



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2018-2019
Joe Cacciatore, *Chairman*
Dr. Robert Marston, *Vice Chairman*

MINUTES
Regular Meeting 17 May 2018
7:00 pm

AGENDA:

- ◆ Call to Order
- ◆ **Public Hearing** - Home Occupation at 96 North Road (MBL 15-03-17) - Keith Hart for a home office and storage of trucks and equipment. PB HO18-01
- ◆ **Discussion** with Kevin and Dan Stacey re: 35 South Road.
- ◆ **Board Business**

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

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

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

Also present: Applicants Keith Hart Sr. and Keith Hart Jr., Mr. & Mrs. Bodwell, abutters Dan Mahoney and Mark Clark, and residents Mr. & Mrs. Wixon and Mr. and Mrs. Lyons.

Minutes: Mr. Cacciatore asked for a motion to approve the February, March and April Minutes.

Mr. Bath made **MOVED** to approve the February, March and April Minutes; second by Dr. Marston with a unanimous vote.

Public Hearing - Home Occupation at 96 North Road (MBL 15-03-17) - Keith Hart for a home office and storage of trucks and equipment. PB HO18-01

Mr. Cacciatore asked Mr. Hart to describe his business.

Mr. Keith Hart explained they had a trucking company and Mr. Keith W. Hart wanted to purchase the house and land from Mr. Bodwell to live there, have a home office and store his trucks for his company. He would not be conducting business there. Trucks and trailers would be parked on the property.

In response to the question of what equipment would be there Mr. Hart explained they have loaders, an excavator, a bull dozer, dump trucks, and they plow in the wintertime. The dump trucks would go out in the morning on jobs and the loader usually goes out also. The excavator would go out if they needed it for a job or it could stay on the property if not needed that day. Other than the trucks and equipment, only personal vehicles would be stored on the property.

There could be some piles of loam and gravel if there was extra from a job, but it would then be used for the next job. They had no hazardous materials.

Ms. LaBranche noted they did not specify what type of business they operate on the application. Mr. Keith W. Hart said they would not be running the business from the property, only storing the trucks and equipment there. His business is trucking. The trucks haul dirt, materials and equipment; go out in the day and come back at night. The property would be where they store their trucks and equipment. There was an office in the garage which they would utilize for the home occupation.

Mr. Cacciatore asked if the Board had questions.

- What about the logging referred to in their name? ***Mr. Hart responded they do not really do logging anymore.***
- Will the trucks be stored in the garage or outside? ***Both; two to three trucks would fit in the garage; the rest would be outside. At the most a total of 10 pieces of equipment and that number would not be all the time.***
- How often would you come and go? ***Mostly they leave once a day but occasionally they could come back for another piece of equipment.***
- What equipment do you have and what are the numbers? ***Dump trucks, tractors and trailers; Class 8 trucks – full size tractor trucks with flat-beds, tri-axle dump trucks.***
- What are the amounts of each type of vehicle? ***At the present time there are 2 dump trucks, 2 tractors, 3 trailers, 1-2 bull dozers and 1-2 excavators. There could be more equipment at times but they would not all leave every day.***
- How will you maintain your equipment? ***The garage will be utilized for repairs.***

Ms. LaBranche explained that Mr. Bodwell, who is potentially selling the property to Mr. Hart, has a pre-existing, non-conforming grandfathered use on the property; a septic service. Mr. Bodwell asked why it is not-conforming? Ms. LaBranche stated a non-conforming use means you are operating a commercial business out of your home in a residential zone. When the Home Occupation ordinance was adopted in 2001, the town required all pre-existing, non-conforming uses to come in for a home occupation permit, recognizing they would get a permit each year attesting to the activity going on the property. In 2000 Mr. Bodwell was registered as Bodwells Septic and Excavating, and in 2001 it was just Bodwells Septic Service. Mr. Bodwell stated only the name went to an LLC; they were still doing the same business as before.

The Board's charge is to determine the level of business in the last 3-5 years to use as a comparison to what the Hart's want to do. Since Mr. Bodwell's business is septic service and Mr. Hart's is trucking, it is not the same type of business. The Board would need a description of what the business is today.

Mr. Bodwell stated he does septic service (3-4 service trucks – box vans), excavation (with an excavator), two to three 6-wheel dump trucks, 2-3 septic trucks (tankers), and has 2-3 pickup trucks with caps.

Mr. Hart asked if the grandfathering goes with the property. Ms. LaBranche replied it does, but when the use is down-scaled over time, they do not go back to when it was at its maximum. If any part of the business is down-scaled, then that is the point from which they determine activity. Ms. LaBranche explained they were trying to get a baseline of what the activities were for the transfer of use; the equipment that is there now and the equipment that is proposed to be there with the new use.

Mr. Bodwell asked what makes the proposed use different than what is happening now? ***The Hart's do septic installation the same, but do not have sewage trucks or do anything associated with sewage hauling.***

Mr. Bodwell noted his septic trucks are the same size as Mr. Hart's dump trucks.

