

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
April 15, 1999

FILE

AGENDA

- 7:40 Subdivision Regulations and Site Plan Review Regulations Amendments – Public Hearing  
8:00 Dean Howard Construction – Sanborn Road Subdivision – Continued Public Hearing  
8:30 Larry & Lee Erickson – 53 Haverhill Road Subdivision – Public Hearing  
9:00 La Noria Dev. Corp./Thomas Gage – Powwow River Road Subdivision – Continued Public Hearing  
9:30 Chuck Woodlands Realty Trust – Light Industrial Park Site Plan Review – Public Hearing

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, Beverly A. Fillio, Dr. Robert Marston.

Absent: Raymond R. Donald – Ex-officio, and Alternates Peter A. Riley and Robert Nigrello.

Others attending: Sarah Campbell – RPC, Kent Shepherd – Deputy Building Inspector, Lawrence K. Smith – Conservation Commission Chairman, Tom Gage, James Levelle – LLS, Charlie Zilch, Dennis Quintal, , Eva Smith, Richard Smith, Jr., Amanda & Stanley LaShoones, Larry Erickson, Kevin Fitzgibbon, Michael Duclos, Laurie Carbone, Kevin Murphy, Charlie Marden, Mike Benjamin, Rosemary Blood-Benjamin, Alice E. West, Bob Nichols, Mr. & Mrs. Merrill Newman, Wayne Couture, Mearle Burdick, Reid Simpson, Mark Heitz, Richard Cook, and other members of the public who did not address their concerns.

Chairman Smith called to order this April 15, 1999 public planning board meeting at 7:32 PM with the roll call.

Minutes: The Board reviewed minutes dated January 28, 1999. Noting that only three members were present at this meeting, and that not all three members were present to vote this evening, Chairman Smith ordered that the approval of these minutes be postponed until the voting attendance requirement could be met.

Upon the review of the March 25, 1999 Planning Board minutes:

MOTION: Mr. Johnson motioned to accept the March 25, 1999 minutes as presented. Dr. Marston seconded. With no further discussion, the motion carried 4-0 (Mrs. Fillio abstaining).

Incoming Correspondence: Chairman Smith acknowledged incoming correspondence from NH Estuaries Project, Exeter River Watershed Project, RPC – Dues, NHDOT Planning Bureau, RPC- Livable Communities in America, RPC – Circuit Rider Contract (approved, signed and to be forwarded to the Selectmen), and Main Street News.

Subdivision Regulation and Site Plan Review Amendments – Public Hearing: Chairman Smith opened the public hearing for amendments to both the Subdivision and Site Plan Review Regulations at 7:45 PM. Mrs. Campbell presented two regulation amendments to be considered prior to the printing of the 1999 Zoning Ordinance Book. A Subdivision Regulations amendment would amend the “Fees” section (page 14) by adding the following:

*\$20 Recording Fee (plus applicable Rockingham County Registry of Deeds fee) for each attempt to register a mylar.*

She explained that \$20 would be billed each time a mylar is recorded or attempted to be recorded, plus the one time fee that the Registry charges. Currently that charge is \$26 per mylar; thus the total cost to record a mylar (provided it's recorded first try) would be \$46.

The second amendment proposed would be to the Site Plan Review Regulations Section VI.G by adding a new #2 as follows:

*Where necessary, the Planning Board may require interior access roads to connect adjoining uses and reduce the number of access points of the main road.*

She explained that this would benefit both traffic and appearance issues.

MOTION: Mrs. Fillio motioned to approve the proposed amendments to the Subdivision Regulations and the Site Plan Review Regulations as presented. Mr. Johnson seconded. With no further discussion, the motion carried 4-0.

**Next Planning Board Meeting :** After reviewing the potential submission of applications for Planning Board review, the Board agreed to begin the next regular meeting, held on May 20, 1999, at 7:00 PM.

**Certification of Monumentation:** The Board took up discussion on whether or not to approve and implement a Certification of Monumentation form that would require licensed land surveyors to verify and sign off that all appropriate monumentation bounds have been set regarding an approved subdivision plan. Argument was provided that adopting this procedure would not guarantee proper bounds would be set. Some members stated that the past practice of verification via the building inspector should still be done.

Land surveyors and engineers in attendance gave their opinions of the proposal. It was stated that obtaining further documentation by the land surveyor was a good idea. Another view was that the markers sometimes get knocked out and moved during parcel development and excavation. Member ultimately agreed that including the form would benefit the town, but directed that the building inspector continue to verify such monumentation.

