

**TOWN OF LYNDEBOROUGH**  
**Zoning Board of Adjustment Minutes**  
**August 7, 2018**  
*Approved 9/13/18*

**7:05 p.m. Roll Call:** Chairman Karen Grybko; Vice Chair Rick Roy; Lisa Post and Linda Anderson.

Member Tom Chrisenton recused himself because he is also the Planning Board Chairman.

Lyndeborough Town Administrator Russ Boland was present on behalf of the Town.

Public: Larry Boisvert and Attorney James Lombardi sat at the table. Sharon Boisvert sat in the audience. Dave Roemer, Steve Brooks and a few other residents were in the audience.

Media Present: Jessie Salisbury

**NEW BUSINESS:**

**Re-Hear Case 2018-2:-- Lots 237-13 & 237-14**

**Laurent (Larry) Boisvert and Sharon Boisvert; owners of Portable Privies, Inc.**

Also D/B/A Feel Good Farm, 52-54 Johnson Corner Road, Map 237, Lot 13 & Map 237 Lot 14, applied for an Appeal of Administration Decision of the Code Enforcement Officer Ed Hunter's letter dated March 22, 2018. Case 2018-2 was heard on May 22, 2018. Tonight Mr. Boisvert is before the Zoning Board per his request of a Motion to Rehear the decision of the May 22, 2018 ZBA meeting.

**Timeline between May 22, 2018 meeting and tonight's Rehearing.**

**June 21, 2018:** Sharon Boisvert hand-delivered a letter to Citizens' Hall which was received by Dawn Griska. The letter, written by Attorney Lombardi, titled "Motion for Rehearing" asked that the May 22, 2018 ZBA meeting be reheard. Mr. Lombardi stated many reasons which included under "RSA 647:31, I...the ZBA has no authority to impose conditions under these circumstances..."

**July 17, 2018:** The ZBA met to consider Mr. Boisvert's Request for Rehearing and voted to grant his request with an affirmative motion 4-1. The Board acknowledges they can't impose conditions on an Appeal of an Administrative Decision. The Board can put conditions on a variance decision.

**July 17, 2018:** ZBA Secretary Kathleen Humphreys drafted a letter, which was reviewed by the Board. The notice was emailed to Attorney Lombardi from Citizens' Hall after the conclusion of the meeting. (Sent at 8:07 p.m.)

**July 19, 2018:** Mrs. Humphreys called Mr. Lombardi at his office. Mr. Lombardi's position was his client preferred the Request for a Rehearing be held in abeyance but he said if the ZBA wants to meet on August 7, 2018 that his client will be ready and present. A certified letter was sent to Mr. Lombard's law firm's street address which contained the same letter dated July 17, 2018 which granted the Request for Rehearing Case 2018-2. The letter asked Mr. Lombardi to inform his clients their request was granted and of the meeting date. The certified envelope also contained an Abutter Notification for the Motion to Rehear Case 2018-2.

**July 21, 2018:** Letter from Attorney James Lombardi dated July 20, 2018 titled "Motion for Rehearing". Notes in this letter state it was emailed and mailed via US Post Office. This letter is in response to a phone call on July 19, 2018 from the Board Secretary Kathleen Humphreys informing him the Board granted their Request for Rehearing and asking him to confirm the meeting date with his clients. This letter had the same title but different content than the letter dated June 21, 2018 but can be distinguished by this statement "...appreciate the Board's granting the request. However, the Motion for Rehearing asked that it be held in abeyance to allow Mr. Boisvert to present his application for site plan review to the Planning Board in Sept.

**July 23, 2018:** Abutter's certified letters were hand-delivered to the Lyndeborough Post Office.

**July 26, 2018:** Public Notice in Milford Cabinet. Town covered public notice and abutter fees.

**July 31, 2018:** Sharon Boisvert called the Town Office requesting a copy of a letter from Lauren Heimann. After research it was determined that Mrs. Boisvert made an error in the name she asked for. The ZBA had a letter dated May 19, 2018 submitted by abutters Lauren Wile and Michael Wile, who could not attend the May 22, 2018 meeting. This letter was referenced in the minutes as "see file". The Wile letter was provided, via email, to Mr. Lombardi by ZBA Secretary Kathleen Humphreys on August 2, 2018.

**Aug. 6, 2018:** Letter from Attorney James Lombardi dated August 6, 2017 titled "Re: Motion for Rehearing – Laurent Boisvert II" was sent via email at 4:22pm to ZBA Chairperson Karen Grybko, ZBA Secretary Kathleen Humphreys and Town Administrator Russ Boland as well as faxed to the town office at Citizens' Hall. This letter requested a 30-day continuance.

#### **MINUTES TRANSCRIBED:**

**7:05 p.m. on August 7, 2017**

#### **ZBA meeting to Rehear Case 2018-2 per request of applicant**

Chairperson Karen Grybko explained that tonight's meeting is to rehear the decision of ZBA Case 2018-2 from May 22, 2018 which was an appeal of the Administrative Decision by the Code Enforcement Officer Ed Hunter who denied a home business application for Portable Privies to operate on Lots 237-13 and 237-14 on 54 Johnson Corner Road in Lyndeborough.

Attorney Lombardi said he submitted a letter yesterday requesting a 30-day continuance by email and fax which was received after business hours. His client would like to present more details about the environmental impact from the government and DES standpoint as well as their dealings with the Milford Treatment Facility. He wanted to address how the business is conducted so the town and the abutters can understand better how his business works.

Sharon Boisvert hand-delivered a letter on June 21, 2018 to the town office making Motion for Rehearing but Mr. Lombardi now feels they needed more time to prepare. Mr. Lombardi mentioned the he had a conversation last Thursday, August 2, 2018, with Chair Karen Grybko who informed him the Board made an incorrect decision therefore its best all-around his client presents again and they rehear the meeting.

**VOTE: Lisa Post made motion to deny the request for continuance. Linda Anderson seconded the motion.**

Discussion: Lisa Post said the reason you [addressing Attorney Lombardi] sent a Request for Rehearing is you correctly pointed out we do not have the authority to put those conditions on. We really need to go back and do what is correct and give you a rehearing on that today.

Mr. Lombardi wanted to respond to that statement. He felt there were concerns voiced at the previous hearing and they are not geared towards addressing them before they are addressed at the Planning Board stage and the Boisverts fully intend to move forward with that hearing while preserving their rights to appeal this decision. He added, "From a timing standpoint, we have not yet prepared that additional information which we were going to present at the Planning Board stage. Now that there won't be a Planning Board stage, at least based on the May 22, 2018 decision, we would feel it would be beneficial for the town and if it's not going to be beneficial, we would like to understand why. The conditions put on were primarily geared towards addressing the environmental impacts this operation had. We are not looking for any favors here but want to add information they did not have before. We appreciate you accepted our request." [for a Motion to Rehear the May 22, 2018 case]

Chair Grybko said our point that tonight is about an Administrative Appeal on the Zoning Ordinances and Code Enforcement Officer Ed Hunter's letter which has nothing to do with the particulars of Larry's business. It is basically, is his business allowed as a home business. All this other information might be for Planning Board or for a variance when we decide if the business can continue. Tonight we will focus on the Administrative Appeal and we are not allowed to put conditions on it. We need to vote "yes" or "no" then you proceed on what we agree on today. We want to hear the Administrative Appeal.

Mr. Lombardi still argued that he believes there are issues that people will be thinking about. One is particular from Ed Hunter's letter is if the business is not incidental and secondary to the use of the property as a residence. He thinks people want to know what the business is, what it entails and what the impacts are, including the environmental issues, which he felt the abutters made clear. Mr. Hunter said that whether or not the Board puts conditions on it they need to address is this is incidental and secondary or not to the residence. We want to make it clear. We don't want there to be an underlying decision, especially if it's a negative decision, any concerns about the environmental impact. Mr. Lombardi said he felt it's a reasonable request. "Yes, we did ask for this and we appreciate you granting that but we had considered for the reasons I indicated in my letter that it does not make sense to hold this now until we go to the Planning Board. We want them to have full information"

Lisa Post noted the applicant presented at the last meeting information and documentation from the Milford Treatment Plant, DES Permit and gave a description of how he ran the business. "We listened to the abutters and felt the conditions were put on incorrectly and we need to reverse that and in order to do that we need not to do a continuance. I uphold my motion. There is a variance scheduled for October where conditions can be put on."

Linda Anderson reiterated the ZBA does not have the authority to put conditions on and that has to be negated then to proceed. Rick Roy agreed they do not have the authority.

Chair Grybko asked the question if the Board should do the continuance until after the Mr. Boisvert meets with the Planning Board.

Mr. Lombardi asked if he could interject. We are not at this point, given the Board's decision that it was incorrect, planning on going to the Planning Board. To me that nullified the entire decision. We are not planning at this point on going to the Planning Board because that is not a condition.

**VOTE: Lisa Post said she still stands with motion to deny the request for a continuance. Linda Anderson already seconded the motion. Motion passed 4-0.**

Chairperson Grybko explained the Board is going by Code Enforcement Officer Ed Hunter's letter dated March 22, 2018. This has a long history of the town. It appears the Planning Board got the document and it was misplaced then Ed Hunter reviewed it. The application is dated 8-25-16.

James Lombard asked if he could interject again. He asked what version of the ordinance should apply. And the question is not only what version applied at the time this application was given to the Planning Board back in October or Sept. of 2016, but also what was the version of the ordinance in effect when Mr. Hunter made that decision. There is a lot of confusion about that. I want to clarify with the Board and I don't have that document. He felt he was only give a few days to prepare for this and what the language was in effect when this application was submitted and what the language was when Ed Hunter made his decision. There is confusion about this all the way back to 2005. We want to figure out which versions required Planning Board review.

The secretary asked if Mr. Lombardi has copies of all applications they submitted to the Planning Board and could they provide copies for the Board. She mentioned there was a point when the Planning Board was waiting months for a completed application and that could be clouding the situation which prompted a letter from the Planning Board Chairman Bob Rogers in November 2016. She also reminded Mr. Lombardi there is outstanding documentation that was requested at the May 22, 2018 meeting that has not been received yet by the ZBA.

Member Lisa Post made the point that Mr. Lombardi sent the Request for Rehearing on June 21, 2018 and that is plenty of time to prepare. "You didn't prepare because you wanted an abeyance. We met and decided as a Board to have the rehearing so we could correct our actions of incorrectly putting on these conditions. We also know at this point that we have to operate under the current ordinance as it stands right now. We can't go back. This hearing is today and we have to go by the ordinance that in existence right at this moment."

Mr. Lombardi said, "I respectfully disagree with that. Lisa Post tried to say they were advised of this fact but Mr. Lombardi talked over her and said he would be happy to speak with counsel.

Mr. Lombardi: "Mr. Boisvert submitted his application dated Oct. 2016. It was in fact given to the Planning Board or someone at a meeting of the Planning board. Now what happened at that point in time it's pretty clear that it was submitted, and to when it was submitted and if there is confusion over that it is not because of Mr. Boisvert's action. We as you know, the Town and Mr. Boisvert were in the middle of litigation. It was stated to us clearly, the reason why we are here is that application as misplaced and the reason why no one really knows why it was misplaced is not Mr. Boisvert's fault. It was here in the town and Mr. Drescher, the attorney for the Town, clearly indicated to us, and I can provide that, the statements he made to us in writing it was lost and misplaced. In January of this year it was found as a result of their search for documentation in connection with our request for information in the discovery process through interrogatories."

Mr. Lombardi: "They apologized and said it would go to Mr. Hunter to make a decision because that is where it should have gone in the first place. That was indicated to Mr. Boisvert when he attended the Planning Board back in 2016. However at that point the application was already submitted so it was out of his hands and nobody seems to know when it was placed in a drawer and when it came out. We have dates to when it was submitted. (Mr. Lombardi was asked if he

could provide the dates and he said “let me finish” and kept talking) and the fact it was not recognized in the minutes is not because of something that Mr. Boisvert did or didn’t do. It was submitted and was clearly and admittedly lost by the town and that may be why there are not dates in the minutes. Or why there does not seem to know.”

