



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2017-2018
Joe Cacciatore, *Chairman*
Dr. Robert Marston, *Vice Chairman*

MINUTES
Regular Meeting 18 January 2018
7:00 pm

This meeting was held at the East Kingston elementary School due to public interest

AGENDA:

- ◆ Call to Order
- ◆ **Continued Public Hearing** - Application for Home Occupation - James Watkins, 130 Sanborn Road, East Kingston, NH (MBL 07-03-06) Jamco Excavators LLC, for a home office and storage of excavating machinery - EK PB HO/03
- ◆ **Discussion** with Cris Lopez re: running a restaurant at 89 Main Street, East Kingston.
- ◆ **Board Business**

CALL TO ORDER: This meeting of the East Kingston Planning Board was called to order at 7:00 pm.

Members Present: Chairman Joe Cacciatore, Vice Chairman Dr. Robert Marston, Josh Bath, Bill Caswell, and Ex-Officio Richard Poelaert.

Advisors Present: RPC Senior Planner Julie LaBranche, East Kingston Building Inspector John Moreau, and Assistant Building Inspector Tom Welch.

Also present: Applicant James Watkins and his attorney representative Ms. Keri Marshall; and several residents and interested parties.

Board Business

Chairman Cacciatore stated the Board would be entering a non-public session to consider legal advice from counsel, and asked for a motion.

Mr. Bath **MOVED** the Board go into non-public session as per RSA 91-A:3, II(1) at 7:02 pm; Dr. Marston seconded. Roll Call vote: Mr. Cacciatore - aye, Dr. Robert Marston - aye, Mr. Bath - aye, Mr. Caswell - aye, Mr. Poelaert - aye. Vote was unanimous.

Ms. LaBranche explained to the members of the public that the Board was allowed to enter a non-public session to consider legal advice from counsel which they have not yet had an opportunity to review.

The Board moved to a secure location for their non-public session.

The Board returned from their non-public session at 7:40 pm. Mr. Cacciatore asked for a motion to permanently seal the minutes of the non-public session.

Mr. Bath **MOVED** the minutes of the non-public session be sealed permanently; Dr. Marston seconded. Roll Call vote: Mr. Cacciatore - aye, Dr. Robert Marston - aye, Mr. Bath - aye, Mr. Caswell - aye, Mr. Poelaert - aye. Vote was unanimous

Continued Public Hearing - Application for Home Occupation - James Watkins, 130 Sanborn Road, East Kingston, NH (MBL 07-03-06) Jamco Excavators LLC, for a home office and storage of excavating machinery - EK PB HO/03

Mr. Cacciatore opened the public hearing and explained the meeting procedure that would be followed. He would ask if the Board has any further questions regarding the application and the applicant would be given the opportunity to add further testimony or information for the record.

Then the floor would be opened to public comment and testimony for additional information or testimony from what was heard at the December meeting. If there were no further questions and comments, he would close the public hearing.

The Board would then deliberate on the application, determine whether the Board was prepared to act on the application and if prepared, move to approve or deny the application.

Mr. Cacciatore asked if the Board had any questions.

Mr. Bath noted that delivery of materials was listed on the application and asked what types of materials that would be. *Mr. Watkins answered sand, stone, loam, gravel.* Mr. Bath asked where the materials would be stored. *Mr. Watkins stated in the back lot in the same place Mr. Rossi had always stored his materials. It would not be long-term storage.*

Ms. LaBranche asked what the quantities of material would be stored on site. *Mr. Watkins answered a few dump truck loads and it would be coming and going consistently.*

Mr. Cacciatore asked about the repair shop Mr. Watkins had referred to in the previous meeting, which was not included on his application. *Mr. Watkins noted it would be only for repairs to his equipment and/or personal vehicles; he was not opening up a repair shop.*

Ms. LaBranche commented there was not a lot of information provided on the scale of the pre-existing non-conforming use or the amount of materials stored on the site to provide a benchmark for the Board and asked if the residents could offer any testimony regarding these points when the public comment period opened.

Caren Rossi, Mr. Rossi's daughter, stated they had left of materials on site when they moved, including a loam pile and a fill pile. There was also a stone pile which they depleted. In the back Clark-Henshaw corner there had been storage of pipe, catch basins and other materials used in septic systems and for drainage.