**MOTION:** Mrs. Fillio motioned to adopt and include the "Certification of Monumentation" form in the Subdivision Regulations. Dr. Marston seconded. With no further discussion, the motion carried 4-0.

**Dean Howard Construction - Sanborn Road Subdivision - Public Hearing:** Chairman Smith opened the public hearing at 8:00 PM for Dean Howard Construction's application to subdivide 99.57 acres (MBL# 8-2-9) into 10 lots. This public hearing is a continuation from the March 25<sup>th</sup> meeting.

Representing Dean Howard Construction was James Levelle, LLS of Levelle Associates, who explained that the proposal is to subdivide 99.57 acres into 9 frontage lots along Sanborn Road with one 81-acre lot remaining. He stated that at the last meeting, several issues were brought up and that he has addressed them as follows:

He stated that both the Road Agent and the Building Inspector have inspected all the proposed driveway sight distances. The proposed driveway on MBL# 8-2-21 has been moved to accommodate better sight distance, but all the other proposed driveways either meet or exceed the required sight distance specs. He went on to say that as far as the sight distance on the bend in the road was concerned, a 6/100 of an acre easement would be written to ensure visibility around the corner (see note on sheet #2 of the plan). He stated that this easement would also allow an area for the removal of snow on that section of Sanborn Road.

Mr. Levelle then reviewed the proposed fire pond. He noted that a 15-ft. gravel road would access this pond with a turn-around radius to accommodate a 30-ft. truck. The pond would have a winter capacity of 50,000 gallons and that a test hole was dug by Bob Rossi to confirm its viability. He stated that this proposed fire suppression plan has been worked out to the satisfaction of the Fire Chief.

Mrs. Fillio stated that the proposed fire apparatus turn-around's center must also be gravel to accommodate snow removal, a request made earlier by the Road Agent.

Regarding the Planning Board's concern about tree and stone wall preservation, Mr. Levelle stated that a general note on sheet #1 (see note #12), states that no cutting of living trees along the frontage of these lots is allowed other than what is necessary for driveway or roadway sight distance. At Mrs. Campbell's concern, Mr. Levelle stated that a specific depth of allowable tree cutting for sight distance could be noted. He said that he has no plans to change the road, just to clear the trees at that corner.

He went on to say that State approvals have been received. In addressing drainage concerns brought up by abutters at the last meeting, Mr. Levelle stated that a culvert is located on sheet # 5 and within one of the proposed right-of-ways. He stated that the grade of the land would direct water flow away from Sanborn Road and to the back of the proposed lots and once the back lots are developed, a drainage plan would be designed to direct the water even further back.

At the inquiry of Mr. Johnson, Mr. Levelle stated that an easement for the fire pond and its access road would be given to the Town, thus the maintenance of the access road would be the responsibility of the Town. He stated that once the back lots are developed, a closer access road would be designed and paved.

Fire Chief Alan Mazur after reviewing the plan stated that there has to be an easement and that this proposed fire pond would be treated like any other cistern.

Chairman Smith stated that he would like lot 8-2-16 shown on the plan. Mr. Levelle stated that although that parcel is owned by Dean Howard, it is not a part of this subdivision plan. Chairman Smith then opened the meeting to abutter comments. There were none.

Mr. Levelle stated that he has a couple of conceptual plans for the remaining 81 acres, but no commitment yet. He also stated that Mr. Howard has changed his mind and would definitely continue on with the development of the nine frontage lots.

Mr. Larry Smith, Conservation Commission Chairman stated that the East Kingston Conservation Commission has reviewed the drainage report on this proposed subdivision and has a few concerns with statements made in the report. He stated that the statement regarding the three lots next to the newly proposed road, stating that all drainage of those lots drain into the roadside ditch with a 15" culvert is unsupported, as no specific drainage calculations were done. There are no figures to support this documentation.

He further stated that the drainage on the proposed road has a 12-ft. rise and in order to get the water from the front to the back of the land, a storm drain and underground pipe is necessary.

Mr. Levelle responded that the water would be collected at Sanborn Road with a catch basin and then directed to the rear (or south) of the parcel. He stated that this was one reason the right-of-way was designed at 80-ft. wide instead of 60-ft. He said he doesn't anticipate picking up all the run-off there, just some of it. He stated that pre and post drain calculations could be done if the Board requests it. He went on to say that in his 25 years of subdividing, this would be the first time he would have to submit drainage calculations for street lots. He stated that he consulted Steve Cumming, PE for the basic report.

