

# **TOWN OF EAST KINGSTON PLANNING BOARD**

## **MEETING MINUTES**

October 19, 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

Conservation Easement Review

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.

Others Present: Victoria Healey – RPC Planner, Dennis Quintal – Town Engineer and Conservation Commission Chair, Fire Chief Ed Warren, Christian Smith – PE, Peter Brown, Mike Seekamp, Atty. Josh Lanzetta, Marc Jacobs – Soil Scientist, Sally & Denis Hamel, Keith Reynolds, David Toothaker, Cheryl and Tim Carroll, Police Chief Michael LePage, Town Administrator Grace Ruelle, Richard Leith, Jason Haley, Andy Herum, Kathy Carlson, Vicki Brown – Conservation Commission member, Gordon Powers – Conservation Commission member, George Whiteman, Susan Jordan, Jaclin and Steve Morrison, Atty. Mike Harris, Dan Guilmette, Mark Brinkerhoff – Road Agent, Mike Malynowski – PE (via Zoom), 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 the grant planner would not be presenting this evening.

### **CONSERVATION EASEMENT REVIEW**

Conservation Commission Chair Dennis Quintal presented a property located on the northeast corner of East Kingston that is being considered for conservation easement along with abutting properties in Exeter and Kensington. Access to the property is located off Powder Mill Road in Exeter. The owner would like to put the 72-acre East Kingston parcel in conservation easement along with the Exeter and Kensington parcels by way of grants from SELT (Southeast Land Trust) and other sources, which would also include \$100k from each of the three towns. The total cost to the three towns to place 156 acres in conservation easement is \$300k. East Kingston would be utilizing bond monies from the \$4million warrant article approved by the voters in March. The Conservation Commission supports the easement.

He went on to explain that the Board of Selectmen, who would need to approve the easement, have questions associated with the developability of the parcel and have asked that the Planning Board make a finding on whether the parcel can be developed, as this could affect the value of the easement.

Chairman Bath spoke in favor of SELT and of adding this parcel to their conservation efforts.

Vice Chairman Allen also spoke in favor of preserving the land and wildlife corridor.

Ex-Officio Nigrello raised the issue of scattered and premature subdivision (state statute) which could prevent any type of development to the property as the only access to the parcel is through the towns of Exeter and Kensington. He asked if the board would invoke this statute as it would place an unnecessary burden on town services.

Conservation Commission Chair Quintal provided topography detail (steep terrain) as an obstacle for constructing a road, and also noted there would need to be one to two railroad crossings.

Vice Chair Allen opined that even though scattered and premature subdivision provisions might apply today, and given the state's concern about housing shortages, there could be a possibility the statutes could change in such a fashion that the property would become developable. \$100k is very little money in comparison to the cost to the town should the property be developed.

Police Chief LePage spoke to the difficulties and liabilities associated with having to service properties that would require them to leave the borders of East Kingston to access properties in East Kingston.

Fire Chief Warren stated that if there is no access to the land, he has no concerns.

Vice Chair Allen reiterated his position to which other board members concurred. Mr. Nigrello thanked the board for their feedback.

### **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) at 1 Main Street, MBL# 09-07-01 which is located in the town center district.

#### **PRESENTATION BY THE APPLICANT**

Atty. Mike Harris from BCM Environmental & Land Law, PLLC stated he would be representing the Morrisons along with Mike Malynowski, PE of Allen & Major Associates who would be presenting by way of Zoom. He then noted they did not bring with them the 22x34 plan sets as Mr. Malynowski was intending on bringing them with him. They did; however, provide the board with 10 copies of 11x17s plan sets. Chairman Bath stated not having the larger plans on hand would not hinder the board's review and consideration.

Mr. Malynowski thanked the board for accommodating his virtual attendance and presented the plan noting he read the Town Engineer's comments and has prepared a new plan showing the improvements requested. He provided a description of the property (residence with barn, access on Main Street, shared driveway with fire department, and a second driveway at the intersection which will be abandoned). He spoke about providing a gravel access to the rear of the barn to where the dumpster and trailers will be located. The trailers would be used to store hay, grain and shavings. The area would also include a small turnaround so that the trailers can be moved around by Mr. Morrison's equipment. A filtration trench has been added and the stormwater analysis has been submitted. No impervious surfaces are proposed; however, changing grass surfaces to gravel will affect the stormwater runoff to which siltation measures will be taken (products sold by Mr. Morrison). He stated there was ample room for parking and snow storage and erosion control measures have been added to the site to minimize any impacts. All the items accounted for in the Town Engineer's review have been addressed, including the soil delineations and a stormwater narrative.

#### **PROFESSIONAL REVIEWS**

Town Engineer Quintal read through his most recent review letter dated October 11, 2023 noting a number of his comments from his first letter were addressed so they are not included in this most recent review (applicant's response in bold):

**1. Site Plan Section IV.B.5 – A Mylar will be required for recording after final approval. Once the final plan is approved, a mylar will be submitted to the Town.**

**4. Section IV.C & Section VI.E.7 – Reviews & Site Inspections will be required during development to verify compliance. Understood.**

**5. Section IV.C.4 & Section VI.L – Escrow Account is required to reimburse the Town for review agents. Understood.**

19. Section VI.N – Review by the Fire Department is required. **Understood. We will coordinate with Town Staff to ensure that the plans are reviewed by the Fire Department.**

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. **Understood.**

21. Section VIII.F.5 – Sign location and size must be provided if proposed. **No signage is proposed.**

**ADDITIONAL COMMENTS:**

24. Plan C-1 shows the surface where the 4 parking spaces located on the street side of the Barn as gravel. I believe it is currently pavement.

