

**TOWN OF LYNDEBOROUGH**  
**Zoning Board of Adjustment Minutes**  
**September 13, 2018**  
*Draft 1*

**7:02 p.m. Roll Call:** Chairman Karen Grybko; Vice Chair Rick Roy; Lisa Post, Linda Anderson and alternate Pam Alter.

Member Tom Chrisenton recused himself because he is also the Planning Board Chairperson and there is the possibility this case may be before the Planning Board. Pam Altner took Mr. Chrisenton's seat at the Board.

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

Public Present: Larry Boisvert, Attorney James Lombardi, Sharon Boisvert and Wally Holt

Media Present: Jessie Salisbury

**CONTINUED 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 of Adjustment per his request of a Motion to Rehear the decision of the May 22, 2018 ZBA meeting which was heard on August 7, 2018 and ended with a continuance rescheduled for tonight.

***Meeting transcribed as followed:***

**Chair Grybko:** Our business tonight is a continuation of the hearing for Larry Boisvert, Portable Privies to rehear the Case 2018-2. This is an Administrative Appeal of Ed Hunter's letter dated on March 22, 2018. We are going to use the podium tonight to present and since this is the third time that we are rehearing this we are going to ask everybody to keep the comments to 10 minutes. According to Ed Hunter's letter the reason he wrote the letter for the Home Business Application to deny it was:

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 home 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.

**Chair Grybko**, addressing **Attorney Lombardi**. Would you like to address the issues of Ed Hunter's letter? The first point why Ed said he denied it was the definition of Home Business that it is supposed to be conducted in the residence or accessory structure and it's conducted partially outside.

**Attorney Lombardi**: Yes, I would like to address that. Can I clarify one thing you said that all speakers are limited to 10 minutes, does that include me?

**Chair Grybko**: Yes.

**Attorney Lombardi**: I didn't realize we were going with that procedure as we have been here before and those procedures were not in place. I will do my best to comply. Just give me a minute to find what I need to address that.

**Chair Grybko**: According to our Zoning Ordinance that was updated this year at our Town Meeting it says, "*General 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.*" Basically Ed addressed that and it's not all located inside a building.

**Attorney Lombardi**: at 3:45 minutes into meeting: By the way, I would like to ask if the information, I assume this is how it goes, but would like to make the request, the information and documentation that has been provided in prior hearings be incorporated into the record or may stay in the record for the proceedings.

**Chair Grybko**: Yes.

**Attorney Lombardi**: We did address that in my letter of April 19, 2018 which was the letter asking for the appeal as indicated we are appealing that.

**Secretary Humphreys**: Is that information in the April 24, 2018 letter because going...

**Attorney Lombardi**: No, the April 24 was the variance request which we are not considering tonight. The April 19 letter was the letter is the official letter on record.

**Secretary Humphreys**: The Board made the decision they are going off the April 24 letter because the letters were very similar. (*Both boxes were checked for variance and appeal on Mr. Boisvert's handwritten applications for April 19, 2018 and April 24, 2018. In the notes of April 24, 2018 it references the Appeal and Variance have been filed contemporaneously but stands alone*)

**Attorney Lombardi**: I understand that but the letter made it very clear, the April 24 letter was purely the appeal letter, was purely the letter requesting a variance. The April 19 letter, the first letter, was the appeal letter appealing Mr. Hunter's decision of March 22, 2018. As far as, by the way, we do object to officially the fact this is being decided under now a different version of the ordinance than what Mr. Hunter used in making his decision. He did not make his decision under the 2018 version but rather under the 2017 version.

**Chair Grybko**: Understood, but we need to go by the 2018 version.

**Attorney Lombardi**: I want my objection included on the record for that.

**Attorney Lombardi:** To get to your question directly Ms. Grybko. Mr. Hunter's statement inclined that all aspects of the business must be conducted in a residence or accessory structure is incorrect. Section 1200, B of the 2017 version, if you allow me to get to the 2018 version in just a sec., states the home business shall be operated in the residence or accessory structure but the ordinance also contemplates that materials and equipment related to the business shall be kept outside and that is true under the 2017 version and 2018 version.