The secretary mentioned the Planning Board sent a letter to Mr. Boisvert requesting his Air Soft Site Plan application be completed so they can be heard at the December 2016 meeting because the Board has been expecting this application for many months and to date, this application has yet to be filed nor heard by the Planning Board. This letter also informed Mr. Boisvert in writing the Planning Board cannot take action on their Home Business application and to see the Code Enforcement Officer, which Mr. Boisvert was also informed verbally by Chair Rogers at the September 15, 2016 meeting. Mr. Lombardi said he didn’t know what letter. He was informed it was a letter by then Chair Bob Rogers.

*(This letter below from Bob Rogers was read out loud at the May 22, 2018 meeting plus included in the minutes as an attachment. Also see Planning Board minutes of 9-15-16)*

Lisa Post read the letter the following letter:

*Town of Lyndeborough Planning Board  
9 Citizens' Hall Road  
Lyndeborough, NH 03082  
November 17, 2016*

*Laurent Boisvert II  
Johnson Corner Road  
Lyndeborough, NH 03082*

*Dear Mr. Boisvert:*

*For the past few months, we have anticipated a request from you for an amendment to your approved site plan for the recreational activities on your property on Johnson Corner Road. Such a request must include a detailed description of the proposed amendment along with a copy of the existing site plan with an overlay of your proposal, and any supporting documents you may choose to submit. To date, we have not received these. In order to schedule and legally notice the required public hearing in December, we must have a complete application by Wednesday, November 23, 2016.*

*We have received an application for a home business, which we are not authorized by the present zoning to consider. Please give this matter your immediate attention.*

*Sincerely,  
Robert H. Rogers, Chair, Lyndeborough Planning Board*

Mr. Lombardi asked if this letter went out and if it was signed. The secretary said it was sent by Chairman Bob Rogers. Mr. Boisvert asked if there is any record of the date they came before the Planning Board. Mr. Boisvert and another Home Business applicant were before the Planning Board on Sept. 15, 2016. Both applicants were told by the Planning Board Chairman Rogers that Planning Board could not hear the application or take action per zoning and they were to go see the Code Enforcement Officer. This information is in the minutes.

According to Mr. Boisvert, “On that day we were there, there was a gentleman who was making an application to have a winery on his property. There were two subjects and both of us were told to leave that day by advice of Drescher. My engineer, Jim Phippard, had overlays for the meeting we were supposed to come to.”

*(Note: Attorney Drescher was not at this PB meeting on 9-15-16, see minutes)*

Mr. Lombardi asked if he could make a comment. This is requesting information about an amendment to your “approved site plan for recreational activities on your property”.

Lisa Post said the letter references the home business.

Mr. Lombardi read, “*We have received an application for a home business, which we are not authorized by the present zoning to consider.*” He added, that is consistent to what we have said, an application was submitted.

The secretary tried to add that he was asked to finish submitting his application but was cut off by Mr. Lombardi who added, “That is not what it says here”. “*We have received an application for a home business, which we are not authorized by the present zoning to consider.*” It has no further request. It says, “*Please give this matter your immediate attention*”

Mr. Boisvert noted that is when Mr. Drescher said he is no longer allowed to discuss the issue. *(Minutes reflect that Mr. Drescher was not at the meeting in which Mr. Boisvert claims he was)*

Again, there is nothing here that is inconsistent. We submitted an application and they had the application.

Mr. Boisvert mentioned they invited Wally Holt to attend that meeting with them. Plus there was the other applicant present.

Lisa Post added there was also a Cease and Desists on the November 14, 2016. *(Three days before Mr. Roger’s letter was sent)*. Mr. Lombardi acknowledges they have that.

Mr. Lombardi asked if he could make another request to have this continued. He said there is considerable confusion about when things were submitted, about the version of the ordinance that we are supposed to be applying here, Mrs. Post just stated we are considering this version that currently exist because we are now here before the Board, Aug. 7, 2018. I respectfully disagree with that and I would love to talk to counsel for the town. We had ongoing discussion recently in connection with the litigation. I would like to get this all clear so everybody is working on the same page and that a proper decision is made. If the Board chooses to deny we’ll have to live with that and consider our options. What we would like to make sure is the Board has complete information and everybody understands these issues which are crucial to this decision.

**VOTE: Lisa Post made a motion to uphold Ed Hunter’s decision to deny a home business at this time.**

Chair Karen Grybko said she would like to consider the request to give Larry the benefit of the doubt and his attorney time to make sure we are all talking about the same Home Business definition that was applied to base on what we have today. We just separated things out and want to make sure what Larry applied for still exist today. I want us to find out when the original application was placed and what Ed Hunter was deciding on, was what we have on the records today.

Secretary Humphreys wondered if the confusion comes because Mr. Boisvert didn't submit the right application. "They were told to submit the application and the responsibility was on them to submit the application and they didn't do it and left an incomplete and inaccurate application in the Planning Board box. The Planning Board was not responsible for submitting the Home Business application which they had no authority to oversee.

Mr. Lombardi said they can address that from communication with Attorney Drescher directly so there shouldn't be any confusing over that issue.

Secretary Humphreys: "Do you have copies of the applications submitted to..."

Mr. Lombardi: "The Board should have that and it's in the minutes of the meeting on May 22, 2018.

Mrs. Humphreys: "Do you have a copy of the application submitted to Code Enforcement Officer Ed Hunter?"

Mr. Lombardi: "Yes. We do and that was submitted to the Board and the Board also has a copy of that application, a complete application. *(It's unclear which Board he is referring to)*

Mrs. Humphreys asked if they could resubmit a copy of the one he is talking about so we are clear on that.

Mr. Lombardi: "Are you saying it's out of the records?"

Mrs. Humphreys: "I'm not. I asking if you want to verify if it's the right one and provide a copy."

Mr. Lombardi: "We believe it is because it was submitted previously. I'm not sure I understand what you are asking.

Mrs. H: "You want to be clear what the application is. There was an incomplete application to the Planning Board, [for Air Soft] which after months of waiting a letter was sent to Mr. Boisvert informing him the Planning Board can't take action on his home business application" *See letter from Bob Rogers dated 11/17/16, The Planning Board was waiting on his application and site plan review for the Air Soft recreation home business at Feel Good Farm.*"

Karen Grybko had a document dated 4/24 and asked if this is the application in question. Is the one you are talking about?

Mrs. H: "No, looking for the 2016 Home Business Application to Code Enforcement Officer Ed Hunter."

Mr. Lombardi: "With all due respect this is another reason we need to make sure we can clarify everything in the record. Mr. Hunter made a decision based on an application. If the application was not complete and there was something wrong with it he would have just denied it on that basis but he did not. So based on his decision he was clearly implying the application was appropriate at least from its completion standpoint."

Member Lisa Post addressed the chair to say she "disagrees with doing a continuance because the board decided to do a rehearing in order to reverse our decision on the conditions we put on and the only way we can do that is to uphold Ed's decision."

Lisa Post addressed Mr. Lombardi, "You have the variance in October to hear this all out. It can be sorted out this much easier and much more appropriately because then that is where

conditions are able to be put on. You will have time to get everything together. We will have time to check and clarify what we need to with our attorneys. So again I make the motion.”

**VOTE: Lisa Post made motion to uphold Ed Hunter’s decision. Linda Anderson seconded the motion.**

Rick Roy said he’s also confused because said he feels he’s looking in the rear view mirror. Which ordinance is Larry applying for 2017? The Hunter decision under the 2017 ordinance or circumstance that dictate what has to be done under the 2018 ordinance.

Lisa Post said that, “Regardless we can uphold Ed’s decision which he used the zoning ordinance from 3-18-17. We can also uphold it as the ordinance today that exist and put into effect on 3-13-18 because we should be applying the most current ordinance for this rehearing.

Rick Roy would like a copy of the 2017 ordinance. He had read the 2018 ordinance. They are very similar. Mr. Roy thinks going to the Planning Board would be the better route for Mr. Boisvert. The application was made in 2016.

Lisa Post reminded the Board they have been advised they can’t go back to old ordinances and have to work on this today, they have to apply the ordinance as of today. “They do have other means, they were due to go for a variance in October, it’s already schedule. They have time to get everything they need to get together for the neighbors, the chemicals they are using and the methods they are using and they can apply for a variance and if conditions need to be applied the Zoning Board has the capacity to do so. That is why I’m pushing to uphold Ed’s decision.”

Town Administrator Russ Boland said “We have been counseled that the ordinance that has been in effect when the decision was rendered, which was 2018. He added, the difference between 2017 and 2018 is not substantial enough to change the decision. In addition, the variance seems to be the best option for the applicant.”

Lisa Post reiterated that “this decision does not hurt your ability to come for the variance and this give you plenty of time to pull this together. It’s August. You had more than a month to gather the information for this re-hearing, I would assume, when you sent that to us [June 21, 2018] you were prepared after writing it to come for a hearing and obviously you were not so this gives you time. I think we have to uphold this in the ordinance. I think this gives you plenty of time in my opinion and I think we have to uphold it under the ordinance that exist now, 2018.”

Chairperson Grybko said since the Board voted and decided to go ahead with the appeal we are not going to reconsider our decision. We have to address Code Enforcement Officer Ed Hunter’s concerns. She read from portions of his certified letter dated, 3/22/18 Ref: Home Business Application.

1. Home business is to be conducted in the residency or an accessory structure. The portable toilets will be loaded and unloaded as they are transported to and from other locations. The toilets may require cleaning and possible repairs. Also conducted outside.
2. The business is not incidental and secondary to the residential use of the property.

Chairperson Grybko read from the 2018 Zoning Ordinance

**1200.00 Home Business.**



#2. The business activity shall occupy less than one-third (1/3) of the floor area of the residence or an equivalent area in an accessory building.

#5. Exterior storage of materials and equipment must be screened from view from any public road or abutting property.

**1200.00 Home Occupation:**

#2. The business activity shall occupy less than one-fourth (1/4) of the floor area of the residence or an equivalent area in an accessory building.

#5. Exterior storage of materials and equipment is prohibited.

Lisa Post made the following points:

1. The business does not occupy less than one-third (1/3) of the home if you put the porta-potties together.
2. It is not incidental and secondary to the residential use of the dwelling because trailers are not accessory buildings.
3. The business activity shall not changes the character of the surrounding neighborhood and the neighborhood is residential homes.

“Those are a couple of my reasons, in addition to Ed Hunter’s decision, why without those conditions, that we put incorrectly, that I believe we should uphold this decision because as it stands now it does not fit the definition of a home business,” said Lisa Post.

Rick Roy felt that it would not even apply to the 2017 Zoning Ordinance.

Larry Boisvert said, “I would beg differently.”

Chairperson Grybko asked if anyone in the audience had a question. Before anyone could speak, Mr. Lombardi asked if he could interrupt. No abutters were given the opportunity to speak at this time.

Mr. Lombardi had concerns the Board was taking a vote at this point and said he was a bit disturbed by this. He wanted a chance to make his client’s arguments again. Member Rick Roy thought that Mr. Lombardi said earlier said they were not prepared. He said he is prepared to present again. Mr. Lombardi said, “Ms. Post said things he takes extreme issue with and he would like to express why.”

Mr. Lombardi’s argument is quoted as followed:

1. “Ms. Post said we have other means of addressing these issues and that is true. We have taken steps to preserve Mr. Boisvert’s rights and this is one of them in the event the Planning Board’s decision is not favorable and wasn’t something that the Boisvert’s can live with.”
2. “That does not diminish the importance of this hearing to deciding it correctly and deciding it with the appropriate information and under the appropriate version of the zoning ordinance. There is a whole lot of confusion over what version of the zoning should be applied here. We heard tonight, the current zoning should be the one that should be used to make this decision and I strongly disagree. Mr. Boisvert should not be penalized because the town misplaced his application for over a year.”

