

Zoning Board -Public Hearing on Presby Gravel Special Exceptions
and Variance in regards to asphalt plant

February 25, 2015

Present: Robert Clark (RC), Scott Champgane (SC) and Jennifer Trelfa (JT)

Town Counsel: Walter Mitchell (WM)

Secretary: Suze Tavernier

Thad Presby (TP) and Larry Towle (LT)

RC introduced the Board, Town Counsel and secretary

RC asked for a motion on the minutes from prior hearing, SC made motion to accept JT 2nd so all

RC explained the Board was holding hearing in regards to two special exceptions and a variance for to

Presby Gravel LLC property located R18 Lot 4 reference to change of use 5.05.2 and special exception

regarding height of structure and storage of flammable product over 500 gallons. He explained that

people will be allowed to speak with the Board and the abutters speaking first. He asked that when

anyone wishing to speak stand and state who they are, where they resident and if resident of the Town.

He asked that comments and questions be kept short.

RC only have three members here, we are trying to get other member on phone. Are you ok Thad if we go ahead with only have three?

TP yes

WM May I speak?

RC Yes

WM I need to remind you in order to get approval on any of the permits sought tonight you will need three affirmative votes so if you go ahead with three it has to be a unanimous vote, I want to make sure you understand that.

TP ok with that

Steve Toutant I live on Kathy Rae drive just above rustic log cabins. In doing some research in preparation I found that the state requires five members on the Zoning Board of adjustment

WM A zoning Board is a five member Board, but right now there is not a fifth member that has been

appointed and Selectmen are having problems finding someone to serve. It is a five member board, but it is not an illegal proceeding with less than five.

Steve Toutant my point if the state requires by law, if you end up in court would these proceeding be illegal with only four members and only three here?

WM Not at all, all that's required to legally proceed is to have a quorum, which is three, present but as a matter of fairness most Boards do what we just did with applicant, which is to explain if you only have three you need three votes for approval

Steve Toutant ok I just don't want it thrown out somewhere down the road

WM No, not a problem

ST to RC no answer on phone

RC OK Thad will be just us three

TP Ok let go

RC spoke to Larry Towle, where this is going to be your plant, leasing land not a resident of Lisbon, but the Board will recognize you as expert witness

RC asked if anyone else was not resident, but felt they had reason to be heard. A Selectboard member for the Town of Sugar Hill and State Representative Rebecca Brown made their presence known and requested to permission to speak.

RC explained all the certified letters had gone out and all but one had been returned. He stated the Board had received several letters as well.

RC asked TP present his information

TP explained the need for special exception due to height of stack and for storage of flammable. He explained the plan is to locate the plant at the intersection of the two Roads Route 302 and 117. Where the plant will be located is already 20' below grade of 117, little impact, should not see stack from 302 on 117 they have already built a berm 6' above road level. He feels appropriate place for plant as already zoned for industrial use, plant would have similar noise, visual and traffic. He feels the 58' height for industrial uses and feel it's reasonable as where located will be hidden from view, no egress issue. As for special exception feels appropriate similar scope of what we already do there and as for storage of fuel, regulated by the State, storage is designed by engineer and has to be approved by the State, feels it mainly a formality because the unit is over 500 gallons.

SC- asked TP if there are current fuel tanks on site

TP No, we don't use petroleum product currently, it for the number two heating oil that will be used
LT-Storage unit has to be designed by engineer, DES regulates it. There is a secondary containment in the design

SC-asked LT how long he has operated at his current location, and if any issues at current location

LT- 11 years with no issues and current will all permits

RC- asked LT any containment if asphalt spill on ground

LT explained asphalt liquid is inert, wont seep into ground, can be cleaned up with loader

RC asked how much liquid will be in storage unit

LT the storage unit is for number two heating oil, 85% full at most. He explained the secondary containment unit is made for the size of the tank, so it can hold up to 10 thousand gallons. This is all regulated by the State; they determine the slope of the land as well

SC asked LT to explain the current plant and how it works

LT explained the plant is a "3 ton batch plant" because the plant can produce 3 ton of asphalt at a time. The market is the Littleton area, small commercial; 11 years average is 35 thousand ton a year, over 30 weeks. Average of 14 trucks a day. Some days more, some days less or none. I don't want people to be confused by what you see on internet this is-small production. Not like Pike, that produces 200 thousand ton, including Waterford VT.

