BUSINESS**

##### **APPROVAL OF MINUTES**

Board members reviewed the minutes from August 17, 2023 meeting.

**MOTION: Vice Chair Allen motioned to approve the August 17, 2023 minutes as published; seconded by Mrs. Smith. The motion passed 5-0-0.**

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

The board will be polled for a date for a site visit to 213 Haverhill Road.

##### **PROPOSED ZONING AMENDMENTS**

This item was tabled to the next meeting.

#### **ADJOURNMENT**

**MOTION: Chairman Bath motioned to adjourn; seconded by Mr. Nigrello. The motion passed 5-0-0.**

The meeting ended at 9:46pm.

Respectfully submitted,

Catherine Belcher, Land Board Secretary

Minutes approved on October 19, 2023.