**Chair Grybko:** A Home Occupation; the definition is that the Home Business, acceptable business is under the Planning Board with a Site Plan Review. Because it's in front of the Zoning Board, we have to assume that it is a under Home Occupation because we are not allowed to grant a Home Business permits.

**Attorney Lombardi:** My understanding is...

**Member Lisa Post:** We are working off the Home Business.

**Attorney Lombardi:** I would like to get into the record is the relevant versions of the 2017 Ordinance and the 2018 Ordinance. I have 7 copies of each. It breaks it down nicely as to where the Home Business and the Home Occupation terms are defined.

(See file for copies. 2018 Zoning Ordinance listed as Item #1. 2017 Zoning Ordinance listed as Item #2).

**Secretary Humphreys:** When did you print these?

**Attorney Lombardi:** Today. Oh, they were copied today as to when they were printed I think my secretary ran them off just this week. I don't know if the 2017 version is available on-line. I don't think it is. The 2018 version is on-line. We had the 2017 version.

My understanding of the 2018 version is it created two categories; Home Business or Home Occupation. There are General Requirements that apply to both and then there are specific requirements that apply to the Home Occupation and the Home Business. As I understand one of the differences between a Home Occupation and a Home Business is that no materials are allowed outside at all with a Home Occupation, with the idea that it's something along the line of accountants or an internet business that can be conducted within the four walls of the residence. A business, as I understand, contemplates that it will be conducted primarily within the walls of the residential or accessory structure but where the business part of it will be but the materials and equipment can be stored outside as long as they meet the requirements they are sheltered from public view, from abutting properties or from the road. There are a couple of other minor difference as well. My understanding is Mr. Boisvert is applying for approval as a Home Business not a Home Occupation.

To get to the original question, as to Mr. Hunter's first reason for denying the application.

*"1. Home business is to be conducted in the residence or an accessory structure". His objection is appears to be there are operations that are conducted outside including according to him "cleaning and possible repairs of the toilets". Again, the ordinance clearly anticipates that the materials and equipment for use and storage outside in connection with the business. In this case the business operation utilizes a computer, filing cabinet and a desk in the Boisvert home. That operation occurs in a portion of one room, correctly if I'm wrong Larry, the square footage of that operation is a about 12x12, at least the whole room is. Compared to the total area of the house itself which is 1,200 square feet. Again the ordinance allows for the materials and*

equipment to be stored outside so long as they are obscured from public view, either from the road; they are screened from view of any road or abutting property.

**Attorney Lombardi Continued:** When the ordinance was amended in 2012. By the way, I do have the 2017 version for what occurred in the 2012. Materials and equipment could not be displayed at all outside. That was changed in 2012 to allow storage as long as it was secured from view. Therefore, maintaining materials and equipment related to the operation of the business outside, like portable toilets in this instance, is allowed.

Beyond the portable toilets being out, Mr. Hunter also suggests that any activity associated with the portable toilets like loading and unloading them or cleaning and repairing them is likewise forbidden by the ordinance if that activity is conducted outside. But the ordinance does not restrict that activity and it makes no sense to me. If the material and equipment may be maintained outside, as the ordinance expressly allows, as part of any business, it's only natural the toilets would be loaded and unloaded as needed for delivery to and from customer's sites. The same thing applies for cleaning and repairing as any good business would want to make sure they maintain their equipment, especially if they are going to customer's sites they need to be cleaned and repaired. The activity in this case is minimal in any event. Likewise it is not visible to the public.

To address what happens outside. Mr. Boisvert does perform some cleaning and some repairs on the toilets but the cleaning only involves water. The disinfecting or any other services; removal of waste takes place on the customer's site. That does not take place at Mr. Boisvert's property.