25. The plan shows how the TT Tractor Trailer vehicles will be able to get into the property and park. However, the plan must show how they can be turned around to exit the property.

26. I have no objection with the Stormwater Design, Calculations or Maintenance Plan.

Chairman Bath inquired how the tractor trailer units are going to navigate to the back section of the property and further stated his concerns with the Main Street entrance to which he asked Police Chief LePage to present.

Chief LePage spoke to historical events associated with the intersection of Main/Depot/Haverhill Road. A complaint was filed, an inspection of the intersection was conducted, and a public hearing was held on the state's plans to address the geometry of the intersection whereby they would create a three-way stop. The town proposed to remove the stop sign on the railroad track side of the intersection so there would be only a single stop sign located on Haverhill Road. After the public hearing, the plans were halted. His concern is now adding a business access to that intersection, especially when some of the business traffic will include tractor trailer units.

Mr. Malynowski stated they propose closing off the access to the driveway that enters right into the intersection and only using the shared driveway that is shared with the fire department. Atty. Harris added that the NHDOT has issued a letter granting the continued use of the shared driveway. With respect to tractor trailers navigating the property, they will only drive in and drop the trailer off. Mr. Morrison would park the trailer behind the barn using his own onsite equipment.

Chairman Bath expressed his concern with the shared driveway's angle noting a large truck could not make a right turn out of the driveway without crossing the center line adding a greater safety concern for the intersection.

Mr. Morrison stated all his deliveries come from Interstate 95, thus they would enter and exit from that direction so turning right out of the driveway would not be an issue – they would have no need to travel in the direction of Kingston.

Atty. Harris added the traffic volume for tractor trailer trucks is low. Additionally, Mr. Morrison can instruct the drivers they can only turn left out of the driveway.

**BOARD REVIEW**

There being no board questions at this time, Chairman Bath reviewed the site plan checklist for the purpose of determining if the application was complete for invoking jurisdiction.

APPLICANT:	STEVE MORRISON (MIDDLETON SUPPLY LLC)	DATE:	10/19/23			
Location:	1 MAIN STREET	MBL#:	09-07-01	Case#:	2023-08	
Scope/Nature of Proposal:	OPERATION A GRAIN/FEED/HAY/SHAVINGS WHOLESALE AND EROSION CONTROL SUPPLY BUSINESS					
SECTION I	AUTHORITY					
SECTION II	PURPOSE					
SECTION III	PROCEDURES	MET	NOT MET	WAIVED	N/A	

	Escrow Account	X			
<b>SECTION IV</b>	<b>SUBMISSION REQUIREMENTS NEW SITE PLAN DATED 10/3/23</b>	<b>MET</b>	<b>NOT MET</b>	<b>WAIVED</b>	<b>N/A</b>
	Plan Sets (full size/11x17) <i>Full Plan sets not provided</i>	X			
	To Scale (60'/inch) <i>30' and 40' scale depicted (to be corrected)</i>		X		
	Date/Title/North Arrow/Location Map	X			
	Name/Address Developer/Engineers/Owners/Abutters	X			
	Topographical Plan with Contour Lines	X			
	Easements/Rights-of-Ways	X			
	Soils/Wetland Data Requirements	X			
	Name/License/Seal LLS	X			
	Name/License/Seal PE	X			
	Copy of Property Deed	X			
<b>SECTION V</b>	<b>REQUIRED EXHIBITS AND DATA</b>	<b>MET</b>	<b>NOT MET</b>	<b>WAIVED</b>	<b>N/A</b>
	A. Natural features (water, trees, vegetation)	X			
	B. Location of buildings, size, setbacks	X			
	C. Elevation view of all buildings	X			
	D. Off street parking and loading spaces	X			
	E. Access and egress	X			
	F. Water, sewage locations with setback	X			
	G. Location of waste disposal facility	X			
	H. Stormwater management/drainage	X			
	I. Contours and finished grade elevations	X			
	J. Landscaping, buffers, open space	X			
	K. Size, design, location of signage		X		
	L. Location of public services (gas, power, etc.)				X
	M. Lighting	X			
	N. Streets and roadways	X			
	O. Property lines	X			
	P. Roads, boundaries, easements (subdivision)				X
	Q. Any other exhibits/data required by the Board				X

#### INVOKING JURISDICTION

Chairman Bath stated the plan and materials were sufficient for the board to take jurisdiction.

**MOTION: Chairman Bath motioned to invoke jurisdiction on Steve Morrison's site plan review proposal (case 2023-08) for property located at 1 Main Street, MBL# 09-07-01; seconded by Mrs. Smith. The motion passed 5-0-0.**

#### PLANNER'S REVIEW

RPC Planner Healey stated there was still some confusion on the traffic patterns and where the pavement ends. She asked that more detail be provided. She also asked for more detail on the proposed signage as the size and location were not depicted on the plan. She concluded with recommending the plan, once approved, be recorded at the Registry of Deeds.

#### BOARD COMMENTS

There were no board comments at this time.

