

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES

June 24, 1999

FILE

AGENDA

- 7:30 Laurie Carbone – 298 Haverhill Road – Appeal from Administrative Decision (1999-02)
8:15 George Storm – 2 Marshall Road, Kingston – Appeal from Administrative Decision (1999-03)

Members attending: Chairman John V. Daly, Vice Chairman David Ciardelli, Norman J. Freeman, David C. Boudreau and Alternate Members Peter A. Riley, Richard A. Cook, J. Roby Day, Jr., and Charles F. Marden.

Absent: Edward Cardone.

Others attending: Richard A. Smith Sr. – Planning Board Chairman, Adam Mazur, Sherry Nichols, Michael Wilson, Sargent Reid Simpson, Curtis & Lucienne Jacques, Carol Nupp, Alan Resnick, N. Joe Freeman, Carol Freeman, Mary & Austin Carter, Fire Chief Alan Mazur, Andrew Berridge, Richard Gordon, Donna Martel, Richard Friese, Deborah Kiesel, Atty. Robert Deshaies, Dale & Merrill Newman, Becky Hanna – Seacoast News Correspondent, Joseph O'Sullivan, Laurie Carbone, Atty. Charles Quinn, Mr. & Mrs. Kent Shepherd, Patricia Mazur, Joanne Postal, and other members of the public who did not address their concerns.

Laurie Carbone – 298 Haverhill Road – Appeal from Administrative Decision: Upon opening this public hearing, Chairman Daly directed that order be maintained throughout this hearing and that all comments and questions must be directed to the Board and not to anyone testifying. He then opened the hearing for Laurie Carbone and abutters who have filed an Appeal from Administrative Decision from the May 20, 1999 Planning Board Decision to approve the Site Plan Review application of Chuck Woodlands Realty Trust regarding ADMAT Enterprises. The applicant, a direct abutter to the property in question cited that the decision is in violation of:

Article IV.A - *Any use that may be obnoxious, injurious or in the nature of a nuisance by reasons of production, emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions or that is dangerous to the comfort, peace, enjoyment, health or safety of the community or lending to its disturbance or annoyance, is prohibited;*

Article XII.3.(e) - *Light manufacturing enterprises, except biological and chemical material; service or utility business not in conflict with the public health, safety, convenience or welfare of substantially detrimental or offensive to adjacent zones or destructive to property values, when permitted by the Planning Board; and*

Article XII.5.(g) - *No inherent noise 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...*

Chairman Daly stated that because he has given legal advice to the Town regarding this issue he would not participate in any voting, but would continue to chair the meeting. No objections were indicated by either Atty. Deshaies or Atty. Quinn. He further noted that because Charles Marden is named in the appeal (Chuck Woodlands Realty Trust), and Peter Riley served on the Planning Board from whom the appeal is taken, they too, would not participate in any voting on this matter. He then designated alternate members J. Roby Day and Richard Cook to sit as voting members.

Atty. Charles Quinn representing the applicant and other abutters of the Chuck Woodlands Realty Trust property stated that it is their position that the Planning Board erred in a number of ways in its decision to approve the site plan review and that the Zoning Board of Adjustment has the power to correct it. He stated that the Board has the power to reverse the Planning Board's decision and to move for peace in the community.

He stated that there are large commercial trucks operating in a light industrial zone that abuts a residential neighborhood and that the Planning Board erred, as it should have never taken up this site plan review because the trucking business is not a permitted use. This is a violation of the zoning laws. Chuck Woodlands Realty Trust should have applied for a variance for the use as reflected in a memo written by Town Counsel. Atty. Quinn distributed copies of the memo to Board members and asked that they read it carefully as it points out pertinent issues.

He continued to say that although not intentional, a proper site plan review should have been followed. The effects of the approval are detrimental to the surrounding neighborhood. He stated that he is prepared to provide videotape and testimony that 18-wheelers are going in and out of the property at 11:00 PM, 3:00 AM and 4:00 AM. Videos were taken from Mrs. Carbone's bedroom window.

