

Unofficial

**HOOKSETT ZONING BOARD OF ADJUSTMENT
MINUTES**

Tuesday, January 11, 2011

**HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

Chairman C. Pearson called the meeting to order at 7:00 pm.

INTRODUCTION OF THE BOARD

Chairman C. Pearson, R. Duhaime, D. Pare, R. Bairam, P. Denbow, Alternate, T. Lanphear, Alternate, M. Simoneau, Alternate, J. Levesque, Council Rep. G. Hyde absent

APPROVAL OF MINUTES

November 9, 2010

R. Bairam motioned to approve the minutes of November 9, 2010. Seconded by T. Lanphear.

Vote unanimously in favor.

NEW PUBLIC HEARINGS

BURL LAND CLEARING

150 Londonderry Turnpike
Map 43, Lot 49

A request for an Appeal of Administrative Decision by Peter Rowell, Code Enforcement Officer which states, *industrial operation is not allowed on this site.*

Chairman C. Pearson appointed T. Lanphear to rule/vote on this application.

Attorney Greg Michael representing Burl Land Clearing: This does not concern the Variance but rather is an Appeal of Administrative Decision relative to a letter issue by P. Rowell on November 23, 2010.

C. Pearson stated that a decision must be made regarding the date that the appeal was filed. RSA requires that an appeal be filed with 30 days of a decision. In August of 2006, then Code Enforcement Officer Michelle Bonsteel sent a Cease and Desist Order stating that the grinding of stumps was an illegal operation. In February of 2010 a letter was sent by P. Rowell, Code Enforcement Officer stating this was Industrial Use and all grinding operations must be discontinued as of April 1st 2010. Following a withdrawal of a Variance application by Burl, P. Rowell sent a letter stating that the grinding of stumps is an Industrial operation and therefore is not allowed in the Commercial Zone. This notice of November 23, 2010 was appeal on December 20th, 2010. The Board must decide if the appeal was filed in a timely manner.

G. Michael stated that the March letter allows the grinding, therefore was nothing to appeal.

R. Duhaime: It says 30 days from the date of the decision.

P. Rowell: When do you feel they were dully noticed that this was the illegal operation of Industrial Use. Was it in 2006, March of 2009 or in November of 2010. If you feel that November 2010 was the first time that the Burl's were noticed then they've met the 30 day requirement .

The Consensus of the Board was to hear the Appeal.

G. Michael: This is 150 Londonderry Turnpike in the Commercial Zone. As a result of some of the issue on the site, my clients met on November 1st, 2010 with the Planning Board for a site compliance hearing. At that time, the Planning Board did not feel an amended site plan was needed. There was discussion about stump grinding and I would like to distinguish between grinding and other wood activities on the site. Often times these activities merge. I want to request that everyone stay focus on that. Mr. Rowell's letter outlined what happened and on page 2 discuss that they went before the Planning Board for a consensus on various items. He correctly points out that the Planning Board did not feel that grinding was an allowed use. There has always been some question about that because it is considered an agricultural use to take the stumps out and grind them. The Planning Board looked at storage of logs etc. and concluded that based on the July 2004 site plan that my client was not in violation of those issues. If you take a look at the darken area, this is where he points out his position on various factors. *I'm making a determination that the Industrial operations is not allowed on your site per Hooksett Zoning Regulations in the Commercial Zone.* I assume Mr. Rowell had some basis for this opinion. He further stated that *you have no site plan approval for THIS operation.* I think what he means there is the grinding operation. He goes on and tries to be more specific. *This includes the manufacturing of wood products such as chips, mulch, processed firewood and any other product that requires an Industrial process to manufacture. This includes the screening of soiled loam which has been imported onto the site.* Most of the loam on site is a result of the stumps brought on the site. Often he brings stumps to his location because there is no place to put these stumps where he is working. They have loam attached to these stumps. My client is removing the loam that remains and there will be no more loam screening on site. So we agree with that. I would like to turn to the term "Manufacture" of wood products. The word Manufacturing means many things. We agree that wood pellets, which are the small things that machines are used to create small pellets is a form of manufacturing. My client has always chipped wood for fire and heating purposes. They sell wood to the School Department and they sell wood to PSNH. They also chop timber for firewood. That's not something new. That was brought up to the Planning Board in December of 2003, when this was going through the planning process. In the minutes of the Planning Board, they talk about the storage processed bark mulch. They do not make bark mulch. There is no manufacturing of bark mulch. They store the processed wood and firewood. They talk about this going to power plants. Some of the wood is cut into firewood. This is in the minutes. This isn't