#### CONSIDERATIONS OF WAIVERS

Atty. Harris presented four waivers and their rationale for requesting them:

Waiver Request No. 1: Section VI.F Post-construction Stormwater Management

The proposed use of this property is for both Mr. Morrison's personal residence and the commercial operation of a Grain/Feed/Hay/Shavings Wholesale and Erosion Control Supply Business. No new development on the property is required. There is no past history of excess stormwater associated with the property. As part of the site plan development, Mr. Morrison retained Allen & Major Associates, Inc. to assess drainage from the property. Runoff flows were estimated for both the existing and proposed conditions using Hydro CAD 10.10 software. One Study Point was considered, flow to northerly abutter. Areas contributing to this Study Point are shown on the Watershed Plan. The report concludes that the project provides for sufficient stormwater storage and infiltration so that the volume of runoff is significantly reduced for all design storm events. Thus, the waiver will not be detrimental to public safety, health, or welfare, and will not be injurious to abutting properties.

The waiver will also promote the public interest. Mr. Morrison proposes a lawful business which is permitted within the Town Center. His proposal would significantly reduce stormwater runoff. No additional benefit would come from requiring a stormwater management plan. The regulations seek to prevent detrimental injury to public health, safety, and welfare, and to injury to property by requiring stormwater management post-development of a property for commercial use. Here, that objective is met as the project provides for sufficient stormwater storage and infiltration so that the volume of runoff is significantly reduced for all design storm events. Finally, requiring a post-construction stormwater management plan would create further delay in Mr. Morrison's plan to relocate his business to East Kingston and could result in the loss of customer goodwill. No additional benefit to the public would result from denying the waiver. Again, the objective of the regulations is met as the project provides for sufficient stormwater storage and infiltration so that the volume of runoff is significantly reduced for all design storm events.

#### Waiver Request No. 2: Section VI.J Flood Hazard Areas.

The property is not located in a FEMA floodplain, and there is no history of past flooding associated with the property. As noted above as part of the site plan development, Mr. Morrison retained Allen & Major Associates, Inc. to assess drainage from the property. The report concludes that the project provides for sufficient stormwater storage and infiltration so that the volume of runoff is significantly reduced for all design storm events. Thus, the waiver will not be detrimental to public safety, health, or welfare, and will not be injurious to abutting properties. The waiver will also promote the public interest. Mr. Morrison proposes a lawful business which is permitted within the Town Center. His proposal would significantly reduce stormwater runoff and there is no natural source of flooding (e.g., river, stream, etc.) abutting the property. No additional benefit would come for requiring a further flood hazard assessment. The regulations seek to prevent detrimental injury to public health, safety, and welfare, and to injury to property by requiring flood assessments of post-development of a property for commercial use. Here, that objective is met. Finally, requiring further flood hazard assessment would create further delay in Mr. Morrison's plan to relocate his business to East Kingston and could result in the loss of customer goodwill. No additional benefit to the public would result from denying the waiver.

#### Waiver Request No. 3: Section VI.L Performance Bond.

A performance bond may be required by the Board. The bond is generally used to ensure that conditions of a post-development site plan approval are implemented during construction. Here, Mr. Morrison is not proposing any new development; only existing structures and landscaping are utilized. All conditions, not waived, of the East Kinston Site Plan Review Regulations will be met at the time of the site plan approval. Requiring a performance bond would not be within the spirit of the regulations and would not provide any public benefit. It would be a hardship for Mr. Morrison to comply with the bond requirement when there is nothing to secure.

#### Waiver Request No. 4: Section VI.N Fire Suppression Provisions.

It is not believed that this provision is applicable to this Site Plan Application. This provision requires provisions for fire suppression water sources, equipment, their maintenance, and proximity to properties "shall be in accordance with applicable subdivision requirements." These requirements can be found in the Town's Land Subdivision Regulations

and are applicable to a proposed new subdivision. If the Board finds this requirement is required, we ask that they deem the requirement met or waived. The project does not involve any additional development. The property is located next to the Town Volunteer Fire Department, and there is an onsite pond that can be used to draw water to suppress any fire on the property. Requiring compliance with this provision would not be within the spirit of the regulations and would not provide any public benefit. It would be a hardship for Mr. Morrison to comply with the requirement when there is on-site water for fire suppression.

Fire Chief Warren indicated he had both comments and concerns regarding the waiver from fire suppression requirements, in that the NH Fire Safety Code provides guidance and requirements for the type of business being proposed. He stated the pond out in back of the property doesn't do the fire department any good as there is no access to it. What would be required per the state fire marshal is an Emergency Action Plan. There should be heat detectors in the trailers and areas that are used for storage. Hay and pellets burn, thus there needs to be a fire suppression plan (heat detectors, fire extinguishers, etc.) He does not support waiving the fire suppression requirements as it relates to a fire suppression plan but does support waiving it as it relates to the need to construct a fire pond or cistern as he has access to a fire pond on Haverhill Road. He added that if there is storage on site, the fire department needs to be able to drive around them at all times.

He went on to say that when he was reviewing the NHDOT approval letter for the use of the shared driveway, the DOT says no tractor trailer units, only one-ton trucks. The fire department is busier than ever and there may be times when the shared driveway access will be blocked due to emergency personnel parking.

Discussion ensued about the three tractor trailer units depicted on the plan. Mr. Morrison stated the trailers will be coming in getting unloaded, and taking empties and spinning them around, then another comes in and one goes out. The third one is basically an empty one that is ready to go, so the reality is there would be two staying on site. Fire Chief Warren stated if a trailer is used for storage, it will need a fire prevention plan.