Chairman Daly stated that three specific issues were noted with the appeal and asked Atty. Quinn to specify which issue the evidence supports.

Atty. Quinn responded that the videotape goes to the noise issue. He stated that the use of the property is not within the light industrial definitions noted in the memo from Town Counsel. He read aloud an excerpt of the letter listing East Kingston's Light Industrial Zone permitted types of businesses: research laboratories, office buildings, lawful warehousing, and service or utility businesses not in conflict with public safety, health, convenience or welfare or substantially detrimental or offensive to adjacent zones or destruction to property values.

He continued to say that if the Planning Board maintains the use is allowed, then a site plan review should have been required, yet no current site plan is in place. He said that there was no hearing for a site plan review. There was a new tenant on the property after the lumber mill stopped and this trucking business constitutes a change in use. A change in use requires a site plan review, yet the use is not a permitted use – a variance should have been sought. He stated that this new use exceeds the operation of the prior use, as the sawmill operated during daytime hours.

Atty. Quinn then distributed copies of two appraiser statements, which stated that the operation of a trucking business is detrimental to the abutters' property values. He also submitted a letter from the NH Department of Transportation stating that the current driveway servicing the site is not approved for its current trucking operation use. He stated that the options are to close down the business or limit the hours of operation. It is not the intentions of the abutters to put people out of business. The Zoning Board has the power to correct what should have never gotten to this point. He then requested permission to play two segments of video each running about 40 seconds.

With permission granted, the video was viewed with Atty. Quinn narrating that Mrs. Carbone took these recordings in September 1998 and June 1999. With the video running he stated that not just one or two trucks are emerging from the site at 4:21 AM, but five 18-wheelers, which are very loud. This causes a disturbance in the neighborhood. He stated that this evidence falls within any of the articles cited in the appeal.

The second segment of video dated June 22, 1999 also narrated by Atty. Quinn, showed the trucks entering the site at 10:19 PM, 10:47 PM, 11:00 PM, 11:06 PM and 2:30 AM. Atty. Quinn stated that it is the testimony of abutters that this also occurs on Sundays. He is just asking for a proper review of the business with hours of limitations designated.

At this time Chairman Daly advised Mr. Marden that he would have the opportunity to play back the video and offer comments when it is his turn to address the Board.

Atty. Quinn went on to say that there are noise limitations – *No inherent noise 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.* He stated that the videotape and abutter testimony clearly shows the business is in violation of the ordinance. He reiterated that on June 22, 1999 18-wheelers were exiting the site into a residential zone at 2:37 AM.

Mrs. Laurie Carbone stated that six tractor-trailer trucks entered the site between the hours of 10:30 PM-11:30 PM.

Atty. Quinn stated that this activities is in violation of Article IV.A- *Any use that may be obnoxious, injurious or in the nature of a nuisance by reasons of production, emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions or that is dangerous to the comfort, peace, enjoyment, health or safety of the community or lending to its disturbance or annoyance, is prohibited.* He stated that this trucking activity has not always been there. When the neighbors moved in there was a sawmill. There has been a clear change of use. He said that this is a trucking terminal as trucks are going in, dropping off trailers, switching and leaving. This 24-hour a day activity is different from the operation that was going on before.

He then thanked the Board for listening and stated again that they are not trying to put anyone out of business, they just want to limit the hours of operation.

With no questions from the Board, Chairman Daly directed representation for the Chuck Woodlands Realty Trust to present their position.