something they dreamed up afterwards. The Planning Board had no problem with this. Chipping and cutting can be debated forever. They don't manufacture wood pellets but they take wood and timber and they cut it into firewood and they do chip some of it and sell it. This has been going on for many years. For the record, the firewood cutting and chipping is only done once or twice a month and the client agrees that in terms of this administrative appeal, that won't be done more than that although I think they have the right to do it. I'm letting you know that this board has the power to attach any restrictions to any approvals it grants. My clients are not out every day chipping or processing firewood. A big issue that has come up through the entire review is the grinding of stumps, which is the biggest issue that has arisen. Mr. Rowell has commented on that as well as the Planning Board. The March 9th letter states that he tried to work through this. My client would like to grind the stumps that are there and end that. This would be a commitment of no more grinding on the site. I think that's what Mr. Rowell was trying to work through that. This Board when hearing an application for a Variance for this activity, there were comments made by a few members that we should try and get the stumps ground and out of there and end that issue. The ZBA commented that they'd prefer if this could be worked out with the abutters and resolved. I'm prepared to propose a timeline of no later than March 30th, correction, May 30th to get rid of the stumps. My client's equipment is on other sites and I don't want to say something just to say it. But by May 30th there will be no further stump grinding activity on that site. There will be no further loam activity on that site. As far as the chipping and the firewood that I mentioned that was brought up to the Planning Board in 2003, as has been going on for many years, I am making a commitment to the Board that it is not going to happen greater than one or two times per month. That is what Burl does in terms of reclaiming and recycling materials that they take from land clearing jobs that they do. I remind the board that in RSA674:33 the power of the board, you have the ability, and it allows you to do what is right and fair. You're the group that has the power to issue the orders that relate to zoning in the Town of Hooksett. You're the group that has the power to take a look at Peter and my comments and make the decisions that have to be made. What I'm trying to do tonight is be very clear about the activities and their intentions regarding those activities so there can be a more harmony within the neighborhood regarding this commercial use within the commercial zone which is what it was approved for a number of years ago. I am happy to answer any questions the Board might have. If this is approved in the way I suggested, then a Variance will not be necessary or requested because the activity that would have been discussed in a Variance case will cease. It will end and there will be no further need for that.

C. Pearson: You are here for an appeal of administrative decision and you are asking us to define Industrial Use as we act on this appeal rather than look at what the Administrative Decision is and state whether we agree with that Industrial operation as Peter saw it and act on that. I don't know if the two can go together, that we can act on defining Industrial Use based on an Appeal of Administrative Decision.

P. Rowell: The board has to come to an agreement on what Industrial Use is and if that Industrial Use definition applies to what Burl Land Clearing is doing on their site, then you have to rule appropriately.

G. Michael: I think there is a middle ground. I think the Board can look at this and say we are going to approve in part and disapprove in part, part of the Administrative Appeal based on certain conditions being observed. We might all get to the same point without the need of necessarily going through that entire drill. I'm suggesting that as a condition, that without ruling whether it is Industrial or Commercial, which we can debate all day. Your ordinance doesn't say in clear black and white language that grinding stumps is this or that. I think the Board has the power as I mentioned in RSA 674:33 of reaching a decision that makes sense. You are the people that have the power to work with the ordinance, make exceptions to the ordinance as needed. I don't know that we even need to go there because I'm saying effect May 30th, if we are allowed to grind in the interim, we won't be grinding all the time because we can't even start for a number of weeks, that will not be an issue any more. That will end. I know this is an unusual case, but Planning Board doesn't have the power to waive zoning the selectman have no power to waive zoning, you're the people granted the authority to fashion a result that makes sense and allows things to work out in a way Mr. Rowell and the Zoning Board wanted months back.