3. "There is substantial difference from what the zoning said now and what it said then."
4. "The ordinance has now been amended to put back Planning Board approval for Home Businesses but not Home Occupations. I don't believe that Mr. Boisvert's business would qualify with Home Occupation because it's not entirely contained within the home."
5. "We are prepared to address that again."
6. We are prepared, and we did address, the three elements Mr. Hunter put forth in his letter for grounds for denying the application. We disagree with how those have been characterized."
7. "We disagreed with the conditions that were put onto the decision of the Board back in May [2018]. As I said from the start, we are fully prepared to move forward with the Planning Board application and to go before the Planning Board to satisfy them and whatever concerns they might have. We are in the process to applying for that and we are looking forward to a hearing in September."
8. "When we submitted this request for a hearing, we made it clear our request was to put it into abeyance and it made sense because we have not gotten to the Planning Board yet. As I said directly in that letter, in that motion, if that decision was favorable at the Planning Board level, we would withdraw these motions. We would withdraw the variance. There would be nothing further to do. We would not be here to bother the town any further. I thought that request was reasonable."
9. "When I got was the decision, that was sent to me by Ms. Humphreys that night [7-17-18], I was not at my desk, I was a bit confused and it seemed to me the Board hadn't taken that into consideration. So I wrote a subsequent letter and sent it to the Town."
10. It wasn't until last Thursday when I spoke to Ms. Grybko that I found out the hearing was going forward and the only way we could put it off was to come to the hearing and to request a continuance which for those purposes would suffice. So we didn't not have the time that you feel that we had from June 21, 2018 until today to prepare for this hearing because we had no idea until Thursday [August 2, 2018] and I did assume that it was going to be put off for reasons that I had put into the letter."
11. "I did not realize the Board had decided they made an improper decision."

Lisa Post responded, "You pointed that out.."

Mr. Lombardi responded, "I'm just addressing your point that we had plenty of time. We did not have plenty of time. We would have had in addition the other information that we pointed out and I still don't understand why the Town doesn't think it would be beneficial. To understand more completely the environmental impact of what is going on with Mr. Boisvert's business. Also possibly to have statements and support from people who deal with him on a regular basis? The Board has every right, has full authority to do continuance in these instances. This has been going on for years, why putting it off for another 30 days would be a detriment to the Board, I can't understand. "Again, Mr. Boisvert was fully prepared to move forward in all respects with the decision of the Board that was made on May 22, 2018. We just asked for the accommodation of 30 days. If the board wants to move forward on the very issue underlying this hearing we are prepared to reiterate what was done before and to strengthen the argument which apparently didn't come through as clear as it could have. Before you make a vote we want the opportunity to make those statements."

Rick Roy: "From my understanding you want us to make our decision based on Ed Hunter's decision based on the 2017 ordinance, correct?"

Mr. Lombardi: "On the version of the ordinance that he considered at the time."

Rick Roy: "Then you want to go to the Planning Board before that and use the 2018 ordinance? How many ordinances can you use?"

Mr. Lombardi: "We are just doing what the Board had requested us to do. They had required us to do under the May 22, 2018 hearing. We will vacate Mr. Hunter's decision but we have these conditions and one of these conditions was you go to the Planning Board in September and put your application before them and if they approve, you are ok, as long as you meet those other conditions. We are fully prepared to do that"

Chairperson Grybko recognized Town Administrator Russ Boland.

T/A Russ Boland: "Counsel makes some very good points. I would also like to say if they are going to present their arguments; that the Town has the right to present ours. For clarification, and he can talk with counsel if he wants, but the 2017 Ordinance and the 2018 Ordinance are identical in the sense that the general requirements for home business and home occupation shall be permitted in the Town in the Village District, Rural Lands One, Two and Three in compliance with the provisions of the section and are not subject to Site Plan Review and approval by the Planning Board.

This was debated and the 2018 Zoning Ordinance under **1200.00 C. Home Business** as printed in the 2017 Town Report for majority vote on 3/13/18, which was approved, reads:

1200.00 C. Home Business

1. A Home Business shall be permitted in all districts of the town and is subject to Site Plan Review by the Planning Board. A formal application is required.

Lisa Post: "The Home Businesses is under the General Requirements. Then there is the Home Business and the Home Occupation page. In order to meet either one of these criteria, you have to satisfy the General Requirement first, which it does not"

Mr. Lombardi: "We are not dealing with...this application was not submitted in the 2018 version and you have not answered the question yet as to why Mr. Boisvert should be penalized because the town lost his application."

Lisa Post: "We are not penalizing him. He has the opportunity to go for a variance. He applied for the appeal to Ed Hunter's Decision and we incorrectly placed conditions on it that were unacceptable to him as you so aptly pointed out that we were incorrect. We need to correct our position which we did and we voted on not having the continuance. **VOTE...Again. I make the motion to uphold Ed Hunter's decision because we already heard your arguments, [interruption] can I just finish. We decided then, at the last hearing, that with conditions we could live with that. However, since we can't put conditions on it, I can't support the decision we made incorrectly. I would like to uphold Ed Hunter's decision and allow you to go for a variance and you can still go to the Planning Board. You have your variance schedule for October 4, 2018. I don't think anything you say tonight will change our minds. We spent over two-hours last time going over this and the decisions we made then, were to put criteria on them and we will do the same thing today if we have the opportunity but we don't since this is an appeal of an administrative decision and we can't put conditions on it, so again, I make a motion, without hearing the information because it's more appropriate to the variance decision to have that information. It's a better use of everyone's time."**

Mr. Lombardi: "First, the variance procedure is a lot different than this. You make it sound like they are one in the same and they are not. The variance is asking for a permission to operate outside of the scope of the zoning ordinance, whereas this is an appeal of a decision that said the business does not meet the zoning ordinance requirement and the elements that need to be met in connection with the variance request are totally different than what we are discussing in this appeal."

Mr. Lombardi: "Second, I have a question for the Board. If Mr. Hunter's decision was incorrect on May 22, 2018, how can it be correct now?"

Lisa Post: "I don't believe it was incorrect, I believe it was the correct decision. However we were considering and Mr. Chrisenton brought up that there was some confusion on the Planning Board level. However, and we cannot make that decision. That is why we made these decisions."

Chairperson Grybko: "We felt if we pushed you to the Planning Board that gave you options."

Lisa Post: "Since we can't put conditions on it we can't give you those options and you have to come back for a variance."

Chairperson Grybko: "You don't meet the criteria for current zoning ordinance."

Mr. Lombardi: "But if it didn't meet the criteria, why did the Board uphold it?"

Rick Roy: "We do with conditions. We were trying to give Larry the benefit of the doubt and it could be executed at the Planning Board. When you asked for the appeal it opened up Pandora's Box and we found out we didn't have the authority as you pointed out. We have to correct our decision now since we don't have the authority. We felt that if you could meet these things we felt we could see those gray areas differently."

Mr. Lombardi: "It still does not answer the question as to why you voted to deny a decision to overturn a decision that you now are saying is appropriate."

Chairperson Grybko: "No we were not. We were just pushing it down to the Planning Board so he could get the correct application designation. It says that."

Mr. Lombardi: "You would not have had to put conditions on it if you denied it."

Chairperson Grybko: "We just pushed it down the road. I don't think we really made a decision and we were going to let you go to the Planning Board."

*[Mr. Boisvert had a private conversation with Mr. Lombardi out of earshot of the Board]*

Lisa Post: "I think we made a decision, like I said before, with conditions, we heard from neighbors with concerns and by addressing their concerns we felt like okay, we are giving a little bit here and a little bit there and maybe this can all work out. However, since we have no ability, again, to do that, we can't make that decision and we have to uphold the original decision of Ed Hunter's denial of the home business because it didn't fit then and it doesn't fit today."

Mr. Lombardi: "Your decision was you would put conditions on it but essentially you decided that the three elements that Mr. Hunter noted in his letter weren't so. You were saying he said "this business is not incidental and secondary to the residential use of the property" and by your decision you were saying it was?"

Lisa Post: "I don't think that is relevant. I think our decision now has to be to uphold Ed Hunter's decision."

Mr. Lombardi: "And that was not what you were supposed to do on May 22?"

Chairperson Grybko: "We got confused and we decided to give Larry the opportunity to go the Planning Board because we felt that he fit the definition to have a site plan review. The exterior equipment must be screened from view and Larry met those criteria more than the criteria for a Home Occupation. So we pushed it down the road and let Larry operate until he can find a proper application. We were advised that on an administrative appeal we can't put on conditions, only with a variance or an exception. Administrative appeals we can only vote "yes" or "no". No conditions or gray area. Only "yes" or "no". What we are saying is, based on Ed Hunter's letter, Larry does not fit the criteria that is allowed for a home business because it's not secondary to the property because it's more than 25% of your residence and there are other things outside and they are not hidden from the road. It's not secondary and incidental to the residential use of the property."

Lisa Post reread the 2018 Zoning Ordinance under General Requirements and the Home Occupation/Business and those were my reasoning for upholding Ed Hunter's decision.

#### 1200.00 C: Home Business

1. "The business area shall occupy less than one-third (1/3) of the floor area of the residential or an equivalent area in an accessory building."

Ms. Post added that this goes by the size of the building.

Ms. Post said the business is not secondary and incidental to the use of the property because the trailers are not accessory buildings.

#### General Requirements

#3: "The business activity will not change the character of the surrounding neighborhood..." Ms. Post added, the surrounding homes are residential.

Mr. Lombardi asked if he could look at the zoning ordinance that Lisa Post just read from and he wanted to see the next page also.

Mr. Lombardi: "You are reading into Mr. Hunter's decision things that he did not mention."

Lisa Post: "No, those are my reasons for upholding."

Mr. Lombardi: "We are talking about an appeal of the decision by Mr. Hunter."

Lisa Post: "I agree with Mr. Hunter and I have additional reasons as to why, as well."

Abutter Dave Roemer raised his hand and was acknowledged by Chairperson Grybko.

#### Dave Roemer read under 1200.00 Home Business

#5. "Exterior Storage of materials and equipment must be screened from view from any public road or abutting property." He asked if that was that what you were trying to capture and Chairperson Grybko agreed.

Larry Boisvert got emotional and said, "I having lived in this town my whole life. For 31 years I have been in the toilet business. The toilet business has been all over the world and the town"

has spent a lot of money trying to stop it. Now you know, having been here my whole life, I have been to a lot of meetings. I'm not hurting anybody. I'm especially not hurting myself and I render a good business. I'm proud of the business I run. I can't understand why you are pushed so hard by neighbors to stop me from doing a good job. You don't have to answer. I don't want you to answer. I just hope you sleep at night as you remember this because those neighbors have no vested interest in fighting me. They are just pushing you to spend town money to stop me from doing it. Not one of those people come to you and spend money, tax dollars. To say here, I want to help to fight the cause against Larry to stop him. It's your tax dollars and my tax dollars. I'm proud of the great business I have run over the 10-years, oh 30-years. I have not done any spills anywhere. People come to me in the town; I won't name names, to render the service. I do a damn good job and I know it but those few people that are nearby me that want to stick it up my butt because they don't like me. They are just jealous and I know that. I still going to keep doing a good job, the best I can and spend a lot of money fighting them, to do that good job. They don't care. That is their problem. Thank you."

