

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
May 20, 1999

FILE

AGENDA

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

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman (7:49 PM), Beverly A. Fillio, Dr. Robert Marston and Alternate Peter A. Riley (7:30 PM).

Absent: Raymond R. Donald – Ex-officio, Alternate Robert Nigrello and Building Inspector Glenn P. Clark.

Others attending: Sarah Campbell – RPC, Lawrence K. Smith – Conservation Commission Chairman, Tom Gage, James Levelle – LLS, Dennis Quintal, Eva Smith, Amanda & Stanley LaShoones, Larry Erickson, Laurie Carboni, Kevin Phyllis, Charlie Marden, Bob Nichols, Merrill Newman, Mearl Burdick, Sargent Reid Simpson, Richard Cook, Adam Mazur, Fire Chief Alan Mazur, Deputy Fire Chief Rob Carter, Austin & Mary Carter, Carol Freeman, Road Agent Bob Rossi, Andrew & Marilyn Berridge, David Sullivan, Joe O'Sullivan, Dick Gordon, Donna Martel, Patricia Mazur, Richard Parker – LLS, and other members of the public who did not address their concerns.

Chairman Smith called to order this May 20, 1999 public planning board meeting at 7:08 PM with the roll call.

Signs: It was noted that the East Kingston Zoning Ordinance and Site Plan Review Regulations consist of sign provisions for residential signs (home occupation) located in residential zones, and commercial signs for commercial businesses located in commercial or light industrial zones, however there were no sign provisions for commercial businesses located in residential zones. It was further noted that grandfathered and agricultural businesses were exempt from these sign provisions.

Board members noted that the reason there are no sign provisions for commercial businesses located in residential zones is because most of these [commercial] businesses are either grandfathered or illegal. Attention then focused on the recent Planning Board approval of a country craft store business located at 14 Main Street and the Selectmen's recent denial of a sign permit for a sign over 2 square feet [for the business]. It was acknowledged that this building and parcel, although located in a residential zone, was considered commercial. Members reviewed the property card for this parcel and noted that the parcel is taxed at a higher rate because of its commercial use.

It was the consensus of the Board that if the property is taxed commercial, used commercially and treated commercial by the assessing officials, then commercial provisions must apply to the property. It is not fair to tax the property at a commercial rate and then deny commercial rights. Members also realized that sign permits are issued by the Board of Selectmen and that this [Planning] Board has no authority over such matters, however, members were hopeful that the Selectmen would revisit and reconsider the sign permit for this parcel.

Unfortunately there was no Selectmen representation present at this meeting to investigate the Selectmen's decision to deny this sign permit request.

Further discussion resulted in the discovery of insufficient sign size provisions under the Site Plan Review Regulations Section VII.6.E.3.a (*maximum sign area 8 square feet*). Members agreed that the previous commercial size provisions of 32 square feet should be used here in this section. It was noted that when these new Site Plan Review sign provisions were adopted, the commercial sign provisions under General Provisions in Zoning were deleted.

Members moved to hold a public hearing on June 17, 1999 to amend the Site Plan Review Regulations Section VII.6.E.3.a to reflect a maximum sign measurement of 32 square feet.

Minutes: The Board reviewed minutes dated April 15, 1999. It was noted that prior to this meeting Conservation Commission Chairman Larry Smith noted errors in the minutes and that such errors had already been corrected.

MOTION: Mrs. Fillio motioned to accept the April 15, 1999 minutes as corrected. Dr. Marston seconded. With no further discussion, the motion carried 3-0.

71 Main Street: Mrs. Fillio stated that in 1997 Mr. & Mrs. Damon of 71 Main Street applied for and were granted a home occupation permit for a small welding business. She said that for the past year there has been a tractor-trailer unit parked on their premises in clear violation of the home occupation agreement made with them (Damon). She went on to say that this is an insult to the Board because much time and effort to hear and decide each application is given and when specific conditions or agreements are made, they are not always enforced.

Chairman Smith noted that home occupation renewals are up in June and that advising the Board of Selectmen of this particular concern, enforcement actions could be taken. Members then noted Article 10.2.2:

Exterior of the building must not display any evidence of the home occupation except a permitted sign. Variation from the residential character is prohibited.

Again, the Board noted the lack of Selectmen representation present at this meeting. It was stated that much of the business conducted by the Planning Board involves the Board of Selectmen and that their presence is needed at each meeting.

