

**TOWN OF CENTER HARBOR
PLANNING BOARD**

**Tuesday, May 24, 2022
Meeting @ 6 p.m.**

Chair Charles Hanson called the meeting to order at 6:00 p.m. Present Vice Chair Peter Loudon, Selectmen's Rep Bill Ricciardi, Secretary Rachel Xavier, Members Mark Hildebrand, David Nelson, Alternate Member Alan Rilla and Clerk Aimee Manfredi-Sanschagrin. Absent with notice Kelli Kemery and Steven Brown.

Public Attendance: Robert (Bill) and Kim Cook, Paul Ursillo, Amy Elflin, Christian Hinds, Lisa Lopes, Kirk Meloney, Jean Meloney, Sheila Mohan and Code Enforcement Officer Bill Doucette. Other members were in the audience but names are unknown.

Voting Members: Charles Hanson, Peter Loudon, Bill Ricciardi, Rachel Xavier, Mark Hildebrand, David Nelson and Alan Rilla.

I. MINUTES:

Chair asks for a motion on the May 3, 2022 minutes. Peter Loudon motions to pass the minutes as read. Selectmen's Rep Bill Ricciardi mentions a correction needs to be made to the Case number for the Hearing, it should be adjusted to 2020-0505, it's currently written as 2022-0505 just a typo that needs to be corrected and Bill Ricciardi states he will second the minutes as corrected. Chair asks for a vote. All were in favor of approving the minutes as corrected.

II. PERMITS:

Bourque, White and Boivin. No questions or comments by the Board.

III. HEARING NRSPR – ROBERT (BILL) AND KIM COOK 2022-0524

Chair states this application is before the Board because of a complaint that was submitted to the Board of Selectmen regarding the activity taking place there. Bill Doucette CEO is in attendance this evening and has visited the site. Chair asks for Bill Doucette to give an overview of his findings.

Bill Doucette states he visited the location and there appears to be a home-based business that we viewed as an essential service to the community. He spoke to the property owner Bill Cook and went over some of the issues he noticed regarding fill that went over a banking and perhaps cleaning up the site a bit. The major concern is that there is a secondary business operating out of this location.

Chair states this has been an interesting development and made us do a bit of homework. It seems the business the Cooks are running themselves is fine as is. Technically you don't need a

site plan approval from us to run your business because your work involves being off site. You can park your vehicles there because you can park up to 4 vehicles, with a GVW over 12,000 on your lot that is in our Zoning Ordinance. (For reference Section 4:4:4 Commercial/Construction Equipment). The problem is you can't have a 3rd party in there. First, you need to get the other company to leave until you get this addressed. You could seek a variance from the ZBA to request the other company be allowed to work out of that property because there is no Special Exception that will allow them to be there. That is the ZBA so that is a separate process. As far as the PB is concerned, I don't believe there is any action we need to take this evening other than the fact you cannot have Turn Key in there anymore. If you decide to go through the process of the ZBA at that time they could approve that company to be there.

Kim Cook states the owner of Turn Key lives at their property he is the fiancé to her daughter but if having that company there is causing this problem then they can find another place. Chair states at this point based on what we read it doesn't work, your company/business is fine. Bill Cook asks if there is a time frame on moving them out? Chair says as soon as reasonably possible.

Chair opens the hearing up to the public.

Kirk Meloney states he is an abutter to the property, and they are the neighbors that called out the use to Code Enforcement and the Selectboard.

Kirk Meloney, this is based on the fact we are abutters and have seen the history of this property develop. I have no personal vendetta against the Cooks, it has nothing to do with them. This use could be done by somebody else, and I would still have and my wife would have the same concerns we have today. The Cooks submitted a letter with their application which did take a few jabs at us as abutters and I brought a letter in yesterday to sort of address that but I didn't realize that the letter had to be in 5 days ahead of time so you guys could review it, my bad, so I could do one of two things, I could speak to my letter, I could read my letter so it becomes part of the record or I could just wing it off the cuff here and tell you what we think has been happening with this particular property development over the years and why we feel this is not exactly a property use in the AR zone.