Mr. Smith stated that he disagrees with the statement made in the drainage report that says the site is mostly wooded throughout. He stated that it is mostly open field. Mr. Levelle disagreed with Mr. Smith.

Back to the drainage issue, Mr. Smith stated that drainage calculations are required by the ordinance, and the abutters on the other side of Sanborn Road need confirmation that water run-off won't end up on their lots.

Chairman Smith asked if Mr. Howard was planning to invoke covenants on the proposed lots. He stated that he opposes them.

Mr. Levelle replied that he did not know. At Mrs. Fillio's questioning, he reiterated that the trees located at the bend in the road on Sanborn Road would be cut back for sight distance and that the existing stone wall would be moved back away from the pavement 15 ft. He stated that this would benefit snow plowing.

When Chairman Smith recommended that one of the proposed driveways be moved to the proposed gravel road, Mr. Levelle stated that both the Building Inspector and Road Agent have already approved his proposed driveway location plan as presented.

The Board reviewed the fire pond's location verifying that it met the 1200-ft. coverage provisions. The Board then noted the following items to be addressed prior to subdivision approval.

1. Drainage calculations needed to support specific claims in drainage report;
2. Include a depth measurement in the reference for tree preservation; and
3. Show the stone wall going all the way to Sanborn Road.

Chairman Smith then announced that this public hearing for Dean Howard's proposed subdivision plan on Sanborn Road would be continued until Thursday, May 20, 1999 at 7:30 PM at the Town Hall and that this announcement would serve as notification to all abutters.

**Lee & Larry Erickson - 53 Haverhill Road Subdivision - Public Hearing:** Chairman Smith opened the public hearing for Lee and Larry Erickson's proposal to subdivide 53 Haverhill Road, a 7.9-acre parcel into two lots. Dennis Quintal, PE of Civil Construction Management presented the proposal on behalf of the Erickson's.

Mr. Quintal identified the parcel as MBL# 9-8-26 consisting of 7.9 acres with 358.94 ft. of road frontage. He stated that Soil Scientist Jamie Long flagged the wetlands and his seal is present on the plan. In giving the history of the subdivision plan, Mr. Quintal explained to the Board that Mr. Erickson contacted him for a septic design last year, which was approved by the Town and State and constructed. After the construction of the septic system, Mr. Erickson asked Mr. Quintal if his parcel met the requirements for subdivision. Mr. Quintal noted that Article VI.B of the East Kingston Zoning Ordinance provides for backlot subdivisions, which allow for 200 ft. of frontage on one lot and 40 ft. on the second lot. He stated that he then went ahead with HISS mapping and a proposal was designed.

Mr. Quintal further stated that he has already made application with the State for subdivision approval. He stated that the State requested a test pit be done on the 4,000K area, which has since been completed. The proposed plan has undergone lot size calculations by the soil scientist, and test pit data has been collected. He noted that he has made some changes to the plan since the plan was submitted to the Planning Board. Those changes include: adding the addresses of all the abutters, noting the applicant is also

the owner, assigning a new MBL# for new proposed lot, showing concrete bounds at all new points, and showing the location of the test pit.

Mr. Quintal continued to say that this proposed subdivision is proposing a common driveway. He stated that if a separate driveway were designed, they would need to cross 160 ft. of wetland and apply for a Dredge and Fill permit. He further stated that proposing a separate driveway would not only have a negative impact on the wetlands, but that the NHDOT provides only a minimal amount of road access on a State road be given. Installing a second driveway near the bend in the road may warrant safety concerns, cutting of trees and vegetation, and the disturbance of the wetlands are all reasons why he is proposing a common driveway. He stated that the State requested a draft copy of a driveway easement and agreement, which has been done. The deeded easement would include the shared access of the driveway to both lots and a maintenance and care agreement.

Mr. Quintal then submitted a written request for waiver from Subdivision Regulation Section IV.D (common driveways).

Mrs. Campbell asked for frontage measurements on both lots, then inquired as to how two houses are already existing on both proposed lots.

Mr. Quintal stated that Mr. Erickson submitted an application to construct the second home to the Board of Selectmen, who agreed to allow its construction with the condition that an occupancy permit would not be issued until the existing mobile home was removed from the parcel. He stated that if this subdivision weren't approved, then the trailer would need to be removed. He noted that each lot supports its own septic system and well.

Mrs. Fillio responded that this proposal is pretty much a done deal prior to the Planning Board's consideration. She stated that this whole public hearing is just a formality. Mr. Erickson replied that he meets all the criteria. Mrs. Fillio stated that he does not meet the driveway requirements.