Alternate Planning Board Member Candidate: Chairman Smith acknowledged the letter of interest for an alternate member position from David Morse of 40 Willow Road. After a brief interview,

MOTION: Mrs. Fillio motioned to recommend that the Board of Selectmen appoint Mr. Morse to the position of Planning Board Alternate. Dr. Marston seconded. With no further discussion, the motion carried 3-0.

At this time (7:30 PM) Alternate Member Peter Riley joined the meeting.

Minutes: Noting that all three members present at the January 28, 1999 Planning Board meeting were now present at this meeting, the Board reviewed the minutes dated January 28, 1999.

MOTION: Mrs. Fillio motioned to approve the January 28, 1999 minutes as presented. Mr. Riley seconded. With no further discussion, the motion carried 3-0 (Dr. Marston abstaining).

Dean Howard Construction - Sanborn Road Subdivision - Continued Public Hearing: Chairman Smith opened the public hearing at 7:32 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 April 15th meeting.

Mr. Larry Erickson explained that the proposal is to subdivide 99.57 acres into 9 frontage lots along Sanborn Road with one 81-acre lot remaining. He announced that ownership of the parcel has since changed from Dean Howard Construction to Brentwood Commons LLC but that the application on the table has not changed. He stated that Agent James Levelle, LLS is not yet present, and then he (Erickson) submitted a Drainage, Erosion Control & Stormwater Management Plan. He said that at the last meeting, there were some questions about drainage calculations and this report was requested.

Conservation Commission Chairman Larry Smith stated that the Conservation Commission has reviewed the report and they have no problems with it. He stated that his main concern was getting the calculations on the record.

Mr. Erickson stated that at the last meeting there were also some concerns about the curve in the road. He said that the stone wall would be moved back 15 feet and trees would be cut along that curve to increase sight distance.

Mr. Levelle entered the meeting at 7:38 PM and presented the Board with a revised plan. He noted that a drainage study had been submitted to the Conservation Commission and that they (Conservation Commission) were satisfied with it. Other changes to the plan included a notation on sheet #1:

No cutting of living trees within the ROW & 25 feet from the ROW along Sanborn Road is allowed other than that which may be required for driveway or roadway clear sight distance or for utilities; and

Sheet #2 and #6 which reflects the turn-around for fire apparatus at the fire pond to have a solid center.

Mr. Levelle stated that at the last meeting the several items needing to be addressed have been completed. They include:

1. a drainage study has been submitted and approved;

2. a tree preservation depth has been noted on the plan;
3. the fire apparatus turn-around has been modified;
4. site distance concerns at the bend in the road have been addressed (sheet #2); and
5. the stone wall is shown going all the way to the Sanborn Road.

He then requested that the board grant conditional approval of the subdivision application on the setting of the monumentation.

Members then reviewed the plans noting the soils on sheets #4 & #5. At the inquiry of Mrs. Fillio, Mr. Erickson stated that 2000 square foot homes would be built on the frontage lots.

Without any questions from abutters, Chairman Smith focused on the fire pond and asked Deputy Fire Chief Rob Carter if he had any questions about the proposed fire suppression plans for this subdivision.

At this time (7:49 PM) Board Member Edward Johnson entered the meeting.

Mr. Levelle explained that when the back acreage is developed an additional fire pond may be added to the rear area of the property. He also noted that the remaining 81-acres meet the provisions for a buildable backlot. When questioned, he stated that the maintenance easement noted on sheet#4 would provide clear access to the fire pond for future maintenance.

In reviewing the 1200-foot fire suppression requirements, Deputy Fire Chief Carter noted that when calculating the 200 feet from the fire pond to Sanborn Road, adequate footage is not met. It was noted that the required footage for fire suppression could be met when measuring across the back of the proposed lots and that this calculation was acceptable to the Fire Chief.

Mr. Levelle explained that an 80-foot ROW was designed for one of the two access roads to create less impact on the abutting lot. He stated that both access roads may not be used but this will depend on the development of the back acreage. He stated that the bounds have not yet been set, as the application has not yet been approved. He said that sheets #1, #2, and #3 would be recorded at the Registry of Deeds.

MOTION: Mrs. Fillio motioned to approve the application to subdivide property located at 41 Sanborn Road, MBL# 08-02-09 into 9 frontage lots with an 81-acre parcel remaining as presented conditional on the setting and verification of the proposed bounds. Mr. Riley seconded. With no further discussion, the motion carried 5-0.