Ms. LaBranche noted they were looking at activities from the last 10 years or so and not going back to the start of the business 30 years ago. She asked if those materials had still been stockpiled on the property in the last 5 years and to what quantities. *Ms. Rossi stated the materials were still there today but could not calculate the quantities.*

Mr. Caswell noted one of the considerations was not only the number of vehicles that would be onsite, but how many trips up and down the road would be happening on a daily basis. He asked Mr. Watkins if he could provide some more information on what that level of activity would be. *Mr. Watkins noted it would be sporadic and not on a daily basis. There could be some activity if he was working close by, but his main business would still be in South Hampton. He said it was hard to compute how much activity as it would depend on what his jobs were and where they were located.*

Ms. Marshall listed a number of vehicles, which the Rossi family had provided, that were on the property and had been used in the business. Ms. LaBranche asked what was the timeframe those vehicles were on the property. Ms. Marshall stated within the last 15 years. *Mr. Watkins stated there would never be full-time employees there. This is his home. He reiterated that 95% of his activity would be happening in South Hampton.*

Mr. Cacciatore noted that the Town was more interested in what Mr. Rossi might have had on site for his business within the last 5 years. Ms. LaBranche commented on the list of equipment provided by Ms. Marshall and noted that the litmus test was not the scale of the non-conforming use over the entire 30 years; be rather what was happening in the most current years to establish a benchmark what the non-conforming use was.

Testimony had noted that the on-site vehicle count had gone down to 10 within the last 7 years, and in subsequent years has reduced to 4-5 vehicles. The business had declined significantly from what it had been 30 years ago. Ms. Marshall noted there were more than 4-5 and it was a testimony to how well it had been shielded.

Ms. LaBranche noted she had requested from the Town Clerk information on how many vehicles Mr. Rossi had registered and was told this was confidential information and could not be disclosed. She had also requested a list from the state DMV but has not received an answer to her request.

Mr. Cacciatore asked Mr. Watkins if he had any further information to offer to the Board. *Mr. Watkins stated he did not.*

Ms. LaBranche asked if they would like to formally submit the list of equipment Ms. Marshall read to the Board. *Ms. Marshall said no.*

Mr. Cacciatore stated he would now open up the floor for comment from the public and asked if they would state their name and address for the record before speaking. He asked if only information that was not covered at the December hearing be discussed.

Richard Henshaw, 66 Exeter Road - *Mr. Henshaw asked what the official name of the business that wanted to move into that location?* Mr. Cacciatore read off the application - Jamco Excavators LLC. *Mr. Henshaw noted the company's headquarters is in South Hampton and if is this going to be a subsidiary of a pre-existing LLC in South Hampton, how is the revenue stream from this business going to help the Town of East Kingston? If he has equipment registered in another city, it has no additional support to our Town.*

Mr. Cacciatore referred to the application, which states there will be one resident and 2 non-resident persons employed. *Mr. Henshaw stated as it was listed in South Hampton, how can there be 2 locales listed as the same business?*

Ms. LaBranche reminded Mr. Henshaw he should not address the applicant directly, but address the Board. Mr. Watkins would have a chance to answer the question. Mr. Cacciatore noted Mr. Watkins was the owner of the company and this would be his place of residence. *Mr. Watkins stated that if and when he decided to scale down his business, he might at that time decide to move it to East Kingston, but he was not there yet.*

Mr. Caswell noted that in most cases the Board would be considering a business that was on-site. The proposed use is a little different as it is a satellite location. *Mr. Watkins noted if he were to move his main business location, all the equipment and vehicles would still be registered out of South Hampton.*

Tim Allen, 103 Willow Road. His house is at the end of Sanborn Road and all the traffic from the Watkins property would be going by his house. He has lived there for about 12 years. He has visited at Mr. Rossi's house and spoken to him about various things. He inquired how the Board has established real numbers for the amount of equipment there?

He corroborated that over the last 12 years, there was never the amount of equipment on the property that Ms. Marshall stated. He would see Mr. Rossi pull out of Sanborn Road with a dump truck and trailer, a small dozer and a backhoe. That was the extent of the equipment he saw go by his house.