Mr. Lombardi: "I respectfully requested that we continue this because the version of the ordinance currently, in many respects, is substantially different, especially in how the wording is concerned. This is the first time I'm seeing this. This is clearly not the version of the ordinance that Ed Hunter made his decision under. If we are appealing a decision, the version of the ordinance that he worked from has to be the same one the decision is made under. I renew my request to continue this for 30-days. I can't for the life of me understand why the Board wouldn't want full and complete information about the version of the ordinance they need to make the decision under and just as important the information about the environmental impacts that this business supposedly has on the community, as voiced by the abutters. And as the Board clearly was concerned about as well because of the conditions they sought to imposed, whether they were not appropriately imposed or otherwise. There is a lot of confusing over this and now you are sort of forcing this through making us, rendering a decision that is not properly based on the law and you are not giving us full opportunity to prepare for this hearing. Again, we will continue our remarks and I do have more remarks to make because I completely disagree with the fact that it's not incidental and secondary to the use of the property as a residential business."

Mr. Lombardi: "Without a decision that is favorable we will be contesting the way this has been handled. We are just asking the Board accommodate us and allow us to move forward so we can clear up these issues, or attempt to. I'm happy to discuss with Counsel. I think its best everybody gets on the same page because otherwise this will just continue in litigation and further requests for appeals. I would think the Town would want everybody on the same page. I know I'm coming across as upset and angry on behalf of my client. I have to admit I am. I don't see why the Board cannot give us this accommodation. To stretch this out and additional 30 days, in light of the fact this has been going on for a long, long time, which would allow us to get the information we need to make the time we need to make an appropriate decision."

Town Administrator Russ Boland wanted to go on record as saying that the town has no objection to a 30-day extension and asked if the Board would consider that.

Chairperson Grybko would like to consider this extension. She would like clarification as to when the application was submitted and the language then and what Ed Hunter did. We all need to be on the same page with the same information.

Rick Roy agreed and would like to know the language that is vague and see clarification regarding "incidental" and "secondary" and he wanted to review the 2005 court decision. Mr.

Lombardi also mentioned the term “customary” which should not apply here and it all comes down the language and the devil is in the details.

Lisa Post: “Your opportunity hasn’t been removed. You still have the variance to go to.

Mr. Lombardi: “We would prefer not to.”

Lisa Post: “You should not have pointed out that you can’t live with the conditions we put on it and that was appropriate....”

Mr. Lombardi: “We had to under the conditions of the timeframe.”

Lisa Post: “We had to respond under a timeframe also.”

**VOTE: Rick Roy moved for a continuance of this meeting to Thursday, September 13, 2018 at 7:00 p.m. at Citizens’ Hall. Linda Anderson seconded the motion. Motion passed 3-1. Lisa Post voted no. All other members voted yes.**

Abutter Steve Brooks asked if they can get a copy of the old zoning because they are at a disadvantage not to see them. It was suggested to put the 2017 Zoning Amendment in the minutes and they can be available on-line. The current Zoning Ordinance is on-line already.

Rick Roy: “What are your goals for the meeting for the continuance? You said you had more information you wanted to present tonight. We heard a lot of information the other meeting. We heard about the necessary licenses Larry needs, the environmental/state controlling agency permits. When I come here, to prepare myself, what is it that you want to present? Do you want to talk about the language? The 2005 court decision? What do you want to talk about so we are prepared?

Mr. Lombardi: I want to present additional information. About the environmental issues and try to make it clear what versions of the zoning issues apply to different situations?

Rick Roy: I don’t think the environmental issues are relevant. What is relevant is the decision by Mr. Hunter and there are two things: 1) Whether we should consider it based on the 2007 Ordinance and 2) Whether his decision should be in tact or not. We already went over the environmental issues.

Mr. Lombardi: “With all due respect, that was clearly a concern. If it affects at all the decision...”

Rick Roy: “That was not relevant to Mr. Hunter’s decision. You are bringing that up.”

Mr. Lombardi: “We don’t know what Mr. Hunter considered because his letter was very brief. When you talk about what is incidental and secondary what is being considered. Is it being considered there is a tank truck that is parked there? There is storage of portable toilets outside the trailers. That those toilets may leak into the ground? What do they have in it? Are they transported? They have to be lifted on the trucks and how does that play into if it’s incidental and secondary. What we are trying to do, I don’t understand why the Board won’t want more information than less, to try to understand completely. I’m just trying to help the Board do its job. Clearly there is a lot of confusion. Our primary aim is if the Board thinks it does not need any other environmental issues. If they don’t want it..”

Rick Roy: I wonder if it’s relevant to look at the 2017 zoning ordinance.

Larry Boisvert: "At the last meeting you were very concerned about what we did and you asked me to describe it. Then you made a decision and put restrictions on us. Now you are willing to remove the restrictions."

Lisa Post: "We are not willing removing the restrictions. We had no ability as a Board to put restrictions on an Administrative Appeal."

Mr. Lombardi asked if the meeting is still official. Yes it is. *The meeting has not been adjourned.*

Secretary Humphreys confirmed to Mr. Lombardi that she emailed the official letter about tonight's meeting on July 17, 2017 after 8:00 p.m. since he questioned when he got the notice. "It was sent before we left the meeting that night."

Mr. Lombardi: "We are going to provide more information regarding the ordinance and make some legal arguments; also talk about the incidental and secondary issues and provide more information about the environmental concerns"

Lisa Post reminded Mr. Lombardi that she asked for information at the May 22, 2018 meeting which has not been provided. She requested the square footage of the office in the home to conduct the business and I think you should provide us with that. Mr. Lombardi will provide that. Ms. Post also reminded the applicant they were asked to provide about the size, including the height of a porta-potty. Mr. Lombardi said if he could bring a tank and the pump truck to the meeting then everyone could go out and see it but the Board felt it's not necessary. Ms. Post wants the measurement.

Karen Grybko addressed Mr. Boisvert and said, "You should also note we are not picking on you. We have requirements and we are seeing whether or not you fit the definition of the requirement. If you don't fit the definition, you go to a variance, asking us to exclude you from the requirements. It's nothing personal. We are just going by the General Requirements and see if you fit in the box. Your attorney will try to bring a shoe horn to make sure you will fit in the box."

It was noted the Zoning Ordinances are in the Town Reports. The latest version is online. After discussion it was determined that T/A Russ Boland will contact Attorney Drescher on Mr. Lombardi's behalf.

#### **APPROVE MINUTES:**

**-May 15, 2018**

**VOTE: Rick Roy made a motion, Linda Anderson seconded to approve the minutes of May 15, 2018 as written. Motion passed 4-0.**

**-May 22, 2018**

**VOTE: Lisa Post made a motion, Rick Roy seconded to approve the minutes of May 22, 2018 as amended. Motion passed 4-0.**

**-July 17, 2018**

**VOTE: Rick Roy made a motion, Linda Anderson seconded to approve the minutes of July 17, 2018. Motion passed 4-0.**



**ADJOURNMENT:**

**VOTE: Rick Roy made a motion, Linda Anderson seconded to adjourn at 9:30 p.m.  
Motion passed 4-0.**

Respectfully Submitted,

*Kathleen Humphreys*

Kathleen Humphreys  
ZBA Secretary

Attachments:

- Motion for Rehearing, June 21, 2018
- Motion for Rehearing/Abeyance, July 21, 2018
- Continuance Request – August 6, 2018
- Ed Hunter's Code Enforcement Letter denying the Home Business Application, March 22, 2018
- 2018 Zoning Amendment as printed in the "2017 Town Report"
- 2017 Zoning Amendment as printed in the "2016 Town Report"
- 2012 Zoning Amendment as printed the "2011 Town Report"
- Planning Board minutes from September 15, 2016
- Application to Planning Board from Boisvert dated, October 31, 2016
- Planning Board Minutes from November 17, 2016 (*see end where Bob Rogers read letter*)
- Bob Rogers' Letter, Nov. 17, 2016

# LOMBARDI LAW OFFICES PLLC

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*Of Counsel*  
Also admitted in MA

June 21, 2018

**\*\*\* HAND DELIVERED \*\*\***

Karen Grybko, Chair  
Lyndeborough Zoning Board of Adjustment  
9 Citizens Hall Road  
Lyndeborough, NH 03082

**RE: Motion for Rehearing**  
Laurent Boisvert II  
54 Johnson Corner Road  
Rural Lands One Zoning District  
Tax Map 237, Lot(s) 13, 14

**ALL RIGHTS RESERVED**

Dear Ms. Grybko:

Appeal of decision of Code Enforcement Officer  
Enclosed on behalf of Laurent Boisvert II are an original and eight copies of a Motion for Rehearing under RSA 677:2 regarding a decision of the Zoning Board in the above matter.

Thank you for your time. If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
James T. Lombardi

JTL/acs  
Enclosures



THE TOWN OF LYNDEBOROUGH  
ZONING BOARD OF ADJUSTMENT

**RSA 677:2 Motion for Rehearing by Laurent Boisvert II**  
**Regarding a Decision of the Lyndeborough Zoning Board of Adjustment**

NOW COMES Laurent Boisvert II of 54 Johnson Corner Road, Lyndeborough, New Hampshire (Petitioner), by and through his attorneys, Lombardi Law Offices, PLLC, and pursuant to RSA 677:2, requests a re-hearing on a decision of the Lyndeborough Zoning Board of Adjustment (ZBA), granting an appeal, with conditions, of an Administrative Decision by the Zoning Code Enforcement Officer that denied Mr. Boisvert the right to operate his portable toilets business as a home business under Section 1200 of the Lyndeborough Zoning Ordinance. Those conditions included the following:

- (i) That Mr. Boisvert "submit a completed [site plan review] application to the Lyndeborough Planning Board which shall be heard by the Planning Board no later than the September 2018 meeting," and
- (ii) That the Planning Board include certain requirements in its decision if it is to approve Mr. Boisvert's application.

A copy of the ZBA's decision, dated May 29, 2018, is attached as Exhibit I. The requirements to be included in the Planning Board's decision are noted in the decision.

Mr. Boisvert submits this Motion for Rehearing on the basis that the conditions applied to the granting of the appeal were illegal or unreasonable, and in support thereof states as follows:

1. The ZBA has no authority to impose conditions under these circumstances. Under RSA 674:33, I, the ZBA "[has] the power to hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance..." Under RSA 674:33, II, it "may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken." But the ZBA has no further power in this instance. P. LOUGHLIN, 15-22 NEW

HAMPSHIRE PRACTICE: LAND USE, PLANNING AND ZONING § 22.02 (2017) (hereafter, LOUGHLIN) ("In exercising this power, the board has all the powers of the administrative official from whom the appeal is taken, but no more.")

2. The administrative official in this case, Ed Hunter, the Code Enforcement Officer who rendered the initial decision denying Mr. Boisvert's home business application, may have had the power to interpret the provisions of the Zoning Ordinance in this case. He did not have the authority, however, to impose conditions on an approval if he had granted one. Zoning boards in New Hampshire may impose conditions on applicants when considering variance requests and appeals of administrative decisions in matters involving nonconforming uses. See Peabody v. Windham, 142 N.H. 488, 493 (1997). However, this matter does not involve either.

3. Moreover, even if the ZBA had authority to impose conditions in this instance, any condition that it imposed must be "reasonable and lawful." Id. Under the version of the Zoning Ordinance in effect when Mr. Boisvert submitted his application to operate his portable toilet business as a home business—the version that Mr. Hunter consulted in making his decision in this matter—there was no requirement that an applicant for a home business obtain approval from or appear before the Planning Board for any reason. Therefore, the ZBA's decision to impose such a condition was beyond the scope of what the Ordinance required and hence was unlawful.

4. Certain other conditions are unreasonable. For instance, "on-site cleaning of the portable toilets is strictly limited to the outside shell of the unit." Certain abutters expressed concern about chemicals and human waste getting into the water supply from Mr. Boisvert's operations. He made it clear, however, that he takes all precautions in operating his business and makes sure that all chemicals and effluent are disposed off-site. Cleaning the inside of the toilets, in similar fashion to cleaning the outside, does not change that. It only involves washing the interior of the portable toilet (walls, door, ceiling, toilet seat, etc.) with high-pressure water. He uses no soap or chemicals of any kind in this process. Any such cleaning takes place before the toilet is shipped to a customer. Any customer would expect a clean portable toilet before he or she used it. Moreover, the part of the toilet being cleaned in

this instance does NOT involve the tank or anything inside it. Under these circumstances, it is clearly unreasonable for the ZBA to outright forbid the cleaning of the inside of the portable toilets on the premises.