Chair states Mr. Meloney can wing it, the Board is there so he can go ahead.

Kirk Meloney, for one thing it's not a personal vendetta. I could address the jabs that were taken but I really don't see the relevance of that.

Chair, right if you could just stick to the facts.

Kirk Meloney, we've watched this property go from a wooded sloped parcel to a large flat filled gravel area which provides a parking area for various pieces of equipment, temporary shelters, garages, storage of many different items and scrap pile that appears to have vehicle metal items. Over the years there have been countless trips by the dump trucks brining in solid fill to create the space it has become. We have seen asphalt chunks we have seen trailers full of old metal

culverts get dumped on the property and this is only because in the fall when the leaves are down, we have a clear view of this property from our house. Other types of unidentified fill have been dumped on the site and it's been buried and graded smooth. At one point the site was being used as a snow dump but when we brought that to the town's attention. They put a stop to that which was good because that is not a permitted use in the agrural zone. They were dumping snow 10 11, 12 o'clock at night but they are not doing that now, they stopped many years ago. We recognize people have a right to develop their property for their benefit and we consider ourselves reasonable with neighbors using their properties as they want to however, our concern is the way this parcel is currently being used. Not only by the property maintenance but the other company, Turn Key Construction, which you have just addressed. I don't believe any third party can be in there on their parcel without some sort of special exception or variance. The vehicles from Turn Key came in and out all hours of the night but regardless they are going to be forced to leave so I'm good with that. To Jean and I, this goes beyond the normal use of a standard home occupation which is a permitted use in the agrural zone. This appears to be a commercial use of land that was created by filling and developing over the years which doesn't seem to have any normal regular business hours of operation. We hear back up beeping for trucks, dump trucks etc. any time of the day and on weekends some times. We really believe if this kind of use is going to be a permitted use in the agrural zone it would require a special exception by the ZBA. This is clearly, in our opinion, a commercial use of property where they are staging woodchips this that and the other thing and it's in the agrural zone. We bought in the agrural zone in 1979 knowing what we were buying. We kind of look the other way with this process, this has been going on with these folks for many years but once we came to the conclusion that they don't have any kind of permission to do what they doing, is why we cited our concerns to the Selectboard, and again, it's not a personal vendetta against the Cooks. It could be Joe Blow doing the same thing and we would have the same concerns. I have no problem with these people, I understand people needing to make a living from their properties that's great but we don't feel this is a proper use in the agrural zone. If it does get a special exception though the ZBA, there they could regulate hours, regulate parking, regulate basic use of operation etc. There are times, and again, I'm not meaning to be nitpicky but 12 o'clock on a Sunday afternoon I'm hosting a barbeque, we are playing horseshoes and we are hearing backup beepers. It's not an agrural operation. It would be one thing if they were farming, I would say that's great, but this is not farming and the only other point I want to make, they cited essential services on their application, by the definition it reads very clear to me (Kirk reads definition of essential services as defined in the Zoning Ordinance). I am not sure what essential service other than people that need to get plowed out that's true, driveways and walkways shoveled absolutely but to me our definition that is current in the Zoning Ordinance is not applicable to them calling their services of a home occupation an essential service.

Chair asks if there are any questions.

Alan Rilla introduces himself. Kirk introduces himself and adds he used to sit on the Board for 22 years my name is all over the place.

Alan Rilla, I'm just curious and I had planned to get out to the property, but I didn't, how far away from you is all of this activity that is going on?

Kirk Meloney, our house sits about 85-95 feet from the property line maybe further but I haven't measured it. We erected the fence about 10-15 years ago because activities, wholesome activities like kids riding dirt bikes and all that, their headlights were shining in our dining room window while we were having dinner 6-7 at night so we put the fence up to block that. Also, as we witnessed the property get more and more developed, to block our view in the wintertime when the leaves are down. You go on the second story of my house in the fall or wintertime and it's a very clear 100+ view of the operation as we see it and hear it. We own 16 acres, built our house in 1987 that is adjacent to this abutting property but we owned that property since 1979. The fence that was erected clearly sits 15-20 feet on our side of the property line.