Atty. Robert Deshaies stated that he is representing Charles Marden, Trustee of Chuck Woodlands Realty Trust. He said that the approval of the site plan review was in fact a zoning determination made by the Planning Board at the time of the Planning Board hearing. He stated that a site plan review was presented and conducted for ADMAT Enterprises at the Planning Board hearing. The memo from Town Counsel was also part of the hearing where the Board went through the process of site plan review. The Planning Board based their decision on the testimony of the deputy fire chief and Andrew Berridge in regards to their definition of light

industrial. He said to deal with the issues of Article IV.A...*any use that may be obnoxious*...this is speaking in terms of a nuisance activity that is dangerous. He stated that most zoning bylaws are a product of history. The Zoning Enabling Act, which provides for site plan review has a purpose to prevent the undesirable and preventable elements of pollution, such as noise etc. that may prove harmful to adjacent properties. He then noted the 1972 Lellis Case, a private nuisance case where it was decided that substantial harm is that in excess of customary interference of land use in an ordinary society.

He continued to say that this is a company that owns seven trucks that operate from 4:00 AM and have agreed to try not to return (except for unusual circumstances) after 9:00 PM. There are other trucks that operate on the property. Charlie Marden has trucks and the painting business has trucks.

When questioned whose trucks were shown in the video, Mr. Marden replied that they were ADMAT's.

Atty. Deshaies stated that he does not think Article VII.5.G applies to this situation. It applies to a specific industrial site – any industrial activity will have trucking activity. He stated that the petitioner is located directly across Route 108 and that 108 is a state highway with trucks going by at all hours of the day and night. He said that at the Planning Board meeting, one abutter stated that they complained to the Department of Transportation and the State Police who supposedly investigated the complaint and found nothing. The Planning Board heard that evidence and made a reasonable determination.

He went on to say that the Planning Board considered setting hours of operation, but found it unnecessary. He stated that he is not sure that this issue is appealable to this board. In this instance the Planning Board made the correct decision, they considered all the issues and applied them to the zoning bylaw. He said that the Zoning Board should respect and not second-guess this decision.

Atty. Deshaies further stated that in responding to Article XII.3.(e) - *Light manufacturing enterprises, except biological and chemical material; service or utility business not in conflict with the public health, safety, convenience or welfare of substantially detrimental or offensive to adjacent zones or destructive to property values, when permitted by the Planning Board...* the fact that the abutters are simply located next to a light industrial zone is destructive to their property values.

Chairman Daly then opened the meeting to questions and comments from abutters.

Mr. Michael Wilson of 221 Haverhill Road stated that he lives 600 feet from the business' driveway and he doesn't have a problem with it. He says he doesn't hear the trucks and that he leaves his home at 4:45 AM to go to work. He said that construction vehicles have to be on site at a certain time. He stated that the train makes more noise.

Mrs. Sherry Nichols of 181 Haverhill Road stated that although she doesn't abut the property directly and she live farther away than the Wilson's, she is unable to sleep because of the noise. She said she never had a problem with the lumber mill – these trucks are loud. This noise devalues her property and it deters anyone from purchasing it. She stated that she is not opposed to the business. She said that the laws are being overlooked for the sake of a few and that she finds this distasteful.

Mr. Joseph O'Sullivan of 1 Depot Road stated that he works in manufacturing and that manufacturing is an appropriate use in a light industrial zone. He then questioned what is the baseline for the noise level. The light industrial zone should be a place for trucks to come and go. He stated that hundreds of trucks stop at the intersection located by his house as well as the passing of the train. He knew that when he bought his house on a state road he'd have to expect some trucking noise. He said that Mr. Marden's land was set aside for businesses that use trucks.

Mrs. Carbone responded that when she purchased her house there was a sawmill across the street and that this change of use is very intense. She is woken up every night when the trucks enter and exit the site. She is requesting that the same respect that is so readily given to the business be given to the residents.

Atty. Quinn stated that the main point is that this is a change of operations. Neighbors did not complain about the noise when the site was a lumber mill. He asked that the Board help the abutters with this situation and set hours of operation.

Mrs. Carbone stated that this is also a safety issue. The huge trucks that come out of the driveway have to swing on to the opposite side of the road with cars coming and going. She said that the school bus turns around on her property.