P. Rowell: When we met for the Variance request, you said go back and try and work something out. In speaking with the attorney, the ZBA can't grant a temporary Variance. On check with the attorney to see if I can go against the ordinance, I cannot. I would like to work this out as well but I cannot. I have a copy of the RSA and you can look at it and see if the RSA as Mr. Michael's indicated, that you have the power.

R. Duhaime: I think this board has to consider the neighbors as well. The zone was decided by the town.

G. Michael: I'm not convinced that this is an Industrial Use. That's why I'm trying not to engage the Town in a fight over this. I'm trying to fashion a solution through the Administrative Appeal to allow the limitations to be placed on this so we can move forward in a productive way.

C. Pearson: The Board would also like to see this resolved, but I don't know if we can do this off an Administrative Appeal. I think if we go with the Variance, I don't know how this will go.

G. Michael: Would you like to consult with your attorney. I am happy to have that discussion. I'm trying to work through it and set the stage for the abutters that are zoning style issues so that everyone comes away with an understanding of what we can do and what we shouldn't be doing.

C. Pearson: It's how we go about this to get these stumps removed without changing the use. I don't know if an Appeal is the right way to do this. This is unusual. Peter, you had discussions with attorneys; is there any way they can legally and we can allow them to get rid of these stumps and move on?

P. Rowell: I keep reading what Attorney Michael pointed out in the RSA which says you have the power to make a determination that gives you some latitude. I am not an attorney.

C. Pearson: But the only way we can alter it is to allow them a temporary Industrial Use.

G. Michael: You're assuming it is an Industrial Use. If you don't assume that and just attach it as a condition, the stuff leaves. I'm not trying to box you into a corner. We're prepared to have it in the minutes, and we've made a representation to you that it ends. We don't get to the idea that it's Industrial Use. We don't go there because I have some concerns whether or not the Ordinance prohibits this. I'm telling you that we are willing to self-prohibit it and not raise this issue before the Board again. This gives us the opportunity to get rid of these and move on, which is what Peter tried to do in March.

R. Duhaime: We are putting the abutters at the mercy of what we decide. Zoning laws are put in place so that we don't run into these issues. We can interpret and make judgments but when you have a number of abutters objecting, you have to make decisions that stick with the law and what the Code Enforcement Officer has decided.

C. Pearson: I think what the attorney is saying, if we deny the appeal, I can see this coming back to us as a Variance request and then we will get into defining what is Industrial and what is not industrial. However, if we can have, like we tried last time, to find a way to have the abutters and the applicant happy, as a temporary solution, to clean it up and move on. I don't know if voting on an appeal is the right avenue.

P. Rowell: When I went to the attorney and asked if I could grant someone the right to break the Ordinance, they said no in the same way that you can't grant a temporary variance. I think I went as far as I could go in my original memo by granting them until April 1 to clean it up. That was as far as I could go by allowing them to break the Ordinance but they were already breaking the Ordinance at the time. I gave them a drop dead date. That was as much leeway as I had. That was in my March memo. You should look at how far you can extend your powers or how comfortable you feel.

C. Pearson: Our concern is keeping the abutters happy, and if we extend it, we don't over extend it.

J. Levesque: Since P. Rowell's letter of March 2010, where you gave them a month to finish up the stumps; why weren't the stumps worked on and were more stumps brought onto the property after that date?

G. Michael: There are two parts to the question, my clients expressed concerns with continuing with the grinding based on the concerns that were raised. As far as the stumps on the property, they are allowed to store product on the property. That is not the issue. The stumps are allowed to be there, but I will tell you that they didn't march forward and grind because there were some concerns about that at the time as to whether that should

be done or could be done. We are where we are and we are here now. But I am sensitive to what you are saying.

J. Levesque: My point is if you know you can't grind stumps after this date, why would you bring more stumps to the property. And if you did bring more stumps to the property knowing you can't grind them, then you must know you have to haul them off the site after that.