With no other board questions, Chairman Bath presented each waiver for board action.

#### Waiver Request No. 1: Section VI.F Post-construction Stormwater Management

Town Engineer Quintal stated his only concern with this is to make sure the work gets done correctly and then cited the escrow account that could be used to cover inspections prior to the approval to operate the business. With respect to the long-term concerns, there is not a lot of change to the property. If the work is done according to plan, there is no need to require post construction management. The work should be inspected once completed.

Discussion ensued on adding parameters to make sure the trench drain is kept clean, that the water runoff goes into a big field out back of the property, and that the impact is so small the Morrison's could maintain it themselves. It was agreed that other measures were in place and that granting the waiver would still secure the objective of the regulations.

**MOTION: Chairman Bath motioned to grant the waiver from Site Plan Review Regulations Section VI.F Post-construction Stormwater Management; seconded by Vice Chair Allen. The motion passed 5-0-0.**

#### Waiver Request No. 2: Section VI.J Flood Hazard Areas.

Chairman Bath agreed with Atty. Harris' rationale for granting this waiver – there is no history of flooding, no water bodies close enough to affect the area, and strict conformance would cause an unnecessary hardship to the applicants. Board members concurred.

**MOTION: Chairman Bath motioned to grant the waiver from Site Plan Review Regulations Section VI.J Flood Hazard Areas; seconded by Vice Chair Allen. The motion passed 5-0-0.**

#### Waiver Request No. 3: Section VI.L Performance Bond.

Vice Chairman Allen opined the scope of the proposal does not warrant a performance bond that the escrow account won't cover. Board members concurred.

**MOTION: Chairman Bath motioned to grant the waiver from Site Plan Review Regulations Section VI.L Performance Bond; seconded by Mr. Nigrello. The motion passed 5-0-0.**

Waiver Request No. 4: Section VI.N Fire Suppression Provisions.

Fire Chief Warren stated he has no problem with waiving the provision to create a water supply; however, if the use expands or changes in the future, they could add a hydrant to the pond out back. Planner Healey agreed.

**MOTION: Chairman Bath motioned to grant the waiver from Site Plan Review Regulations Section VI.N Fire Suppression Provisions; seconded by Vice Chairman Allen. The motion passed 5-0-0.**

#### BOARD DISCUSSION

Discussion ensued on providing an emergency fire action plan, requiring left turn only for trucks exiting the business, restricting the hours of the for deliveries to avoid rush hour traffic, the possibility of blocking the driveway access due to the parking of emergency personnel at the fire station next door, putting safeguards in place where the delivery trucks do not block the driveway, and placing parking lot striping on the driveway area.

#### PUBLIC COMMENT

Chairman Bath opened the hearing to public comment.

Dan Guilmette of 29 Main Street noted Main Street is the central artery for the town and asked the board to give the intersection important consideration when reviewing the proposal.

Susan Jordan of 19 Main Street inquired about the exact location for the truck entrance noting the traffic is very heavy on Main Street and that she has witnessed cars passing other cars in front of her house.

Kathy Carlson of 89 Sanborn Road inquired about the driveway serving as a bus stop for the elementary school and the summer day camp and how these factors into the use of the property.

Fire Chief Warren responded that the day camp bus stop was actually located in the back parking area by the salt shed when the bus used to stop in town.

#### BOARD DELIBERATION

Vice Chair Allen noted areas of safety concerns related to the coming and going of trucks, permitting left turn only out of the driveway, restricting the hours of deliveries, developing an emergency action plan, and providing a traffic plan for trucks that are not able to enter the driveway in the event the driveway is blocked.

Discussion ensued on taking action with conditions or continuing the hearing to next month in order to review the completed conditions before approval. Atty. Harris stated the Morrison's are hoping for a decision tonight as they must receive site plan approval in order to sell their other property.

The board reviewed the list of conditions:

1. A Fire Emergency Action Plan, as required under NH Fire Code Chapter 31, shall be submitted and approved by the Fire Chief.
2. An annual inspection of the business shall be conducted by the Fire Department for fire code compliance.
3. The set hours for tractor trailer deliveries shall be confined to 10:00am to 2:00pm so as not to impede daily rush hour traffic.
4. Only three (3) tractor trailer deliveries shall be permitted per week.

5. For traffic safety reasons, all tractor trailer units shall exit the business driveway turning left only onto Route 107 South towards Seabrook.
6. A Traffic Safety Plan depicting the truck traffic route in the event the business driveway is not accessible due to the parking of emergency personnel at the adjacent Fire Station shall be submitted and approved by the Police Chief.
7. The dimensions and location of the proposed business sign to be provided.
8. Clear detail of the pavement and gravel area to be shown on the plan.
9. Update the site plan to depict the plan scale of not less than 1" = 60' per East Kingston Site Plan Review Regulations Section IV.3. (Notation on plan not required.)
10. Payment of all professional review invoices to be deducted from escrow account with remaining funds released back to the applicant. (Notation on plan not required.)
11. Provide a final plan for recording at the Registry of Deeds. (Notation on plan not required.)
12. Submit payment for associated recording fees made payable to the Rockingham County Registry of Deeds. (Notation on plan not required.)
13. Any changes, or expansions to the scope, nature, or infrastructure of the business must be approved by the Planning Board.