Atty. Quinn then submitted two pictures of trucks entering and exiting the site. He asked the Board to compare the size of the trucks to the small driveway they are coming in and going out of.

Mr. David Sullivan of Clement Lane responded that large trucks and tractor-trailer trucks regularly drive on the other side of the road. Most trucks can't take narrow corners – even going their slowest, trucks have to swing onto the other side of the road. This is allowed

in the driver's manual for New Hampshire and most anywhere you go. He stated that without trucks, we would all be sitting her naked and dirty as trucks transport clothing and soap.

Mrs. Deborah Kiesel of 4 Ashlie Road stated that in addressing the baseline for trucking noise on Route 108, the ordinance measures the noise by using the term "average". The trucking activity and noise currently being generated from 213 Haverhill Road is much different from the noise from traffic on 108. On this section of 108 there are no stop signs or traffic lights, no stores or gas stations that would cause a truck to down shift or use their Jake brakes. There are no turn-offs only straight road. There is no reason for the average truck to stop and turn on this section of road. Prior tenants have never created this noise. She then stated that a night's loss of sleep is a substantial loss. This is a unique situation with unique noise. She said most towns measure noise by decibels, but East Kingston measures it by using the word "average".

Atty. Deshaies stated that as a new tenant, ADMAT Enterprises was required to go through site plan review. One hearing lasting two months was conducted. The Planning Board granted the site plan review application. He said that the only issue is whether the Planning Board interpreted the zoning bylaws correctly. The land is zoned light industrial and any use permitted there would carry a trucking use with it – any retail, warehousing, etc. He stated that when you stop and turn around, the change in use is more noticeable.

He went on to say that any approved use would carry this type of noise and that this use is not a grandfathered issue. The trucking use has never been determined grandfathered – this issue is not relevant tonight.

Chairman Daly stated that part of the problem in this whole issue of what light industrial is and is not, is the language that the ordinance uses. There has been evidence and testimony introduce on extraneous material – other than what is written in the zoning ordinance, of what is light industrial. The problem is how do you fit this use as defined in what is written specifically in the East Kingston ordinance?

Atty. Deshaies responded that light industrial uses allowed by the ordinance include any commercial business of retail, wholesale, service, and utility. He categorizes this trucking business as a service or utility operation adjunct to other operations.

The Chairman stated that the ordinance provides that service businesses not in conflict with public health, safety, convenience or welfare of substantially detrimental or offensive that tend to reduce property values in the same or adjoining districts.

Atty. Deshaies responded that he doesn't see how one can call the entering and exiting of trucks into a light industrial property a nuisance. If they did, then there would be a nuisance in every commercial operation, industrial operation, manufacturing operation in the state.

Chairman Daly replied that the ordinance specifically states "not destructive or detrimental to the adjacent zones". This site was then recognized as being located on the border of a residential zone.

Atty. Deshaies stated that the way the ordinance addresses this is to provide a 200-ft buffer between the two uses. The focus is the plant or industry that is on site and to protect the neighborhood from noise generated by that, but there is no way to prevent trucking access. He stated that he didn't think there was any industrial enterprise that operates without trucking.

Mr. Riley stated that although he can't vote on the issue tonight, he did vote at the Planning Board hearing. At the night of that meeting, Mr. Marden stated the proposed use was not suitable for light industrial but then called it warehousing. He stated that his question is since the site plan review requires the access to be consistent with state regulations, how does the June 15, 1999 letter from the NH Department of Transportation stating the access is not acceptable affect this decision?

Atty. Deshaies responded that that matter was the subject of litigation several years ago, which the courts found in favor of Mr. Marden. This letter was just received by them and Mr. Marden will address it.

Mr. Riley stated that the letter must be taken at face value. How can the ZBA approve this site plan review knowing required criteria has not been met? How can the Board accept a site plan that was accepted by the Planning Board after this information has been presented?

Atty. Deshaies stated that this is a different matter and it is not before this board tonight. The only things before this board are the items that have been noticed.