G. Michael: That is true. There is no way I can say much about that. I'm telling you that now we're not bringing any more stumps to the property and have no intention of bringing more stumps to the property and that is all part of the program that I'm trying to lay out here. This will not be an issue hopefully once we work through this.

D. Pare: At the last meeting, you talked about being done with the grinding by the end of March, now you are going into the end of May. This keeps going on and on.

G. Michael: My clients are trying to run a business. It's a family business. This is not an excuse, I'm just trying to say what it is. They have limited equipment and they are out doing other jobs right now, as we speak. There is a highway job that they're doing for the State and obviously, if we pulled all the stuff out that would cause breaches of our contracts and ya we could get it done in 2-3 weeks but it would cause tremendous hardship to my clients. I'm using a date that is fair and appropriate, works and gets it done before the kids are out of school. I know some of the abutters are concerned with having this activity take place over the summer months.

P. Denbow: The equipment used to grind, is that the same equipment you use to chip once a month?

K. Molten: No, it's different.

R. Bairam: In 2004, at the Planning Board meeting, you said there would be no grinding on the site. Why would you start grinding if you promised you wouldn't?

G. Michael: I wasn't part of that, but I believe they felt it was part of the operation. I think they should have then gone back to the Planning Board to have a further discussion at that time.

R. Bairam: You've been grinding and on your application you said you wouldn't. Now you got caught, and now you want us to overlook 6 years of grinding.

K. Molten: We didn't intend on grinding when we originally went to the meeting. Then as business grew, we didn't think of this as illegal. It is part of what we do as a logging company. We didn't see it as "we can't". We didn't know it had to be brought back to the Board. Only when we met with Peter and he said you can't do it, so that is why we started the whole process. We didn't realize that we weren't allowed to do it. We said we weren't going to grind originally because we didn't intend on grinding.

D. Pare: Why would you say that you're not going to grind?

K. Molten: When we went to the meeting we did not intend on grinding.

D. Pare: It must have been brought up by someone. Did they ask you, "Are you going to grind"? Why was it brought up?

K. Molten: I wasn't at the meeting so I don't know.

D. Burl: I wasn't there either, it was my engineer that did all that. I have no idea why he said that.

D. Pare: There must have been a reason why it was brought up. Probably because of noise. And then you went ahead and starting grinding anyway.

D. Burl: It wasn't really bothering anyone until recently.

P. Rowell: There was a letter to "Cease and Desist" from the previous Code Enforcement Officer from 2006 as well.

K. Molten: When she sent that letter,(M. Bonsteel) I called her and I asked her, "I got this letter, what am I supposed to do?" That's when I first came on board with the company. And she said, "don't even worry about it, I had to send it. You guys are fine, it's part of what you do." Honestly, that's what she said, and I said "oh, ok". So we didn't think anything of it. I went by what she said. That was the only time I talked to her. She was really nice. That's what her response was and we went about our business. So we didn't even know it was something we weren't supposed to be doing.

P. Rowell: I would like to speak on behalf of the former CEO that usually when you write a Cease and Desist Order, you take some time to think it over and it isn't something that is done lightly. As you can see, I haven't even written an Order to Remedy or a Notice of Violation in this case, I've just been nudging along saying you can't do it. This last letter was the sternest letter I've written saying this is my determination. The next letter would be a Notice of Violation if it continues. That's when the fines come into play.

K. Molten: We don't plan on doing them anymore. We've already found, like I said at the last meeting another location to truck them to. We realize it is an issue for the abutters. We haven't brought any more stumps in. We don't want to. We just want to get this pile taken care of and out of there so it isn't an issue any more.

J. Levesque: I'm confused, you said the equipment to grind the stumps is not on site and is off on a job somewhere. Then Mr. Denbow asked about the other equipment that you were going to use when you were going to grind once a month. Why wasn't that equipment utilized all this time to get rid of the stumps?