**MOTION: Chairman Bath motioned to approve Steve Morrison's site plan review proposal to operate a grain/feed/hay/shavings wholesale and erosion control supply business at 1 Main Street, MBL# 09-07-01, with the 13 conditions noted; seconded by Mrs. Cornoni. The motion passed 5-0-0.**

Chairman Bath closed the public hearing at 8:23pm.

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

Chairman Bath opened the public hearing at 8:24pm 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. He then called a three-minute recess to allow the applicants to get their technology up and running.

#### **PRESENTATION BY THE APPLICANT**

Attorney Josh Lanzetta of Bruton & Berube PLLC in Dover, NH introduced applicant Peter Brown, Professional Engineer Christian Smith of Beals Associates, and Soil Scientist Marc Jacobs. He then presented a slideshow depicting FEMA National Flood Hazard Layer FIRMette which shows the parcel categorized as the lowest concern for flood hazard and google map slides dated 1998-2023 showing the driveway bounds have not changed over the past two decades.

He stated they will further present the site plan changes as requested from last month, review the traffic plan, request a waiver from the survey requirements, and address the comments raised by the public. He asked that the board invoke jurisdiction on the plan and grant the waiver this evening.

Professional Engineer Christian Smith reviewed Town Engineer's comments dated October 2, 2023 and provided responses (in bold) as follows:

*3. If test pits were done, why would the results not be presented to the board for review? Relevant or not!*

***Response: The additional test pit locations have been added to the Site, Grading, & Drainage Plans and the test pit logs from Marc Jacobs, Certified Soil Scientist, have been included as part this submittal response.***

*4. 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 disturbance area.*



**Response: The area of disturbance has been added to the Overall Site Plan (Sheet 2, Note 7), along with specifying that Shoreland Protection and Alteration of Terrain Permits will be required for the project.**

5. This permit should be provided prior to final approval. (referencing the Shoreland Protection Permit for disturbance within the 250-foot reference line to the Powwow River)

**Response: The applicant will submit for a Shoreland Protection Permit and obtaining that permit can be made a condition of approval.**

9. Clearly fill was added close to the edge of wetlands as noted during the department heads site walk and should be removed. The board may wish to conduct an additional site walk to verify this point.

**Response: The applicant will look for direction from the Planning Board on this comment.**

11. Monitoring wells and testing of groundwater would document and verify that no environmental impact to the site.

**Response: The original comment was that “the concern would be whether some form of contaminants would be delivered and then leached into the groundwater.” The Safety Data Sheets included with the last response reflected the lack of contaminants in the products being delivered to the site. We do not believe the installation and ongoing testing of monitoring wells are required at this site.**

16. 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.

**Response: The applicant agrees to providing a stamped survey plan and recording it at the Registry of Deeds if deemed required by the Planning Board as part of the approval.**

19. Upon approval this document should be recorded in the Registry of Deeds.

**Response: The Inspection & Maintenance Plan will be recorded in the Registry of Deeds if deemed required by the Planning Board as part of the approval.**

20. Grading Plan should be revised to show the minimum 4-foot-wide erosion control mix berm next to the 15-foot buffer.

**Response: The Grading Plan has been revised accordingly to show the erosion control mix berm as 4 feet wide.**

21. Note that all sediment control and stormwater features must be installed and inspected prior to any material processing on the site.

**Response: Note #12 has been added to the Site, Grading & Drainage Plan B (Sheet 4) stating this requirement.**

He then presented the circulation (traffic) plan utilizing a software program and WB-50 sized trucks showing how the tractor trailer units will navigate the site. Four employee parking spots were also added. As indicted before, the plan does not propose any lighting; the applicants will use vehicle headlights and battery-powered lights on poles when hours of operation fall outside natural daylight hours. The applicants have verified that they have cell phone service at the site. And the storage area for the dye packages and the dumpster have been added to the plan.

#### BOARD QUESTIONS AND COMMENTS

Chairman Bath stated his takeaway from the last meeting was the cavaliness of the applicants regarding the noise, the buffer, the damage to Bowley Road, safety concerns at the intersection of Bowley and Haverhill Road, and the odor that would be produced by the plant operations. The Powwow River serves as a water source to the Town of Amesbury and he has concerns that a project this size could affect the drinking water of another community. His concern is not

so much the bark itself, but the trash, items in the bark, and the refueling of vehicles and equipment on the site. Testing and monitoring wells are on the table as a means to address the fears of abutters. The business proposes the coming and going of tractor trailer trucks all day long to which neighbors have testified that the existing natural buffer is not enough to buffer the noise from the light industrial park down the street, which is farther away than the parcel in question. The board has not had the opportunity to understand and analyze the equipment's sounds and noise decibels, and the board needs to understand and consider the impact to Bowley Road over the course of years.

Mr. Smith stated that Mr. Brown (applicant) has researched the decibel levels of the machines used on the property.

Chairman Bath responded that business activity in the light industrial district is not supposed to produce noise, smoke, vibration beyond the property lines. These activities are strictly prohibited.

Vice Chair Allen stated that from a position of invoking jurisdiction, the application is complete enough; however, from an approval position, more information is needed. There needs to be a site entrance and exit plan whereby the tractor trailer units do not have to swing across travel lanes to navigate the intersection of Bowley and Haverhill roads.