Mr. Allen explained that along with the vehicles stored on the property, there were also concerns about the use. Some of the equipment is the same, but the use will not be. Mr. Hart explained the trucks and equipment will be parked in the yard; there will be no use going on at the property.

- What are Mr. Bodwell's hours at the present time? **7:00 am -7:30 am to 6:00 pm.** Mr. Hart asked how important were the hours of operation? Mr. Allen stated it was very important for a noise aspect as it is a residential area. Mr. Bodwell is very respectful of the neighborhood and there have been no issues. **Mr. Hart stated that occasionally they would need to leave as early as 4:30 am to get to a job site. That would not be the norm, but they could be leaving that early sometimes.**
- What operations does Bodwell Septic perform? **Mr. Bodwell installs 30 septic system per year; pumps 2 million gallons of septic (the truck holds 45,000 gallons); and performs leach field inspections. He works 7 days a week.**
- How would the Harts get rid of waste? **They burn the waste oil and recycle other fluids into drums which are then picked up.**
- Will the Harts be repairing other peoples vehicles? **No, only our own vehicles and equipment.**
- Do you pressure wash the trucks in the yard? **Sometimes, with bio-degradable soap. Mr. Bodwell stated there was grass there to filter anything before it gets to the brook.**

Mr. Bodwell has all types of supplies on site, and stone and sand as well. The stone and sand get delivered and he takes to the job site what he needs for that job.

Mr. Bodwell was asked to list his equipment used in the last 5 years. 2007 Volvo tri-axle dump truck, 2010 Kenworth tri-axle septic truck, 1995 tandem septic truck, 2005 Ford dump truck, 2007 Isuzu box truck, 2006 F-350 diesel service truck, 2004 F-350 service truck, 2 equipment trailers (tag-alongs), loader tractor and associated accessories, plus all the necessary tools needed to do the work. He also may rent 2-3 different excavators and he rents a loader, which stays on-site. They used to own their own excavators and loaders, but now they rent. And he has plumbing supplies (mostly PVC pipe), fiberglass septic tanks (which are stored both inside and outside), and a 50' x 9' high storage container (which is like a box trailer on the ground).

- How much gravel, sand and loam are on the property? **5,000 yards a year go through there at about 200 yards at a time.**
- What equipment do the Harts have? **2 dump trucks, 2 tractors, 2 bulldozers, 2 dump trucks, 2 excavators, up to 4 equipment trailers.**
- Mr. Allen reiterated they are a trucking company but do they also haul aggregate? **Yes.** Will you store aggregate on-site? **Yes; similar to what Mr. Bodwell does. If there is extra from a job, it could come back but would most likely be used at the next job.**

Ms. LaBranche asked Mr. Bodwell if the aggregate and loam is stored/contained in any certain way. **He indicated it was contained by concrete blocks.**

Mr. Poeleart noted that Mr. Bodwell's trucks that were parked behind the barn were mostly shielded from view. Mr. Hart noted he would be mostly be parking in the same area.

Mr. Cacciatore opened the floor to abutters, asking them to state their name and address for the record.

Mr. Dan Mahoney, 6 Sanborn Road has lived at that address for 10 years. Mr. Mahoney read a statement which noted he was concerned about fluid contamination if the garage was used for repairs. He also thought it would be prudent for the Board members to visit Mr. Hart's present base of operations to see how he manages his own property.

He was concerned about the scope of the equipment spoiling the picturesque open farmland views and suggested a list of equipment be obtained from the applicant so the Board could constrain operations. He feels if the business is allowed at that location, it would be a disaster.

Mr. Mahoney stated that Mr. Bodwell has been a good neighbor and mostly only the septic trucks have been seen, not the other equipment.

Mark Clark, 2 Sanborn Road has lived at that address for 6 years. Mr. Clark reported he has not noticed any disturbance from Mr. Bodwells property. He brought up pictures of Mr. Hart's equipment on his phone for the Board to see, which he stated was a big difference from what Mr. Bodwell has. He is worried about the size of the trucks and the dangerousness of pulling vehicles of that size out into the road.

Ms. LaBranche asked where Mr. Hart's business was located at the present time. ***He replied on Newton Junction Road in Newton and he has operated his business from there for 5 years and had no problems with his neighbors.***

Did he own all the equipment Mr. Clark showed the Board? ***Mr. Hart said the equipment with his name on them is his; some of the other things are what he hauls with his equipment but do not belong to him.***

Ms. LaBranche pondered if the Board needed to get any feedback from the DOT as she was concerned with the shoulder of the road. ***Mr. Hart stated all his trucks are permitted from the state.*** Ms. LaBranche was concerned also about the site lines of the trucks entering and exiting. ***Mr. Hart Sr. asked why she had concerns about the road for East Kingston; he said that was a concern for the state.*** Mr. Allen noted they have a responsibility to the town.

Ms. LaBranche opined an equipment list should be something the Board asks for so they know what they are working with. What would be the maximum number of vehicles could they expect would be on the property if everything was there at one time.

Ms. LaBranche explained that the Board would not permitting a commercial use; they would be permitting a grandfathered use; that use cannot operate the same in a residential area as if it were in a commercial area.