As has been testified before the waste is hauled under license under DES to a license disposal and treatment facility in Milford. The disposal of human waste on the Boisvert property was cited by DES many years ago as new environmental laws and regulations were enacted by the State. But such activity was discontinued in 2003 and the property record was cleared by DES one year later. By the way I do have, copies of a letter by Tim Sweatt of DES actually inspects the vehicle that Mr. Boisvert uses and approves or disapproves the certification he needs to get the permit from DES. I don't have time to read the letter but would like it in the minutes. (See file for letter dated Sept. 12, 2018 from Tim Sweatt. Labeled Item #8 submitted 9/13/18)

This letter ever since he took the position, Mr. Sweatt began providing these inspections and decided on certain certification and approvals since 2002. He also mentioned that Mr. Boisvert also obtained his certification every year since then and had the vehicle inspected every year from 2010 to 2018 with the exception of 2014. But again, those inspections are only required every other year. Sorry, I don't mean to take over the proceedings here. If you have a particular questions.

**Chair Grybko:** Does anyone have any questions? (no questions)

**Attorney Lombardi:** Are you asking more questions.

**Chair Grybko:** We are pretty much all set here. Do you have anything else you want to add to the #1?

**Attorney Lombardi:** I have quite a bit more to add. I would like to at least get in other exhibits. I have an updated plan that was prepared by the land use consultant.

**Chair Grybko:** We are doing an Administrative Appeal tonight on why Ed Hunter denied the application. I don't think that has anything to do with an Administrative Appeal.

**Attorney Lombardi:** If I could just voice my objection. You told me that the version of the Zoning Ordinance of the needs to be applied is the version that applies at the time the appeal or the application is being heard. What I don't understand is why we can't address...the appeal covers the whole application and you folks last time decided there were some conditions that were not met beside the ones that Mr. Hunter's had cited in his letter. So it seems to me we should be given the opportunity to make our case again. It is a re-hearing. I will go by your decision on this but it's a re-hearing of the appeal and we need to make our case to indicate why Mr. Hunter was incorrect on every ground that he stated, first of all. Secondly, why there are no other grounds that the Board might apply in upholding his decision. So I object to not being given the opportunity to explain and to address all the issues in this case.

**Vice Chair Rick Roy:** One of the grounds was the question of incidental and secondary. There are already been a precedent with the Court. Mr. Roy read from page 10, "*Under the facts of this case, in a light most favorable to respondents, the court cannot conclude that the storage of up to fifty portable toilets, a pickup truck and a tank truck is incidental to the primary use of the Laurent's cottage as a residential dwelling. Nor can the court conclude that the storage of these items is customary such that regulatory authorities in Lyndeborough intended to permit such use in Rural Lands One district.*" It said up to 50 units but apparently it's up to 80 units. The court said this. (See file for 2005 Superior Court ruling Town of Lyndeborough vs Boisvert)

**Attorney Lombardi:** First of all I would like to make a clarification, Mr. Boisvert realizes, and has the capacity, for up to 80 toilets at the properties, there are not 80 toilets at the property. Larry, do you want to respond as to how many you have on the property now?

**Larry Boisvert:** About 30.

**Member Lisa Post:** I object to the conversation going on here. We are really here for the appeal.

**Attorney Lombardi:** My apologies.

**Member Lisa Post:** We don't want the same situation as last time. It just went on and on. We are going to hear the appeal directly and only on those three items only. And you finished item number 1 and there were no questions.

**Chair Grybko:** I would like to give Russ Boland a chance to address some number 1 on behalf of Ed Hunter.

**Town Administrator Russ Boland:** I'll follow what ever procedures you want to but I think it would be in the interest of everyone involved for the attorney to present his case then I present mine then rebut. Is that okay with you?

**Attorney Lombardi:** That is fine. As long as I can rebut as needed and keep it short and sweet. Should I address the secondary issue?

**Chair Grybko:** Yes, you can now.

**Attorney Lombardi:** I'll reiterate what I said in my letter of April 14 then I'll talk briefly about the Court decision. (*Unsure which day Atty. Lombardi meant, the letters were dated April 19 and April 24*). The term incidental. Neither term; incidental or secondary, is defined in the Zoning Ordinance. I think they are both terms of art that are used by courts and by towns in their Zoning Ordinances. I did cite Webster's 3<sup>rd</sup> New International Dictionary to define *Incidental* to mean quote, "subordinate, non-essential or a temporary position or significance". *Secondary* to mean, "of second rank, importance or value". The meaning is clear that is it not supposed to overtake the residential purpose of the property. In this case, the primary use of the property is of course, residential. Mr. Boisvert has lived there a long-time, all of his life.