Chairman Daly informed Atty. Deshaies that the Zoning Board of Adjustment has the power to hear and decide what the Planning Board had initially heard and specifically the noticed items.

Atty. Quinn stated that even calling the trucking business a service or utility business is okay, but the order mandates a new tenant go through site plan review and with that specific criteria must be met. This argument does not guarantee the use fits into the definition, but all the criteria must be met. The letter from the NH DOT states the road access matter has not been satisfactorily met.

Richard Gordon of 4 Burnt Swamp Road questioned if there is a farm on Sanborn Road that is offensive by smell, would the town put that farm out of business? The property values in the area in question have utility (gas & electric) lines through it –this in itself would reduce their property values.

Mrs. Carbone replied that her property does not have those types of easements. She further stated that with her NH Real Estate license, she is aware of the disclosures that must be listed when selling a home. Line number 43 specifically asks if the property is located near large trucking activity, noises, airstrips, etc. This information must be disclosed and it has an adverse effect of property values.

She went on to say that after the site plan review was approved she received two calls from the Selectmen and Planning Board members stating that a mistake was made. The callers then directed her to go to the ZBA to correct it. She stated for the record, it was not Peter Riley.

Mr. Andrew Berridge of 127 South Road stated that all of the testimony brought up tonight was presented to the Planning Board – there is no new information. He further stated that the Planning Board did follow proper procedure and it gave the business consent to operate. He asked if this board is here to decide if the correct process was used.

Chairman Daly replied negatively.

Mr. Berridge stated that when Mrs. Carbone played the videotape for the board she turned the volume way up to make the noise of the trucks appear louder. He stated that she resides on a state road with trucks going by all hours of the day and night. He noticed that on the videotape there was a street light outside her bedroom window. Since she complained at earlier meetings of the headlights from the trucks, then what effect does this street light have? The light seemed brighter than the headlights of the trucks shown in the video.

He went on to say that ten years ago at Town Meeting the town as a whole voted in favor of zoning this area light industrial. The majority of the town thought it was a good use for the property – that's just the way it goes.

Chairman Daly stated that in effect, this hearing is a rehearing of what was heard by the Planning Board and although there are specific allegations, the ZBA has the power to amend, affirm, or reverse the Planning Board's decision.

Mr. Riley stated that the June 15th letter from the NH DOT was not heard by the Planning Board, thus in contrary to Mr. Berridge's claim, there is new information to be considered.

Joann Postal of Ashlie Road asked if this business fits into the definition of light industrial and does East Kingston have a definition of industrial to compare the light industrial definition to. It appears that the use is more industrial than light industrial.

Chairman Daly replied that there is no specific definition of either to compare.

Austin Carter of 86 Depot Road stated that he hears traffic all the time as he lives on Route 107 which is used as a shortcut for trucks to bypass the tolls to get to Route 125. He has lived in East Kingston since 1961. When the light industrial zone was voted in it was positioned on a state road. The town has no control to regulate what goes on the state roads. The only control the town can administer is the activity going in and out of the site. Product must be moved by trucks and the town voted that this is where it should be located.

Mr. Cook stated that he has tried to listen carefully and be objective in this case. He attended both Planning Board sessions regarding it. At this point, he stated that nothing has convinced him that anything out of the ordinary is going on there. He stated that he can sympathize with Mrs. Carbone, but the town voted in the light industrial area and he feels he must concur with the town's wishes.

Mr. Day stated that he has read and reread the information regarding this case. He noted that there are several references to Articles IV & XII regarding noise. He stated he read the letter from Town Counsel advising the Planning Board in this matter, but there appears to be a general disagreement about the permitted uses. He said without a clear definition of a service or utility use in a light industrial zone, the permitted uses are left up to interpretation. The Planning Board was aware of the traffic situation and the abutters' concerns. The Planning Board citing the application was complete, invoked jurisdiction on the site plan review, heard testimony and cast their votes. It was a 3 to 1 vote in favor with one member abstaining.