5. Similarly, it is unreasonable for the ZBA to forbid Mr. Boisvert from washing his business truck on his property. Again, Mr. Boisvert made it clear that he takes extreme precautions in handling all chemicals and other pollutants that might be a risk to the public. On what basis the ZBA feels that it can impose such a condition to prevent Mr. Boisvert from engaging in a simple and normal activity—like washing his truck—that everyone else within the ZBA's jurisdiction may engage in, whether for personal or commercial purposes, is entirely unclear.

6. Moreover, as he noted, Mr. Boisvert has all necessary permits and certifications to run his portable toilet business and is monitored periodically by the Department of Environmental Services. On this basis, it is questionable whether the Zoning Board has jurisdiction at all to impose these types of conditions.

\*\*\*

Based on the above, the ZBA's decision to grant Mr. Boisvert's appeal with conditions was unreasonable and unlawful. The appeal should have been granted without conditions based on the plain language of the Zoning Ordinance and the fact that Mr. Boisvert's portable toilet business satisfies all elements required of home businesses under Section 1200 of the 2017 version of the Ordinance.

At this time, however, Mr. Boisvert wishes to preserve all his rights in this matter. In the interest of moving forward, he will submit a site plan review application to the Lyndeborough Planning Board for his business by September 1, in accordance with the minutes of the ZBA meeting. If he obtains approval from the Planning Board subject to reasonable conditions, he will accept such approval and will conduct his business accordingly and will withdraw this Motion as well as his request for a variance which he submitted earlier. He asks in the meantime that this Motion be held in abeyance until the Planning Board matter is concluded.

WHEREFORE, Mr. Boisvert respectfully requests that the ZBA:

- A. Hold this Motion in abeyance until the Planning Board matter is concluded;
- B. If the Planning Board matter is not concluded to his satisfaction, grant him a rehearing on his appeal of the Administrative Officer's decision in this matter;
- C. Grant his appeal without conditions; and
- D. Grant such other relief as may be just.


Respectfully Submitted,

LAURENT BOISVERT II

By his Attorneys,

Lombardi Law Offices, PLLC

Dated: June 21, 2018

By:   
James T. Lombardi, Esq.  
4 Bell Hill Road  
Bedford, NH 03110  
(603) 471-9110  
NH Bar No. 13810

# EXHIBIT I



## TOWN OF LYNDEBOROUGH

Zoning Board of Adjustment

9 Citizens' Hall Road, P.O. Box 6 • Lyndeborough, NH 03082  
Phone (603) 654-5955

### Notice of Decision

Case 2018-2

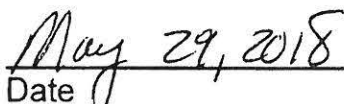
You are hereby notified that the **Administrative Decision**, dated **3/22/2018**, by the **Code Enforcement Officer** for **Laurent Boisvert d/b/a Feel Good Farm, Inc., Portable Privies on Lot 237-13 and 237-14. Street Address: 52 and 54 Johnson Corner Road, Lyndeborough, NH and has been:**

- **Conditionally Vacated:**

**Mr. Boisvert's request** for a **Home Business under section 1200 C.** of the Lyndeborough Zoning Ordinance must be heard by the Planning Board with the following **conditions applied:**

- 1) Laurent Boisvert shall submit a completed application to the Lyndeborough Planning Board which shall be heard by the Planning Board no later than the September 2018 meeting.
- 2) Any action by the Planning Board under their Site Plan Review authority shall include the following requirements:
  - a) Portable toilets must be stored out of public view.
  - b) Portable toilets must be thoroughly cleaned off site prior to the return to this property.
  - c) On-site cleaning of the portable toilets is strictly limited to the outside shell of the unit.
  - d) No chemicals are to be used on the portable toilets on the property.
  - e) The Portable Privies, Inc. business truck must not be washed on the premises.
  - f) The number of portable toilets allowed on this property is restricted to the current supply of 80 units.
  - g) The business shall not be expanded to exceed the 80-unit limit.
  - h) This conditional approval is only to be applied to Laurent Boisvert and is not transferable with this property and /or the sale thereof.

  
\_\_\_\_\_  
Karen Grybko, Chair  
Lyndeborough Zoning Board of Adjustment

  
\_\_\_\_\_  
Date May 29, 2018

Note: Motion for rehearing by the Board of Adjustment shall be filed in accordance with RSA 677:2.

The application submitted by Laurent Boisvert and the record in this matter, shall be a part of this approval. Copies of this notice will be distributed to: the applicant, Planning Board, Board of Selectmen, Town Clerk, Property File and Building Inspector.

COPY

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*Of Counsel*  
Also admitted in MA

July 20, 2018

Karen Grybko, Chair  
Lyndeborough Zoning Board of Adjustment  
9 Citizens Hall Road  
Lyndeborough, NH 03082

RE: **Motion for Rehearing**  
**Laurent Boisvert II**  
**54 Johnson Corner Road**  
**Rural Lands One Zoning District**  
**Tax Map 237, Lot(s) 13, 14**  
**Case 2018-2**

**ALL RIGHTS RESERVED**

Dear Ms. Grybko:

This letter is in response to an email this office received from Kathleen Humphreys, ZBA Secretary, on July 17, 2018 at 8:08pm indicating that the Zoning Board had granted a rehearing in this matter, scheduled for August 7, 2018 at 7pm.

We appreciate the Board's granting the request. However, the **Motion for Rehearing asked that it be held in abeyance** to allow Mr. Boisvert to present his application for site plan review to the Lyndeborough Planning Board at its September meeting, in accordance with the Zoning Board's decision of May 22. As the Motion stated on page 3, "If he [Mr. Boisvert] obtains approval from the Planning Board subject to reasonable conditions, he will accept such approval and will conduct his business accordingly and will withdraw this Motion as well as his request for a variance which he submitted earlier. He asks in the meantime that this Motion be held in abeyance until the Planning Board matter is concluded."

As the Motion also stated, Mr. Boisvert submitted the Motion for Rehearing to preserve his right to appeal the decision by the Zoning Board in the event the Planning Board decision is unfavorable. Because the statute allows only thirty days to request a rehearing on a Zoning Board decision, Mr. Boisvert was required to submit the request for rehearing when he did. But because he is willing to work with the Town and hopes to see this matter resolved, he asked that the Motion be tabled until after the Planning Board has conducted its site plan review.

Holding the rehearing of this matter at this time would undermine the parties' attempts to have this matter resolved before the Planning Board. Therefore, we respectfully request that the rehearing be rescheduled until the matter before the Planning Board is concluded.

Thank you for your time. If you have any questions, please do not hesitate to contact me.

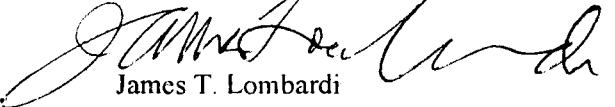
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Karen Grybko, Chair  
Lyndeborough Zoning Board of Adjustment  
July 20, 2018  
Page 2

Very truly yours,



James T. Lombardi

JTL/acs

Cc: Laurent Boisvert II

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August 6, 2018

**\*\*\* BY FAX (603-654-5777) AND EMAIL \*\*\***

Karen Grybko, Chair  
Lyndeborough Zoning Board of Adjustment  
9 Citizens Hall Road  
Lyndeborough, NH 03082

**RE: Motion for Rehearing—Laurent Boisvert II**  
**54 Johnson Corner Road—Rural Lands One Zoning District**  
**Tax Map 237, Lot(s) 13, 14**  
**Case 2018-2**

**ALL RIGHTS RESERVED**

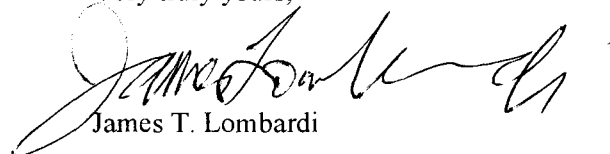
Dear Ms. Grybko:

In follow-up to our discussion last Wednesday, Mr. Boisvert would like to request a 30-day continuance of the rehearing in this matter, which is scheduled for tomorrow, Tuesday, August 7, 2018, at 7pm at Citizens' Hall. The reason for the request is to allow Mr. Boisvert sufficient time to prepare additional information for the Board's consideration regarding the operation of the portable toilet business and the related environmental concerns that were voiced by certain abutters at the initial hearing on May 22. It is anticipated that that information will include details regarding (i) the solution that Mr. Boisvert adds to the toilet tanks before the toilets are used, (ii) the process that Mr. Boisvert follows in cleaning, shipping and storing toilets and transporting and disposing of human waste at the Milford treatment facility, and (iii) the inspections of Mr. Boisvert's business operations by the NH Dept. of Environmental Services (DES). We trust that this additional information will be helpful to the Board and the neighbors in better understanding Mr. Boisvert's business and will help allay any environmental concerns.

Mr. and Mrs. Boisvert and I will be in attendance tomorrow evening in the event the Board has any questions regarding this request.

Thank you for your time and consideration.

Very truly yours,



James T. Lombardi

JTL/acs

Cc: Laurent Boisvert II

---

4 Bell Hill Road  
Bedford, NH 03110  
603.471.9110  
www.lombardilawoffices.com



TOWN OF LYNDEBOROUGH

Office of Selectmen

9 Citizens' Hall Road • Lyndeborough, NH 03082

Phone (603)654-5955 • Fax (603)654-5777

3/22/2018

COPY

CERTIFIED

Laurent Boisvert

54 Johnson Corner Rd.

Lyndeborough, NH 03082

Ref: Home Business Application

Dear Larry:

I am writing to address your application for a home business dated 8/25/16. Apparently, this document was submitted with the intent that the Lyndeborough Planning Board would be reviewing and acting upon your request. It is however, my understanding that you were advised at the time that the Building Inspector is the authority to make a determination whether or not the application would meet the standards for a home business. The application was discovered a short time ago at the Town office. It was inappropriately placed back in the Planning Board mailbox and never found its way to me.

In any case, here we are. It is true that the zoning ordinance was amended at Town Meeting on 3/18/17. To a great extent, this was a housekeeping action within the zoning ordinance. Section 1200.00 continues to allow for Home business within most districts provided they meet the narrow criteria for a home operated business.

The list of questions on the application you have provided, substantially follow the required criteria for a home business that is "compatible with the residential character of the neighborhood". Based on your answers to these questions I find that this business does not meet the standard. My decision is based on the following.

1. Home business is to be conducted in the residence or an accessory structure. The portable toilets will be loaded and unloaded as they are transported to and from other locations. The toilets may require cleaning and possible repairs. Also conducted outside.
2. This business is not incidental and secondary to the residential use of the property.

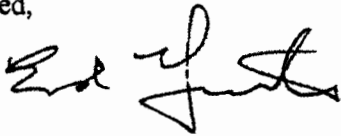
3. One other item, the Town needs to consider here is that there is another business on this residential site. This is an approved business that has an approved site plan. Potentially, there may be a conflict or consideration that may be of interest to the Planning Board that could effect that original approval.

It is my determination that this application does not meet the criteria for a home business and therefore is denied.

As in all my administrative decisions, you have the right to appeal. You may make either of two appeals. The first would be to appeal my administrative decision. In which case, you would have an opportunity to make a case that I have made a mistake in my interpretation of the ordinance. The second type of appeal to be for a variance to the ordinance. Either one, or the other of these appeals, would be made to the Lyndeborough Zoning Board of Adjustment. Forms for an appeal to the ZBA can be obtained at the Town Office or found on the internet at the Lyndeborough Website.