**Member Lisa Post:** Can I ask if you have any new information on that? Because again, you presented that previously. Our understanding was you were going to come with some additional information.

**Attorney Lombardi:** I am. As far as the Court decision in 2005 is concerned, the Court issued the order granting severance judgement to the Town of Lyndeborough of the question of whether the Boisvert's will operate the portable toilet business is in violation to the ordinance. And it said they were in violation because they had no express permission from the town either in the form of a Variance or Special Exception or other permit to operate the business. And the business couldn't be considered "accessory use" to their use of the property for residential purpose. It's true; the Boisverts didn't have express permission. But the rest of what the court stated in that decision is irrelevant because it was in fact looking at whether the business was "accessory use" for zoning purposes and that is the difference. The Boisverts are not here looking to have their business approved as an accessory use but as a business as a matter of fact, both the 2017 version and the 2018 version define accessory use as being "*customary, incidental and subordinate to the primary use of the property*". It also defines Home Business but it defines that as "*incidental and secondary*" and not "*customary*". The court throughout its decision on that issue referred to what is an accessory use or what constitutes an accessory use. And an accessory use is a use that is typically customary, incidental and subordinate for the principal use of the structure. And the court goes through about 2-3 pages of this in its analysis.

**Member Lisa Post:** I will say we did go through this as well last time.

**Attorney Lombardi:** When did we go through this?

**Member Lisa Post:** At the last hearing, and the first hearing.

**Attorney Lombardi:** You asked me if I had a response to that and I did not have a chance to respond specifically to that question. Other than to say that is what the court did but I want to point out, that part of the court's decision does not apply here. The court, first of all said there are only two things. You can have express permission or you can only have an accessory use but this ordinance provides for a third use and that's a Home Business which is incidental and secondary. And that is expressly provided under Section 700 or 701, whatever that provision is and that is in the 2017 and the 2018 version.

**Member Lisa Post:** Are you presenting new information on that?

**Attorney Lombardi:** That is what I'm doing now. Is that okay?

**Member Lisa Post:** Yes, but we did hear all this before.

**Attorney Lombardi:** No you didn't. I didn't prepare that before. I'm not sure how you could have. If you would you just allow me to present what I have I will just be a minute or so.

Again, the court's decision used the term customary throughout its analysis of that issue. And we are not talking about here what is customer because I think most of us would agree that the operation of a portable toilet business is not customary in a residential use. I think typically we think of a garage of being customary, tennis courts, maybe a tool shed. But the question here is not what's customary. The question is what is incidental and secondary or what is secondary to the use of the property as a principal, residential use principally.

The Portable Privies business in this case will always be subordinate to the use of the property as a residence and it has not taken the place of the Boisvert's home nor will it. The fact there are about 30 or less portable toilets stored there does not change that fact. This is a large piece of property as you know, about 200 acres. The business takes up just a minute fraction of that acre. It's conducted professionally, virtually out of sight and with due regard to the environmental impacts, the neighbors and the community. There is no smell, no noise, no hazards there is nothing unsightly that can be seen. The houses of course can be seen as can the barn, the horses they have as well as the fields, the hills and the trees. This business then, given all that, is not secondary to the use of the property given as a residence is unclear. I did mention this briefly that between 2012 to 2017 the Town of Lyndeborough approved five applications to operate Home Businesses all appears in 2013 and they included a Bed & Breakfast, the sales of firearms and accessories, earth excavation and even if I can make a point...

**Member Lisa Post:** Again, from the information you provided I can go back and look at the notes...*Mr. Lombardi talked over Ms. Post.*

**Attorney Lombardi:** We hope you do. There seems to be a lot of comments made about things that have already been addressed but they aren't getting through to the Board, especially regarding the appeal itself and why we did that. I'm just trying to make it clear.

**Member Lisa Post:** It's very clear. We heard it the first time. This is almost the third time on some of these things and we were looking new information that you had to come to us with.