WM- The Chair has asked me to try to Focus the discussion here because one of the things you have asked for is a special exceptions for manufacturing 5.05.5 to get that you not only have to satisfy the Board that you meet the standards in 8.03, but this use is only allowed for manufacturing provided no pollution results, so I think the burden is on you to demonstrate to the Board explain why you don't believe pollution will result with this operation

LT Explained that the plant is regulated by State of NH DES and Air Resources apply for permit, temporary permit issued given a limited amount of time to get plant up and running. Then State comes in with subcontractor with man lift and test the port in stack, while running Results either issue permit or told what needs to be corrected. Once issued have to redo every 5 years, or if a complaint

SC asked LT how many times tested, you are in Bethlehem correct

LT times over the 11 years 2005 and 2011

SC did you fail

LT no never had to make correction pass 1st time

SC you reside locally?

LT yes, Lyman

RC Can the State show up or have to give you notice?

TL Don't have to give notice can just show up anytime, I have never had a problem

TP Can we do pollution one at a time. So storage unit-containment unit is 110% of volume of tank.

Heavily regulated for spill, no more likely than any other type of tank. Do we need more discussion on tank or are we moving on to plant?

SC I was doing all at once. I was all set on fuel storage

TP This is #2 heating oil, same as what a house puts out

LT The plant used #2 heater oil permitted by regulations of DES

SC Let's go on to noise, current hours of operations

LT-Explained plants runs based on customer demand. Plant may run for 10 minutes, and then shut down several times a day. Plant runs not much than two hours total during the course of average day. Some days could be slightly more, some days not at all. DES test 85-110 decibels, sound dissipates quickly, like anything you can find high readings as easily as low readings.

TP Would like to point out back up alarm on loader is 105 decibels, asked mechanic so the noise is not out of the ordinary for industrial use

RC the crusher that was there before made more noise?

TP crusher would make much more

SC basically you run plant for about 10 minutes at a time

LT in business for 17 years owner for 11 years, which is the average, going to be same market. Averages are accurate being honest, if two trucks came in at once would run for 20 minutes.

SC so noise is produced only when plant is running

LT only when burner on. The liquid asphalt is heated 24 hours a day with the same kind of furnace you run in your home, it also runs on #2 heating oil and no louder than one in your home.

SC how many complaint noise or otherwise have you received?

LT never had complaint

Terry O'Brien- He asked if LT could describe the current location, residential homes, concern about winds and thinks many other people have the same concerns. He made attempt to find plant, in the middle of nowhere a vast property.

SC That is why I am trying to bring up now. I have these questions as well. Currently where plant is and this location slightly different, trying to find out

LT Small comment on vast property, however more people can see me now than at new location.

Mann's Hill homes can see me, West Forest Lake Road, runs behind me, as the crow flies, waterfront property closer to me as the crows flies

SC Stated that LT had explained the estimated truck traffic in regards to selling the asphalt, what was the impact of hauling in material used for the plant. How much more traffic with that add

TP Explained that number was up in the air, they plan to use as much from the site, as most convenient.

SC how often does that run you have bins correct

LT Explained he keep raw material in yard, loader fills cold bins, if those bins are full I can load 3-4 trucks before I even need to fire loader up to get more material

SC stated he had no further questions

JT Asked what comes out from stack, what are we going to see?

LT There are, to be fair emissions that come out of stack, once test measures how much particulates come out of stack, we pay State for any emissions. What you see is steam, very white

JT asked LT to explain the process

LT Explained cold feed goes into dryer, dries out aggregate, 80% moisture out, works like clothes dryer. Then elevator, hot, carries to top of screen deck, separate four bins, stores hot until truck come to load, recipe into hopper state certified weight, up dry and liquid, after measured drops into mixer and drops into truck

JT asked about the smell produced

LT Explained no scale of smell, no way to tell you best way to explain, driving down road if farmer spreads manure in field you smell as you get closer, it fades as you drive away or if you go through a construction with paving, the smell is there for a while. The only real odor is from the liquid asphalt and only smells when hot, once cold no smell at all

JT asked if the State sets the height on the stack

LT stated the DES sets the heights; it's based on location, based on how wide or narrow

RC Open to questions from abutters, anyone who received a certified letter

Rachel Houston- Main concern about the odor and noise and asked how long the plants runs

LT explained on the average day less than 2 hours a day from May 1st through Thanksgiving-30 weeks.