Mr. Quintal stated that he could apply for a separate entrance with dredge and fill approval. At Dr. Marston inquiry, he stated that the driveway is approximately 12-ft. wide and constructed of gravel. He said that many large construction vehicles have used the driveway to access the new construction behind the existing trailer.

At the request of the Planning Board, Selectman Jack Fillio explained that prior to the occupancy of the newly constructed home, the trailer would have to be removed.

Mr. Erickson stated that when he initially agreed to remove the trailer on the issuance of an occupancy permit, he wasn't aware of the backlot subdivision provision. It wasn't until after the construction of the new house that he learned of this. He stated that if this subdivision proposal were denied, he would remove the trailer as agreed. He further stated that he meets all the criteria and he doesn't see how the Planning Board can deny this proposal.

Mr. Quintal stated that Mr. Erickson would need to address this trailer removal agreement with the Board of Selectmen in order to get it voided. Mr. Erickson stated that he submitted a written statement to the Selectmen indicating his intention to remove the trailer on the completion of the construction of the new house.

Members then questioned the viability of the existing septic system for the trailer. Mr. Erickson stated that the system was constructed in 1961 and he and his wife have had no problems with it at all.

Chairman Smith stated that there needs to be a legal leaching area for the existing trailer in order for the Board to approve the subdivision.

Mr. Quintal responded that if the trailer wasn't there, the proposed subdivision would still meet all the requirements.

Mrs. Fillio stated that she is not comfortable with the order in which this proposal was presented. She asked why Mr. Erickson had already gone ahead and constructed the new house and now that he thinks everything is complete, he comes to the Planning Board for approval.

Mr. Erickson replied that initially the parcel seemed too wet to subdivide, but once he had it mapped out, he decided to go forward. He reiterated that this proposal meets all the criteria.

Mr. Quintal stated that the agreement with the Selectmen was still in effect and that the Erickson's can not move into the house until the trailer is removed. He stated that the subdivision proposal must receive Planning Board approval and that once approval is given, Mr. Erickson needs to appeal to the Selectmen to change the agreement and allow the trailer to stay.

Mr. Erickson stated that if the subdivision doesn't get approved, then he would move the trailer.

Selectman Fillio responded that regardless of any subdivision plan or its approval, the agreement with Mr. Erickson is to remove the trailer upon the completion of the new home. Getting subdivision approval won't change that.

Mr. Erickson stated that he doesn't feel that if he meets all the criteria and subdivision approval is granted, he should have to move the trailer. He stated that his intentions have changed and if he receives subdivision approval, he would NOT remove the trailer.

Mrs. Fillio stated that she feels Mr. Erickson has undermined the proper procedure and she doesn't like it. Mr. Erickson again stated that he meets all the criteria and that the Board can't deny the application just because they think he is devious.

**MOTION:** Mrs. Fillio motioned to invoke jurisdiction on the subdivision proposal for MBL# 9-8-26. Mr. Johnson seconded. With no further discussion, the motion carried 4-0.

**MOTION:** Mrs. Fillio motioned that the Planning Board NOT approve the application for subdivision until the agreement with the Selectmen to remove the trailer is executed. Mr. Johnson second.

DISCUSSION: Mrs. Fillio asked why Mr. Erickson made a deal with the Town if he had no intentions of keeping it.

The vote was called 2-2.

Mrs. Rosemary Blood-Benjamin asked about the frontage requirements. Once explained to her, she asked if there were any guarantees that a second driveway won't be constructed after all. She stated that the location of a possibly proposed driveway creates some safety concerns. She stated that that vehicles come around the bend quite fast and placing another driveway along that section of road might be hazardous.

Mr. Quintal stated that there are no guarantees a second driveway won't be constructed now or at some later date.

Mrs. Campbell stated that the issue regarding the viability of the existing septic system was valid. At the admission of the property owner, the system is over 30 years old and it is known that systems weren't designed to last that long. She stated that it would be within the rights of the Planning Board to see that an updated system be one of the conditions in this proposal. She said that it would be irresponsible of the Planning Board to let this issue go unaddressed.

Mr. Quintal responded that a new septic system could be a condition for approval of the subdivision and for the approval of allowing the trailer to stay.

Attention was brought to the request for waiver for a common driveway. Dr. Marston asked if the driveway could be widened.

Mr. Quintal stated that the driveway is gravel and was both strong and wide enough to accommodate cement, lumber and construction vehicles while the new home was being constructed.

Chairman Smith asked if there was adequate space for two-way traffic as it would be imperative that there be no wait time for exiting or entering the driveway at the road access.