**Attorney Lombardi:** I understand. I'm not trying to be difficult here. But I am trying to get across the point we have a situation where this gentleman here is trying to get approval for his business.

**Member Lisa Post:** We realize that. That is why we are here.

**Attorney Lombardi:** But there were other business that was approved that could scarcely be deemed incidental and secondary. And the ordinance also allowed adult entertainment and hazardous materials...

**Member Lisa Post:** We are not here to dispute all of those. We are here on the appeal and that is singly what we are here to do tonight. And we are now at 25 minutes into this and we are still on the first item so I would like you to either present new information or move on...

**Attorney Lombardi:** In fairness, I didn't realize we would be restricted in how much time we would have and what we could present. This is a re-hearing, meaning that it's a new hearing.

**Chair Grybko:** It's a hearing that started a month ago and that we were looking for this new information to help us make our decision.

**Attorney Lombardi:** And I do have more information. I presented some to you. Right now we are talking about the Court's decision. Even though you might have seen the decision you have not heard our arguments except for what I was just able to tell you on why the court's analysis on why it was incidental and secondary or customary should apply in this case. I've addressed that.

**Lisa Post:** So are we ready to move on to the next one?

**Attorney Lombardi:** Can I ask again if I can just submit the exhibits I got, to be part of the records that are not already in the records? *Mr. Lombardi presented a map.*

**Lisa Post:** We are not the Planning Board. Those items will not help us. Those would be for the Planning Board and the variance.

**Attorney Lombardi:** We are trying to address all issues that are relevant to this decision by Mr. Hunter. He appears to...there are a number of underlying conditions and factors that go into his decision and why we feel that they are wrong and we feel we should be given the opportunity present them. I will grant you, I have repeated some things before and will try to eliminate them to get them done quicker.

*Mr. Lombardi presented the following documents into the record. See file for documents.*

*-Updated map of Feel Good Farm with privies shown outside, dated 2/10/18 by Brickstone Land Use Consultants (Item #3). Previous map from 2004 showed trailers where privies were stored in.*

*-"Safe T Fresh", explanation of chemicals Mr. Boisvert uses in cleaning in the tanks. Printed from Wikipedia. (Item #4)*

*-Letter from abutter Dan Holt, no date (Items #5)*

*-Letter from abutters Wayne and Adrienne Colsia from Paradise Farm, dated 9/12/18 (Item #6)*

*-Email from Attorney Drescher, dated 2/14/18 (Item #7)*

Mr. Lombardi started to explain the Safe T Fresh chemicals.

**Chair Grybko:** That information is not addressing Ed Hunter's letter. That is concerning an application for the Planning Board and denial or...

**Attorney Lombardi:** I think it goes to the question of is it incidental or secondary. It's before a part of...the Board did hear comments from people who had serious concerns about the environmental issues.

**Chair Grybko:** That is more towards a variance than the appeal.

**Attorney Lombardi:** I want to make sure we are covering our bases here. I'm not going to talk about anything completely irrelevant. I don't want to waste your time...

Long pause



**Attorney Lombardi:** Are you waiting on me?

**Chair Grybko:** Yes. And for Russ.

**Attorney Lombardi:** Can I address one thing here? We didn't talk about Mr. Hunter's third reason which was essentially can't operate more than one business on the property and he said it another way the Planning Board may have a conflict with this but there is nothing in the ordinance that says you can't operate more than one business on the property as long as you meet the requirement of home business or whatever you are looking for. It should be allowed. I do want to address one other thing. The fact the Board indicated they are deciding this issue under the 2018 version of the Ordinance, there are some different elements we have not addressed at all and clearly Mr. Hunter was again referring to the 2017 version but there is one factor here that, there are a number of factors that are not in the 2017 version, but one that is maybe significant is #3 under the General Requirements which states the "Business activity shall not change the character of the surrounding neighborhood nor will it provide window displays or other characteristics associated with retail or commercial use." There is no retail or commercial use or window use. The statement the business activity shall not change the surrounding character of the surrounding neighborhood. This business has little if any impact on the environment or the community except for Mr. Boisvert's truck which deliver the toilets to the customers, pick them up and transport. The septic or treatment plant, there is no visual because the toilets themselves cannot be seen. We wanted to have photographs. Many of you know what the property looks like from the street, the privies are way down behind the barn or the back and because of the topography, they can't be seen in any event. There is no odor or noise or hazard from the sanitizing solution Mr. Boisvert uses. They are as minimal as many other household products and those are talked about in the environmental sheet I gave you regarding the sanitizer. Many of those products we all use and that risk is minimized further because he does not actively use the products at the property, only at customer's sites. So there is no change in the character of the community.