K. Molten: They are separate operations.

D. Burl: You can't run a stump through a chipper.

J. Levesque: Then the answer you gave to Mr. Denbow had nothing to do with grinding stumps.

D. Burl: It doesn't.

P. Rowell: To clarify, Mr. Burl's operation normally operates on the site where the trees are being cut. He cuts the trees, he runs the trees through the chipper and he hauls the chips to the power plant. The chipper and the trees never go on his site. The stump grinding operation probably started after you initially started the whole thing. You buy another piece of equipment that processes stumps. You take the stumps out of the soil on some sites (like Market Basket) then you have to do something with them. They have a separate piece of equipment, it's a big machine, they put the stumps in, and it goes into the grinder and goes to the power plant. Is that correct?

K. Molten: No, the stump grinder is a huge machine, the stumps go into it and it produces a bigger piece of wood and that gets brought to Outdoor World and that gets made into bark mulch. The stumps that go into the stump grinder come out in bigger pieces and then they go to be made into mulch and they do all the mulching and dyeing there.

P. Denbow: Is the loudness the same on both pieces?

K. Molten: It is totally different.

D. Burl: The grinder makes incredible vibration. It is sitting on ledge and the abutters are on ledge. The chipper has rubber tires and there is not the same noise and vibration. The grinder is louder.

D. Pare: Do you bring your equipment, trucks and trailers to service at our site.

D. Burl: Yes

D. Pare: You do. When you return that down to Windham, you couldn't fill that with stumps and do it down there?

D. Burl: No, the only thing you can move them in is a trailer dump.

D. Pare: Those trailer dumps need to be serviced too don't they?

D. Burl: We don't really use them for that. What do you mean service, I don't understand.

D. Pare: Everything has to be serviced. If your business is in Hooksett, you have to bring things in to service them.

D. Burl: We don't use it every day. In fact we are not using it at all now because we are not hauling stumps unless we are hauling them to the Salem pit or the Belmont pit, then we use them. Usually everything gets ground up on the job site so we don't have to haul stuff. I don't like hauling stuff.

D. Pare: How many loads are at the Hooksett site now?

D. Burl: I would say 200-300 loads.

D. Pare: If you are going to do this once a month, how can you be done by May 30th?

G. Michael: That's the firewood vs. the grinding. That's the once or twice a month.

D. Burl: It will take 4 weeks to make it into basketball size and then it will take 2-3 weeks to run through the grinder. That would be continuous operation.

R. Duhaime: In March 2010, they went to the Planning Board for a Change of Use application and they were told they need a Variance.

P. Rowell: We have a process called Change of Use, which is an administrative review for minor site changes. The Town Planner and CEO reviewed the application and the Planner asked Attorney Buckley and he advised that a Variance was needed and then to the Planning Board. That request for a Change of Use was denied and a Variance was needed.

Open Public at 7:55

Chris Bandasian representing Hill Haven Realty (abutter):

This is an Appeal of Administrative Decision and about whether this activity is an Industrial Use.

C. Pearson: This appeal is actually an Appeal of the Decision by P. Rowell to allow an Industrial Operation on the site, not whether or not it is an Industrial Use

C. Bandasian: The particular operation under discussion is stump grinding but what we're hearing is that stump grinding is a temporary concern. What we're hearing new this evening is that into perpetuity this applicant wants to run a saw mill and produce firewood and wood chips on site and that's a different issue. We submit in both cases this is an Industrial Use, as Mr. Rowell pointed out. It is taking raw material, engaging an Industrial process, whether it is taking a stump and using a splitter to make it smaller and putting it into a grinder or running a saw mill to produce firewood, it is an Industrial Use. Our greater concern is to continue in perpetuity to run a saw mill to produce firewood and wood chips. That's clearly an Industrial Use. I don't think there was an error committed

on the part of your Code Enforcement Official. Just because a saw mill is going to operate 2 days a month, doesn't exempt it from the category of being Industrial Use. I understand the dilemma you are in, in terms of the stump grinding but that's not all that's being asked of you. You are being asked to except the saw mill in perpetuity based on the fact that presently the applicant only intends to operate it a couple times a month. It is still an Industrial Use.