Mr. Allen asked - How are you going to get real data about what was on the property? Over the last 12 years there was a steady decline in the amount of traffic from Mr. Rossi's property. If this goes through from the

Board, will the Board set hours of operation? How are you going to ensure safety? There are children on the road all the time; there have been children hit on Sanborn Road. Two cars barely fit on the road. The deliveries of stone and gravel in the amounts needed for a construction company is very different than what the normal resident would have delivered to them.

Ms. LaBranche noted that when the Board goes into deliberation on the application, they will be considering all information provided including hours of operation, number of vehicles, and number of employees and they will most likely be listed as conditions of approval.

Ms. Caren Rossi, 38 West Mill Pond Road, Lee, NH stated that a construction company would not have all those pieces of equipment in one place at any one time. It costs money to bring a machine back and forth to a job; most likely the equipment would stay on the job site during construction. Mostly they go from job to job; rarely does the equipment come home. All the equipment from that list was not on the property at one time; it was at different jobs.

George Henshaw, 82 Little River Road, Kingston, NH - His question was about the time period for the home occupation and grandfathering. He was under the impression it was a year but he was hearing lot of different numbers.

Ms. LaBranche noted the Board would consider what non-conforming use existed when it was established, what it was in 1989 (which was a pretty extensive business according the testimony from the Board and the public), the history of a declining business in its scale and scope for the past 8-10 years, and public testimony.

Kevin Fry, 12 Forrest Drive - He ascertained that the Board and the public were looking for some sort of compromise between what was 30 years ago and now. He also offered that some of the equipment that was Mr. Rossi's now belongs to Matt Gallant, who purchased the septic portion of the business. He walks the road and never saw 10 pieces of equipment. He offered that perhaps a number of vehicles could be decided upon now and revisited at a later date to be increased if all has gone well.

Tim Allen, 103 Willow Road - Storage of equipment is one thing, and the delivery of materials is another. Those are huge trucks that are not our neighbors, they don't care about our neighborhood or our Town or our street, delivering materials. This is an important consideration. He mentioned EPA laws for runoff and containment, etc. as wetlands surround the entire area and it drains into the Great Swamp. He asked who the town would go after if there was a problem. Ms. LaBranche could not answer that question. She stated the Town does have an ordinance for wetlands Zoning, but non-conforming uses are exempt from zoning after the grandfathered status.

Dave Ciardelli, Giles Road - He noted that Mr. Rossi had been a steward of the community and as such, self-policed himself. If someone was doing something he did not agree with, he would take care of it. We are now moving into the unknown and that's the reason for the concern. Mr. Rossi isn't there anymore and the residents are now looking to the Planning Board to provide that protection to the community.

Cory Selecki, 39 Giles Road - Does the definition of the business that is moving there fit the ordinance definition of a home occupation?

Ms. LaBranche explained that in 1989 when the home occupation ordinance was enacted and adopted, it included a clause that non-conforming uses were not subject to the specifics of the home occupation ordinance. They were required to register through the home occupation process every year and for the homeowner to report that they still had an active business. If the non-conforming use ceases for a period of a year, it loses its grandfathered status.

She stated when the Board has a home occupation application before them, they look at all the specifics listed in the ordinance in great detail. The same does not apply to a non-conforming, grandfathered use.

George Henshaw, 82 Little River Road, Kingston, NH - He thought he heard at the last meeting that no snow plow equipment would be stored there. *Ms. Marshall stated it was never stated that snow plows would not be stored on the property; in fact, a snow plow that plows Town roads will be stored there from time to time.*

Mr. Cacciatore closed the floor to public comment.

Mr. Cacciatore asked if the applicant had any further information to provide to the Board; *Mr. Watkins answered he did not.*

Mr. Cacciatore asked if the Board had any further questions.

Ms. LaBranche noted she still had questions about the volume of the materials that would be stored on the site. She was looking for information about the amounts that had been previously stored there for a baseline. Ms. Rossi stated there was a stone bin, a fill bin, a loam pile and a burn pile. She estimated there was about 4 tri-axle loads of stone at one time. The loam pile was approximately the same in size. Mr. Bath asked if it was contained in any way. Ms. Rossi noted the bins had been divided by tires, but they were disposed of before they sold the property. The stockpile area is not visible from the road. The stockpile area is located on 3/4 of an acre of land at the most.