#### PROFESSIONAL REVIEWS

Town Engineer Quintal read his letter of review dated October 16<sup>th</sup> as follows:

*My previous comments that I believe have been satisfactorily addressed are deleted. Remaining are my comments with the applicant's responses in Bold Italic are provided for the Board to consider:*

*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.*

***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.***

*CLEARLY FILL WAS ADDED CLOSE TO THE EDGE OF WETLANDS AS NOTED DURING THE DEPARTMENT HEADS SITE WALK AND SHOULD BE REMOVED. THE BOARD MAY WISH TO CONDUCT AN ADDITIONAL SITE WALK TO VERIFY THIS POINT.*

***Response: The applicant will look for direction from the Planning Board on this comment.***

*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.*

***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.***

*MONITORING WELLS AND TESTING OF GROUNDWATER WOULD DOCUMENT AND VERIFY THAT NO ENVIRONMENTAL IMPACTS TO THE SITE.*

***Response: The original comment was that "the concern would be whether some form of contaminants would be delivered and then leached into the groundwater." The Safety Data Sheets included with the last response reflected the lack of contaminants in the products being delivered to the site. We do not believe the installation and ongoing testing of the monitoring wells are required at this site. The quality of groundwater in an aquifer this close to the Powwow River is a concern and should be checked as a result of this material processing project.***

#### ADDITIONAL COMMENTS

*22. There were several comments from Abutters at the last meeting. All physical issues that could affect the neighbors should be evaluated for possible long-term impacts.*

23. A survey plan with a surveyor's stamp must be provided. Measurements by an accurate boundary survey will correctly identify the limits of the edge of the Powwow River. The access easement to the Bowley Property Tax Map 11-2-13 must be shown along with all abutters noted on the plan.

24. Add note stating which sheets will be for recording and others on file with the Town.

25. Because there will be a high volume of trips by heavy trucks, the applicant must obtain State DOT approval to access State Route 108, Haverhill Road. The Applicant shall be responsible for making the Route 108 access safe for entrance and exit of many large tractor-trailers every day.

26. Please provide the volume and truckloads of stable soil needed to be brought into the site to establish the proposed grades.

27. List all State and Federal permits required & obtained on the plans.

28. I have no objection to the Stormwater Management Plan. However, if the State requires changes, revised plans must be submitted to the Town.

29. The Fire Department should evaluate the concern for fire of the material processing on the site. If a water supply well or wells are needed on the site, the locations must be shown.

30. A Bond needs to be established for repairs to Bowley Road as a result of all heavy truck traffic. Video photos taken prior to construction shall be used as a base line for current conditions. These can be compared with future conditions for damage validation.

31. Upon review of the Vehicle Maneuvering & Queueing Exhibit I find that an error is made with the scaling of the WB50 trucks. WB50 trucks are 55 feet total length. The Plan incorrectly has them shown as about 32 feet. I find the turning radius for this size vehicle to be not correct. The minimum turning radius needs to be 17 feet and maximum is to be 45.7 feet. The radius of the curves shown on this plan are way shorter than required for a WB50 truck. I would recommend that the correct dimensions be provided. Also, all turns & templates from Route 108 to the site must be included for review.

Town Engineer Quintal stated the easement for the neighboring Bowley parcel needs to be added to the plan. The work recently done to the Bowley property using only 10-wheelers has impacted the condition of Bowley Road; the proposed 18-wheeler trucking activity poses a greater concern for the road.

Fire Chief Warren stated he reached out to the State Fire Marshal's office and the Town of Plaistow where the applicants operate another mulch manufacturing business. The fire code allows mulch piles no higher than 60 feet – the applicant proposes 40 feet. With respect to fires, water cannot be used to extinguish a mulch pile fire; the best way to handle them is to run the mulch back through their machines. There needs to be 30 feet between mulch piles for fire trucks to access. The dyes are not hazardous. He spoke to going back 25 years to see if there were any issues with the plant in Plaistow. There were no issues related to fire safety. There were a few complaints associated with steam coming off the piles and odor. Overall, he has received positive feedback from the town. As long as the piles are only 40 feet tall, that there is 30 feet between the piles, that fire extinguishers are on all machinery and building, the applicants meet the fire safety codes on this type of operation.

Road Agent Mark Brinkerhoff inquired about the traffic direction for entering and exiting Bowley Road and expressed his concerns that Bowley Road was not constructed for the type of heavy trucking activity as being proposed.

Chairman Bath responded the trucks would be coming from all directions – making left and right turns in and out of Bowley Road.

Road Agent Brinkerhoff reiterated the road was constructed for residential use and that adding a topcoat might make the road stronger but only for a while – it won't last long with the type of heavy trucking proposed.

Town Engineer Quintal recommended the board require a road bond with video documentation and evidence.

Police Chief LePage stated there should be only a southbound exit allowed as the acute angle of the road coming from Newton is a problem. The police station abuts the access road and, without pointing fingers, he already has dual wheel truck tire marks across the station's septic system.

RPC Planner Healey's review included providing a service schedule for the portable bathrooms, traffic impact is significant and the NH DOT should be consulted for approval, snow storage should be added to the plan, traffic flow restrictions should be considered (southbound exit only), and designating who would be responsible for monitoring for invasive species.

Mr. Smith noted he had not yet received copies of the professional reports. They will be forwarded to him.

## BOARD REVIEW

Chairman Bath reviewed the site plan checklist for the purpose of determining if the application was complete for invoking jurisdiction.