Mr. Quintal stated that the driveway could be widened at the entrance.

Mrs. Fillio stated that she thinks this subdivision proposal should be tabled until the trailer removal agreement has been resolved with the Selectmen.

**MOTION:** Mrs. Fillio motioned to continued this public hearing until May 20, 1999, giving time for the Selectmen to determine the trailer removal issue, prior to Planning Board consideration of the subdivision proposal. Mr. Johnson seconded. With no further discussion, the motion carried 4-0.

Mr. Quintal asked if there were any other issues besides the trailer that needed attention.

Mr. Johnson stated that the driveway and the existing septic system for the trailer still need to be addressed. Mr. Quintal stated that the septic system issue was not a part of the subdivision, but it could be done.

**La Noria Dev. Corp./Thomas Gage – Powwow River Road Subdivision– Continued Public Hearing:** Chairman Smith opened the continued public hearing at 9:20 PM for La Noria Development Corporation. Thomas Gage owner of La Noria is proposing a 6-lot subdivision to be located on Powwow River Road.

Mr. Gage reported the Soil Scientist's seal has been applied on the plan (sheets #1&2). He stated that he was still awaiting approval from the State for Dredge and Fill and State Subdivision approval. He noted that Town Counsel has approved the fire pond easement language, but the right-of-way easement language has been changed. He stated that he has decided to deed the tag of right-of-way at the end of the cul-de-sac to the Town because not doing so might cause real estate problems in the future, (see note #10). He stated that this tag would not be paved. He went on to say that before the mylar is approved and recorded, the Charlesworth's would assign the designation of the easement to the proposed easement. Both the proposed road and right-of-way would be deeded to the Town.

The Board stated that since the easement language had changed, its review by Town Counsel was needed. The Board then noted the following outstanding items needing completion before subdivision approval:

1. Still awaiting Dredge & Fill approval by the State;
2. State Subdivision approval needed;
3. Easement language approval by Town Counsel (right-of-way);
4. Add Rosemary (or heirs) and Roger Charlesworth to the owners list on sheet #1;
5. Still awaiting Town Engineer's review the road profile and the bond estimate;
6. Amend note #8 on sheet #1 to indicate which easement the notation is referring to.

Members stated that because the Town Engineer hasn't submitted his report of the subdivision, the Board would like to request an additional 30 days for consideration. They stated that if this was not outstanding, the remaining other items were considered administrative and the plan could have received conditional approval.

Mr. Gage stated that he was willing to extend the 90-day clock and additional 30 days. (For the record this is the third extension given by the applicant.)

Chairman Smith announced that this public hearing would be continued to May 20, 1999 at 8:30 PM at the Town Hall and that this announcement would serve as notice to all abutters.

**Chuck Woodlands Realty Trust – Light Industrial Park Site Plan Review – Public Hearing:** Chairman Smith opened the public hearing at 9:39 PM for Chuck Woodlands Realty Trust. Charlie Marden, Trustee presented a proposed plan to operate a trucking terminal from MBL# 11-2-17, 213 Haverhill Road (also located in the light industrial zone). Mr. Marden reviewed a letter submitted to the Planning Board by his attorney, which stated that he is taking a stand that when the lumber mill was in operation there were 60 to 70 trucks entering and existing the property and now there is only 20. He stated that the milling operation consisted of trucking activity that is very similar to the activity presently going on now. He sees no difference.

He further stated that much of the problem was with the road. He stated that he can not get the Town to take a stand on the ownership of Old Route 108. His lawyer has researched this issue and has determined that it is in fact a road. He stated that if this road is Town property and if he can get the Selectmen to take a stand on it, he might be able to move his access road over, thus minimizing the traffic and noise generated by entering and exiting trucking traffic.

The Board reviewed the application for completeness. It was noted that Mr. Marden had a \$7.00 balance on his application fees. For the record, he submitted \$7.00 cash to the recording secretary.

**MOTION:** Mrs. Fillio motioned to invoke jurisdiction on the proposed Site Plan Review plan for property located at 213 Haverhill Road, MBL# 11-2-17. Mr. Johnson seconded. With no further discussion, the motion carried 4-0.

Mr. Kevin Murphy of 201 Haverhill Road stated that if Mr. Marden moves the entrance road, then three lots are effected as Old Route 108 goes through their properties.

Mr. Johnson stated that it is not up to the Planning Board to call Old Route 108 a Town road.

Mr. Marden stated that over the years he had requested the Selectmen to take a stand on the road. The court said it was a Town road, but the Selectmen did not.