As always, if you have any questions, please contact me at 603-325-2890

Signed,



Lyndeborough Building Inspector/ Code Enforcement Officer

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Laurent Boisvert  
 54 Johnson Corner Rd  
 Lyndeborough NH 03082



9590 9402 1427 5329 4702 42

2. Article Number (Transfer from service label)  
 7011 2970 0002 5173 9192

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *Laurent Boisvert*  Agent  Addressee  
 B. Received by (Printed Name) *Laurent Boisvert* C. Date of Delivery *4-11-18*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

USPS TRACKING #



9590 9402 1427 5329 4702 42



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

United States  
 Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•  
 Town of Lyndeborough  
 Building Inspector's Office  
 9 Citizens' Hall Rd  
 Lyndeborough

APR 16 2018

**STATE OF NEW HAMPSHIRE  
2018 TOWN WARRANT  
LYNDEBOROUGH, NEW HAMPSHIRE**

To the Inhabitants of the Town of Lyndeborough, in the County of Hillsborough in said state qualified to vote in Town affairs; You are hereby notified to meet at Citizens' Hall, 9 Citizens' Hall Road, in said Lyndeborough on Tuesday, the thirteenth (13<sup>th</sup>) day of March 2018, at ten o'clock in the morning until seven o'clock in the evening, for ballot Voting of Town Officers and all other matters requiring ballot vote; and, to meet at Citizens' Hall, 9 Citizens' Hall Road in said Lyndeborough, on Saturday, the seventeenth (17<sup>th</sup>) day of March 2018, at ten o'clock in the morning, to act upon Articles 4 through Article 14:

**Article 1: Selection of Officers and Other Matters**

Voting of Town Officers and all other matters requiring ballot vote.

**Article 2: (Question 1)**

**To see if the Town will vote to amend the following section of the Town of Lyndeborough Zoning Ordinance which refer to Section 200.02 Accessory Dwelling Unit Ordinance to read as follows:**

**(Explanation: This will bring Section 200.02 in compliance with State Statute.)**

200.02 Accessory Dwelling Unit means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Delete Sections 503.00 d, 703.00 b, 803.00 b, from Special Exception to new additions to Section 200.02 above as follows;

200.02 I. An Accessory Dwelling Unit shall be allowed as a matter of right by the Building Inspector pursuant to RSA 674:21 in all zoning districts that permit single family dwellings. One accessory dwelling unit shall be allowed without additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single family dwelling without an accessory dwelling unit.

Not more than one accessory dwelling unit for any single family shall be allowed.

II. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but shall not be required to remain unlocked.

III. Regulations applicable to single family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with policy adopted by

02/12/2018

the United States Department of Housing and Urban Development. Adequate parking to accommodate an accessory dwelling unit shall be provided.

IV. The applicant for a building permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485A:38, but separate systems shall not be required for the principal and accessory dwelling units.

V. The owner must demonstrate that one of the units is his or her principal place of residence.

VI. A familial relationship between the occupants of an accessory dwelling unit and the occupants of a principal dwelling unit shall not be required.

VII. An accessory dwelling unit may be deemed a unit of workforce housing for purposes of satisfying the town's obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units.

(Recommended by the Planning Board and Board of Selectmen) (Majority vote required)

**Article 3:** (Question 2)

**To see if the Town will vote to replace section 1200.00 of the Town of Lyndeborough Zoning Ordinance to read as follows:**

**(Explanation: This Section, 1200.00, differentiates Home Occupation from Home Business.)**

**1200 Home Occupation and Home Business**

**A. General Requirements**

1. Home Occupations and Home Businesses shall be conducted in accordance with all town, state and federal laws, regulations and licensing requirements.
2. The business activity shall take place within a residence or an accessory building and must be incidental and secondary to the residential use of the dwelling unit.
3. The business activity will not change the character of the surrounding neighborhood, nor will it provide window displays or other characteristics associated with retail or commercial use.
4. Signs may not exceed four square feet in surface area, may not be internally lit, and may not be placed within the town or state highway right of way.

5. No noise, vibration, dust, smoke, electrical disturbances, odors, heat or glare shall be produced by a Home Occupation or a Home Business, nor shall there be any discharge of hazardous material into the air, ground or surface water.

6. Motor vehicles and equipment used for the Home Occupation or Home Business shall be parked or placed as inconspicuously as possible.

7. Sufficient off-street parking shall be provided for any non-resident employees, customers and suppliers who may normally be expected to need parking spaces at one time. Where additional parking is required, the spaces shall not be located in the front yard or within the side or rear setbacks. Parking spaces shall be a minimum of 9 by 18 feet. On-street parking is prohibited.

8. Traffic generated by the home business shall not create safety hazards or be substantially greater in volume than would normally be expected in the neighborhood.

9. Whenever a Home Occupation or Home Business exceeds any requirement of this Ordinance, it must relocate into an appropriate zoning district and will be subject to Site Plan Review by the Planning Board.

10. A Home Occupation or Home Business legally operating under the provisions of Section 1200 as amended in 2017 of the Zoning Ordinance on the date of the enactment of this Ordinance may continue unless and until the following:

- a. The occupation or business expands in size, scope or purpose.
- b. The ownership of the property is transferred

## **B. Home Occupation**

1. A Home Occupation shall be permitted in all districts of the town as a matter of right. No Site Plan Review or Special Exception by the Zoning Board of Adjustment is required for a Home Occupation.

2. The business activity shall occupy less than one-fourth of the floor area of the residence or an equivalent area in an accessory building.

3. The business shall be carried on by the resident owner, the resident owner's family, a resident tenant, or a member of a resident tenant's family.

4. The business may have no more than one non-resident employee.



5. Exterior storage of materials and equipment is prohibited.

### **C. Home Business**

1. A Home Business shall be permitted in all districts of the town and is subject to Site Plan Review by the Planning Board. A formal application is required.

2. The business activity shall occupy less than one-third of the floor area of the residence or an equivalent area in an accessory building

3. The business shall be carried on by the resident owner, the resident owner's family, a resident tenant or a member of the resident tenant's family.

4. The business may have no more than two non-resident employees.

5. Exterior storage of materials and equipment must be screened from view from any public road or abutting property.

**D. Exclusion:** Food articles produced within a residence or on the surrounding property such as vegetables, fruit, maple syrup, etc. may be sold seasonally from roadside stands and are excluded from the requirements of this Ordinance.

(Recommended by the Planning Board and Board of Selectmen) (Majority vote required)

### **Article 4: Town Operating Budget**

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of, **Two Million, Forty Two Thousand and Thirty Two Dollars (\$2,042,032)**, representing the Operating Budget for fiscal year 2018, as prepared by the Budget Committee. Said sum is exclusive of all special or individual articles addressed; or to take any other action relative thereto.

*The Board of Selectmen and Budget Committee Recommend this Article.  
(Majority Vote Required)*

### **Article 5: 1994 Fire Department Pumper Capital Reserve Fund**

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of **Nineteen Thousand Dollars (\$19,000)** to be added to the Repair and Replacement of the 1994 Fire Department Pumper Capital Reserve Fund previously established for that purpose; or to take any other action relative thereto.

*The Board of Selectmen and Budget Committee Recommend this Article.  
(Majority Vote Required)*

02/12/2018

**STATE OF NEW HAMPSHIRE  
TOWN WARRANT  
LYNDEBOROUGH, NEW HAMPSHIRE**

To the Inhabitants of the Town of Lyndeborough, in the County of Hillsborough in said state qualified to vote in Town affairs; You are hereby notified to meet at Citizens' Hall, 9 Citizens' Hall Road, in said Lyndeborough on Tuesday, the fourteenth (14<sup>th</sup>) day of March 2017 at ten o'clock in the morning until seven o'clock in the evening, for ballot Voting of Town Officers and all other matters requiring ballot vote; and, to meet at Citizens' Hall, 9 Citizens' Hall Road in said Lyndeborough, on Saturday, the eighteenth (18<sup>th</sup>) day of March 2017 at ten o'clock in the morning, to act upon Articles 2 through Article 12:

**Article 1: Selection of Officers**

To choose all necessary Town Officers for the year ensuing.

**Article 2: (Question 1)**

To see if the Town will vote to amend the following sections of the Town of Lyndeborough Zoning Ordinance which refer to the Home Business Ordinance:

(Explanation: These sections contradict other provisions of the Ordinance or are vague or redundant.)

**Amend Section 501.00 subsection h** of the Town of Lyndeborough Zoning Ordinance, Village District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*  
to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 701.00 subsection e** of the Town of Lyndeborough Zoning Ordinance, Rural Lands I District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*  
to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 801.00 subsection f** of the Town of Lyndeborough Zoning Ordinance, Rural Lands II District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*  
to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 901.00 subsection e** of the Town of Lyndeborough Zoning Ordinance, Rural Lands Three District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations*

and subject to Site Plan Review and approval by the Planning Board;  
to read: Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.

**Delete Section 1200.00 subsection o** of the Town of Lyndeborough Zoning Ordinance, Home Businesses, which reads: *The home business applicant or its legal representative must appear before the Planning Board in person and present the proposed plan. This gives the Board the opportunity to ask direct questions pertaining to the application and avoids any confusion as to intent, purpose or procedures of the proposed business.*

**Delete Section 1200.01 and its related subsections 1200.01-a, 1200.01-b, 1200.01-c, 1200.01-d and 1200.01-e** of the Town of Lyndeborough Zoning Ordinance which reads: *In appropriate cases and subject to appropriate conditions, the Planning Board may permit Home Businesses in compliance with the requirements of this section, section 1200.00 and Site Plan Review and Approval by the Planning Board. a) The home business shall not be evident from the road or other public right-of-way. b) Materials or equipment stored outside must be adequately screened from adjacent public rights-of-way and properties. c) Only retail sales which is customary and incidental to the home business are permitted. d) Separate structures may be constructed or placed to accommodate the home business if screened from surrounding development and suitable for reversion to use ancillary and incidental to a residential or agricultural use. e) The home business shall be clearly subordinate and secondary to the primary use of the property as a residence.*

*(Recommended by the Planning Board) (Majority vote required)*

### **Article 3: Town Operating Budget**

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of, **One Million, Nine Hundred and Eighty Five Thousand, One Hundred and Thirty Two Dollars (\$1,985,132)**, representing the Operating Budget for fiscal year 2017 as prepared by the Budget Committee. Said sum is exclusive of all special or individual articles addressed; or take any other action relative thereto.

*The Board of Selectmen and Budget Committee Recommend this Article. (Majority Vote Required)*

### **Article 4: 1994 Fire Department Pumper Capital Reserve Fund**

To see if the Town of Lyndeborough will vote to raise and appropriate the sum of **Nineteen Thousand Dollars (\$19,000)** to be added to the Repair and Replacement of the 1994 Fire Department Pumper Capital Reserve Fund previously established for that purpose; or take any other action relative thereto.

*The Board of Selectmen and Budget Committee Recommend this Article. (Majority Vote Required)*

**STATE OF NEW HAMPSHIRE  
TOWN WARRANT  
LYNDEBOROUGH, NEW HAMPSHIRE**

To the Inhabitants of the Town of Lyndeborough, in the County of Hillsborough in said state qualified to vote in Town affairs; You are hereby notified to meet at Center Hall, 1131 Center Road in said Lyndeborough on Tuesday, the thirteenth (13<sup>th</sup>) day of March 2012 at ten of the clock in the forenoon until seven of the clock in the evening, for ballot Voting of Town Officers and all other matters requiring ballot vote; and, to meet at Citizens' Hall, 9 Citizens' Hall Road in said Lyndeborough, on Saturday, the seventeenth(17<sup>th</sup>) day of March 2012 at ten of the clock in the morning, to act upon Articles 3 through 23:

**Article 1**

To choose all necessary Town officers for the year ensuing.