We don't run on weekends, Monday through Friday day light hours. We are closed on Holidays.

Rachel Houston- Concern about spring across from her and if there will be any issues with leakages

LT explained the fuel storage and beyond that nothing leaches on ground product does not leach into ground. I don't have any hazardous waste and asphalt is inert , it doesn't leach into ground

Montgomery Chandler- Read parts of her letter explaining her concerns in regards to negative impact on their quality of life and property values, information she has found she has found on asphalt plants

TP Explained Rachel Houston's house is the closest, that house is a half of a mile, just to put in perspective. The area is commercial use, zoned for commercial I looked into this, found asphalt plant in Keene located close to apartment complex it's 200-300 feet away. I called Keene asked about complaints if any, no complaints that they could remember. Put in perspective in regards to noise and smell

Montgomery Chandler- questioned if applications were passed and if someone comes along, this permit is good for 5 years, questioned if conditions went with property or person

TP Far as I know comes with land, but conditions put on by the Board remain on. We are longtime residents, not going there

JT How long lease?

TP Ten year term

LT the only other asphalt plant in area is Pike, they can't legally buy him out, and would be the only one interested. He has been in business around 11 years, very small- mom and pop operation

Jan Marshall-Explained she questioned about the ability to speak on the impact and not just questions to be answered. She stated the Board needed to find out the impact on the residents and asked if the Board would be willing to have another hearing if necessary and would statements of concern be allowed then

Jane O'Brien express concern that not all were being allowed to speak about concerns and that the public posting stated anyone with concerns about impact were invited to speak at hearing

Med Chandler-Explained concerns about Property Values

SC Explained he will be looking at the affect other plants have had on property value, that he felt the Board won't even come to decision this evening.

Doug Erb-Explained his use of farm land on straight line and emission-carcinogenic in air and settling on ground where corn grown for livestock

TP explained he tried to get research on solid numbers, and yes there is emission, but it states health risks are minimal. He pointed out other big business in Lisbon are already doing this, but also pointed out the amount of traffic on 302 and emissions for traffic, wire mill with the large amount of number 2 heating oil used there. He felt the area appropriate

LT explained he researched and it stated that one asphalt plant gives off the same emissions as 16 wood stoves. In 2002 US government took off this type of asphalt plant off list of pollutants

Jan Marshall spoke on 8.03 and felt she was impacted and should have received a notice and concerned that people would not have ability to speak on concerns

RC explained the Board was trying to get all questions answered first, and then go on from there. He explained the abutters have priority

Steve Jessemen- spoke as representative from Ammonoosuc River Advisory he explained the Commission is concern about the location of this proposed plant in relation to the Ammonoosuc River and that all digging, trenching within 1/4 mile of river needs DES approval and all approvals on the river come through this committee and we have seen no application. Then he spoke as Steve Jessemen resident, this will be 2 miles directly across river from him. He is concerned about his campground. He explained his concerns about noise, smell and pollution. He expresses concerns about hours of operation and the affect it will have on his business, this will affect his lively hood.

AL Costa- asked if Board had any idea about tax revenue.

RC No information on that yet

AL Costa asked about location of plant in pit and questioned how high stack would be from pit, he asked if 50 feet was from bottom of pit or from level of road and proximity to 117. He concern was not about the height or visual from road, it was in regards to emissions

LT explained plant would be over 1000 feet from 117

Steve Toutant- Explained his concerns about workers being exposed to higher concentrations of emissions at the ground level

LT explained the State sets the stack height

Steve Toutant sited a TX research regarding fires and explosions at asphalt plants and inquired if Fire Department was equipped with foam as these fires could not be put out with water and if not how much would it cost to bring town up to standard

Kate Segal-explained concerns about pollutants, zoning regulations states no pollution and asked how Board could grant

WM The answer to the lady's question the Board at some point when considering this request for special exception is going to have to interpret this provision in the ordinance and decide whether the applicants proposal fits within, they will have to deliberate on that questions as well as other and reach their decision. They will have to interpret the ordinance, make a decision on what it means and whether the application fits with in that

Ina Lippard quoted handout regarding asphalt plants and emissions

LT-Explained the difference between liquid asphalt and what he produces. Then he stated his permit issued by the state allows him up to 40 ton a year of pollution

Rebecca Brown Asked for clarification on question on scale of operation permitted for more than he produces and asked if he planned to expand to permitted amount allowed

