

**TOWN OF KINGSTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
MAY 11, 2023**

PRESENT: Peter Coffin, Chair; Meghan Kelley, Vice Chair; Kyle Bache (alternate); Peter Broderick, Michael Rohulich (alternate), Richard Russman; Members

ABSENT: Shaw Tilton, member

Mr. Coffin called the meeting to order at 7:03 PM.

Mr. Russman recused himself for the hearings. Mr. Bache and Mr. Rohulich were voting members.

A quorum was present at the meeting.

PUBLIC HEARING

**Summit Distributing, LLC Kingston Crossing, Inc.
249 N.H. Route 125
Map R40 Lot 15**

The applicant is requesting a **Special Exception (Article 109:7)** to allow a retail motor fuel outlet with a 5,100 sf convenience store/quick service restaurant and 5 retail fuel dispenser islands (10 fueling locations) and 3 high speed commercial diesel islands (2 fueling locations) within the Commercial II District.

Mr. Coffin explained that the ZBA met on Friday, May 5, 2023 at 7:00 PM and determined that this application had regional impact which requires additional notice to neighboring towns of Brentwood and East Kingston and the Rockingham Planning Commission (RPC).

Mr. Coffin opened the hearing for the purpose of continuing it.

MOTION: by Ms. Kelley **to continue Summit Distributing, LLC public hearing to 7:00 PM on June 1, 2023 at the Kingston Town Hall** due to the requirements of NH RSA 36:57 due to the determination of regional impact at the May 5, 2023 meeting.

SECOND: by Mr. Broderick.

All in Favor (5-0-0)

Mr. Coffin explained that there will not be another notice in the paper and abutters will not receive another notice in the mail. The public is advised that this is the notice to continue for this hearing. **The Summit Distributing, LLC hearing will begin at 7:00 PM on June 1, 2023 at 163 Main Street, Kingston, 2nd floor of the Town Hall.** A notice will be posted on the Town, ZBA website and will be posted downstairs at the Town Hall.

BOARD BUSINESS

Approval of Meeting Minutes (April 13, 2023):

MOTION: by Ms. Kelley to accept the minutes of the April 13, 2023 as written.

SECOND: by Mr. Rohulich

All In favor (5-0-0)

PUBLIC HEARING

Until Service Corp. Right of Way

<Board note: hearing opened at 7:10 PM>

The applicant **appeals the Administrative Decision regarding Article 201.4:E-18 of the Town of Kingston Zoning Ordinance**, whereby the Board of Selectmen denied permission for Until to use herbicides as proposed, which states the following as a prohibited use in the Aquifer Protection Zone.

Applicant: Christopher Moultroup, Manager – Forestry Operations for Until presented on behalf of Until Service Corp.

- Mr. Moultroup explained that he is here to appeal the Administrative Decision from the Board of Selectmen (BOS) on April 10, 2023 based on Article 201.4:E-18.
- Mr. Moultroup read a definition of Integrated Vegetation Management (IVM) as defined by the American National Standards Institute (ANSI). This is what they use as best practices to treat the ROW's.
 - Mr. Moultroup explained that Until uses a 5-year cycle and that every 5 year's they go through and trim the side sidelines and the floor. The ROW area that is trimmed is about 75 feet. The ROW is about 100 feet.
 - The mechanical stuff is done on the sideline and floor area in year one.
 - The following year they come back to do low-volume foliar herbicide application and do a layer of spray on the regrowth within the floor on any tall growing tree at maturity, i.e., birch trees, maple trees, anything at maturity that is 10 feet or taller. This is applied by qualified spray applicators with backpacks with a 2.5-gallon tank and wands that walk and selectively spray individual plants. This is a highly selective process.
 - The mix that is used according to a vendor that was used in the past, is 2 – 3 gallons per acre. This is very diluted, and the chemical portion is very small. Last year the mix was 4% Rodeo which contains glyphosate. Four ounces per 100 gallons with Escort XP which targets pine trees. About .5% is Clean Cut a surfactant which helps the droplets adhere to the leaves. The actual concentration of the mix is 95% water and not all active ingredient.
 - 75-foot-wide easement and roughly 2.5 gallons per acre, would have to go 500 feet to do one acre. Volume of active ingredient is very low.
 - The state laws are very strict to get a permit. There are setbacks for public wells, 250 feet from any public well is restricted.
- Mr. Moultroup said he reached out to the David Rousseau, Director of the Division of Pesticide Control-NH Department of Agriculture to get more information on the licensing of the spray applicators and they do have to go through a qualification and testing process to be able to be an applicator and supervisor.

