

CASE 13-3
Benjamin Baumann
225 Water Row

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, March 4, 2013

The Board consisted of:

Jonathan F.X. O'Brien, Acting Chair; Nicholas B. Palmer, Acting Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Stephen A. Garanin, Associate.

Notice was published in the *Sudbury Town Crier* on February 14 and February 21, 2013, posted, mailed and read at this hearing.

Mr. O'Brien, as Acting Chair, explained the requirements necessary to substantiate the granting of a Special Permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Benjamin Baumann, applicant, was present along with his wife Shannon, to request a special permit for a home business to operate a part-time, non-retail smoked fish business in an existing barn on his property at 225 Water Row. Mr. Baumann said that he has been smoking fish in his back yard as a hobby on weekends and has never received any complaints from neighbors about smoke or odors. He plans to restore a 24' x 24' single-story barn, bringing it up to code and improving its visual aesthetics, so that he can move his fish smoking operations inside the structure.

Mr. Baumann described the equipment needed for this facility which would include a low-temperature smoking oven that burns approximately an eighth of a cup of woodchips per hour which is less than a standard fireplace, a refrigerator and freezer, a sink, vacuum sealer, and steel work tables. He explained that he picks up his fish fully-prepped and filleted directly from a supplier so there would be very little fish waste or smell. An underground storage tank would collect brine water and would be pumped regularly. Mr. Baumann estimated one gallon of water per four pounds of fish would be collected. Deliveries from UPS would be expected once or twice per week. The small physical size of the operation would limit its growth into something larger. Mr. Baumann said that his intent is to develop his hobby so that he can share his products with the community at local stores and at weekend farmers markets.

Mr. Baumann said that he discussed his plans with both the Director of The Board of Health, Bob Leupold, and Assistant Building Inspector Mark Herweck. The Board was in receipt of letters of support from two abutting neighbors, Shuping and Emma Zhang, 219 Water Row, and Pete and Laura Grebus, 241 Water Row. He explained that his closest abutting neighbors were approximately 250 feet away from his property and Great Meadows National Wildlife Refuge runs along the front of the property.

Mr. O'Brien asked whether the storage tank for the brine was already installed at the property. Mr. Baumann said that he would have to install it. Mr. O'Brien reminded Mr. Baumann that when the property is sold he would have to disclose that there is an underground storage tank.

Mr. Gossels asked how often the tank would need to be pumped out. Mr. Baumann estimated that it would be pumped out once every four months.

Mr. Klofft asked for an estimate of the quantity of fish that was to be smoked. Mr. Baumann said that one serving of fish is about four ounces. He said that at a farmer's market he would probably bring 100 servings so that would amount to about twenty-five fillets.

Mr. Garanin asked about the preservation of the structure itself given that it previously housed alpacas. Mr. Baumann said that the structure itself was solid but he would be replacing the concrete floor and the exterior shingles. A metal chimney would also be added and perhaps a cupola. Mr. Garanin asked how many feet the shed was set back from the road. Mr. Baumann said that it was approximately ten to fifteen feet from the road.

Mr. Gossels asked whether there would be any excessive smoke or any fish smell emanating from the shed. Mr. Klofft said that he did quite a lot of research prior to the hearing and he could not find much data on the effects. Mr. Baumann said that there are several ways to smoke fish, including hot- and cold-smoking cycles. He said that the way he smokes fish only uses a small batch of woodchips.

Mr. O'Brien asked who had oversight on the production of food. Mr. Baumann said that the facility would be subject to state inspection and there would be posted notices at the facility.

Mr. O'Brien asked whether there were any neighbors present who wished to speak.

Lyn MacLean, 209 Water Row, said that she has been a resident of Sudbury for sixty years. She was attending the hearing so that she could see what the structure might look like. She said that the property was located in a rural district with wild animals around and she would not like to see any sort of modernistic building. Mr. Baumann said that his wife, Shannon, was primarily designing the structure but the goal was to have a classic conversion so that it would look like a quaint country barn.

Mr. Garanin asked how the existing structure would be cleaned to prepare it for food production. Mr. Baumann said that the interior walls would be replaced. Mr. Garanin asked about the possibility of moving the structure back from the road so that it was less intrusive. Mr. Baumann said that he could look into that but it was not his initial intent.