Alan Rilla, did adding the fence help?

Kirk Meloney, yes but that activity ceased and again, the use the property sees now, in our opinion, far more commercial than a typical home occupation, the use should need ZBA approval. Also, the applicant supplied a map (site plan drawing) it was not real clear to anyone like yourselves looking at it. (Kim adds that is why I submitted pictures.)

Kirk Meloney, pictures are good, but it would have been easier if they took a picture of their property off of the tax map and drawn the outflow of what the property contains, there are two roads in and out for trucks so to me again, the use hinges upon commercial. Again, it's nothing personal it's just the use of a site.

Peter Loudon, how much of this activity is going to go away now with Turn Key leaving?

Kirk Meloney, I really don't know.

Peter Loudon, well that is my question because I really don't know either.

Kirk Meloney, I would have to say that the history of us living where we live being adjacent to the property, this use has ramped up way before Turn Key came on site. They probably came on site a couple years ago. The Cooks have been developing this property to be what it is over past 10 years or so and that is the best I can answer that question.

Peter Loudon, that's fine and until Turn Key leaves, we don't know exactly what is going to be staying and what's going to be going. This has been developing for a lot longer than you realize with Turn Key, I don't know.

(conversation and questions between applicant and abutter Meloney, Chair states the questions have to go through the Chair).

Alan Rilla, (to the Cooks) I'm thinking you've understood your neighbors' concerns for some time.

Kim Cook, actually, we were approached a few times from Ken Ballance and he said if you stop this, for instance the snow dumping, there won't be a problem so we cease and desist the snow dumping. Anything that Ken Ballance brought to our attention we stopped. (Chair adds for those that didn't know Ken was the former Code Enforcement Officer for many years). We thought we were in the parameters of being neighborly.

Bill Cook, we just want to use our property, as much of it as we can.

Kim Cook, we have a tree line between the flat area and the fence line as a buffer but maybe we need to plant more evergreens so when the leaves come down. I don't know, but it's nice to be

able to utilize that property for what we pay for. As far as the culverts being done and the dirt, the dirt was used as leveling the metal culvert went to scrapping yard. Things are always revolving and going to the scrap yard. It's not a pile that is never ending, it's a designated area and as a load of the same type of metal comes in he takes it to Gillpatrick's or somewhere else. It doesn't stay and it definitely doesn't get buried.

Alan Rilla, so there are some core things that you will continue to do even after Turn Key is going?

Kim and Bill Cook respond yes and add that Turn Key keeps a couple of trucks and a trailer the beeping is because they are taking a skid steer off or putting a mini excavator on.

Alan Rilla asks if they would be willing to offer the neighbors anything.

Bill Cook, other than asking Turn Key to go they can't stop doing what they do. My scrapping, which might be an eyesore to them, is my hobby. The rest of it is our livelihood, the stock piles are used on properties and that's what we do. Chair adds that it is a property management company.

Kim Cook, there is mulch, ledge pack, erosion stone which would be needed if someone's driveway washes out in the middle the night we can go repair it so we can help them which is why we consider ourselves an essential business because our customers depend on us.

Mark Hildebrand, Ken was aware of, as I look at the regulations here one in particular is about filling of lands, he was ok with what was going on?

Kim Cook, the only thing that has changed since Ken has been gone is the amount of Turn Key equipment.

Mark Hildebrand, were there any permits pulled or paper trail for what you've done there?

Kim Cook, as far as?

Mark Hildebrand, everything, building the house the garage.

Bill and Kim Cook, yes.

Bill Doucette, a lot of the filling was prior to 2016 when they adopted the Water Resources Ordinance.

Chair, like I said Aimee, I and Sheila we went through this pretty extensively and keep coming back to they are conducting their home business just the two of them. Based on our ordinance they are allowed to do that and they don't have people going there, it's not a retail operation it's just their own equipment once you remove the Turn Key Construction because having them there changes the game. Chair asks Sheila if that is accurate.