APPLICANT:	MIDNIGHT LEASING LLC	DATE:	8/17/23, 9/21/23, 10/19/23			
Location:	9 BOWLEY ROAD	MBL#:	11-02-11	Case#:	2023-11	
Scope/Nature of Proposal:	SITE DEVELOPMENT AND THE OPERATION OF A MULCH PRODUCTION COMPANY					
SECTION I	AUTHORITY					
SECTION II	PURPOSE					
SECTION III	PROCEDURES		MET	NOT MET	WAIVED	N/A
	Escrow Account		X			
SECTION IV	SUBMISSION REQUIREMENTS		MET	NOT MET	WAIVED	N/A
	Plan Sets (full size/11x17)		X			
	To Scale (60'/inch)		X			
	Date/Title/North Arrow/Location Map		X			
	Name/Address Developer/Engineers/Owners/Abutters		X			
	Topographical Plan with Contour Lines		X			
	Easements/Rights-of-Ways ( <b>Bowley easement to be added</b> )			X		
	Soils/Wetland Data Requirements		X			
	Name/License/Seal LLS				PENDING	
	Name/License/Seal PE		X			
	Copy of Property Deed		X			
SECTION V	REQUIRED EXHIBITS AND DATA		MET	NOT MET	WAIVED	N/A
	A.	Natural features (water, trees, vegetation)	X			
	B.	Location of buildings, size, setbacks				X
	C.	Elevation view of all buildings				X
	D.	Off street parking and loading spaces	X			
	E.	Access and egress	X			
	F.	Water, sewage locations with setback				X
	G.	Location of waste disposal facility	X			
	H.	Stormwater management/drainage	X			
	I.	Contours and finished grade elevations	X			
	J.	Landscaping, buffers, open space	X			
	K.	Size, design, location of signage ( <b>to be acted on later</b> )		X		
	L.	Location of public services (gas, power, etc.)				X

	M.	Lighting				<b>X</b>
	N.	Streets and roadways	<b>X</b>			
	O.	Property lines	<b>X</b>			
	P.	Roads, boundaries, easements (subdivision)	<b>X</b>			
	Q.	Any other exhibits/data required by the Board (TBD)				

**MOTION: Chairman Bath motioned to invoke jurisdiction on Midnight Leasing LLC's site plan review proposal (case 2023-11) for property located at 9 Bowley Road, MBL# 11-02-11; seconded by Vice Chair Allen.**

Discussion: Noting confusion from the public, Chairman Bath explained the terms and action to invoke jurisdiction citing it serves as the board's official determination that all the site plan materials required were submitted for the board to begin taking formal consideration of the plan and starting the 65-day clock to make a decision.

**VOTE: The motion passed 5-0-0.**

#### CONSIDERATIONS OF WAIVERS

Atty. Lanzetta requested the board grant the applicant's waiver request from survey requirements. Mr. Smith read the waiver aloud as follows:

*We respectfully request a waiver to the Town of East Kingston Subdivision Regulations Section V Required Exhibits, which requires a Boundary plan of the property. A boundary plan of record already exists for the parcel and is recorded in the registry. A copy of the plan has been provided in the plan set. An additional survey is not required as it would not provide any new information and would result in an undue cost to the landowner. We feel the waiver is justified if needed, as there are no proposed changes to the property bounds that have already been established and complies with the East Kingston criteria as follows:*

- 1. The waiver will not result in a detriment to public safety, health or welfare or be injurious to abutting property owners as there is a record plan on file at the Rockingham County Registry of Deeds.*
- 2. The waiver would not result in a variance of the East Kingston Zoning Ordinance, Master Plan or official maps as not change to the established boundary (by others) is proposed).*
- 3. The waiver as proposed will secure the objectives, standards and requirements of the East Kingston Site Plan Review Regulations.*

Atty. Lanzetta reiterated that not conducting a boundary survey would present no danger to the public. A former survey plan was recorded in which the current site plan was drawn, there are no changes to the boundaries, and requiring a survey would be a hardship to the applicant. The cost of surveying a property this size would run tens of thousands of dollars and they are hesitant to spend this kind of money before they are even sure the site plan would be approved. They have provided a clear chain of title and the business operations aren't anywhere near the water.

Town Engineer Quintal countered that the survey was done years ago, and over time, the conditions of the monuments can change (be moved, get lost, etc.) as can the river's edge. It is important to determine the boundaries along the river and provide abutting properties assurance of their boundary lines.

Responding to board questions, he continued to explain that the changes can occur to river's edge over time; the reference line needs to be established to ensure setbacks are accurately shown.

Vice Chair Allen asked how long ago it was since the wetland boundaries were done. Mr. Smith responded they were recently delineated by Mark Jacobs.

Chairman Bath called for a show of hands of which board members would support granting a waiver. There was no show of hands.

Discussion continued on the importance of accurate river bounds. Atty. Lanzetta reiterated this would be an incredible expense and burden to the applicants and that the process for the wetland's protection permit will address all the bounds along the river – it doesn't seem reasonable for the board to deny the waiver.

**MOTION: Vice Chair Allen motioned to deny the waiver from Site Plan Review Regulations Section V: Boundary Survey Plan; seconded by Mr. Nigrello. The motion passed 5-0-0.**

#### PUBLIC COMMENT

Chairman Bath then opened the public hearing to public comment.

Denis Hamel of 2 Sullivan Drive provided a number of items for board consideration with respect to his review of the plans. In summary:

- Terrain alteration plan is needed.
- There is 111,000 square feet of disturbance area including bridge and road enhancements.
- There is no guardrail on the bridge which poses a safety hazard at night and during the winter.
- The stormwater report does not show how the 10-inches per hour (which is allowed) was calculated.
- The water quality flow needs to be approved by the AOT.