Mr. Coffin informed the applicant that what the Board needs to hear is why Unitil believes their application request should not have been denied by the Select Board on April 10, 2023. Mr. Coffin referred to the article referenced for the BOS denial. The Aquifer Protection District ordinance, Article 201:4:E-18. *"18. Use or generation of hazardous materials greater than small quantity generators or greater than 25 gallons of regulated substances; except where permitted in association with 14 and 17 above."* (#14 and #17 do not apply to this request.). P. Mr. Coffin also read the portion of the definition that applied, Article 201:1 P., *"Toxic or Hazardous Materials: Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules, Section Ws 410.04 (I), in New Hampshire Solid Waste Rules He-P 1901.03 (v), and in the Code of Federal Regulations 40 CFR 261."*

Mr. Coffin said this is why the application with the BOS was denied, there is presumption that they would be applying more than 25 gallons of regulated substances. If the applicant can demonstrate that there is less than 25 gallons used or the substances aren't hazardous to the public water supplies (this is what the aquifer is considered to be) or wouldn't be qualified under this section of the ordinance. The Board can put conditions on the application to restrict what is not allowed.

Mr. Moultroup said that the chemicals are safe according to state rules when applied correctly and referenced the State of Pesticide Control Director. He mentioned that the special permit given by the state does give a lot of setbacks they have to abide by. He referred to a brochure he had that indicated all the places they cannot spray. Cannot spray in waterways. Mr. Moultroup said he is not a chemical expert and was hoping to have an expert available tonight, but he wasn't able to attend. He referenced some information that he received from legal that referenced research from the Commonwealth of Massachusetts, Department of Agriculture Resources.

Mr. Moultroup said that Unitil could use other chemicals that may not be noted on the list they provided to the Board. Mr. Moultroup read the state definition of Glyphosate.

Mr. Coffin asked if they collect the dead trees, plants, etc. after they spray. Mr. Moultroup said they do not. Mr. Coffin pointed out that any rainfall washes off the leaves and then the chemical goes into the ground.

Mr. Coffin stated that none of us here are scientists and we do have the opportunity to have a hydrogeologic study done by a qualified professional. This is one option the Board could offer. Mr. Moultroup mentioned the Massachusetts study that was done, and it is good resource. Mr. Coffin asked Mr. Moultroup to send along the links to that information as well as any other information they may want included with their information already provided. Mr. Moultroup commented that the links are noted in the material they provided with their application.

Mr. Moultroup brought up some of the benefits of using the chemicals. In the future the hope is to eliminate mowing. Mowing can be destructive, the large equipment cuts everything down regardless of what it is and disturbs the wildlife, plants, and soil. As time goes on the less chemical is used because of the biological control ends up happening, the native low growing species eventually form a shrub layer and take over the site which minimizes the growth of tall trees. When this happens, you are not mowing and are doing less spraying.

Mr. Moultroup explained that any abutter or landowner can let Until know that they do not want the area near them sprayed and they won't spray that area. Mr. Coffin commented that the Town has vested interest in everyone in Town. Aquifer is considered a significant resource in this Town.

Mr. Moultroup said he can provide information on other chemicals that can be used instead of Rodeo.

Mr. Moultroup referred to the Town ordinance 201.4:E.-18, section F. Permitted Uses: #2, #7 and #6. Forestry and ROW maintenance is mentioned as a permitted use.

Mr. Coffin explained that he understands the need to maintain the growth in the ROW, however, the question is this the right method to maintain it in the aquifer protection zone. There may be other alternatives that are less hazardous to the aquifer protection zone.

Board comment(s):

Mr. Rohulich asked if the spray method isn't used, would Until have to mow to maintain the ROW. Mr. Moultroup explained that the issue with only mowing is it doesn't go to the root and the stems multiply. The benefit of using an herbicide is it is systemic and goes to the root and the whole tree dies.

Mr. Bache referred to the Until treatment map that was provided to the Board and asked if Until will be spraying in the restricted area noted on the map. Mr. Moultroup said they do not spray in the restricted areas, there is a restricted buffer.

Mr. Broderick questioned the term of herbicide is being used but the term pesticide is also being used in the material and what is the difference. Mr. Moultroup said that herbicide is a form of a pesticide. Mr. Moultroup said that all the chemicals they use are approved by the State of NH. Mr. Broderick asked if the herbicides were biodegradable. Mr. Moultroup said he is not the expert in them but could find out the answer.