LT explained he has stated his numbers based on the market, which has been stable for 11 years, yes permitted for more than produce but don't foresee expansion

Rebecca Brown asked if permit goes with the land

There was a discussion on permit remains on the land, not issued to a particular person

Gabrielle Costa questioned the idea LT would not want to grow his business and asked if the Board have done research on effect on property values on surrounding homes, when plant goes up

Jan Marshall Suggested Presby pays to have study done on impact of property values and made that suggestion to the Board

Alaina Lessard Spoke on the Hardship portion of the regulations

WM Don't believe that thing you are reading reflects the zoning stature criteria on variance as it presently exists that narrative sounds like it describes the variance test that used to exists before the legislature changed the statue . I believe that the current language of the statue pertains to variance is properly reflected on the application your are reading from the ordinance, but if the ordinance, may I cut you off please because if the ordinance, this ordinance is quite old and I can tell because it still contain a reference to chapter 31 and that references , what I am saying is the source of it, is probably

20 years old before the statutes had been changed and the variance, the test for variance, no matter what you have in your ordinance if doesn't reflect the state standard or test then it's not valid have to go by the state standards so the Board is going to have to look at the variance standard as in the present statute that is what will guide them as to the variance

Alaina Lessard- explained she pulled this information from Town's web site and this is what she thought the Board went by

WM- I certainly understand that, which is the standard that existed by case law, 20 years ago but not presently rsa674-76 is where you will find sections in there that pertain to granting the authority variance and what standards must be found by the Board

Alaina Lessard Asked what standard the Board will go by

WM they will go by the current state standards

Chris Knap Explained he has known LT for many years not looking to do anything, I have been at plant and these fears are a little over blown. DES already approves good faith effort not being ousted from current site. All the levels set by state within guidelines any pollutions is too much, don't see how his good faith efforts/ barrier for noise. What more do you need? Business aren't coming to Lisbon

Kate Segal questioned if the Board could grant based on the Town ordinance, and inquired as to how this proceeds and asked if this was just an informational meeting

WM This is a public hearing, I expect the Board will not be making a decision tonight they will continue this hearing until their next meeting, because if there is any further checking the information that results from that checking will have to come in at a public hearing they keep the public hearing open take in any further information they have to take in close public hearing deliberate among themselves in public meeting ask various questions and make decisions

Kate Segal asked if the next public hearing there will be a chance to speak and they will deliberate in public

WM All Town hearings have to be in public

SC explained that in the past the Board has gone two weeks and then reconvened and will be a continuation of this public hearing

Mike Petriccione Express his concerns about pollutions and EPA pollutions standards. He further expressed concern about Town's liability if board approves in contradictions to law

WM Trying to take your question put in more general hypothetical the general question I gather is if town gives an approval, in the hypothetical the Town would doing the permit make the decision that it thought that it was within the law, even though some people might disagree. Question as to whether the town has made the right decision or not is one that is answered in the appellate process somebody, whether it's the applicant or abutters is unhappy with the decision by this Board can appeal to superior court and whatever the court says is the final answer and beyond that the town has no liability. Again hypothetically if the court disagrees with decision with this Board and over turns decision than that's it other than the possible appeal to the Supreme Court, there is no risk of liability to the town for the making, excising those individual judgments

Jan Marshall explained she was on Budget Committee and had concerns that zoning board has history of making decisions that result in law suits

Terry O'Brien spoke about property values, and thought it would be beneficial to have study done and paid for by applicant

Montgomery Chandler inquired about the increase in traffic and effect on town budget

RC explained state roads

Anne Salter Explained her biggest concerns were noise and pollution and the impact on her business, at Bishop Farm. She explained they have worked very hard to build up her business and feels that this would kill her business

Jan Marshall spoke on the variance posted on town's web page and that's what she relied on to prepare. She inquired if there would be an opportunity to make additional comments at other hearing. Take statements, just been told town's regulations are not legal

Steve Toutant asked if the Conservation Commission will be giving input

Steve Jessemen-spoke regarding DES and Ammonoosuc Advisory committee, had not received application

TP only time you need to apply if disturbing wet lands, not disturbing wet lands; He asked if need and told no but if we need to we will

JT motion to continue to March 25 at 6:00 SK2nd so voted all

Steve Morrison brought letter of concern to Board regarding 53 Armstrong Ave. and 2001 decision and change of circumstances

RC made motion to adjourn JT 2nd so voted all