Mr. Smith produced the chart in the stormwater report that depicts how the 10-inch per hour was calculated.

- Circulation (traffic) plan incorrectly depicts the size of a tractor trailer truck. The actual length is 60 to 70 feet. This should be corrected.
- Turning radius provided shows the tractor trailer trucks having to cross travel lanes.
- He presented a map of wildlife habitat in the area and along the Powwow River corridor noting the noise and activity of the plant will destroy this.
- The Bowley Road and Haverhill Road intersection also serves as a bus stop – this is a safety issue.
- Pedestrian traffic throughout Ashlie, Sullivan and Bowley is high thus posing a safety issue.
- He provided a drainage plan highlighting the wetland buffer noting additional fill was added.
- Google maps utilized in the proposal do not provide accurate scale.
- The reference line of the Powwow River can be different based on high water making the shoreline depicted on the plan questionable.
- Concern with the contamination of ground water by using tons of dye over the years. The infiltration rate is fast as shown in the drainage report – the runoff will eventually get to the river. The water might not be poison, but no one wants to drink pink water from the red dye.
- The drainage culvert construction is questionable with the amount of stone used.

Tim Carroll of 1 Ashlie Road spoke to decibel readings noting a lawnmower measures 70-80 decibels, a leaf blower measures 70-90 decibels, a diesel truck 100 decibels, a train whistle 110 decibels, and a mulch grinder measures 120 decibels. Every ten-decibel increase is twice the sound. He asked if the mulch plant in Plaistow was surrounded by overnight residents.

Fire Chief Warren responded that was not part of the conversation or information provided with his inquiries. At Mr. Carroll's further questioning, he stated he would know the area in the dark should there be a need to go onto the parcel during the night.

Andy Herum of 1 Bowley Road stated if the trucks are not allowed to turn left towards the Town of Newton, all the trucks will be directed into town. This would equate to 60 trips a day through town. He said it's hard to see cars coming with the angle of Bowley as it connects to Haverhill Road – it will be much harder with the snow piles. He noted the increase of salt necessary to keep the road clear for the trucks and how this would impact the wetlands.

Keith Reynolds of 6 Sullivan Drive spoke to the trucks going in and out over driveways to get to the access road which will be worse in the winter with snow. The NHDOT should be consulted for more than just the Haverhill Road intersection, but also the dam down the road. Kids play in the roadway all the time. Also, the trucks can legally use Ashlie Road. He is concerned with the smells, sounds, steam and potential for fire in the middle of the night.

Jason Haley of 170 Haverhill Road expressed concern about contamination coming from the trucks (leaking oil and fuel) as well as spills from refueling equipment on site. He also has concerns about noise and odor.

Cheryl Carroll of 1 Ashlie Road quoted from the town's ordinances as it relates to:

- 100.8 - winter parking bans and where the tractor trailer units will park when waiting to enter and exit the site;
- 100.9 - snow emergencies
- 5.0.3 - road weight limits (data from other towns) in which tractor trailer units weight of 8 tons when empty and 50-tons when loaded and questioned how the town's roads will handle this;
- 5.05 - noise; and
- 6.01 - exhaust and unloading.

She stated she was told the town does not allow manufacturing and that the proposal is a manufacturing operation. She encouraged the board to get decibel readings from the plant in Plaistow.

Sally Hamel of 2 Sullivan Drive stated the leaves are falling off the trees and they can already see the trucks on the abutting property.

Due to the time, Chairman Bath closed the public comment section of the hearing.

#### BOARDS REVIEW

Vice Chairman Allen provided a list of items that needed to be addressed:

1. Wetland infringement along access road to be established.
2. Monitor wells and downstream water.
3. Establish a Bowley Road existing conditions and maintenance plan.
4. Determine vibration and noise levels as these could bring the proposal to a dead stop as they are strictly prohibited in the light industrial district. Submit model numbers of equipment for decibel rating and/or witness the operation.
5. Provide a fire protection action plan.
6. Determine a plan to prevent dyes from seeping into the water.
7. Snow storage plan to be provided.
8. Plan for dealing with bad mulch.
9. Create 30-foot space between mulch piles (currently shown at 15 feet).
10. NHDOT permit for traffic entering and exiting Bowley Road.

11. Emergency plan for other situations (hazmat, fuel leakage/spill).

Planner Healey agreed to contact the DOT. She also recommended the board conduct a site walk to both the current site and the fully operational site for context.

Noting the time of 9:53pm and the school building closes at 10pm,

**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 November 16, 2023 at 7pm; seconded by Vice Chair Allen. The motion passed 5-0-0.**

Chairman Bath closed the public hearing at 9:53pm.

#### **OTHER BUSINESS**

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

Board members reviewed the minutes from September 21, 2023 meeting.

**MOTION: Vice Chair Allen motioned to approve the September 21, 2023 minutes as published; seconded by Mrs. Smith. The motion passed 5-0-0.**

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

The board to be polled for a work session.

#### **ADJOURNMENT**

**MOTION: Chairman Bath motioned to adjourn; seconded by Vice Chair Allen. The motion passed 5-0-0.**

The meeting ended at 9:56pm.

Respectfully submitted,

Catherine Belcher, Land Board Secretary

Minutes approved November 2, 2023.