Mr. Allen noted a non-conforming use has a right to move forward if it is a similar use. The Hart's need to prove this is a similar use and not substantially different.

Susan Wixon, 26 South Road asked if the Harts owned all the equipment they used or do they use other people's equipment, and is that why they can't give an exact amount of the pieces of equipment that would be on the property? ***Mr. Hart stated that was sometimes the case. A borrowed piece may be on the property for a couple of days until it gets returned or the owner picks it up.***

Mr. Bath noted the Board needed to know what has been used in the last 3-5 years on Mr. Bodwell's property in order to make a comparison as to whether Mr. Hart's home occupation would be similar in scope.

Mr. Hart Sr. noted that not everyone can have a place in an industrial park to keep their equipment and also have a house; they just don't make that kind of money. That's why Mr. Bodwell's place would be ideal. There is a house there to live in and enough room for the equipment.

Mr. Allen noted that the Board was trying to gather information so they can make a legal and fair decision.

Ms. LaBranche gave some history regarding the home occupation ordinance. In 1989, the town adopted the home occupation ordinance. At that time there was a list of the preexisting commercial uses in the town. The town decided to bring these non-conforming uses under compliance and required that all the businesses apply for home occupation permits, recognizing they don't really meet the definition of a home occupation. It was a method by which the people filling out the home occupation permits each year could attest that there were no changes to what they were doing, and that they were still doing operating their business.

Ms. LaBranche suggested a few action items before the Board motioned to continue this public hearing.

- Mr. Bodwell and Mr. Hart will receive a copy of the minutes. It is requested they each make a list of all the equipment they have. It is requested for the Harts to also include photos of the types of equipment with weights and sizes and numbers of each they have.

- A site walk was suggested, with the Fire Chief also attending, so the Board could see what the property looked like.
- It also would be helpful if Mr. Bodwell could make a sketch of the property showing where the house and other buildings are located, the driveway, and approximate area where vehicles and equipment are parked/stored and where materials are stockpiled.

Mr. Poeleart asked Mr. Hart if some Board members could visit his current location; he agreed it would be fine. They also entertained visiting Mr. Bodwell's property; Mr. Bodwell stated he was not agreeable to a site visit at this time.

Ms. LaBranche noted that without the ability to see what was currently on the Bodwell property, if Mr. Hart's application was approved, the Board may impose conditions that might not have been necessary if they had the ability to inspect the property to see what was there now.

Ms. LaBranche reviewed it was requested the Harts provide an equipment list with number of vehicles and specifications for each vehicle and piece of equipment with photographs of each. Mr. Bodwell was also asked to provide a list of his current equipment and a sketch of the property indicating where the buildings and driveway are located.

Mr. Cacciatore asked for a motion.

Mr. Bath **MOVED** to continue the public hearing for Mr. Hart's home occupation until June 21; second by Mr. Allen with unanimous approval.

If Board members have any further questions for the Harts or Mr. Bodwell, they should be submitted to either Ms. LaBranche or Mrs. White by May 30 so they can be included in the list that will be sent to them for the June meeting.

Discussion with Kevin and Dan Stacey re: 35 South Road.

Mr. Cacciatore explained the Stacey's had cancelled the discussion with the Board, and he had no information on when it might be rescheduled. School Board member Mrs. Lyons asked that the school be included in any further discussion the Planning Board has in regard to Mr. Stacey.

There were some residents present who asked if they would be notified when the discussion might happen. It was explained abutters were not notified for discussions as no decisions can be made outside of a public hearing. If there ended up being a public hearing, they would be notified; if it was just a discussion they would not.

Board Business

Masone – Mr. Quintal noted he was working on the Masone pad design plan for the new tenant and hoped to have it completed by the June meeting; he would send it to Mrs. White for distribution to the Board. Mr. Quintal was also working on an existing conditions plan for the light industrial park.

Member Recommendation – Mr. Cacciatore had inquired if Mr. Ron Morales would like to become a permanent member of the Planning Board and Mr. Morales agreed he would like to be on the Board. He had previously served on the Board. Mr. Cacciatore asked for a motion.

Mr. Bath **MOVED** to recommend to the Selectmen to appoint Mr. Morales as a regular Planning Board member; second by Dr. Marston with unanimous approval.

Mr. Cacciatore asked for a MOTION to enter a non-public session at 8:45 pm.

Mr. Bath **MOVED** the Board go into non-public session as per RSA 91-A:3, II(c) at 8:45 pm pertaining to letters received from the Staceys; Mr. Allen seconded. Roll Call vote: Mr. Cacciatore - aye, Dr. Robert Marston - aye, Mr. Bath - aye, Mr. Allen – aye, Mr. Caswell - aye, Mr. Poeleart - aye. Vote was unanimous.

The Board returned from their non-public session at 9:25 pm.

Adjournment

MOTION: Dr. Marston **MOVED** the Planning Board adjourn, Mr. Bath seconded.

Mr. Cacciatore closed the meeting at 9:30 pm.

The next Planning Board meeting will be on June 21st.

Respectfully submitted,

Barbara White

Planning Board Secretary

Joseph Cacciatore

Chairman

Minutes approved June 21, 2018