



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

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

MINUTES
Regular Meeting 19 July 2018
7:00 pm

AGENDA:

- ◆ Call to Order
- ◆ **Continued 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

Board Business.

- Review of Paved Pad/Berm plan for Light Industrial Park
- Discussion regarding home occupation application process for grandfathered, non-conforming uses

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, Bill Caswell, Tim Allen, Ron Morales 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 Fire Chief Ed Warren.

Also present: Applicant Keith Hart Jr., Mr. & Mrs. Bodwell and Keri Marshall who is representing Mr. Hart and Mr. Bodwell; abutters Mark Clark, Keith Tote, Michelle Chetwynd, Michael Farrand, and Dan Mahoney; and Mrs. Cecelia Hart, 299 Mill Road, Brentwood.

Minutes: Mr. Cacciatore asked for a **MOTION** to approve the June Minutes.

Mr. Allen **MOVED** to approve the June Minutes; second by Dr. Marston with a unanimous vote.

Continued 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. Hart submitted information at this meeting to the Board consisting of registrations and lists of vehicles, and Mr. Bodwell also submitted working hours both for himself and workers, office hours, number of vehicle trips, deliveries, number of emergency service calls, and google map pictures with a sketch of the property areas with measurements for parking, bulk material storage area, and the shop.

Mr. Bodwell supplied 5 copies of his information; Mr. Hart submitted 4 copies. Board members shared the provided information for review.

Ms. LaBranche noted at the last meeting there was a lengthy discussion about the detail of information they needed to make an informed decision, and a letter was sent on June 29 to both Mr. Bodwell and Mr. Hart listing that information and requesting it be received by June 12th so it could be distributed to the Board for review.

Mr. Allen asked why it was not submitted by the date requested; Mr. Hart stated he did not see the date on the memo.

When asked about the logging aspect of the business, Mr. Hart replied he does not do logging any more. Only excavation and hauling of materials.

Since there were new residents in attendance, 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. 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 obtain a home occupation permit, recognizing they would get a permit each year attesting to the activity happening on the property.

Since Mr. Bodwell's business is septic service and Mr. Hart's is trucking, it is not the same type of business. The Board is trying to establish a baseline for the scale and scope of the business, and the impact on the community. Is the equipment that's being used for the current business equivalent to what is being proposed with Mr. Hart's business? The Board needs to make sure it will not be an expansion of the current use.

The Board previously issued a letter requesting more information spelling out the information requested from both Mr. Hart and Mr. Bodwell. It appears Mr. Bodwell has supplied most of the information requested, and Mr. Hart has provided partial information.

The Board had asked Mr. Hart and Mr. Bodwell for narrative with detailed descriptions written out for the business and other types of activities that are / would be happening on the property. The burden of proof is on the applicant.

There is incomplete information which the Board is seeing for the first time. It would be difficult to do much this evening given we received the information tonight and everyone does not have a copy of the information to refer to. This is why it was asked for in advance; so the Board could have time to review it.

The Board needs to review all the information in order to make an informed decision on whether or not to recommend to the Selectmen to grant the application for home occupation, perhaps with certain conditions. This Board does not make the final decision if the application is recommended; that is up to the Selectmen.

Ms. LaBranche asked as the Board had been given a tremendous amount of new information this evening, do they think they can proceed tonight, or do they need more time to review the information?

Mr. Allen mentioned a hypothetical example which states that although someone who purchases a piece of property may continue the same grandfathered, non-conforming use on that piece of property (as long as that use has not expired), they do not have a right to ANY commercial use.

Also, a court case *Town of Salem v. Wickson (2001)* – As part of a non-conforming farm and secondary to the farming of the property, they sold fertilizer made from the livestock manure. When the farming use for this property ceased, the courts deemed continuation of the fertilizer production without the underlying farm use was an illegal change in the non-conforming use.

It will be difficult to ascertain if the businesses are similar enough to go forward without the answers to the questions asked for previously.

As there appeared to be concern about noise, Mr. Caswell asked if the Mr. Hart and Mr. Bodwell would agree to calibration of noise levels of the trucks. Mr. Caswell would be happy to conduct those calibrations. Neither Mr. Bodwell or Mr. Hart answered one way or the other.

The Board spent a great deal of time again trying to understand the number and types of vehicles and equipment.

They reviewed that the times of operation were basically the same. Mr. Bodwell's vehicles and equipment stay on the property when it is not being used; Mr. Hart stated his equipment would be at job sites, but his vehicles would be at the property.

Since some of Mr. Hart's vehicles were larger than Mr. Bodwell's, Mr. Hart was asked if he would need to go over the double line in the road to pull out of the driveway. Mr. Hart stated he did not think so but had not done so could not answer for sure. Mrs. Bodwell noted the driveway has a very large mouth onto Route 108.