Lee & Larry Erickson– 53 Haverhill Road Subdivision–Continued Public Hearing: Chairman Smith opened the public hearing at 8:12 PM for Lee and Larry Erickson's proposal to subdivide 53 Haverhill Road, a 7.9-acre parcel into two lots. He stated that this hearing is a continuation from April 15, 1999 and that Dennis Quintal, PE of Civil Construction Management would present the proposal on behalf of the Erickson's.

Mr. Quintal reported that since the April meeting, the proposed plan has received State Subdivision Approval and an agreement with the Board of Selectmen to keep the existing mobile home on the property (if the subdivision plan is approved), has been reached. He went on to say that the only outstanding issue on this plan is the driveway easement. He stated that he is requesting a waiver from Subdivision Regulations Section IV-D, requiring a separate driveway for the proposed new lot.

Mr. Quintal explained that agreeing to a single driveway would prevent the disturbance of 160 feet of wetlands and further impact to the access on the highway. He stated that it is not practical to construct a second driveway for this proposal. He said the easement agreement would be executed at the time of the sale of the lot.

The request for waiver was read into the minutes.

MOTION: Mr. Johnson motioned to grant a waiver from Subdivision Regulations Section IV-D, requiring a separate driveway for the proposed subdivision of MBL# 09-08-26 to prevent further impact to the wetlands. Mr. Riley seconded. With no further discussion, the motion carried 4-1 (Mrs. Fillio opposed).

MOTION: Mr. Johnson motioned to approve the application to subdivide an 8-acre parcel located at 53 Haverhill Road, MBL# 09-08-26 into 2 lots as presented conditional on 1) a notation be placed on the mylar indicating that a waiver was granted from Subdivision Regulations Section IV-D (*..each building lot shall have its own driveway accessing onto a street or highway.*) to prevent disturbance to the wetlands on lot 09-08-34; and 2) the setting and verification of the proposed bounds. Mr. Riley seconded. With no further discussion, the motion carried 4-1 (Mrs. Fillio opposed).

La Noria Dev. Corp./Thomas Gage – Powwow River Road Subdivision – Continued Public Hearing: Chairman Smith opened the continued public hearing at 8:41 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 stated that he had spoken with Town Counsel regarding the language to deed the road to the Town and the road bond. He stated that Atty. Daly asked that he (Gage) put together a proposed deed. He said that he has done so and is awaiting word from Atty. Daly. Mr. Gage further stated that he met with a bond company who states that the company would not advance any payment until the Town signs off that the roadwork has been done to satisfaction. He stated that this would serve as added protection to the Town that a quality road is built.

He went on to say that Dredge and Fill approval has been granted subject to the recording of this proposed plan and that State Subdivision approval has also been granted (just waiting for documentation).

At this time, the Board spent extensive time reviewing the report from the Town Engineer. Members acknowledged the Town Engineer's recommendations to ditching versus sloping, but chose to allow a more natural water run-off plan with sloping. Many recommendations regarding the design of the road were discussed. It was advised by the Board and agreed by Mr. Gage that the cul-de-sac's center be paved solid and that its center be slightly elevated to direct run-off.

In further review of the proposed road, it was noted that the cross-section should reflect NHDOT type "F" and not "B". Discussion about the safety of the road's access onto the main road transpired. It was agreed that paving the 4-foot shoulders and 12-foot travel lanes of the proposed road would meet the State standards for school buses. It was noted that the road plan must abide by the State's requirements as its access is in the DOT's jurisdiction. Members requested a detail of the road from station 0 to station 1.

The Board directed that road bonding must be negotiated and approved with the Board of Selectmen

MOTION: Mrs. Fillio motioned to APPROVE the application to subdivide a 25-acre parcel into 6 lots located on Powwow River Road, MBL# 03-02-03 as presented conditional on 1) paving the center of the cul-de-sac; 2) receipt of State Subdivision Approval; 3) receipt of a detailed drawing of the road entrance from station 0 to station 1; 4) removal of the ditches from the plan; 5) receipt of all review fees; 6) receipt of acceptable bonding approval by the Selectmen; and 7) the setting and verification of the proposed bounds. Mr. Johnson seconded. With no further discussion, the motion carried 5-0.