Mr. Coffin mentioned that the state makes a general comment for everywhere in the state about the chemicals that they have listed as being approved. We are talking specifically about the aquifer protection zone. The state EPA encourages the towns to have stricter regulations for aquifer protection zones. Kingston is unusual because of the amount and quality of the aquifer beneath the Town, and this is why the Town has a higher standard than a general application procedure for the routine parts of the state. This is why he recommends an independent review by a scientist of what these chemicals are.

Ms. Kelley mentioned that the Town treats their aquifer as a public water supply for private wells.

Mr. Broderick brought up that his understanding is Kingston is set on the largest aquifer in New Hampshire. The Town is more restrictive than some of the state regulations.

Mr. Coffin explained that the Town has used Dana Truslow, Truslow Resource Consulting LLC to conduct hydrogeologic research in the past and he has spoken to her briefly and she could do an independent study on this. This is due diligence that is necessary to understand and get expert input on the Unifit herbicide proposal.

Public comment(s):

Public comment opened at 8:02 PM.

Pat Guevin, 21 Main Street –

- Mr. Guevin had concern about the spray on the leaves, when the leaves fall on the ground, the chemicals will fall on the ground and unless they are biodegradable will put poison into the ground. This is why the Town has their ordinance.
- Don't do things just because they are easier and less expensive, especially because this could have an impact on our drinking water.

Dana Akers, 16 Reinfuss Lane -

- Mentioned he wrote an email to the BOS and the ZBA.
- Commented that the burden of proof to prove the chemicals are safe is with Unifit.

Mr. Coffin spoke and explained that the applicant pays for any study that would be done. The applicant is responsible for providing enough information to the Board so that they can make a decision.

Lorraine Mascioli, 26 Old Coach Road -

- We need to protect our water.
- Cost should not be the determining factor to use Herbicides. There should be safer means to maintain the utility ROW.
- The words toxic and unlikely to occur and using data from The Massachusetts Agriculture studies to support what is going on in New Hampshire should not be what the NH studies should be based on.
- Ms. Mascioli brought up their property also abuts the superfund site on Rte. 125, and this has caused chemicals leaching into the water. Their well is tested at the federal level to make sure the current remedy in place continues to be successful.
- Herbicides and pesticides are toxic chemicals, and the Town has already had a huge issue to deal with because of the superfund site.
- She mentioned that the Town doesn't allow these chemicals in our aquifer protection zone.
- Mr. Mascioli did a quick Google look up on what Rodeo is and it shows it is used for aquatic weed control. She emphasized that we need to protect our water supply.
- Ms. Mascioli expressed that this herbicide application is something the Town can't

afford to approve.

Richard Russman, 18 Beach Drive -

- Mr. Russman said that Rodeo does kill anything and everything.
- He asked what is done in the restricted areas.

Mr. Moultroup explained that the small areas are cut by hand and the larger areas are mowed with various equipment, i.e., excavator, skid steer.

Muriel Ingalls, 100 Main Street -

- Ms. Ingalls said that Kingston has an opportunity to learn from its past mistakes. Gave the example of the Barrell Factory (the superfund site on Rte. 125). The chemicals impacted wells and people suffered, they were sick and lost their homes.
- People in Powwow Pond approached the state to get rid of the milfoil in the pond and it ended up killing fish.
- With all these issues why are we talking about using chemicals in the ground.
- Kingston has a gift of aquifer ground water.
- She mentioned that Kingston Lake got a grant to improve the quality of Kingston Lake.

-Mr. Coffin mentioned that for the record the denial that was given for this application was from the Board of Selectman, not the Planning Board.

-He mentioned to Mr. Akers we did get his email regarding glyphosate, paraquat, diquat and is in the record.

Mr. Coffin asked Mr. Moultroup if paraquat and diquat are listed as one of the eight chemicals. Mr. Moultroup said he has not heard of that.

Nick Mascioli, 17 Chase Street –

- He commented that maintaining the ROWs shouldn't be about the cost to maintain it. One option has zero impact on the aquifer, insects and animals. What is the cost between difference between mowing vs spraying it. The method used should be about the health of people vs the cost to solve the problem.

Sandra Maida, 10 Concannon Road -

- She mentioned that in the area of Country Pond, Great Pond and Powwow Pond there is a large Stratified Drift Aquifer which is an important source of groundwater.
- Does not like chemicals, doesn't use chemicals on her lawn. She has a private well and there isn't public water in Kingston and most of the wells are from the aquifer.
- The Barrell Factory superfund site was one of the biggest chemical problems in the country. This contaminated Country Pond and all the wells in the area. There were a lot of sick people from this.
- Unitil has always gone around trimming trees and now they want to use chemicals.
- We voted for our aquifer and do not want chemicals in our wells, we don't want to get sick from the herbicides and pesticides.