Road Agent Bob Rossi stated that he did not know the road's status with the Town.

Mr. Murphy stated that according to his and Mr. Nichols' deed, Old Route 108 is not a road. He stated that the Town approved his and Mr. Nichols' lots.

Mrs. Campbell redirected the meeting to the application before the Board to operate a trucking terminal at 213 Haverhill Road. She reviewed the actions of the Planning Board and Mr. Marden that preceded this request for a Site Plan Review application from Mr. Marden.

1. April 20, 1995 – Site Plan approval was given to Mr. Marden for the construction of a kiln, garage and storage building.
2. September 1997 – Discussion with Mr. Marden regarding the leasing of his vehicle repair building to a vehicle repair tenant. Also the approval of the renovation of the storage building was given with the Board's expectation that a site plan review application would be forthcoming.
3. December 1997 – The Planning Board adopted Site Plan Review amendments that would require written notification be submitted to the Board for changes in use and changes in tenancy.
4. October 1998 – The Planning Board wrote to Mr. Marden requesting he make written notification of any changes or expansion of use(s) on his property since April 1995, when last site plan approval was given.

She went on to say that in 1995, Mr. Marden's plan showed a garage, kiln, storage building, and sawmill. It is the sawmill building that is in question here tonight. Mr. Marden then confirmed that there is trucking activity in building #2 (old sawmill) and a vehicle repair garage in building #2.

Chairman Smith opened the meeting to comments from abutters.

Mr. Bob Nichols of 191 Haverhill Road stated that he bought his house 14 years ago next to the sawmill. He had no problem with the sawmill's location. Since that time a post office has been constructed across the street, an excavation pit is now behind his property, the Sheriff's Department has a shooting range out back, and he's had to fight the development of a light industrial park next door. He continued to say that Sullivan Logging has cut down all the good trees across the street, there has been the construction of the pipeline, and now someone is cutting down trees behind his property.

He then explained how the large amount of trucking activity from Mr. Marden's property frightens his grandson when he waits out for the school bus in the morning. He stated that the trucks are big, fast and loud and are going in and out of the old MSK complex at all hours of the night and day. He stated that the Town should regulate hours of operation in this light industrial zone. At the inquiry of Mrs. Fillio, he stated that he bought his house in 1983.

Mr. Merrill Newman of 216 Haverhill Road stated that he and his wife bought their house two years ago. They were informed that a sawmill operated across the street. This was not a problem to them. Last year the pipeline came through, this was also not a problem. He stated that he works at the Big Dig in Boston and he has never once had to wake up to his alarm because the noise and the lights of the trucks coming out and going into the old MSK complex is unbelievable. He stated that there are no logs or lumber being generated there, and that the way in which the trucks are operating; someone's child is going to get killed. He stated that light industrial does not include heavy trucking.

He went on to say that the headlights from the trucks shine directly into his house and he and his wife have no privacy. They can't even leave their bedrooms without being fully dressed because they never know when the headlights are going to shine through their home. He stated that he came to East Kingston looking for peace and all he's gotten was a piece of hell. He can't sell his property because of the trucking activity. He said that one would be amazed at the noise coming from the complex. During the day there is high-pressured steamers, huge noises, and trucks running in and out all day (and night). He stated that this is his first home and he has done his best, but this type of business does not belong in the midst of a residential zone. It belongs on Route 125, there are too many kids on Route 108. He stated that he is very upset by this and that he never thought it would get this bad. Both he and his wife have bags under their eyes because they haven't had a full night's sleep in ages. The trucking activity during the night and early morning hours has made sleeping impossible.

Mrs. Laurie Carbone of 208 Haverhill Road stated that her home is located directly across the street from the MSK complex. She stated that she has been fighting this trucking operation activity for a year now.

Mr. Newman stated that great noise is generated as each truck slows down to enter the complex and that this goes on all during the day and night. He stated that this business seems to be getting bigger and bigger and that they can't hide behind the MSK Lumber sign. He then invited Planning Board members to come to his home and witness the noise for themselves.

Mrs. Carbone stated that mixing light industrial and residential zoning was a big mistake.

Mrs. Fillio stated that large trucks go all through town and that where her home is located, many trucks use their jake brakes. She stated that although she empathizes with these residents, what makes them any different from the rest of the town who has to tolerate trucking noise.