Chuck Woodlands Realty Trust – Light Industrial Park Site Plan Review – Continued Public Hearing: Chairman Smith opened the public hearing at 9:40 PM for Chuck Woodlands Realty Trust. This meeting is a continuation from April 15th. Charlie Marden, Trustee presenting a proposed plan to operate a trucking garage from MBL# 11-2-17, 213 Haverhill Road (also located in the light industrial zone) stated that at the last hearing he noted his position that he did not think he needed Site Plan Review approval for the operation of a trucking garage. He further stated that the Planning Board motioned to continue the public hearing to contact Town Counsel regarding this case. He then asked if such contact had transpired.

Members stated that counsel had been sought and received and then directed that a copy of such correspondence be provided to Mr. Marden.

At the inquiry of Mrs. Fillio, Sargent Reid Simpson stated that even though only one incident report had been filed with the Police Department regarding the noise from 213 Haverhill Road, many other complaints were entered in the Police Department's daily logs. He stated that he received many of those complaints personally. He said that the Police Department doesn't usually write up an incident report unless there is property damage.

Mr. Robert Nichols stated that he complained to the Department of Transportation and they referred him to the State Police, who came down and sat by the road for a while, then left.

Mrs. Fillio asked if there were other trucks (other than logging) when the business started.

Mr. Marden replied that when the business was MSK Lumber, there would be both logging and lumber trucks in and out of the complex during the day and sometimes at night. He stated that wood chips were shipped at night. He also stated that his records indicate that the mill began in 1958 and changed to MSK Lumber in 1980.

* Since this meeting, Chairman Smith approved that the setting of monumentation along the roadway be done at the completion of the road and so indicated in the road bond. All other monumentation shall be set prior to the recording of this plan.

Mr. Richard Cook inquired if the Board had received any word back from Town Counsel about Old Haverhill Road. Members responded that they had not but thought the Selectmen were looking into it. It was noted that the issue with Old Haverhill Road is separate from the application on the table.

Mrs. Fillio stated that the zoning ordinance does not list trucking as a permitted use allowed in light industrial.

Mr. Marden replied that his business falls under the "service industry", which opens up to a broad scope.

Mrs. Campbell responded that this proposed trucking activity does not fit into the service industry category.

Mr. Marden stated that the Planning Board came to him for a light industrial zone and that this trucking activity is a trucking garage only, not a terminal as earlier described. He further stated that most light industrial zones have trucking activity. He stated that there are only 7 trucks at ADMAT and more with the sawmill.

Chairman Smith opened discussion to abutters.

Mr. Kevin Murphy stated that when the trucks come out of the complex, they are fully loaded. He said that trucks were leaving at 5:30 AM on Sunday.

Mr. Andrew Berridge stated that he has served on the Planning Board, Board of Selectmen, and the Future Land Use and Acquisition Committee and that he was in town when the Town voted to establish a light industrial district. He stated since that time, a lot of investments have been made to that area. He said that the Town always wanted to target those types of businesses for the light industrial zone. He stated that whatever you do there, it will always involve trucks. He continued to say that the abutters to the light industrial district built there home *after* the zone was established and their property values already reflect the close proximity of the light industrial zone.

Mr. Berridge went on to say that he once resided at the corner of Routes 107-A and 108 and is aware of the commercial traffic passing through there. He stated that the complaints generated by the abutters to the light industrial zone are self-centered.

Mr. Richard Cook stated that his business began as a home business on Burnt Swamp Road. He stated that he could not see how the Town could have a light industrial zone without trucks. He said warehousing and carpentry businesses have some sort of trucking activity. No matter what you pick, there will be some sort of trucking activity. He said that he also lives on a State road and he sees and hears trucks of all shapes and sizes. He stated that he once had an issue with the NHDOT about a culvert across the road by his house; every time a truck went over it, the windows in his house would rattle. He complained to the State, it got fixed, but the trucks are still going by.

Mrs. Marilyn Berridge stated that the Master Plan is fairly clear for the light industrial zone's intended use. She stated that the Planning Board has made several attempts to expand the commercial district in town, but each time it was turned down the argument was that the Town does not need more commercial zones when the industrial zone is not being developed.

Mrs. Laurie Carbone stated that she disagrees with Mr. Berridge and that her property value had depreciated because of the trucking activity across the street. She further stated that she was not notified of this hearing. She went on to say that it is the hours of operation of the trucking not the trucking business itself that is the problem. She has lived across from the MSK complex for 15 years and only in the past year has she not been able to sleep because there are trucks going in and out of the complex at 3:00, 4:00, and 5:00 AM.