He continued to say that the Planning Board considered the property as light industrial and they appeared to accept the definition of light industrial uses presented by the Deputy Fire Chief. The application was approved. He stated that he must conclude that the Planning Board found no compelling reason to set hours of operation. The Planning Board had the authority, but they chose not to do so. If the Planning Board failed to look at the matter presented, then there is cause for further action, but the Planning Board did not make an error and the ZBA has no reason to reverse the decision.

He stated that the lines of definition are very fuzzy. East Kingston needs to write more specific ordinances.

Mrs. Carbone stated that at the Planning Board meeting, the Board said they didn't have the authority to set hours of operation. There was a lot of discussion about the hours.

Mr. Day responded that the Planning Board did have the authority to regulate the business' hours.

Mrs. Carbone stated that Mrs. Fillio said the Board didn't have the power to do that. Sarah Campbell read the article that stated the Board did have the authority, but the Board was saying they did not.

Atty. Deshaies stated that the minutes state that there were a couple of attempts to set hours of operation but a compromise couldn't be reached. The Planning Board did have the authority to set the business' hours but didn't agree on a time frame.

Chairman Daly stated that the Planning Board clearly had the authority to set hours of operation and that the ZBA also has the authority to set hours of operation during this appeal.

Mrs. Carbone stated she is asking the Board to approve the site plan review but with conditions. This only seems fair to both parties. Here has been no respect for the abutters here, this whole thing has been about Charlie Marden.

Mrs. Nichols then questioned the voting status of the board. It was explained to her that two alternates would be voting in place of Peter Riley and the Chairman totaling five voting members.

Atty. Quinn stated that the Planning Board lacked all the information regarding this site plan review. Since the time of the approval new information has come up regarding the state driveway permit.

Mrs. Kiesel stated that the due diligence of this Board is to investigate the issue further.

Regarding the hours of operation issue, Atty. Deshaies stated that many of the trucks have to be on site early in the morning, that is why they start at 4:00 AM. ADMAT Enterprise owner Mearle Burdick has informed his drivers to take their trucks home if they are coming back after 9:00 PM. Again he stated that he is only talking about seven vehicles here.

At Mr. Freeman's inquiry, it was noted that Kent Shepherd, abutter and appellant, parked his 18-wheeler at his home for years. It was stated that it was only one truck and that no complaints were ever received because of it.

Mrs. Nichols stated that this trucking business is a drastic change to what the neighborhood has been like in the past.

When asked about limiting hours of operation, Mr. Marden replied that ADMAT agreed not to use their Jake brakes and to go 20 MPH when approaching the neighborhood. He stated the MSK still has trucks going in and out on Saturdays and Sundays and late at night. He stated that he feels the MSK operations are grandfathered as they have been in existence since 1958.

The Chairman stated that the MSK business is not before the ZBA, the change of use is.

Mr. Marden continued to say that the truck count was higher when the sawmill was in full operation. This letter from NHDOT is late, the town didn't make a decision on the right-of-way. He then stated that there are no compromises on the hours of operation, the trucking business is a 24 hour a day, 7 day a week business.

Mr. O'Sullivan stated that setting hours of operation could have an adverse effect of the development of the whole light industrial area. Many people have in good faith invested in its development.

Mr. Merrill Newman of 216 Haverhill Road stated that they are running a trucking terminal on an area of land that has to access out from behind residential homes – there is no way out of the site but to go by all the homes. He stated that this guy is making too much noise and will only get bigger once approval is given. He stated that this is a scam and a joke. Mr. Merrill and his wife then left the

meeting.

Mrs. Kiesel stated the ZBA can set hours of operation or there could be a warrant article before the town.

Chairman Daly stated that on the issue of whether the Planning Board and ZBA have the authority to set hours of operation, they do.