If the Board does determine, and it looks like you have, if the 2018 version of the ordinance shall apply and decide it will approve Mr. Boisvert's application subject to Planning Board approval, the Boisvert's will reserve their rights and maintain their objection regarding which ordinance should apply. But if it seemingly to comes to a resolution of this matter, they intend to proceed in good faith to ask the Planning Board for approval in that case. I refer to Mr. Boland.

7:40 p.m. Mr. Lombardi had the floor for 40 minutes.

**Town Administrator Russ Boland:** I'm going to maintain my topics to the three conditions that then Code Enforcement Officer Ed Hunter used to reach his decision with one exception on Attorney Lombardi may want to clarify this after I finish. He stated under the April 24, 2018 was strictly to apply for a Variance, I direct your attention to your package where you will also notice there was a check-off of an Appeal of an Administrative Decision also. So I would contend that it was also for the Administrative Decision and not just exclusively for the Variance.

Under the first objection of Code Enforcement Hunter he stated, the "*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*". He is referring to the violation of the exterior storage of materials and equipment must be screened from public view. Even if there is nothing outside of the structure, just taking them out and putting them on the truck and loading them up in the normal course of business they will be in view of the public.

Item 2, which is the business is incidental, I think this is pretty clear and we have case history on it. In your package, I direct your attention to page #10 under the Supreme Court Decision where it says, *“Under the facts of this case, in a light most favorable to the respondents, the court cannot conclude that the storage of up to fifty portable toilets, a pickup truck and a tank truck is incidental to the primary use of the Laurent’s cottage as a residential dwelling. Nor can the court conclude that the storage of these items is customary such that regulatory authorities in Lyndeborough intended to permit such use in Rural Lands One district.”*  
(See file for 2005 Superior Court ruling Town of Lyndeborough vs Boisvert)

Finally, item #3, *“Town needs to consider there 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”*. What Ed Hunter was saying there that by allowing this home business it draws the other business into contention potentially with the Planning Board. Under 2018, the Boisvert’s would have relief if they go to the Planning Board as Attorney Lombardi has indicated.

The Town would ask you to uphold Code Enforcement Hunter’s Decision in the letter March 22, 2018 and the applicants would have potential relief through a variance or by going to the Planning Board.

*Chair Grybko asked Attorney Lombardi if he had any additional comments. He did not.*

**The meeting was opened for Public Comment at 7:44 p.m.**

**Resident Wally Holt:** I’m confused but correct me if I’m wrong but in March, I think it was the March meeting, didn’t the Zoning Board overrule Ed Hunter’s decision in the end?

**Chair Grybko:** No, we got confused and we wrapped up the Variance and we put conditions on an Administrative Appeal and we were wrong. Under an Administrative Appeal we need to vote “yes” or “no”. On a Variance we can put conditions on it.

**Town Administrator Russ Boland:** For a point of recognition, I believe the Boisvert’s appealed your decision and that is why we are here tonight. Wally is right, there was a decision but it was subject to an appeal.

**Chair Grybko:** Right, they appealed our decision and now we are re-hearing the appeal. We are only allowed to vote “yes” or “no” on the appeal. Does anyone else have any questions?