Mrs. Fillio responded that she resides on Route 107 and has the same issues about trucks going by her house at all hours of the night. She stated that the "Jake brake" noise is generated at 4:00 and 5:00 AM. She continued to say that this was not a Planning Board problem.

Mrs. Carbone replied that the Board of Selectmen says this is a Planning Board issue. She stated that her house located directly across the street from the MSK complex is located in a residential zone and that she has the right to sleep.

Mr. Riley questioned how a logging business falls under a service industry.

Mr. Marden replied that the logging activity was tied into the sawmill business established in 1958. He said that the light industrial activity at the MSK complex is a service industry.

Mr. Riley disagreed and stated that logging activity is a heavy industrial activity not a service industry.

Mr. Larry Smith stated that lawful warehousing is allowed by the ordinance and that the hours of operation is the problem that should be addressed.

Mr. Mearl Burdick stated that after the last Planning Board meeting he advised his drivers to adhere to a new set of rules when approaching and leaving the area of 213 Haverhill Road. These rules included instruction to reduce speed, no Jake brakes, and give special noise considerations to the abutters of the complex. He further stated that truck drivers not back to the garage by 8PM are instructed to take their trucks home and not back to the complex. He stated that he is very sorry about the problem but is trying to address it.

He admitted that his trucks do leave as early as 4AM as they need to be on site by 6AM. He stated that the trucks may leave early, but they are not coming back late at night; his employees live in Exeter and Sandown and they have been instructed to take their trucks home if they come back late. He stated that he is doing his best to resolve these issues, but if the Town wants him out, he will go. He then noted that he spends \$25,000 to register his vehicles in East Kingston.

Mr. David Sullivan stated that Mr. Marden had earlier offered to move the entrance, but the boundary issue needs to be resolved. He stated that the Town must be willing to compromise.

Mr. Nichols stated that he resides in the log cabin he built 14 years ago on Haverhill Road and was assured by Mr. Bowley (seller) that there would be no new development. Mr. Nichols then gave similar testimony he gave at the April 15th meeting. He further noted that he was not notified of this hearing.

Mrs. Fillio responded that this hearing is a continuation from the April 15th meeting and that notification was made at the last meeting to the continuation date.

Mrs. Carbone read and excerpt from Article XII of the East Kingston Zoning Ordinance:

Noise: No inherent noise and recurrently generated noise shall be detectable beyond the property line in access 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 speakers shall be permitted.

Mrs. Fillio asked Mrs. Carbone if she wanted a curfew set on the business.

Mrs. Carbone replied that all she wanted was peace and quiet and that hours of operation were needed here. When asked what hours she thought would be fair, she responded that in January she submitted a petition with specific hours of operation for the trucking activity.

Chairman Smith read the petition which noted hours of operation as follows: Monday – Friday 6AM to 7PM, Saturday 8AM to 2PM, and no Sunday or legal holidays. The petition further stated that these hours reflect the light industrial limits of the surrounding towns.

Mr. Murphy stated that the truckers are trying their best, but it is not quiet enough.

Mr. Merrill Newman stated that he had read the noise ordinance and thought he understood it, he read the permitted uses allowed in the light industrial zone and thought he understood it, yet the noise and trucking are still going on. He asked if what is written in the Town's Zoning Ordinance matters as all this activity is in clear violation yet nothing is being done about it. He stated that he is very upset and realizes that the problem is not just one company in the complex.

Mr. Adam Mazur stated that Dick Sargent, then Charlie Marden had a sawmill, which is clearly a commercial venture, for over 25 years and it still one now. He said that the people who purchased homes and land around the business must have given some thought as to what they were buying next to. It doesn't matter how the business is classified, it was there back then and is still there today. Had the abutters thought about what they were buying then, they wouldn't be here complaining now.

Mrs. Carbone argued that what is going on now is clearly a change of use.

Fire Chief Alan Mazur stated that a decision by the Board must be made, as this issue has been discussed 2 and 3 times already.

Chairman Smith stated that he would entertain a motion to approve the application for Site Plan Review with conditions that the business would abide by the instructions in the memo to all ADMAT drivers and no obtrusive lighting allowed.

Mr. Newman asked if that includes all the trucks going in and out of the complex or just ADMATS.

Mrs. Carbone asked who would enforce this.