Mr. Berridge stated that he spoke at the last meeting before the Planning Board and at one point they did try to set hours of operation but they were reminded that setting a precedence to tell people when to go to work was dangerous. You can't have light industrial hours limited to 7:00 AM to 4:00 PM. The town never voted on an ordinance to allow that curfew. He stated that that is not the answer to the problem.

Atty. Quinn stated that they were getting away from the issue. The ZBA has the power to set hours of operation. This whole application is in non-compliance – it does not fit into the light industrial zone provisions. The business needs a variance or the whole operation should be shut down. He stated that his clients are offering a compromise.

Mr. Marden stated that the operation is a garage and not a trucking terminal. When MSK was in full operation, it had many more trucks than what is going in and out of the site now.

Atty. Deshaies stated that Mr. Marden applied for a site plan review and got it. He could have argued he didn't need one because the nature of the business is the same, but he applied for it anyway.

Mr. N. Joe Freeman questioned the noise being generated from within the site. He stated that the noise at the access is no greater than the noise made by the traffic on the road.

Mrs. Carbone stated that the NHDOT says there is a problem and that it has not been addressed since the 1989 driveway permit was issued. Mr. Marden got site plan approval in 1995 and didn't apply to the state for a new driveway permit as required. He has gotten approval for another site plan in 1999 and has still not addressed the state driveway issue. The access is only an 18-foot easement shared with the Murphy's.

Mr. Day stated that the letter from NHDOT is dated June 15, 1999 and that the Planning Board didn't have this knowledge. Nothing has changed since the Planning Board met. This is not relevant information.

Chairman Daly stated that the letter is to be considered new evidence.

Mr. Day responded that three articles were specifically noted in the appeal which pertain to noise, this road access issue is not a noise issue

Mr. Riley stated that this public hearing constitutes an entirely new review, all the evidence should be considered.

Mr. Boudreau stated that the site plan review would oversee issues on a town road but not a state road.

Atty. Quinn responded that if the application is in violation of a state requirement the Board must consider that. This is not just an issue of an appeal; this hearing opens up the whole site plan review application. There was definitely a change of use and his clients are offering a possible solution. This business does not meet the provisions listed in a light industrial zone. He then read aloud Article XII.3.E *...provided that such activities 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 of offensive that tend to reduce property values in the same or adjoining districts.*

He continued to say that the appraiser statements suggest a decrease in the property values.

Mr. N. Joe Freeman stated that the lumber mill has been here for over 40 years without any complaints.

Mrs. Joanne Shepherd responded that there were no complaints then because what was going on then is no comparison to what is going on today. She has resided in East Kingston for 20 years without problems. She questioned when does an 18-wheeler become light industrial. It may be industrial, but not *light* industrial. She stated the only resolution might be to move this business over to Willow Road.

Mr. O'Sullivan claimed that Mr. Marden is being punished for not running his saw mill 24 hours a day. Had he done so, these hours of operation would be grandfathered.

Mrs. Nichols stated she bought her property from Mel Bowley and was told that the area around her home would never be anything. She knew the lumberyard was in operation when she bought her house and she had no problem with it. All of a sudden she is overwhelmed with this trucking activity. Apparently in East Kingston, you can do what you want, no matter the rules. She stated that when she moves again, she would make sure she knows what is zoned, who zoned it and who knows whom.

Mrs. Carbone stated that the town can not make an unbiased decision. The ZBA is too close to Charlie Marden, he is a member, and his friends and neighbors of the board have an added interest in the outcome of this decision. She said that maybe if she went to superior court, she could get an unbiased opinion.

The Chairman stated that it might go to court no matter the outcome here.

Mrs. Carbone asked what more she could submit to convince the Board of her position.

MOTION: Mr. Freeman motioned to affirm the Planning Board's decision to approve the site plan review with the condition that the driveway issue be taken care of – be brought up to standards. Mr. Ciardelli seconded.

DISCUSSION: Mr. Day suggested that a time frame for the condition be set.

Mr. Riley asked if the activity would be allowed to continue until the condition is satisfied. He stated that if the use of the access is contrary to state law, then the approval goes away.