**VOTE: Lisa Post made a motion, Pam Altner seconded to close the public input session of the hearing at 7:46 p.m. Motion passed unanimously, 5-0.**

**VOTE: Lisa Post made a motion to rescind the ZBA’s decision dated May 29, 2018 to “Vacate the Appeal of the Decision of Code Enforcement Officer dated March 22, 2018” for Case 2018-2, Laurent Boisvert d/b/a Feel Good Farm, Inc., Portable Privies on Lot(s) 237-13 and 237-14, street address 52 and 54 Johnson Corner Road, Lyndeborough, New Hampshire. Pam Altner seconded the motion.**

**Rick Roy:** Just so I understand the language. We are vacating our decision that has all the conditions on it? Yes.

**Above motion passed unanimously, 5-0.**

**VOTE: Lisa Post made a motion to uphold the March 22, 2018 Code Enforcement Officer's decision that the Home Business Application from Mr. Boisvert did not meet the criteria under the Lyndeborough Zoning Ordinance date and voted March 18, 2017. Linda Anderson seconded the motion.**

*Discussion:*

**Member Lisa Post:** I would say if it does not meet just one of the criteria it stops everything right there. I believe that Ed stopped it at many points. The fact that the home business is to be conducted in a residence or accessory structure and that it is not incidental to the residential use of the property is the basis for Ed Hunter's decision and I believe it's upheld by the beliefs we have now especially since the building, the cottage, is 1,308 sq. feet and the portable privies are 4x4 feet times by 80 privies = 1,280 sq. feet. I realize they are not all there at one time but it's certainly more than the size of the whole entire cottage. And he only gets 1/3 of the gross living area which is 436 sq. feet. Entirely makes it more than the use of the dwelling.

Then the other part is that the Home Business is supposed to be conducted in a residence or accessory structures. The accessory structures that he has cannot fit all the equipment he has. I realize in the summer time maybe you don't have them all there, but at some point they all have to come back. You are not supposed to be doing this that produce noise, vibration, dust, smoke, electrical disturbances, odors or glare and taking them out and putting them on and washing them off is also against those. You have many, many of the criteria, it does not fit it. In addition to Ed Hunter's it does not meet the ordinance of 2018 General Requirements and it does not meet the Home Business Requirements. That is why I think we should uphold Ed Hunter's decision.

**Member Rick Roy:** What is the motion for, the 2017 or 2018 ordinance? It's the same criteria?

**Member Lisa Post:** No, we have to operate on the ordinance of 2018 when we are making decisions. However, Ed Hunter's decision was on the March 18, 2017 and that was on an appeal at that time. Now when we have to consider anything we have to consider it under the current ordinance and that is why I'm making the 2018 criteria.

We already reversed our decision. Now we want to hold his up but we have to do it under our current ordinance which only, it supplements his arguments from that. They only increased with the new ordinance.

**Chair Grybko:** Are we ready to take a vote in favor of upholding Ed Hunter's letter in denying the appeal.

**VOTE: Motion passed unanimously, 5-0 to uphold Code Enforcement Officer Ed Hunter's letter to Mr. Boisvert d/b/a Portable Privies dated March 22, 2018. (see motion above)**

**Chair Grybko:** We already have a hearing on the variance on the docket for **Oct. 4, 2018 at 7:00 p.m at Citizens' Hall**. According to the new zoning you will have to get a Site Plan approval from the Planning Board. I don't know if you want to go there first.

2018 Zoning Ordinance: *"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"*

Attorney Lombardi said he will review his options. He questioned if site plans and plots plans are not the same thing, there is a difference between them. He questioned which plan is required. He will take a look at them.

**Chair Grybko:** The new Home Business in the zoning says a Home Business needs to be subject to a Site Plan Review by the Planning Board and a formal application is required. Even if you came in for a Variance and granted you one, it would be subject to a Planning Board review of the Site Plan. I'm not sure if you want to go to the Planning Board first and delay the Variance schedule for October 4, 2018.

**Attorney Lombardi:** That does not make much sense. We need to get approval from the Zoning Board first.

**Chair Grybko:** No you don't. The new definition for the Home Business is you go to the Planning Board.

**Attorney Lombardi:** I understand that but even if we were to get Planning Board approval we still need... If I go to the Planning Board and get approval I may not have to come back to the ZBA?

*The Board and Attorney Lombardi discussed the process which was already mentioned above.*

**Member Lisa Post:** That is why at the last meeting that I told you over and over again, you had the variance to go to, and you were supposed to apply to the Planning Board, so it could be heard for the September 2018 meeting so if it came to us and it was approved and we had the October 4, 2018 meeting ready to go. It's my understanding you didn't apply [to the Planning Board] yet.