Stephen Burke, 249 Water Row questioned how any waste would be handled. Mr. Baumann said that he had spoken with the Director of the Board of Health and would be installing an underground storage tank to collect any brine water. Mr. Burke asked whether the structure would be enlarged and Mr. Baumann said that he would not be altering the dimensions, nor would he have to cut down any trees to renovate. A discussion about placement of the chimney ensued. Mr. Burke then asked about whether the food production would attract additional animals. Mr. Baumann said that the building would have a locked door to keep animals out. Mr. Burke then asked about the frequency of delivery trucks and traffic. Mr. Baumann said that there would not be significantly more UPS deliveries than currently exist, perhaps once or twice a week. Since there would be no customers traffic would not increase. Mr. Burke then asked when the fish would be smoked. Mr. Baumann said that since he worked full-time the smoking would occur on weekends as a hobby.

Mr. Gossels questioned why a tank was needed versus a regular septic system. Mr. Baumann said it came down to cost. A tank was really all that was required. Mr. Klofft asked whether the area has ever flooded as he was concerned that the tank might flood in an area where the water table is sensitive. Mr. Baumann

said that the property is located outside of the flood zone. The Board then asked whether an exposed tank would be a better choice. Mr. Baumann said that an underground tank would be more aesthetically pleasing. Mr. Palmer asked whether there might be room within the barn to put the pump and suggested that it might be a less expensive option to put it inside the barn. Mr. Baumann agreed that it might be a better solution and said that he would look into that option.

Mr. O'Brien said that typically home businesses are given a one-year permit to start so that in a year any issues with the operation can be assessed. There were no further comments from the Board or audience. The hearing was closed. The following motion was made and seconded:

MOTION: "To grant Benjamin Baumann, applicant and property owner, Special Permit 13-3, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically for operating a part-time, non-retail smoked fish business in an existing barn on the premises, property located at 225 Water Row, Residential Zone A-1, provided that:

1. The use must be clearly incidental and secondary to the use of the premises for residential purposes.
2. There will be no employees on the premises.
3. There will be no exterior commercial signage or lighting.
4. The placement of the tank will be subject to approval of the Board of Health.
5. The chimney will be placed at the rear of the building.
6. The exterior design of the building will be in-keeping with the community.
7. This permit is non-transferable and will expire in one (1) year on March 4, 2014, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The Board finds the use to be in harmony with the intent and general purpose of the Bylaw. It is in an appropriate location, is not detrimental or offensive to the neighborhood, and does not significantly alter the character of the zoning district. Adequate facilities are to be provided for the proper operation of the use. Given that this is a new venture, the Board finds a one-year renewal period to be appropriate.

Jonathan F.X. O'Brien, Acting Chair

Jeffrey P. Klofft

Nicholas B. Palmer, Acting Clerk

Stephen A. Garanin, Associate

Jonathan G. Gossels

CASE 13-2
David S. Kaplan
9 and 23 Old County Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Monday, February 4, 2013

The Board consisted of:

Jonathan G. Gossels, Acting Chair; Jeffrey P. Klofft, Acting Clerk; Jonathan F.X. O'Brien, Stephen A. Garanin, Associate; and Nicholas B. Palmer, Associate.

Notice was published in the *Sudbury Town Crier* on January 17 and January 24, 2013, posted, mailed and read at this hearing.

Mr. Gossels, as Acting Chair, opened the hearing. He explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

David Kaplan, resident at Unit 25, 6 Old County Road, was present to request that the ZBA overturn a decision of the Sudbury Building Inspector, Mark Herweck, dated December 6, 2012. Mr. Kaplan said that he was appealing all aspects of the decision regarding Section 3423 (Noise), Section 3425 (Glare), Section 2321 (Unregistered Motor Vehicles), Section 3422 (Air Quality), Section 3424 (Solid Waste Storage), Section 2248 (Limited Industrial District or Industrial Park District Parking), Section 2247 (Industrial District Outside Storage), and Section 3500 (Screening and Landscaping).