When asked if the Board wanted to amend the motion, Mr. Day withdrew his suggestion.

Chairman Daly stated that a motion has been made and seconded that the ZBA affirm the Planning Board's decision to approve the site plan review for Chuck Woodland's Realty Trust with the condition that the state highway permit be resolved with the NH Department of Transportation within a reasonable amount of time.

Atty. Deshaies stated that Mr. Marden has no control over the time it will take the NHDOT to consider and rule on his application.

Chairman Daly stated that the time frame would be at the discretion of the Board of Selectmen and that after a decision is made by the ZBA it becomes an enforcement issue. The Board of Selectmen handles all enforcement issues. **He then called the vote. The motion carried 5-0.**

Mrs. Kiesel asked how to enforce the noise ordinance, as it is the town's responsibility to do so.

Chairman Daly stated that Mrs. Kiesel had a legitimate issue. Enforcement issues are directed to the Board of Selectmen. The ZBA interprets the ordinance, the Selectmen enforce it.

The public hearing for Laurie Carbone ended at 9:12 PM. At this time Mr. Marden resumed his position on the Zoning Board.

George Storm – Appeal from Administrative Decision: Chairman Daly opened the public hearing at 9:16 PM for George Storm's request for **APPEAL FROM ADMINISTRATIVE DECISION** from the June 27, 1999 Planning Board decision to deny the Site Plan Review application to operate "Turning Point Farm" a school with day-teaching programs integrating agriculture/animal experiences for preschool age and middle school aged students with tutoring, crafts, sculpture, spinning, weaving, small produce stand, teaching fish farming, hydroponics, etc. from 44 North Road (formerly the Rosenberg property).

The applicant is also seeking a **VARIANCE** from Article III - Districting and Article V - Uses Permitted to operate "Turning Point Farm" from the North Road location.

The Chairman announced that Dr. Storm would not be present for this hearing and that he forwarded a letter to the Board. It read:

As we discussed, I am unable to pursue Turning Point Farm further at this point. It is very likely that the closing of the pending sale will be final July 15, 1999. TPF concept needs to continue raising funds and consider alternative locations.

I would like to postpone my appearance until the first week of September 1999 when the above transaction is or is not resolved. If this is not possible, I then need to withdraw the application now and consider reapplication later if the property is available.

With no objections the Board agreed to continue the public hearing for George Storm's application for appeal from administrative decision until Thursday, September 23, 1999 at 7:30 PM. Chairman Daly stated that this announcement would serve as notification to all abutters.

Mrs. Lucienne Jacques asked if abutters would be given an opportunity to speak at that time.

The Chairman responded affirmatively and stated that no additional notification would be given. Should the property be unavailable to Dr. Storm in September and he withdraws his application, notice of the meeting's cancellation would be posted.

Mr. Curtis Jacques offered to pay for postage to inform all abutters if the meeting is canceled. The Chairman accepted his offer and confirmed that should the September 23, 1999 continued public hearing for Dr. Storm be canceled, abutters' notices would be sent out to inform them at Mr. Jacques' expense.

OTHER BUSINESS

Minutes: The Board reviewed the minutes dated May 13, 1999 and without any objections approved them for the record.

Rules and Procedure: Chairman Daly noting that this is the first of two readings necessary to amend the Board's Rules and Procedures reviewed proposed changes. He stated that incorporating a 30-day provision for appeal submissions was the grounds for the changes. Other changes include administrative and language clarifications.

Members discussed the disqualification paragraph noting that each time a member sits on another board, it should not automatically disqualify them from sitting on the ZBA when a common issue is raised. Also discussed were the number of members needed to act on an application. The Board must have a minimum of three voting members present, but the applicant can request up to five. Members were advised to review the changes further and submit their comments and suggestions at the next hearing.

With no further business the meeting adjourned at 9:35 PM.

Minutes completed and on file June 28, 1999.

approved 7/22/99