Sheila Mohan, I would say yes. There are a lot of people in town who have pick up trucks and things like that but they go off of their property to conduct whatever their occupation is. People don't come to the house, unless they are just stopping by to say hello. The other business equipment there is a violation, under our ordinance it's not an essential service but when they need to go to somebody's house to fill in their driveway as Kim said, obviously to that person it is. Myself, I don't actually think that they needed a notified hearing. If they had received a letter that said Turn Key equipment has to go I think that would have taken care of this.

Jean Meloney, can you inquire about what percentage of the dump truck and heavy equipment will be cut back once Turn Key leaves? I would like to know because I counted at least 5 or 6 times a dump truck has come in and left and then come in and left. I want to know if that number of times will change.

Bill Cook, yes.

Jean Meloney, to what percentage?

Kim Cook, I can address that. I left the house this morning at 3:30 a.m. and got back at 5:30.

Bill Cook, Turn Key does have a 6-wheeler and they occasionally haul stuff in and then bring it back out.

Chair, it sounds like Turn Key leaving is going to make a major impact.

Bill Cook, yes, I agree. As far as our equipment, that's not going anywhere.

Chair, right. Does the Board have any other thoughts on this? This probably could have been more of an enforcement thing instead of having a hearing. At least it's out and we know and if you want a time because you asked about having Turn Key out of there, not that I have the authority to do this but I would say within 30 days have them seek an alternative means. That would bring you to the end of June so certainly before the 4th I would hope that life is quiet. Does that make sense?

Kim Cook responds yes very much so.

Chair, so I don't think the Board has to do anything at this point.

Bill Ricciardi, as you suggested perhaps you might want to plant some evergreens along the property line, we can't make you do that but it might be nice.

Kim Cook, we would have to cut some leafy trees and some dead wood to plant evergreen so it would get sun so it could grow. So, if they hear us cutting trees it would be because we are planting an evergreen.

Chair, you know what I would suggest, why don't you get Turn Key out of there and let things just settle out. I bet things will be alright would be my guess. I'm officially closing this public hearing with no action to be taken by the Board other than the Cooks have committed to having Turn Key out within 30 days.

IV. HEARING NRSPR – LRM DBA THE MUG RESTAURANT 2022-0523.A

Chair announces the case and asks for the applicant to present.

Paul Ursillo states every year they submit a request to the Board of Selectmen for Bike Week to allow outdoor dining at the Mug. During COVID, they were approved by the State and the Selectmen to have outdoor dining through the season which led to why they are before the Board now as to seek permission to have this as a permanent use for their business via site plan. Paul states the hours have changed due to staffing, closed on Tuesdays now and the kitchen closes the latest on Friday is at 9:30, on other days it's typically between 8:30-9. In the past, as soon as it gets dark people leave, we don't have lighting outside. We usually just have tiki lights to keep mosquitos away. We are not planning on putting any lighting out there whatsoever, especially with oncoming traffic we don't want to blind anyone. We would like to have this outdoor seating from Memorial Day to Columbus Day. We police this quite well so we haven't had any problems and one other thing I would like to mention, we have quite a few people coming with dogs and having the outside helps. Unless they are a service dog, they are not technically allowed in the building and that would presumably be due to health code regulations.

Paul continues, the former Fire Chief John Schlemmer taped out the exact location and gave me my occupancy permit based on that which resulted in a number of 53 people outside. They have 5 picnic tables which sit 6 people and then 2 tables underneath the overhang so they have never had up to what they are allowed outside. They believe the max seating has been 40. Paul says it would be nice to not have to go through (is there more to this sentence?)

David Nelson asks if the request will be the same as what they have done annually. Chair responds it's the same area they are just expanding the use for the time frame. This approval, in the past had been for motorcycle week only, they are requesting they be allowed outdoor dining from May to October. Paul states they do have approval from the Board of Selectmen for this year during bike week. Amy Elflin adds they have requested and received approval for bike week for the last 25 years.