Mr. Marden stated that all his MSK trucks are grandfathered. At further inquiry, he stated that there are MSK trucks, ADMAT trucks, and Granite State trucks in and out of the complex. He stated that the MSK and Granite State trucks keep hours of 7AM to 5PM.

Mr. Murphy asked about the starting up hours. He further stated that it is NOT just a few trucks making the noise.

Mr. Dick Gordon asked if the motion the Chairman would consider would limit the hours of operation to this particular business or if it would carry over to all business located in the light industrial zone. He cautioned the board not to set a dangerous precedence.

Mrs. Fillio stated she didn't know how the Town could enforce no trucking activity after 8PM when there are trucks going up and down the State roads all night long.

Mr. Murphy responded that other towns have hours of operation.

Mrs. Carbone stated that the Town of Plaistow had a similar situation and the town enforced hours of operation. She stated that this trucking activity needs to respect the residents living nearby. She said she is not asking the businesses to shut down.

Mr. Joe O'Sullivan asked if when the Town voted to establish a light industrial zone, was there any expectation at the time to limit the use of trucks there.

Mr. Marden stated that he thought having his land zoned light industrial would make things better.

Mr. Larry Smith stated that the issue is not the trucks driving up and down the road, it is the deceleration and acceleration in and out of the driveway at night.

Mrs. Fillio asked if the operation should be confined by installing a gate at the complex's entrance and closing it at 8PM, then at 8AM they are allowed to start their business again. She stated that the Town has changed everywhere not just at the far end of Haverhill Road. She stated that we all have to make adaptations and that the Board could only do so much. She asked if the proposed use fits the legal use of the area.

Mr. Adam Mazur stated that he hopes the Planning Board really thinks about the time frame of the operation. He said that the people here are trying to be as quiet as they can – we all have to live with it.

Mr. O'Sullivan stated that when he bought his house at the corner of Routes 108 & 107, he realized the location of a stop sign (right on the edge of his property) and the train tracks 50 feet away. He hears cars and trucks accelerate and decelerate all day and night along with the freight train going by. He knew this when he bought his house. He stated that effect is still the same.

At Board inquiry, Mr. Marden stated that the sawmill (on a much smaller scale) is still in operation, he still trucks machinery and he rents space to ADMAT, who has 7 trucks.

In response to Mr. Riley, Mr. Burdick stated that the types of freight carried by his trucks are bark mulch, demolition debris (brought to Epping), and steel. Only the bark mulch comes back to the yard. He stated that his books and permits are all in order. He insisted that he does not run a warehouse operation and reiterated that only bark mulch comes back to the yard. He only parks trucks there.

Mr. Nichols stated that when he bought his house there were no problems with trucks. Now there is a lot more traffic in and out of the complex. He stated that his grandson, who resides with him, is afraid to wait out for the bus because of the fast, heavy trucks going by. He stated that some may call all this development progress, but it must be done with respect to those who bought their homes. He said that his property value has gone down and that regulating the hours of operation would be a tremendous help. He continued to say that he usually calls the Department of Transportation or the State Police about the trucking traffic as he does not want to keep bothering East Kingston's Police Department. He reiterated that he is afraid for his grandson.

Mrs. Carbone stated that a decision must be made here and asked that a compromise be made.

Mr. Austin Carter asked if a decision made tonight would affect the entire light industrial zone or just this particular location.

Chairman Smith responded that any decision made tonight pertains to Charlie Marden's application.

Mrs. Mary Carter asked if the rest of the light industrial zone would have to abide by these rules.

Chairman Smith replied not necessarily.

Mr. Marden stated that MSK is still a legitimate business and asked if hours of operation will apply to this business as well.

Chairman Smith answered that the issue is the application before the board. He then closed the hearing to discussion with abutters and the public.

Mrs. Fillio asked what hours of operation could be considered to expect quiet in the neighborhood.

Mr. Marden asked her to define the work "quiet". He stated that industrial is 24-hours a day. He noted that Freddie Ford brings his trucks in and out anytime he wants. He stated that the argument when the light industrial zone was established was that now there would be a place to put all the home businesses.

Mrs. Fillio stated that she could appreciate that residents have a right to operate their businesses. She further stated that setting hours of operation is discriminatory.

Mrs. Campbell stated that the Planning Board could impose conditions that make an application complete to ensure it meets the purpose and intent of the ordinance.

Mr. Gordon asked if conditions could be imposed mid-stream into business.