Mrs. Carbone responded that it is not the normal trucking traffic that bothers her, it is the high volume of trucking activity that comes with a terminal. The trucks going by on a regular basis are not the problem. She said that there are no restrictions to the hours of operation across the street. When the lumber mill was in operation, trucking only occurred during normal daytime business hours. Now the activity is Monday through Sunday, all during the night and day. She stated that she has a right to sleep in her own home; she pays her taxes. She stated that she bought her house when a sawmill was in operation.

Mr. Mearle Burdick, owner of the trucking terminal stated that he has acquired all the necessary permits for his fleet of trucks. He further stated that he pay over \$25,000 in taxes to the Town Clerk each year. He said that he employs three truckers from East Kingston and that he nor his trucks have ever been stopped by the East Kingston Police Department for any violation. He stated that he had received one complaint on a driver and that driver was terminated. He said that he would do anything to keep the neighbors at ease.

Mr. Burdick went on to say that he has only seven trucks in his fleet. He admitted that some of the trucks leave the complex as early as 2:30 to 3:00 AM, but that other trucking activity may be contributed by Granite State Trucking, which operates the trucking repair business on site.

It was determined that Granite State might generate activity for ten vehicles, Burdick's operation generates activity for seven.

Mrs. Fillio calculated that as many as up to seventeen trucks were exiting and entering the complex daily. She noted the times the school busses came through town.

Mr. Merrill stated that the problem is with the seven trucks from the trucking terminal who go in and out of the complex during the middle of the night. They are loud and their headlights are intrusive.

Mr. Burdick stated that he would order the drivers to run only parking lights when exiting the complex.

Mr. Merrill responded that the noise is also a problem.

Mrs. Carbone stated that the Town has a noise ordinance and that she wishes the Town would enforce it.

Mr. Kent Shepherd of 217 Havenhill Road stated that he used to be employed as a truck driver. He said that since the removal of the trees during the pipeline construction, lots of noise from the MSK complex invades his property. He stated that the MSK complex is not controlled. Regulations for hours of operation should be imposed and enforced.

Mr. Burdick stated that he doesn't own any truck older than 1997 and that all his trucks meet all the trucking codes. He stated that his trucking business does not endanger anyone. He further stated that he has a State Trooper inspect his DOT files and maintenance records. He stated that he couldn't afford to have a driver screw up.

Mr. Newman stated that the seven trucks are only a part of the problem. With trucks entering and exiting the complex at 2:30, 3:30 and 4:00 AM, he and his wife are not living a quality life.

Mrs. Carbone reiterated that there is too much trucking traffic at the complex. Mr. Burdick argued that his trucking business is located 400-500 feet off the road. He questioned how this affects the abutters. Mrs. Carbone responded that the noise of start-up and the headlight are intrusive and that she and the abutters deserve to sleep.

Mr. Newman stated that prior to this evening's meeting, he was outside watering his lawn. He stated that out of all the trucks that were entering and exiting the complex, no two had the same lettering (on their trucks).



Mr. Burdick stated that only three of his trucks have the Burdick Trucking logo, the others have a ADMAT logo. At Mr. Newman's questioning of what was being transported in the trucks, Mr. Burdick shouted that he was running a completely legitimate trucking operation and that any reference made otherwise would not be tolerated.

At this time Officer Reid Simpson advised Mr. Burdick to watch his language and to administer self-control or he would be removed from the meeting.

Mr. Murphy reiterated that there is a noise ordinance in Town and that it needs to be enforced. He stated that hours of operation must be imposed as all the surrounding towns have them. He went on to say that a trucking company is not classified as a "light" industrial business.

He stated that what is happening now on the property is not even close to what used to exist. When the parcel housed MSK Lumber, the hours were normal business hours. The hours of the trucking business now are NOT.

Mr. Shepherd stated that the Town of Plaistow had a similar problem. Atlas Motor was shut down during the hours of 10:00 PM – 6:00 AM because of their noise problem.

Mr. Newman stated that a year ago, before the new pipeline construction, he talked with Mr. Marden about the pipeline. He stated that Mr. Marden told him that he had to sell the lumber business because the pipeline people told him that if one of his trucks broke the pipeline, he would be liable for it. He asked since this was a problem back then, what's up with all this trucking now?

Mr. Shepherd stated that this activity is creating a time bomb situation with the pipeline.

Mr. Marden responded that the problem comes with mixing industrial with residential. He stated that the Town wanted it and now he is doing what the Town wants. He said that not all the noise is Burdick's trucks, and if the Town doesn't want it industrial, they should change it back.

At Mrs. Fillio's inquiry, Mr. Marden stated that there are three companies with trucks at the complex. He said the trucking repair company's traffic volume fluctuates. Some days there are only one or two trucks brought in, other days there are as many as fifteen.