Mr. Moultroup commented that they use best practices for management of brush in the ROW's.

David Chase, 151 Rte. 125 -

- Remarked he is impressed with the amount of research that is going into this.
- Noted that Krenite is a killer of pollinators.
- What is the effect of killing the vegetation and if it sits there and rots, what affect does that have on the environment.

Mr. Coffin commented that it is not the decomposing of the vegetation that is an issue, it is a question of the chemicals being in there because it would not be picked up and do the chemicals cause a problem to the aquifer.

Dana Akers, 16 Reinfuss Lane (2nd comment) -

- Diquat is not on Unitil's list but wanted to mention the problem is causes. It goes into the pond and kills all the living plants at once.

Lorraine Mascioli, 26 Old Coach Road (2nd comment) -

- Talked about how Rodeo and Remnant are glyphosates, the same active ingredient as Roundup. There is no denying what is being sprayed is chemical and is not safe.
- Unitil can find a safe method to maintain the ROW's.
- Ms. Mascioli is opposed to this application and has asked the Board to vote no and not spend any more time on this.

Mr. Coffin thanked the audience and the members of the public that participated tonight and noted that their concerns will be taken into consideration. He explained that the Board does a fact-based analysis, and the state does ask that the Board make "Findings of Fact" and any decisions made are backed up with factual research they receive. This is very specific science, and this is why it was suggested that an independent analysis be done. This is fair to the applicant and it's fair to the people in the Town that are concerned about health issues.

Public comment ended at 8:40 PM.

MOTION: by Mr. Broderick to have an independent site-specific study done on the effects of these chemicals.

SECOND: by Mr. Rohulich

Board discussion: Mr. Broderick mentioned to the public that when the Board makes a decision, we have to be able to justify it with facts and do due diligence. The Boards due diligence is to bring in an expert to give advice so the Board can make the best decision. Therefore, we need to get an expert to review and report on and the applicant is responsible for paying for this study.

Mr. Coffin asked the Board to vote if they were in favor of a study by Truslow Consulting to determine the safety of the proposed application of chemicals.

All in Favor (5-0-0)

MOTION: by Mr. Coffin to establish an escrow fund in the amount of \$3,300 to cover the cost of the hydrogeologic study.

SECOND: by Ms. Kelley

All in Favor (5-0-0)

Mr. Coffin brought up if the study becomes more intensive than estimated, that Mr. Moultroup/Until understand that they would be responsible for the additional cost.

Mr. Coffin doesn't believe the Board needs an engineering review. Mr. Coffin also mentioned this is not a proposed development so the Board does not need to take a vote on development of regional impact.

Mr. Moultroup asked how long the study would take. Mr. Coffin replied, it would be completed by May 26, 2023; described evaluation completed and recommendation on the variance request, and any recommendations on specific herbicide use limitations within the proposed treatment areas if appropriate.

Mr. Coffin asked Mr. Moultroup to provide any other data they would want the consultant to consider.

Ms. Kelley asked the applicant if they had access to any organic herbicides that they have used and have had success with. Mr. Moultroup will have to look into this and report back to the Board.

MOTION: by Ms. Kelley to **continue this hearing to June 8, 2023 at 7:00 PM at the Kingston Town Hall, 163 Main Street.**

SECOND: by Mr. Bache

All in Favor (5-0-0)

Mr. Coffin explained that there will not be another notice in the paper and abutters will not receive another notice in the mail. The public is advised that this is the notice to continue for this hearing. **The Until ROW hearing will begin at 7:00 PM on June 8, 2023 at 163 Main Street, Kingston, 2nd floor of the Town Hall.** A notice will be posted on the Town, ZBA website and will be posted downstairs at the Town Hall.

Mr. Coffin mentioned that you can sign up to receive emails from the Town (Kingstonnh.org) and you'll get a notification via email.

<Board note: hearing closed at 8:59 PM>

BOARD BUSINESS CONT.

Mr. Russman joined the meeting as a voting member. Mr. Bache is now an alternate member.

Approval of Meeting Minutes (May 5, 2023):

MOTION: by Ms. Kelley to accept the minutes of the May 5, 2023 as written.

SECOND: by Mr. Russman

Abstain: Mr. Broderick abstained

The Motion Passed (4-0-1)

ADJOURNMENT

The meeting adjourned at 9:01 PM.