Mrs. Campbell responded that whether this business is new or not, Mr. Marden did not apply for Site Plan Review when this change or expansion of use began. The application for the business is before the board tonight.

Mr. Gordon stated that he doesn't understand how the Town could take Mr. Burdick's money and then turn around and kick him in the teeth.

Mrs. Campbell reiterated that the Planning Board does have the authority to impose conditions.

Mrs. Fillio stated that she has a problem with confining someone's ability to make a living between specific hours. She stated that the Town voted in the light industrial zone. She said she is very torn over this issue and can understand both sides.

Mr. Johnson stated that he does not feel he is experienced enough to make a decision on this issue. He stated that it is too bad a compromise can't be reached. He said that he is not comfortable in making a motion on this application.

Mr. Riley stated that he still feels this proposed use is not a service industry. He stated that he has reviewed Article XII and does not understand how this proposed use is considered a service industry. He stated that the proposed activity fits into a heavy industrial use, but not light industrial. He asked if Mr. Marden was arguing that this is a grandfathered business.

Mr. Berridge asked if Mr. Riley was present at any of the public hearings regarding the light industrial zone or when it was voted in. He stated what is in operation at the MSK complex is considered a light industrial service industry.

Mr. Riley responded that although he was not able to vote for the zoning change, he still does not see how a commercial trucking operation could be categorized as a light industrial service industry. It's more a heavy industrial trucking enterprise.

Mrs. Berridge asked how Mr. Riley expected there to be any manufacturing businesses without trucking.

Mr. Riley responded that this is not a manufacturing enterprise.

Mrs. Berridge repeated her question three times to Mr. Riley before he answered that he did not know how a manufacturing business could operate without any sort trucking activity allowed.

Mr. Larry Smith stated that lawful warehousing is allowed and that any customary accessory use incidental to that including parking, is allowed.

Deputy Fire Chief Rob Carter stated that the code the fire department uses is parallel to what is generally categorized by the Town. He stated that insurance type operations are considered a business or a commercial use; retail stores are a mercantile use; light trucking and warehousing is considered light industrial; furniture manufacturing and logging are considered heavy industry. He stated that the Life Safety Code would characterize this trucking garage as a light industrial use.

Mr. Murphy stated that he has live here for 15 years and when MSK was in operation there was a gate at the entrance; the gate opened at 7AM for business and closed at 7PM. On Saturday's the gate was open from 8AM to 7PM and on Sunday's only Charlie or Warren would be around. There was minimal operation at night. He further stated that heavy commercial vehicle activity is restricted.

When Mr. Nichols began to reiterate his fears for his grandson, Mr. Stan Lashoones stated that other parents also worry about their children and the dangers of the road.

Mrs. Carbone stated that you can't operate the light industrial zone at the abutter's expense.

When asked his opinion, Dr. Marston stated that when he bought his farm located next to the railroad tracks, he expected the train to go by at night.

Fire Chief Alan Mazur stated that it was obvious the Board was having some doubts about what action to take. He advised that the Board seek counsel. When informed that counsel had already been sought, he further advised the Board to make a decision.

Mrs. Fillio attempted to make a motion to approve the application with set hours of operation, but found throughout discussion that a compromise of hours could not seem to be reached. She also questioned which trucks would be regulated when other trucks inside the complex would not.

Mr. Murphy asked that all the heavy commercial vehicles be regulated.

Mr. Berridge stated that the Town has a perfectly good and enforceable noise ordinance. Mrs. Berridge added that noise cannot be louder than what is to be expected in the area, which is a State highway.

Mrs. Fillio asked the abutters if the noise level had gotten any better since Mr. Burdick's memo to his drivers. The abutters responded negatively.

MOTION: Mrs. Fillio motioned to approve the Site Plan Review application for property located at 213 Haverhill Road, MBL# 11-02-17 to operate a trucking garage identified as ADMAT Enterprises, Inc. as presented. Dr. Marston seconded. With no further discussion, the motion carried 3-1.

The Board was polled. Those in favor of the motion:

Mrs. Fillio – yes Dr. Marston – yes Chairman Smith – yes
Mr. Riley – No Mr. Johnson – abstained

With no further business before the board,

MOTION: Dr. Marston motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 5-0 and this May 20, 1999 public planning board meeting ended at 11:10 PM.

Respectfully submitted

Catherine Belcher, Secretary

Minutes completed and on file May 24, 1999.

Minutes approved on 5/27/99