Bill Ricciardi asks if the Selectboard had sent a letter informing them if they wanted to continue to do this that you should come in for Site Plan review with the PB? Paul Ursillo responds that he believes he received the letter or that he was verbally told to do that.

Chair mentions that currently The Mug has an approved site plan to operate the mug as it is, this request is to amend that site plan to allow seating outside on a permanent basis. We can put conditions on the approval such as operation from Memorial Day through Columbus Day. Paul Ursillo states the Board can even put times on there, he opens at 11 and typically is closed by 9:30. Chair states that he spoke to Bill Doucette, Code Enforcement and another member had asked the same question about perhaps installing a more substantive fence. Paul's question regarding the fence is that he would like to put a jersey barrier on either side but I don't know if I'm allowed to because we are so far in the state setbacks. When The Mug was built, they received many exemptions from everyone so we don't know if we are allowed via the state to put a jersey barrier there. Bill Doucette states that would be a question for DOT out of Gilford and he believes they would work with Paul to get something done. Chair says we would defer to whatever the state would say could go there and adds it's in everyone's best interest, especially yours to have something more substantive there, someone my height or shorter throws a leg over that split rail fence and they are in rte 3 and your insurance must dictate to a certain degree I would think. Paul says he has to figure out something in the front because when the road is plowed in the winter it goes all the way into his property so to have a fence there it would get destroyed every year. Paul would like the jersey barriers on the sides not in front. Peter Loudon asks perpendicular to the road not parallel to the road? Paul responds yes. Amy Elflin mentions they were thinking of adding some granite posts along the road perhaps set in cement that would be more stable and then putting something between those so it would be more attractive in the front and having the jersey barriers along the side. Bill Doucette mentions they could take a look at Surfside in Meredith and what they've done, they are close to the road. Rachel Xavier expresses that was her concern is the fence and perhaps putting something there that would provide more safety for their patrons. Chair states he likes the idea of the granite posts and removable railing that are functional so that seasonally when you're done you can take all the railings down and let all the snow go through.

Alan Rilla asks how many picnic tables they planned on having? Paul says there are 3 and then another 2. Alan asks if all the picnic tables are out front? Paul responds yes and under the patio. Alan asks if they could relocate the patio to another side? Paul responds it's not functional. Amy states there is a big parking area on one side which is their raised septic system then there is parking on the other side and then the swamp behind the building. Paul states he could not take away any parking. Chair adds part of the appeal for bike week is that people like to watch the bikes go by. Amy also mentions it's easier for the wait staff to access the area through the front door.

Chair asks if any other Board members had questions? Rachel Xavier asks if they wanted to put up lights, could they? Chair responds it depends, if we all agree this is a good idea we could put some conditions on it and they would need to come back to use if they wanted to add lighting because they have indicated that they don't want it at this point. Paul says he is going to tell the Board right now he is not adding lighting.

Chair opens the hearing up to the public.

Christin and Lisa Hinds state they have lived here 6 years and they look down on top of The Mug and we believe that Paul has run an excellent piece of property. It's always quiet, our windows are open all summer long and we are never bothered by motorcycles during bike week. They are great owners and deserve everything they are asking for. The only thing Christian states he would hate to see happen is a 4' stockade fence running across the front entrance. Chair appreciates the comments from Christian Hinds. Chair also mentions that the Board received a letter from Chief Mark Chase indicating the owners have been great operators and partners in the community.

Chair was willing to come up with a motion. Sheila mentions that in doing so even though Paul and Amy stated 53 people might be too many, if 53 fits you may want to mention in your motion "up to 53" so if something happens, they don't have to come back and ask for an increase. Chair agrees.

Motion: Chair motions to approve the NRSPR application with the following conditions:

- 1. Outside seating is allowed from May 15th to October 20th**
- 2. A more robust fence arrangement is to be installed for safety purposes**
- 3. Consistent with the existing outdoor seating capacity approval, up to 53 people are allowed in the outside area**
- 4. If outdoor lighting is required in the future, an amended site plan will be required.**

Peter Loudon seconds the motion. All were in favor. Hearing Closed.