Mr. Watkins' father noted that the amounts would vary according to the jobs that were being done and what was needed for the particular application. *Mr. Watkins noted that a tri-axle holds approximately 20 yards. Again, materials get used and replenished so it's hard to estimate how much at any one time.*

Mr. Allen asked if the business shouldn't have receipts for the materials delivered; and offered that he had never see a tri-axle on the road.

Mr. Cacciatore asked of the Board was ready to make a decision on the application. He polled the Board. Mr. Bath - no; Dr. Marston - yes; Mr. Caswell - no; Mr. Poelaert - yes; Mr. Cacciatore - yes.

Ms. LaBranche asked those who were not prepared to vote why - Mr. Caswell stated he had heard more information tonight and thought they needed to have more discussion.

Mr. Bath stated no because they had not come to a decision on the compromise that was discussed. The Board had asked questions about quantities and volumes and gotten vague answers. He is looking for what the limits are the community can expect and it is hard to make a decision based on the vague answers they have gotten. He opined if there was some more concrete information, they might be better prepared to make a decision. With more information, he could be agreeable to changing his vote to yes.

Some of the items that the Board has to consider are the negative impact on the neighborhood, the safety and the welfare of the public, and the resident's input.

Mr. Caswell noted that Mr. Watkins was not waiting for this decision to be able to run his business, and he opined the Board might need to have another meeting to consider the additional information.

Ms. Marshall opined Mr. Watkins shouldn't be asked to go another 30 days and he should have some decision tonight.

Ms. LaBranche asked if they were to continue the hearing for another 30 days, would the applicant be able to provide documentation as to the number and scale of deliveries and the amounts of material, and a more complete list of vehicles in the last 10 years? More information is needed about the scope of the declining business over the past 8-10 years. This would help in defining what the non-conforming use is and granting you something that is comparable to that.

Ms. Marshall quoted several cases which corroborate her contention that the applicant has the right to continue the pre-existing, non-conforming use. When she completed the application for Mr. Watkins,

she stated she was meticulous in completing it just the same as all the original Rossi application. She opined it would be unreasonable for the Town, at this point, to continue this public hearing again. It had already been delayed and continued in November for incomplete noticing, and continued again last month. This was the third time the client was before the Board prepared to address the public hearing.

She stated Mr. Watkins has no incentive to not get along with his neighbors and wants to be the same good steward and good neighbor Mr. Rossi was and he's displayed that. He's not here being hostile or overly aggressive, he's not asking for the same number of employees although she would have advised him to as she believes he has that right. She opined to limit the application when the original application did not have that limitation is improper.

Mr. Caswell noted that for as many court cases that there have been, there have most likely been many more that have just been worked out and come to an agreement; they do not want to go into litigation. Ms. Marshall stated nor do they. Mr. Caswell opined they should be able to work things out. Everyone has agreed a compromise would be best, but there is an absence of hard data for the Board to make a decision. The Board is trying to be careful not to rule in a way that would adversely impact the town. They were trying to understand what used to be done so they could make a fair and informed decision.

Mr. Cacciatore noted he has heard what the residents and what Mr. Watkins has said. It appears the major concern is there is no data about the stock piles and they are not sure if they contain hazardous materials.

Ms. LaBranche noted the Board must base a decision on the public testimony and information provided in the application and provided by the applicant. To Ms. Marshall's point, she noted the application is not a typical home occupation as it is a transfer of a non-conforming use from one person to a new property owner. There has to be some due diligence to establish what the previous use was to inform what the new property owner will be permitted.

She stated Mr. Watkins does not know what previously happened on the property; he was relying on the Rossi family to provide that information. Very little information has been provided with the application itself. Ms. LaBranche stated the Board appears to be ready to deliberate and make a decision this evening but would need some number in volumes of bulk materials as this is new information they have just heard this evening. A maximum amount of materials to be stored on the site would be helpful. If Mr. Watkins could come up with a number, the Board may feel more comfortable in deliberating and making a decision.

Ms. Marshall asked what if there was an agreement that there would be no storage of hazardous materials? Ms. LaBranche noted that was different than large bulk storage of materials. It's more the amount of material and the size of the trucks bringing the materials and the frequency of the trips.