**Article 2**

Are you in favor of the adoption of an amendment to Section 1200, "Home Businesses" of the Town Zoning Ordinance? This amendment will replace the entire section 1200, as proposed by the Planning Board. (This amendment is recommended by the Planning Board and clearly sets guidelines for "Home Businesses" and does **not** require site plan review. (Majority vote required).

**1200.00 HOME BUSINESSES**

Home Businesses shall be permitted within the Town in the Village district and the Rural Lands One, Two and Three districts in compliance with the provisions of the section and are not subject to Site Plan Review and approval by the Planning Board.

- a. The home business shall be incidental and secondary to the use of the dwelling unit as a residence.
- b. The home business shall be operated in the residence or in an accessory structure.
- c. The home business shall occupy a maximum of one third (1/3) of the floor area in the residence, not including the basement. The one third (1/3) shall not apply to the accessory structure.
- d. Home businesses shall be carried on by the resident owner, resident members of the owner's family, a resident tenant, or resident members of the tenant's family and two non-resident employees are permitted on the premises at one time.
- e. No additions or changes shall be made to the residence that would make it impractical to revert the building to purely residential use.
- f. Noise, vibration, dust, smoke, electrical disturbances, odors, heat, glare, visual disharmony or other offensive emissions beyond normal residential use shall not be produced.
- g. Exterior display of materials and equipment is secured from public view.
- h. Traffic generated by the home business shall not create safety hazards.
- i. Sufficient off-street parking shall be provided for any non-residential employees, customers and suppliers who may normally be expected to need parking spaces at one

time. Where additional parking is required, the spaces shall not be located in the front yard or within the side or rear setbacks. On-street parking is prohibited.

- j. Home occupation sign regulation shall be replaced by Town sign ordinance.
- k. When a business outgrows the standards established for a home business, it must be relocated into the appropriate zoning district and be subject to Site Plan Review.
- l. Any hazardous materials used on site shall be handled in conformance with all state and federal regulations.
- m. Internet businesses are to be encouraged.
- n. Adult entertainment operated as a home business shall require an affirmative vote of the town before being approved.
- o. The Home Business applicant or its legal representative must appear before the Planning Board in person and present the proposed plan. This gives the Board the opportunity to ask direct questions pertaining to the application and avoids any confusion as to intent, purpose or procedures of the proposed business.

### Article 3

Shall the Town vote to modify an Exemption for the Elderly under the provisions of RSA 72:39-a from property tax in the Town of Lyndeborough, based on assessed value, for qualified taxpayers, to be as follows: for a person 65 years of age up to 75 years, (\$20,000); for a person 75 years of age up to 80 years (\$30,000); for a person 80 years of age or older (\$60,000). To qualify, the person must have been a New Hampshire resident for at least three consecutive years, own the real estate individually or jointly, or if the real estate is owned by such person's spouse, they must have been married for at least five consecutive years. In addition, the taxpayer must have a net income of not more than (\$25,000) or, if married, a combined net income of less than (\$35,000); and own assets not in excess of (\$60,000), excluding the value of the person's residence?

*Article 3-Explanation: When this exemption was updated in 2010 the net income limit should have been adjusted from \$20,000 to \$25,000 and the asset limit of \$52,000 was to be \$60,000. This article corrects those limits.*

### Article 4

Shall the Town vote to modify an Exemption for the Disabled under the provisions of RSA 72:37-b as follows: the exemption from assessed value for qualified taxpayers shall be (\$30,000)? To qualify, the person must be eligible under Title II or Title XV of the Federal Social Security Act, must have been a New Hampshire resident for at least five years, must occupy the property as his principal place of abode, must own the property individually or jointly, or if owned by a spouse, they must have been married for at least five consecutive years, had in the calendar year preceding April 1 a net income from all sources; of not more than (\$25,000) if single and (\$35,000) if married, and own net assets not in excess of (\$60,000), excluding the value of the actual residence and up to 2 acres or the minimum single-family residential lot size specified in the local Zoning ordinance?

*Article 4-Explanation: The disabled exemption incorrectly says one cannot have assets less than certain dollar amounts when it should say they cannot have more than those amounts.*

# Lyndeborough Planning Board

## September 15, 2016

*Approved*

### **7:30 PM: Call to Order & Roll Call**

**Chairman Bob Rogers, Vice-Chair Tom Chrisenton, Bret Mader, Alternate Julie Zebuhr and Selectman's Rep. Mark Schultz**

### **NEW BUSINESS:**

**-Home Business:** Paul White on 1328 Center Road submitted an application for a Nano Brewery to brew and distribute craft beer and ale in a 12x12 foot brewing shed.

**-Home Business:** Sharon and Larry Boisvert filed an application bring their porta-potty business back to the Feel Good Farm property on Johnson's Corner Road.

The above applicants were informed by Chairman Rogers the course of action for their applications is to see the Building Inspector and the Planning Board cannot take action.

### **CONTINUED BUSINESS:**

#### **-Master Plan Review**

A review of the Master Plan will be tabled until after the joint Board's wetlands meeting with NRPC on Nov. 9, 2016.

#### **-Driveway Discussion – Number of cuts per 500 feet**

The state driveway standards were reviewed. The Town is following the State standards.

There should not be more than 1 driveway to a single parcel. When frontage is 150 feet or less no more than 2 driveways are allowed.

The State standard states when a parcel exceeds 500 feet, no more than 3 driveways are allowed. The District Engineer, ZBA, Selectmen or Road Agent can grant exceptions as warranted by unusual conditions. That can be in excess of 1,000 feet

The town can't have less than the state standards but the driveway standards can be more restrictive. The Board discussed adopting the state standards. To have more restrictive standards would require a vote at Town Meeting.

### **MINUTES:**

**Vote: Bret Mader made a motion, Tom Chrisenton seconded to approve the minutes as amended. Motion passed 5-0.**

### **ADJOURN:**

**VOTE: Tom Chrisenton made a motion, Selectman Schultz seconded to adjourn at 7:41pm. Motion passed 5-0.**

Respectfully submitted,

Kathleen Humphreys

OCT 31 2016



**LYNDEBOROUGH PLANNING BOARD**

PO Box 6 Lyndeborough, NH 03082

Tel: (603) 654-5955

**HOME BUSINESS EXEMPTION**

Business Name: Portable Privies, INC

Owner Name: Laurent Boisvert II

Address: 54 Johnson Corner Rd. PO Box 135

Phone: 603-654-2001

Specific Description of Home Business: OFF site  
Portable toilet and WASH stand  
Rentals

I hereby certify that my home business qualifies for exemption from Section 1200.00 of the Town of Lyndeborough Zoning Ordinance.

Reason for Exemption: We have been doing Business  
FOR 30 YEARS (see documents).

I understand that if circumstances change and my home business no longer qualifies for this exemption I will immediately submit a new Home Business Application through the Planning Board.

Laurent Boisvert II  
Signature of Owner

8-25-16  
Date



# LYNDEBOROUGH PLANNING BOARD

PO Box 6 Lyndeborough, NH 03082

Tel: (603) 654-5955

## HOME BUSINESS APPLICATION

Date: 8-25-16

Name: Laurent Boisvert Telephone <sup>603-</sup>654-2001 e-mail lboisvert@tellihe  
 Address of Home Business 54 Johnson Corner Rd. Map 237 Lot 13

Property Owner Information (if other than applicant)

Owner: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

Description of Home Business: off site Portable toilet and  
WASH Stand Rentals

**HOME BUSINESS.** The Town of Lyndeborough encourages the establishment of home businesses that are compatible with the residential character of the neighborhood. A home business may serve as an incubator to allow businesses to start up. However, a home occupation shall be incidental to the use of the site for residential purposes.

### 1200.00 Village, Rural Lands One, Two and Three districts

- Is the home business incidental and secondary to the use of the dwelling unit as a residence?  Yes  No
- Is the home business operated in the residence or in an accessory structure?  Yes  No
- Will the home business occupy less than one third (1/3) of the floor area in the residence?  Yes  No  
*NON-Applicable*
- Will the home business be carried on exclusively by the resident owner, resident members of the owner's family, a resident tenant, or resident members of the tenant's family?  Yes  No
- Will more than two non-resident employees be on the premises at one time?  Yes  No
- Will additions or changes be made to the residence?  Yes  No
- Will noise, vibration, dust, smoke, electrical disturbances, odors, heat, glare, visual disharmony or other  Yes  No



emissions be produced?

Will hazardous materials be produced or stored at the site of the home business?

Yes  No

Will there be an exterior display or storage of materials and equipment?

Yes  No

Will the home business generate additional traffic in the neighborhood?

Yes  No

Is sufficient off-street parking available for non-resident employees, customers and suppliers who may normally be expected to need parking spaces at one time?

Yes  No

NON-Applicable

Will the home business have a sign?

Yes  No

**1200.01 Rural Lands One, Two and Three Districts.**

Will the home business be evident from the road or other public right-of-way?

Yes  No

Will materials or equipment stored outside be visible from adjacent public rights-of-way and properties?

Yes  No

Will there be any retail sales not related to this home business?

Yes  No

Will separate structures be constructed or placed to accommodate the home business?

Yes  No

***Owner / Applicant Certification***

The signature(s) below certifies that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I agree that I have read the Zoning Ordinance requirements concerning Home Businesses, understand the described regulations and agree to abide by them. I also understand that should the Home Business change or become a nuisance, hazard or unreasonably interfere with the quiet enjoyment of other people's premises, this Home Business Permit will be revoked.

Owner: *Laura K. Bowser* Applicant: \_\_\_\_\_

***Planning Board Approval***

Approved  Denied  Exempt *Note: Exemptions require a Home Business Exemption form be completed.*

Planning Board: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of New Hampshire  
Department of State

CERTIFICATE OF INCORPORATION

OF


PORTABLE PRIVIES, INC.

The undersigned, as Deputy Secretary of State of the State of New Hampshire, hereby certifies that duplicate originals of Articles of Incorporation for the incorporation of PORTABLE PRIVIES, INC., duly signed pursuant to the provisions of the New Hampshire Business Corporation Act, have been received in this office.

ACCORDINGLY the undersigned, as such Deputy Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation of PORTABLE PRIVIES, INC. and attaches hereto a duplicate original of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I hereto  
set my hand and cause to be  
affixed the Seal of the State  
of New Hampshire this 6th  
day of February, 1987



  
Robert P. Ambrose  
Deputy Secretary of State

EIGHTH: Provisions for the regulation of the internal affairs of the corporation are:

Any provision required or permitted to be set forth in the By-Laws.

NINTH: The address of the initial registered office of the corporation is 40 Stark Street, Manchester, New Hampshire, 03105, and the name of its initial registered agent at such address is William V. A. Zorn.

TENTH: The number of directors constituting the initial board of directors of the corporation is one, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are:

<u>Name</u>	<u>Address</u>
Laurent Boisvert	Johnston Corner Road RFD #1 Wilton, New Hampshire 03086

ELEVENTH: The name and address of each incorporator is:

<u>Name</u>	<u>Address</u>
Laurent Boisvert	Johnston Corner Road RFD #1 Wilton, New Hampshire 03086

Dated: 1/30, 1987

  
Laurent Boisvert



**Portable Privies, Inc.**  
Rentals & Service  
Construction & Special Events



Laurent Boisvert II  
Lyndeborough, NH 03082

603-654-2001



SATELLITE INDUSTRIES, INC.