By way of background Mr. Kaplan said that residents began moving into The Villages at Old County Road during 2009 through the end of 2011. He said that throughout that time Lynch Tree Service was one of the tenants at 9 Old County Road and they were good neighbors and not noisy. Now, however, the site is occupied by Masonworks which Mr. Kaplan reported often operates its equipment beginning at 3:30 a.m. He said these practices presented a new situation for the tenants of the Villages at Old County Road who have to deal with the sounds and smells from generators and diesel trucks idling which wake residents up in the early morning and disrupt the use of backyards. Mr. Kaplan said that given the conditions there they can't enjoy their yards, grill food on patios, or have visitors.

Mr. Kaplan said that after dealing on their own with the rude replies to their complaints from Masonworks the Trustees of the Villages at Old County Road wrote a formal letter of complaint on August 29, 2012 to Town Officials including the Board of Selectmen, Town Manager, Building Inspector, and Chief of Police about the diesel fumes, sewage smells, and rusty vehicles parked at the site. In the letter Mr. Kaplan maintained that the visual buffer between the properties had been thinned as driveways to 9 and 23 Old County Road had been widened in 2012 to accommodate the trucks for Masonworks.

A follow-up letter to Town Officials was sent on October 2, 2012 listing the specific concerns identified in the appeal of ZBA Case 13-2. Mr. Kaplan said that the appeal was filed with the ZBA because the noise concerns continue. He said that he was particularly concerned about the potential for increased noise in the spring when construction work picks up. He said that it was difficult to understand Mr. Herweck's letter which he felt was lacking in explanation. In Mr. Kaplan's opinion the fact that the industrial site was grandfathered into local law overreaches. Rusty cars and noxious smells from dumpsters add to the concerns. Mr. Kaplan said that no one's business would be hurt from the complaints

because the bylaws do not hinder business, however the residents' property values at the Villages at Old County Road do suffer.

Mr. Kaplan said that since filing the appeal he has learned that some of the noise from banging dumpsters is caused by trash pick-up service at neighboring Wayland property. He thanked the Lewis' for identifying that and he will be following up with Wayland to remedy that situation. However, he said that Masonworks continues to be loud with their trucks' back-up signals and with the crashing of stone into the trucks. He said they continue to position truck headlights so that they shine into the residents' properties.

Mr. Kaplan said that opinions of the owners at the Villages at Old County Road do vary but all are in support of a solution. He said that he does not want to see any businesses shut down but does want all parties' interests protected.

Mr. Gossels asked the owners, Denis and Marie Lewis, to come forward to discuss the situation.

Ms. Lewis said that they adhered to a landscaping plan as part of an approved site plan for 9 and 23 Old County Road. She said that she had met with some of the Trustees of the Villages at Old County Road to discuss issues.

Mr. Gossels noted that the ZBA has the sense that the neighbors consider the activities from the businesses at 9 and 23 Old County Road a nuisance. He said that the ZBA is faced with assessing both zoning and neighborly issues. He acknowledged that the Lewis' have taken steps to meeting with the Trustees of the Villages at Old County Road. He said that Sudbury needs businesses such as the Lewis's long-standing business and the fact is that the land on which those businesses are is zoned industrial. He further said that Town Officials have previously reported that the Lewis' are not in violation of the Town's bylaws.

Denis Lewis said that there was some amount of noise at the site when Lynch Landscaping was there simply due to the nature of the business. There also was a tenant operating a noisy generator and the Lewis' fixed that problem. They have imposed limits on truck idling times. He admitted that the lights shining through the driveway is still a problem for the second floors of the condominiums because those buildings sit lower than the driveway across the street. In regard to early morning noise he said that Wellesley Trucking empties overhead dumpsters into their trucks during morning hours at Candela, a company located in the business park in Wayland that abuts 9 Old County Road. Dumpsters are not being emptied on the Lewis' property at that time.

Mr. Gossels asked for further explanation of the septage fumes as described in the appeal. Mr. Lewis said that septic pumping trucks do transfer septage from truck to truck on the property but the smells dissipate in a short time. Jon Lewis, son of Denis and Marie Lewis, added that the smells of roasted coffee beans from neighboring Karma Coffee also smell in the area and can at times smell like septage.

Mr. Gossels said that in regard to noise and glare the approved site plan for 9 Old County Road dated October 19, 1987 only required a small amount of landscaping. He said that from his observation the trees are there. They may be ineffective now but the required trees were planted so the owners did what the Selectmen's decision required them to do. Therefore they are in compliance. Mr. O'Brien added that the trees have grown up since 1987 so the screening is not necessarily at an effective height.