Ms. Marshall asked how long the Town had the application; Ms. LaBranche noted the application was submitted in October for the November meeting date. She opined that was plenty of time for the Town to get the information. Ms. LaBranche maintained it was the applicant's responsibility to supply the information not the Town's responsibility noting that the Board had asked the applicant for information, which was answered with small amounts of information. It's not solely the Board's responsibility to research the history of the property to determine the non-conforming use.

Ms. Marshall agreed. Ms. Marshall had copied Mr. Rossi's application verbatim. They are not asking for anything more than the Town gave Mr. Rossi. The only difference is that they are substituting one person for another. This is just a continuation of a non-conforming use.

Ms. LaBranche noted moving forward, the Town may in the future ask for more information to better define a non-conforming use. That did not happen, but it is pivotal to this Board in making a decision just what the scope of non-conforming use was in its last years.

Mr. Caswell noted that for the Board to do its due diligence, there was not a lot of information on the application for them to make the decision and they need more. Ms. Rossi stated that they had discarded a lot of papers and what was left was in the 53' container and she would have no idea where to look.

Mr. Watkins stated he could have sand, stone, gravel, loam, recycled materials (rap), erosion stone and misc construction materials and there would be a burn pile. He opined it could be between 100-150 yards of each material on the high end, but that would not be all the time. His primary storage place was in South Hampton.

Mr. Cacciatore asked what rap was as he was not familiar with that term. Mr. Watkins stated it was recycled materials; Ms. LaBranche noted it was crushed asphalt. Mr. Cacciatore asked if that was considered hazardous to water; both Mr. Watkins and Ms. LaBranche answered it was not.

Mr. Caswell asked how often the inventory turned over; *Mr. Watkins stated frequently.* Mr. Caswell again asked how frequently this could be; *Mr. Watkins noted some could turn over once and some could turn over many times depending on the jobs they were working on.* Mr. Caswell was trying to understand how many delivery trips that would add up to. Ms. Marshall noted that this was not intended on being Mr. Watkins' primary storage place; that was in South Hampton. Only materials for close jobs would be stored on the property. Mr. Watkins' father stated it would always vary from year to year, depending on what jobs they were working on.

Mr. Bath noted that in tallying the numbers, it adds up to 750 yards of materials in a residential area, which seems excessive. *Mr. Watkins stated that was exactly why he did not want to give a definite number as it would always be fluctuating.*

Mr. Moreau, Code Enforcement Officer/Building Inspector, asked if instead asking for amounts of yards, couldn't they designate an area, perhaps 3/4 of an acre, in which to keep the materials? Ms. Caren Rossi showed the Board an aerial view and pointed out where the outside storage area was on the property, which is in the back corner. Ms. LaBranche asked Ms. Rossi how large the storage area is to which she stated 3/4 of an acre. The Board agreed that would be a good definition - not to exceed 3/4 of an acre for storage of bulk construction of materials.

Mr. Caswell noted it could be a total of 120 trips to move that much materials onto the property; *Mr. Watkins agreed that sounded correct. Mr. Watkins noted it also would not be coming in all in one day.*

Mr. Cacciatore noted the Board now has information about the size of the area for stockpiling of materials, and could possibly come to a determination of how many vehicles based on the testimony of what people have seen on the property over the years. They already know there will be 3 employees; Mr. Watkins and two employees.

Mr. Cacciatore polled the Board again to see if they were ready to come to a decision. Mr. Bath - yes; Dr. Marston - yes; Mr. Caswell - yes; Mr. Poelaert - yes; Mr. Cacciatore - yes.

Mr. Cacciatore closed the public hearing.

Ms. LaBranche explained to the residents that this is the phase in the meeting where the comments from the public and the applicant are closed and no more comments may be made. The Board will discuss the conditions they wish to set for the application, set parameters on the non-conforming use and then take a vote. In the non-public session the Planning Board reviewed the relevant testimony and questions that are before the Board.

The issues that were to be determined for this application are:

- ***Is there a valid non-conforming use on the property?*** The Board determined that there is a vested and transferable use on the property.
- ***What is the existing non-conforming use?*** Based on the applications from Mr. Rossi and Mr. Watkins there is a general construction and excavation business, recognizing there is also a personal repair shop on the site.

The Board then discussed and deliberated using the testimony and the information provided at the hearing to define the scale and scope of the non-conforming use to come up with some parameters they feel define that use; what is was and what it shall be moving forward.

The Board prepared conditions for a motion.