2530 XENIUM LANE  
MINNEAPOLIS, MN. 55441  
612 - 553-1900

INVOICE NO.  
**206317**

ORDER # 04993

S PORTABLE PRIVIES  
O JOHNSON CORNER ROAD  
L BOX 135  
D LYNDEBORD NH  
T  
O 03082

S PORTABLE PRIVIES  
H JOHNSON CORNER ROAD  
I BOX 135  
P LYNDEBORD NH  
T  
O 03082

INVOICE DATE	ORDER DATE	SALES	P.O. NO.	CUST. TEL. NO.	DEPT.
06/30/1986	06/03/1986	BOB SELISKER	LARRY BOISVE	603-654-2001	
ABF (6/4/86)		SPECIAL INSTRUCTIONS CASH IN ADVANCE			
QTY. ORD.	QTY. SHIP	ITEM NO.	DESCRIPTION	UNIT PRICE	AMOUNT
1	1		FREIGHT CHARGES		332.59
TERMS: NET 10 DAYS - SERVICE CHARGE ON PAST DUE BALANCES				SALES TAX	

CLAIMS ON SHORTAGES OR DAMAGED GOODS  
MUST BE MADE WITHIN 30 DAYS OF INVOICE DATE

ORIGINAL INVOICE

PLEASE REMIT THIS AMOUNT  
NO STATEMENT WILL BE SENT

**332.59**

# **TOWN OF LYNDEBOROUGH PLANNING BOARD MINUTES**

**November 17, 2016**

*Approved w two attachments*

## **7:30 PM Call to Order & Roll Call**

Chairman Bob Rogers, Vice Chair Tom Chrisenton, Larry Larouche, Mike Decubellis, Steve Brown, Alternate Julie Zebuhr and Selectmen's Rep. Mark Schultz were present.

Guests present: Karen Hewes, Sharon Boisvert, Larry Boisvert, Landon Bell, John MacLellan, Attorney Eric Newman, Brett Believeau, Katie Peterson, Joe Whitmore and Mr. Billeo were among the guest present

## **NEW BUSINESS:**

### **Sarah & Jerry Theriault, 1526 Center Road, Lyndeborough**

Informal Discussion regarding an accessory apartment will take place next meeting.

### **Granite State Concrete, Co. Permit Renewal: Map 213-06**

John MacLellan, Granite State Concrete; Brett Believeau, North American Reserve and Attorney Eric Newman were present as well as numerous abutters.

Granite State officials explained that in 2001 the company installed monitoring wells in the current excavation and future excavation areas and have been monitoring the water levels. A database of the data is kept. For a baseline, samples from two of the wells were sent to a lab to test the water quality. After the first permit, testing was required every two-years then extended to every five-years. The company provided proof they are not affecting the water level.

Attorney Newman explained the test do not look at surface water levels. Data shows that besides seasonal flux there have not been any major changes since their data in 2001. There is a National Surface Water Network on-line across the United States and one of the wells where data is collected every day is in Greenfield, New Hampshire and data from that well and their test sites show the same data points and same flux.

Mr. Bell's new well was tested in 2010 and water samples were taken for a baseline. As part of the next permit process, the tests were redone and Mr. Bell's water quality has improved. Magnesium went up 1,000 mg which is still above the acceptable level.

Granite State Concrete officials explained that they are not blasting into the bedrock. Per permitting, they need to stay 5 feet above the water table but the company policy is to stay about 8 feet above the water table. They won't change their elevation or mining techniques.

Mike Decubellis asked that if their techniques don't impact the levels and wanted to know if the sand sitting on top helps to filter the water. Mr. Believeau said no, they area above the water table. The sand that is above the bedrock does provide some filtration.

Attorney Eric Newman asked that Planning Board to lift the tests. If there are any concerns the Board can inform Granite State Concrete and they will address it. Water testing can be reinstated if necessary. Some Board members had concerns with this request because the town does not monitor the wells and would need to rely on complaints/concerns from residents.

Mr. Bell wanted to go on record about lodging complaints. He would like to see testing once a year. He has concerns about the water level but felt the quality would not change much.

Mr. Believeau explained the original plans have the controlled contour and the bottom of the floor grade at 680-695 feet. If the area has a drought and the water drops it won't go below that elevation. Instead of just being 5 feet above this area will be 15 feet above.

Tarn Road resident Karen Hewes felt in regards to the original permit there was a reason for yearly testing to be done without the data. She had a concern some of the monitoring didn't happen, dams were removed and problems at the Piscataquog River. She felt the Planning Board has seen good work and would want that to continue.

Katie Peterson, Tarn Road resident, asked about the annual cost to keep up with the water test. She was informed it could be several thousand dollars.

Tarn Road resident Joe Whitmore asked how this water testing process for renewal is different from home water testing. Attorney Newman explained that annual elevation testing measurements are taken and under the most recent modification to the permit it changes the water testing process and comparisons. Mr. Whitmore favored the tests. He felt that since the water quality has improved while there is an on-going operation at the pit, it does not guarantee any landscape changes would have a different affect. Attorney Newman cannot say the changes are due to excavation.

Mike Decubellis wondered if the town should check with the hydrologist. He felt that since moving the sand from the top does not affect the water quality he felt it was a reasonable request not to monitor the water level.

Selectman Schultz asked Mr. Bell his opinion. Mr. Bell said eliminating testing is the wrong thing to do and suggested testing maybe every 2 or 3 years but to continue it in some fashion.

It was noted this pit will be done in 2018.

John MacLellan mentioned the company wanted to be good neighbors and agreed to this extensive and expensive testing that no other gravel pit in the state is doing. He felt the 17 tests were conclusive.

Chairman Rogers suggested testing prior to each renewal and reserve the right to reopen this issue if there are any complaints in regards to water level or quality.

Brett Believeau discussed how the water moves through the sand and spaces is not the same as water trapped in bedrock. They are not using explosives therefore there is as much risk of contamination as compared to riding a mower in the area.

Steve Brown discussed his surface well went dry 30 years ago. The repairs had 63 feet of casing and seal to keep the surface water out of the ground water. He wondered if all wells should have casings installed because water can filter through the rocks. The answer was yes.

**VOTE: Tom Chrisenton made a motion for Granite State Concrete to do water testing at the time of renewal for water level and quality, which is every five years. Mike Decubellis seconded the motion. All voted yes. Motion passed unanimously.**

Attorney Newman opposed to this motion, and asked if they can have an agreement if the results, so there are no further changes except for seasonal and no degradation for water, quality can they be lifted at that time. The company is testing water level annual and water quality testing every five years.

Karen Hewes asked if the Board visits the site every five-years. They have not. Mike Decubellis will schedule a site walk.

**Intervals of renewal:**

Attorney Newman reported there are five more years to go in phase 1, which is 17 years. The pit will be in operation about 85 years and felt a longer term would be appropriate.

Mr. Bell had a complaint about the barrier that was to be provided from his property to the gravel operation and felt he has not had sufficient response from Granite State Concrete regarding the work that was done. The trees that were planted died and have not been replaced and the wall was not done to his satisfaction. The landscape contractor was hired by Granite State Concrete and the contractor has not replaced the dead trees. He has a letter on file with the complaint and said he tried to talk to the company.

John MacLellan responded he has not seen the work that was done. They hired a contractor that guaranteed the work and he said he would talk to the contractors. They agreed to do the buffer work as outlined and will again agree to do the work.

***Chairman Rogers requested that Granite State Concrete submit a letter in one year to say what has been done to repair the buffer for Mr. Bell's property and what level of receipt.***

The National Resource Conservation Services has a plant specialist that deal with revegetation sand and gravel pits. There is an office in Milford that could provide information. There was a debate on the type of trees and plants to use.

**VOTE: Larry Larouche made a motion to stay at given years for the renewal process. Tom Chrisenton seconded. Julie Zebuhr voted no. All other members voted yes. Motion passed.**

**LETTER OF CREDIT:**

**VOTE: Selectman Mark Schultz made a motion to change banks to Santaria Bank. Mike Decubellis seconded the motion. Motion passed unanimously.**

***The Board will visit the pit about six months prior to the renewal.***

**VOTE: Selectman Mark Schultz moved to approve the renewal the Granite State Concrete's Permit for five years subject to all that was said tonight. The Board reserves the right to reopen the hearing if the original plan for the landscaping is not fulfilled. Larry Larouche seconded the motion. Motion passed unanimously.**

**Home Business Ordinance:**

Chairman Rogers provided a handout for the Board to review with proposed language change to the Home Business Ordinance which will be voted on at Town Meeting 2017. Members were asked to review the document and provide comments. *(See attached)*

**Driveway Permits:**

The State submitted a permit for a temporary logging cut on Center Road.

Mike Decubellis questioned that there is not a map that shows where the crossing is and had a concern.

**Intents to Cut were reviewed for:**

Old Temple Road  
Rt. 31  
Center Road  
Mountain Road

Mike Decubellis informed the Board that Helen van Ham is doing a cut which is going into Emory Holt Road, a Class VI Road, therefore the logger should not be skidding and dredging the area. His concern is this logger previously did a poor job on a French Road project. He noted that Stonebridge road is there.

**Letter:**

**Bob Rogers read the letter he drafted and plans to send to Larry Boisvert. *(See attached)***

**MINUTES:**

Tabled until the next meeting.

**Adjournment:**

**VOTE: Tom Chrisenton moved, Larry Larouche seconded to adjourn at 9:12pm. Motion passed unanimously.**

Respectfully submitted,

*Kathleen Humphreys*

Kathleen Humphreys  
Planning Board Secretary

*Attached: Proposed Home Business Ordinance for review (Draft)*

***Bob Rogers' letter to Mr. Boisvert, dated 11-17-16***



DB

at 11/17/16 meeting

**To see if the Town will vote to amend the following sections of the Town of Lyndeborough Zoning Ordinance which refer to the Home Business Ordinance:**

**Amend Section 501.00 subsection h** of the Town of Lyndeborough Zoning Ordinance, Village District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*

to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 701.00 subsection e** of the Town of Lyndeborough Zoning Ordinance, Rural Lands I District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*

to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 801.00 subsection f** of the Town of Lyndeborough Zoning Ordinance, Rural Lands II District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*

to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Amend Section 901.00 subsection e** of the Town of Lyndeborough Zoning Ordinance, Rural Lands Three District Permitted Uses, which reads:

*Home Businesses in compliance with the requirements of Section 1200.00 of these regulations and subject to Site Plan Review and approval by the Planning Board;*

to read: *Home Businesses in compliance with the requirements of Section 1200.00 of these regulations.*

**Delete Section 1200.00 subsection o** of the Town of Lyndeborough Zoning Ordinance, Home Businesses, which reads: *The home business applicant or its legal representative must appear before the Planning Board in person and present the proposed plan. This gives the Board the opportunity to ask direct questions pertaining to the application and avoids any confusion as to intent, purpose or procedures of the proposed business.*

**Delete Section 1200.01 and its related subsections 1200.01-a, 1200.01-b, 1200.01-c, 1200.01-d and 1200.01-e** of the Town of Lyndeborough Zoning Ordinance which reads: *In appropriate cases and subject to appropriate conditions, the Planning Board may permit Home Businesses in compliance with the requirements of this section, section 1200.00 and Site Plan Review and Approval by the Planning Board.*

Planning Board  
Town of Lyndeborough  
9 Citizens' Hall Road  
Lyndeborough, NH 03082  
November 17, 2016

Laurent Boisvert II  
Johnson Corner Road  
Lyndeborough, NH 03082

Dear Mr. Boisvert:

For the past few months, we have anticipated a request from you for an amendment to your approved site plan for the recreational activities on your property on Johnson Corner Road. Such a request must include a detailed description of the proposed amendment along with a copy of the existing site plan with an overlay of your proposal, and any supporting documents you may choose to submit. To date, we have not received these. In order to schedule and legally notice the required public hearing in December, we must have a complete application by Wednesday, November 23, 2016.

We have received an application for a home business, which we are not authorized by the present zoning to consider.

Please give this matter your immediate attention.

Sincerely,



Robert H. Rogers, Chair  
Lyndeborough Planning Board

Planning Board  
Town of Lyndeborough  
9 Citizens' Hall Road  
Lyndeborough, NH 03082  
November 17, 2016

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Robert H. Rogers, Chair  
Lyndeborough Planning Board