Mr. Palmer asked for clarification on the coffee odor versus septic odors. Ms. Lewis said that she had been in discussion with the owner of the septic business. He acknowledged that there is some odor produced transferring from one container to another but the process lasts for a half hour maximum. She said that Karma Coffee roasts coffee for about the same amount of time and the resulting smell is that of burned popcorn. The two smells can intermingle. She reiterated that Karma Coffee is not part of their lot. Mr. Kaplan said that anyone can tell the difference between septage and coffee roasting. He said that the residents at 6 Old County Road can even hear the pumping of septage. Mr. Klofft opined that sewage smells can linger at a property for quite some time after the pumping activity is finished.

In regard to the noise of trucks beeping when backing up Mr. O'Brien said that the Sudbury bylaws state that businesses cannot make this noise prior to 7:00 a.m. except in the case of temporary construction work, which does not apply to 9 and 23 Old County Road, an ongoing business. He said that DEP regulations discuss regular versus irregular construction activity and states that if there are noise issues the property owner needs to mitigate them. He added that DEP's regulations are somewhat subjective.

Mr. Lewis noted that employees of the tenant companies are told to go to work at the times they are told to by their parent companies. Mr. Gossels said that the landlord sets the rules of its tenants.

Mr. Gossels asked whether there were any abutters who wished to make comments.

Donna Mills, 47 Rolling Lane, said that the industrial businesses have been there a long time and the residential area does not belong because now the situation isn't fair to the industrial owners or the residents. Mr. Klofft said that there are many areas of Sudbury where different zones border one another. Mr. O'Brien said that development happens and the rules say that when residential communities are developed then the industrial facilities do need to take the residences into consideration. He added that there does need to be compromise.

Karen Bent, 539 Hudson Road, said that industrial jobs start at 7:00 a.m. in many cases so trucks need to start up even earlier in order to get to job sites. To restrict this means that jobs could be on the line.

Chuck Mills, 47 Rolling Lane, stated that he is a tenant at 9 Old County Road and provides snow plowing services.

Tim Hammer, 23 Old County Road, said that his kitchen window is approximately sixteen paces from the septic area and the coffee roasting smell is just as bad as the septic smell. He added that a resident from the Villages at Old County Road rides a loud motorcycle throughout the property early in the morning and he finds that just as disturbing as other sounds. He added that the working-class people working at the Lewis's lot are just trying to earn a living.

Jodi Tucker, Unit 9, 6 Old County Road, said that she has lived at The Villages for five years and has never heard of these complaints except for in the past few months. She said that she can't hear the noise from her unit. However, in this process she has heard nothing about being neighborly and the concerns have been going on for eight or nine months. She said that no one has appeared to apologize so it has become one-sided fighting. Mr. Lewis disputed this claim saying that they have reached out to the residents and he has received at least one phone call of thanks for their efforts. Ms. Lewis added that she and Mr. Lewis had met with four of the current Trustees of the Villages at Old County Road at their units and talked about the noise, lighting, and screening. They discussed the state of the screening at 9 Old

County Road. She said that there could be better communication but they are always approachable and Mr. Lewis can usually be found at the site.

Mr. Gossels questioned whether it would be a good course of action to continue the hearing so that more issues could be sorted out between the neighbors and the Lewis'.

Gio Marzot, Unit 10 6 Old County Road and Trustee for the Villages at Old County Road, said that a cordial meeting with Town Officials had been held recently.

Brian Williams, 26 Autumn Street, questioned whether the Villages at Old County Road should put in more trees and fencing. Screening efforts appeared to him to be lopsided.

Nancy Marshall, Unit 26 6 Old County Road, asked for clarification on which bylaws address times at which work can begin. Mr. O'Brien referred to Section 3423.

A motion was then made and seconded to continue the hearing to Monday, March 4, 2013 at 7:30 p.m. at the Town Hall.

Jonathan G. Gossels, Acting Chair

Stephen A. Garanin, Associate

Jeffrey P. Klofft, Acting Clerk

Nicholas B. Palmer, Associate

Jonathan F.X. O'Brien