Ms. Marshall noted Mr. Hart could attest he would keep to the same working hours as Mr. Bodwell, that there would be less number of vehicle trips, limited deliveries, and not greater than the 15 average monthly service calls Mr. Bodwell has at present. He is willing today to state he will not expand. She noted that increased intensity would be okay; they do not need to be a mirror image. She referred to *Hampton v. Brust (1982)*. Ms. LaBranche noted the Board needed to have that information in writing. Ms. LaBranche noted they also need to compare vehicles.

The Board was still trying to compare the use and vehicles to make a determination. Mr. Allen stated appropriateness is irrelevant. *Steven v. Town of Rye (1982)* – the Supreme Court stated a grandfathered auto garage couldn't change into a plumbing and bath supply shop because that would be a substantial change in the nature of and purpose of the use. That the bath shop was "better suited" to the neighborhood than the garage was held irrelevant.

Ms. Marshall stated they would be going from a business hauling hazardous waste to a business that hauling material. They were both hauling, and there would be a reduction in the level of activity.

Mr. Cacciatore noted they both haul but neither hauls from the site; that's just where they store their vehicles. They are not working from the site.

Ms. LaBranche explained that they were not only deciding whether to recommend to the Selectmen, but they have to establish parameters that will go forward for the next owner to make sure there is no expansion of the present use.

Mr. Moreau asked how would he enforce potential expansion without a site plan that showed where the different items were located in the first place and how much area was acceptable to use? A site visit has been denied twice, so no one has seen the property and all they have to go on is the drawing Mr. Bodwell supplied.

Mr. Cacciatore asked for a straw poll to see if the Board has enough information to make a decision or if the Board wants to continue this public hearing. The poll was tied 3-3 and does not carry.

Mr. Cacciatore asked for a straw poll to continue the hearing so the Board can review the information and the four unanswered questions can be answered. 4 for continue, 1 opposed and 1 abstain.

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

Keith Tote, 10 Sanborn Road – Mr. Tote purchased his house because of the quiet residential atmosphere. He has a concern for the level of proposed activity and types of equipment and in his opinion Mr. Hart's and Mr. Bodwell's are not comparable. He is concerned Mr. Hart will not have the same attention to detail to keep the property neat and uncluttered as Mr. Bodwell.

He does not think Mr. Hart's business will meet the spirit and intent of the of the non-conformance. He also has serious concern for potential of increased traffic and noise.

Dan Mahoney, 6 Sanborn Road – Mr. Mahoney appreciates knowing the details and the town and code enforcement needs to also know. In addressing the shop, he is concerned with the potential for the property turning into a junk yard and when the shop will be used for repairs. Who's keeping track of the details?

Michelle Chetwynd, 112 North Road – Mrs. Chetwynd had several concerns. If Mr. Hart repairs his vehicles and equipment, what happens to the leftover pieces? (Junk yard?) Will there be a similar number of vehicle trips per day? Who checks if the amount of trucks and equipment is not growing? Who will be policing any violations? What happens if there is a violation? Will the driveway be changed to a commercial driveway? (Answer - It's a state road.) Would like to know the number of trucks and equipment cannot continue to grow. Was an inspection of the Hart property in Newton ever conducted? What was the finding? Is there a discrepancy between the class of vehicles? What consideration is there for oil and fuel leaks in the garage?

Michael Farrand, 22 Sanborn Road – Will we notice a difference between the current operation and the proposed operation? In listening to the types of vehicles owned by both parties, he does not see how there will not be a noticeable difference. If there is a significant change, he sees it as a negative effect on his and his neighbor's property values. He does not see the burden of proof being made by the applicant.

Mark Clark, 2 Sanborn Road. Mr. Clark stated it was clear the neighbors do not want to see this happen. If it were him he wouldn't want to come in under these types terms. The applicant sees all the resistance from the neighbors. If this approval goes through, the neighbors will be reporting to which ever entity necessary to make sure the conditions are being upheld.

Keith Tote- Mr. Tote noted when the noise levels are conducted, he thinks they should conducted with the trucks loaded and moving up the hill (Rt. 108).

Mr. Bodwell- Mr. Bodwell noted that when the property was subdivided, they were only given 3 driveway entrances, so when the other lots are developed, there will be two more driveways onto Rt. 108 in that area.

Cecelia Hart, 299 Mill Road, Brentwood – Mrs. Hart stated it does not take long to pull a truck out of a driveway.

Mrs. Bodwell – She addressed the use of the shop at nights and weekends and stated that's what they do at the present time.