C. Pearson: Peter, we are not talking about the saw mill what so ever. That has never been brought up before.

P. Rowell: I didn't see any processing of the log on the site. The logs were stored on the site but I didn't see any cord wood mill on the site. I've only been on the site a couple of times, and I haven't looked around extensively. If someone asked me, the logs were stored for future deliver. All I saw was the stump grinder.

C. Pearson: I believe that Michelle Bonsteel in her order to remedy in 2006 it was regarding the grinding for mulch.

P. Rowell: The minutes in 2004 did state by Mr. Burl' Engineer that some of the wood is cut into firewood. I didn't follow the minutes through to see what else was said. This statement was made in the first meeting. There were three meetings following this.

C. Bandasian: I think there was some commentary about the wholesale of firewood but not of production of firewood on site.

C. Pearson: Tim Gold of Gold Planning and Design, representing Burl at the time stated that some of the wood is cut into firewood.

C. Bandasian: But doesn't indicate where that's done, whether it is on site or on their site in the Commercial Zone.

P. Rowell: I can say that the site plan did not show a firewood processing area. It doesn't say where that is done.

Open Public Input:

C. Bandasian: Those are our concerns; primarily the perpetuation of the sawmill that is being folded into this request.

Moe L'Hereux: If you look at the minutes of the original plan approval, they have written non-residential site plan for storage of processed bark mulch products and firewood. Everything being done on site was just for storage. The processes were taking place on the job lots and brought to this site for storage. The minutes were very clear that they were walking a fine line and they kept on making sure it stayed on the commercial end. Because now they have a site plan, which they didn't do half of things they were supposed to do and now they're coming back and saying, beside not planting trees that

we were supposed to do and encroaching on people's property, now we want to expand it, and it's just not right.

Jill Demers, 6 Waynes Way (with Charlie Crawford): We are here to discuss and ongoing problem we have had in the past and it's time to put this to rest. We have heard how much of a problem we are as neighbors to an illegal operation that has continued to operate since December 15th, 2003. Burl was contacted numerous times by the Planning Department regarding an illegal operation and has continued to operate their business in a Commercial/Residential area as an Industrial operation. There are extremely high levels of noise, dust and environmental hazards and issues with this operation. This Industrial operation has affected the quality of life of our family and neighbors. It has also diminished property values and this operation has to be shut down and taken out of our residential neighborhood. The original meeting minutes for non-residential site plan for storage of bark mulch process and firewood. Numerous times people asked continually and it said there will be no grinding on site. Out of everyone for abutters that are here, our property is directly behind this operation. I would also like you to consider that you wanted them to allow you to view the operation of the stump grinder on site but they never followed through with that and they pushed it meeting to meeting to meeting. I have an 8 year old daughter who has severe allergies to trees and that is tolerable. But when you have a stump grinding operation happening daily or 4 weeks at a time, I can't open my windows even though it's winter right now. In May, in the spring, I can't open my windows because of the amount of dust that comes in. It has to stop. They have been doing it illegal since the first time we came to see you guys in August. I think it was Chris that asked them that question. You knew 5 years that you've been doing this.

Close Public

C. Pearson: To sum this up, we need to either trying to find a way for them to clean this operation up with us giving them a relief to do so. I don't know how to do that without some guidance. I appreciate the attorney's statements on trying to figure out a way to do it but I don't know how we do it. That's one option. Another option is to act on the Appeal to grant or deny it. If we move to deny, we will likely see a future application for a Variance to allow an Industrial Use in the Commercial Zone. That would be an application for consideration at a later time.

T. Lanphear motioned to deny the Appeal of Administrative Decision by Peter Rowell, Code Enforcement Officer which states, industrial operation is not allowed on this site and thereby upholds the decision of the Code Enforcement Officer as indicated in his letter of November 23rd, 2010, which states Industrial operations are not allowed in the Commercial zone. Seconded by R. Bairam.

Vote 5:0 Motion carries

MISCELLANEOUS

The Planning Board is looking for any Zoning Changes proposed. A meeting is scheduled to review the proposed zoning changes on January 24th at 6:00 pm at the Town Hall.

ADJOURNMENT

The meeting was adjourned by the Chair at 8:40 pm.

Respectfully,

Lee Ann Moynihan