**Attorney Lombardi:** It's my understanding you might be able to get them contemporaneously to get Planning Board and variance approval at the same time.

*Discussed options again. It was discussed if Mr. Boisvert wants to apply for the October Planning Board meeting he needs to submit the application the next meeting, September 20, 2018.*

**Attorney Lombardi:** We are still on for October 4. I might ask for a continuance.

**Chair Grybko:** Because Town Hall is closed tomorrow, you will have a decision on Monday by noon.

*(See attached for Notice of Decision ZBA Case 2018-2, dated September 17, 2018)*

*Guest left at 8:00 p.m.*

**Meeting Minutes of August 7, 2018:**

Amendments: Tom Chrisenton recused himself from this case. He did not attend tonight's meeting nor plans to attend any further hearing because he's the Planning Board chairman.

Lisa Post added other amendments that include add date of the hearing which is September. Secretary Humphreys mentioned the minutes were basically transcribed and she did not edit people's comments and will make that point clear in the minutes that it's a transcript.

**VOTE: Rick Roy moved, Lisa Post seconded to accept the minutes of August 7, 2018 as amended. Motion passed 4-0-1. Pam Altner abstained.**

**VOTE: Lisa Post made a motion, Pam Altner seconded to adjourn at 8:45 p.m.**

Respectfully submitted,

*Kathleen Humphreys*

Kathleen Humphreys  
ZBA Secretary

***A Variance hearing for Case 2018-3 for Larry Boisvert d/b/a Portable Privies is scheduled for Thursday, October 4, 2018 at Citizens' Hall at 7:00 p.m. This meeting has already been publically noticed.***

**Attached:**

*Notice of Decision ZBA Case 2018-2, dated September 17, 2018*

**Documents submitted during meeting from Attorney Lombardi: See Re-Hearing file for documents**

- Item #1: 2018 Zoning Ordinance printed and submitted by Attorney Lombardi*
- Item #2: 2017 Zoning Ordinance printed and submitted by Attorney Lombardi  
(Note: the amendment printed does not list this document was amended in 2017 therefore the Board has concerns about when it was updated. Mr. Lombardi could not confirm the date it was printed. The Board has been given the 2018, 2017 and 2012 Town Of Lyndeborough Zoning Ordinances as voted at Town Meetings in their packages for reference which are the approved zoning documents printed from Town Reports.)*
- Item #3: Map of Feel Good Farm, dated 9/10/18 made by Brookstone Land Use Consultants  
(Note, this map is NOT an approved site plan nor has been seen by the Planning Board)*
- Item #4: Safe T Fresh, document from Wikapedia that describes chemicals used on toilets*
- Item #5: Abutter letter from Dan Holt, no date on letter*
- Item #6: Abutter letter from Wayne and Adrienne Colsia of Paradise Farm, dated 9/11/18*
- Item #7: Email from Attorney Bill Drescher, dated 2/14/18*
- Item #8: NHDES letter from Tim Sweatt, dated 9/12/18*

**See file and binders for documents referred to multiple times in the meeting:**

- 2005 Superior Court Ruling, Town of Lyndeborough vs Boisvert
- 2018 Zoning Ordinance. Also found on town website or in the 2017 Town Report as a proposed warrant that has been voted on and approved by the voters
- 2017 Zoning Ordinance. Also found in the 2016 Town report as a proposed warrant that has been voted on and approved by the voters



TOWN OF LYNDEBOROUGH

Office of Selectmen

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September 17, 2018

**TOWN OF LYNDEBOROUGH**

**ZONING BOARD OF ADJUSTMENT**

9 Citizens Hall Road, Lyndeborough, NH 03082

(603)654-5955

**NOTICE OF DECISION**

**CASE 2018-2**

You are hereby notified that the **Administrative Decision, dated March 22, 2018, by the Code Enforcement Officer Ed Hunter for Laurent Boisvert, Lot 237-013 and 237-014,**

**Has Been Upheld.**

Karen Grybko, Chair

Zoning Board of Adjustment