Dan Mahoney– Mr. Mahoney notes that with the difference in the types of business, the level of activity in the repair should would be substantially more intense and comprehensive. He ascertains Mr. Hart would be doing more repairs than Mr. Bodwell does. If the approval happens, he hopes there is a detailed list of what Mr. Hart can and cannot do on the property.

Mr. Bodwell – In answer to Mr. Mahoney, he noted they does the same type of repairs as they have similar equipment.

Keith Tote – Mr. Tote noted Mr. Bodwell rents vehicles. He wants to know if this is allowed for the non-conforming use. How many total number of vehicles will he have on the property?

Ms. Marshall noted Mr. Bodwell stated in his list that he now rents equipment he used to own instead of owing it, so it is not an expansion of use.

Ms. LaBranche noted Mr. Bodwell rents 5 different pieces of equipment. The Board will need to know for what period of time Mr. Bodwell rented this equipment and how often is it/was stored on the property for a period of a year. The Board will need to know the same for equipment Mr. Hart rents (for what period of time and for how long was it stored on his present property). This goes towards determine what the scope of work and the level of activity.

Mrs. Bodwell noted that in previous discussions they stated Mr. Bodwell comes in and out all day long in his business and Mr. Hart would only be going out in the morning and coming back at the end of the day, with perhaps an occasional extra trip for another piece of equipment.

Mr. Allen asked if they were ready to make a motion to continue the public hearing. Ms. LaBranche stated they should make a list of the information they still need from the applicants and provide it to them so they can submit it to the Board on a timely basis.

Ms. LaBranche reviewed it appears Mr. Bodwell has provided all the information requested in the June 29th letter for #1. Mr. Hart has provided the registrations and photos of all his equipment, but still needs to address the last 4 bullets: a description of the proposed use, etc.; the number of times in the last 3 years he stored customer-owned equipment or rented equipment on his business location; the hours of operation and the number of times he has had to start a piece of equipment prior to the hours listed; and if any of the vehicles were considered "wide load". All this information will need to be in writing.

Also, both Mr. Hart and Mr. Bodwell will need to address the questions regarding the rental equipment; types of equipment and how long they were stored on the property.

Mr. Morales noted that rented equipment means the "owner" would be responsible for maintaining it, not the rentee. Therefore, it would be less likely there would be "pieces and parts" of vehicles and equipment on the property.

Mr. Mahoney asked since materials are brought onto the site, is there anything that would prevent it from being "processed" on the site? Mr. Morales stated it was not part of the business Mr. Bodwell has at the present time and would not be allowed. What is allowed would be spelled out in the conditions the Board places on the business.

Ms. LaBranche asked if Mr. Bodwell could quantify the types and volumes of the materials stored on the property. Mr. Moreau asked that the materials storage be defined as a specific area with measurements of the area and not in yards.

Mr. Allen stated the Board needs proof that the excavation for the businesses are comparable, in some quantifiable measure. Mr. Warren asked if percentages would answer the question; Mr. Allen noted for him it would. Mr. Morales stated the mix could be different but they could still be similar; Mr. Allen does not agree.

After reviewing all the information provided, the Board will determine a baseline for Mr. Bodwell's business and Mr. Hart, should his application be approved, would need to abide by that baseline to not expand the use.

After discussion on various pieces of information still needed from both parties, it was determined memos will be sent to each listing the information still needed by the Board. The letter will be delivered on Monday July 23rd. Information from Mr. Hart and Mr. Bodwell will be due to Mrs. White at the Selectmen's Office on August 22nd and will be distributed to the Board members for review. The August Planning Board meeting will be held on August 30th.

Ms. LaBranche noted that all the information submitted should have the name and date included on each page.

Mr. Cacciatore asked for a **MOTION**.

Mr. Morales **MOVED** to continue the Home Occupation public hearing for Keith Hart for a home office and storage of trucks and equipment at 96 North Road (MBL 15-03-17) PB HO18-01 until Thursday, August 30; second by Mr. Allen with a unanimous vote.

The Board discussed having a work meeting to go over the information after it is supplied, but as it was not announced at the meeting for the applicants and the abutters information, there will be no work meeting. The Board will review the materials at the August 30th meeting.

Board Business

- Review of Paved Pad/Berm plan for Light Industrial Park – tabled until a future meeting.
- Discussion regarding home occupation application process for grandfathered, non-conforming uses – tabled until a future meeting.

Adjournment

Mr. Cacciatore asked for a **MOTION** to adjourn.

Dr. Marston **MOVED** the Planning Board adjourn, Mr. Caswell seconded, with a unanimous vote.

Mr. Cacciatore closed the meeting at 9:50 pm.

The next Planning Board meeting will be on July 30.

Respectfully submitted,

Barbara White

Planning Board Secretary

Joseph Cacciatore

Chairman

Minutes approved September 20, 2018