Paul Ursillo asks if he can operate under the approval the Selectmen gave them for Bike Week. Chair states yes, he should proceed with that approval from the Selectmen because there is a 30

day appeal for the Planning Board approval. In 30 days you will be official and you can function under our approval once you meet all the conditions.

IV. OTHER

Changes to Penalty Section of the NRSPR to be consistent with Zoning Ordinance

Chair explains the Clerk is trying to clean up some inconsistencies between the Zoning Ordinance and the NRSPR Section. The penalty section is up for review and the Clerk would like input from the Board if the NRSPR penalty Section 3:4:11 is sufficient or if the Board would like Section 3:4:11 to match the Zoning Penalty under Section 4:3 Penalties.

Peter Loudon states in the interest of simplicity and flow we should be consistent with the Zoning regulations. Chair would also mention, the thing he likes about the Zoning Ordinance is that there is a daily fine and asks for CEO Bill Doucette to correct him if he's mistaken, but there seems to be quite a few people that are not paying attention to their approvals. Bill Doucette confirms that is accurate. Chair states the Selectboard has recently imposed some of the daily fines and it got the immediate attention of the person receiving the penalty. Chair recommends we be consistent and adopt the Zoning Ordinance Penalty as the NRSPR penalty. Peter Loudon and Mark Hildebrand agree. Chair states we had one instance the property owner received notice of this hefty fine and they were in right away. It's for the people that are dismissive we need something more aggressive to get their attention. Bill Doucette adds, when you make a site plan and there are conditions in the site plan, it should be stated to those people that the conditions need to be followed. There was a case where vegetation was required, and it says maintained so it doesn't mean just plant them and let it die off. Bill adds there should be something there that says if these things do not happen you can be subject to fines. Clerk states that is where this discussion stems from, the Clerk is trying to create standard Notice of Decision templates for the Boards based which would be specific to the applications being heard. The letters would include standard verbiage at the end which explains the 30 day appeal process and would also include that any violation of the PB decision may result in penalties and cite the penalties in the letter. Chair states if we are in agreement with this he would consider a motion states we would like to replicate what's in Section 4:3 Penalties in the Zoning Ordinance as NRSPR Penalties under Section 3:4:11.

Motion: Peter Loudon motions to replace the current NRSPR penalties under Section 3:4:11 with the same penalty structure as outlined in the Zoning Ordinance under Section 4:3. Seconded by David Nelson. All in favor.

Update LRPC

Mark Hildebrand lets the Board know about the hazardous waste disposal dates and adds that you can go to any of the 8 stations available. Mark provides pamphlets to be placed in the town lobby. Information will be posted on the town website. Mark also mentions the concern about how people are disposing of their needles. Workers at the dumps or picking up trash are getting jabbed with needles because they are not being disposed of properly. Mark had a box for

disposing needles stating the box holds 1500 needles and states that there are probably people in the community that are diabetic that could use them.

Mark states the annual LRPC meeting is in June and have had a very low response on their survey. Clerk has the survey on the town website and Mark asks that everyone take a few minutes to fill it out. 31 towns are covered and to only have 300 responses is upsetting. David Nelson asked if they put anything on Facebook, Mark responds no and has suggested they put ads in the paper. They didn't utilize social media.

Mark states as far as the Koss project goes, he has nothing new to add at this time. Mark concludes with stating the next time we see him he may be an Executive Commissioner.

****All meetings (unless specifically noticed as "non-public") are open to the public. The Boards try to encourage as much public participation in meetings as possible. All information such as agendas, upcoming cases and meeting minutes can be found on the town website on the specific Boards page. Anyone wanting more information or looking to get more involved, should contact the Town Office for more information. ****

IV. ADJOURNMENT

Chair adjourned the meeting at 7:08 p.m. Next meeting June 7th at 6 p.m.