Mrs. Fillio stated that she does not know how the Planning Board can regulate trucking traffic along Route 108 at 4:00 AM.

Mr. Newman responded that the problem it is not the trucking traffic that is "just driving by", it is the trucks turning and entering the complex that is making the noise (braking, slowing down, trailers rattling over driveway, and headlights). Mr. Murphy and Mrs. Carbone agreed.

Mr. Murphy stated that even the trucks entering and exiting during the day are not the problem, it's the ones that come in during the night. He begged the Board to just regulate hours of operation. He further corrected Mr. Marden by saying the zone is not "industrial", it is "light" industrial.

Mrs. Campbell read the permitted uses for the light industrial zone:

*The Light Industrial District is intended for use and development of research laboratories, office buildings, selected light industries, warehousing, service of utility businesses.*

*Subject to approval by the Planning Board: Any commercial uses as defined in Article VII of the East Kingston Zoning Ordinance; Research laboratories with incidental processing or pilot manufacture, but excluding Biological or Chemical Laboratories; office buildings; any lawful warehousing excluding warehousing of chemical materials; service or utility business not in conflict with the public health, safety, convenience or welfare or substantially detrimental or offensive to adjacent zones or destruction of property values.*

*Light manufacturing enterprises, except biological and chemical manufacturing; provided that such activity will not be offensive, injurious, or noxious because of gas, dirt, sewerage, and refuse, vibration, smoke, fumes, dust, odors, danger of fire, or explosion, or other characteristics detrimental or offensive that tend to reduce property values in the same or adjoining districts.*

*Any customary accessory uses incidental to above, including parking and parking structures, support and maintenance shops, concessions and services located within a principal building with no exterior evidence of such concessions and services, and recreational facilities for the use of employees in the Industrial District.*

*Noise: No inherent and recurrently generated noise shall be detectable beyond the property line in excess of the average level of street and traffic noise generally heard at the time and point of observation, and no noise below such level shall be objectionable with respect to intermittence, beat frequency or shrillness. No external loud speakers shall be permitted.*

Mr. Merrill asked why are we here when this use is not even allowed? Mr. Murphy stated that this trucking business is not classified to be there. He further stated that Mr. Marden's proposal to move the driveway would effect his (Murphy's) property.

Mr. Marden responded that the definition included some commercial uses. He stated that Freddie Ford over on Depot Road has had a trucking business for years without any problems. He said when the industrial zone was created, it was done so to put industry there because the Town said they needed a place.

Mr. Nichols stated that he doesn't want this type of trucking activity in his neighborhood. Mr. Carbone stated that she is worried about the diminished value of her property because of the trucking activity.

Mr. Wayne Couture stated that he is a real estate broker and that he has sold many properties in the area. He said that when the Town voted in the light industrial zone, they (Town) did not have trucking terminals in mind. He stated that the Town Officials have missed many things here. He continued to say that a videotape of this trucking activity and its hours of operation has been submitted to the Planning Board; the evidence is clear.

Mr. Burdick responded that his business is NOT a trucking terminal, it's a business that parks trucks and trailers. Each truck leaves empty and comes back empty. He stated that the trucks do leave early in the morning, but he has informed his drivers that if they are returning after 8:00 PM, they are to take the trucks home with them. He reiterated that he only rents space from Mr. Marden to park his vehicles.

Mr. Marden stated that he has EPA permits and inspections for the businesses within the complex. He said that the Planning Board should get legal counsel involved because the only way it to get this resolved is in Superior Court.

Mrs. Campbell stated that the previous use of the property was for a sawmill. She asked the Board if they thought this new proposed use was consistent with the previous use, if so, they could approve the application or approve it with conditions, if not, then they should deny the application.

Brief discussion on the options before the Board transpired. Several members expressed their uncertainty of whether or not the proposed use was permitted. It was suggested that the meeting be continued until the Board conferred with Town Counsel.

**MOTION:** Mrs. Fillio motioned to continue this public hearing for Site Plan Review until May 20, 1999 at 9:00 PM to allow the Planning Board time to confer with Town Counsel. Mr. Johnson seconded. With no further discussion, the motion carried 4-0.

With no further business before the board,

**MOTION:** Dr. Marston motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 4-0 and this April 15, 1999 public planning board meeting ended at 10:46 PM.

Respectfully submitted..

Catherine Belcher  
Secretary

Minutes completed and on file April 19, 1999.

Minutes approved on 5/20/99