Mr. Bath reviewed the conditions of approval discussed by the Board.

The Board has determined an all-inclusive number of six vehicles on site (including vehicles and equipment - (operating or not) excluding personal vehicles; one resident employee and two non-resident employees; hours of operation of 6:30 am to 5:00 pm Monday through Saturday; all vehicles stored inside or behind the building with no more than two vehicles unshielded; an inspection of the vehicle repair shop by the Fire Department; perimeter containment, and storage of materials limited to 3/4 of an acre.

Mr. Cacciatore asked for a motion.

Mr. Bath **MOVED** the Board approve the home occupation application for James Watkins, 130 Sanborn Road, East Kingston, NH (MBL 07-03-06) with the following conditions: six (6) vehicles all inclusive (including vehicles, trailers and equipment, operating or not) - excludes personal vehicles); three (3) employees (consisting of one resident employee and two non-residents); hours of operation 6:30 am to 5:00 pm Monday through Saturday; all vehicles and equipment stored inside or behind outbuildings with no more than two (2) vehicles stored outside; an initial inspection of the vehicle repair shop by the Fire Department; perimeter containment for the storage material, and the materials storage area limited to 3/4 of an acre; seconded by Dr. Marston. Decision was unanimous.

Mr. Watkins thanked the Board and shook the members hands.

Discussion with Cris Lopez re: running a restaurant at 89 Main Street, East Kingston.

Mr. Cris Lopez, owner of Acapulco's in Amesbury and Jesus Lopez, kitchen manager, were present to speak to the Board.

Mr. Lopez told the Board he has arranged to lease the restaurant at 89 Main Street from Mr. Dunlop and wanted to open a Mexican restaurant at that location. He presently has an Acapulco's Restaurant on Route 110 in Amesbury. He would serve lunch and dinner and would like to be open 7 days a week from 9am to 10pm.

The Board informed Mr. Lopez that the upper and lower levels could only be used for storage. He said he was aware of that from Mr. Dunlop. Mr. Moreau also informed Mr. Lopez that no one could live in the basement, which had been a previous issue. Mr. Lopez said no one would be staying at the restaurant.

The sign on the North Road (front side) of the building would be limited to the size of the sign that had previously been there. There is also a space for a smaller sign on the Main Street side which could be moved as long as it did not impede sight distance for traffic.

Mr. Jesus Lopez stated he would like to speak to the Fire Department about some changes he would like to do in the kitchen area. Mrs. White will give his information to the Fire Chief to contact him. He will need to have an inspection by the Fire Department before he opens.

Cris Lopez and Jesus Lopez supplied Mrs. White with their contact information (addresses and phone numbers) for the file.

The Board agreed the Mr. Lopez could operate his restaurant at 89 Main Street with the above-mentioned conditions. They will send a Notice of Decision to him and also to Mr. Dunlop.

They wished Mr. Lopez good luck. Mr. Lopez thanked the Board.

Country Hills

Mrs. White informed the Board that the Town Attorney had reviewed the proposed changes to the condo documents and by-laws for Country Hills and found them to be satisfactory. Mrs. Willis, President of the Condo Association, with bring clean copies of the new pages they wish to have recorded to the office with a check and Mrs. White will have them recorded. Mrs. White has also provided them with an invoice for payment of the Town Attorney services for review, which will also be brought to the Office.

Adjournment

MOTION: Dr. Marston **MOVED** the Planning Board adjourn, Mr. Bath seconded. The motion passed unanimously.

Dr. Marston closed the meeting at 9:25 pm.

The next Planning Board meeting will be on February 15 at the Pound School.

Respectfully submitted,

Barbara White

Planning Board Secretary

Joseph Cacciatore

Chairman

Minutes approved February 15, 2018

Cat 930 loader
Cat 950 loader
John Deere landscape
Cat D3 bulldozer
John Deere 750 bulldozer
Inern'l TD 6___ bulldozer
John Deere 410 rubber-tired backhoe
510 rubber-tired backhoe
92 excavator
___ excavator
Tank trailers
2 10-wheel dump trucks
2 Int'l 6-wheel dump trucks
2 septic pumping trucks
2 1-ton trucks with sanders
3 pickup trucks
2 cars and other personal vehicles not registered to the business
Compactors
Air compressors
Road sanders