

MINUTES
ZONING COMMISSION
DECEMBER 7, 2011 – 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

Present: Cady, French, Hudecek, Marquardt, O'Neill, Sutherland
Absent:
Staff: Davis, Galetta, Murphy (at 8:27), Town Attorney Carey

Chairman Hudecek called the meeting to order at 7:04 p.m.

II. PUBLIC HEARINGS

1. Special Permit #321, 0 Yetter Road, PIN 270015625780, RU-40 Zone. Proposal is for excavation, processing and sales of 843,220 CY of earth products and the importation of an additional 843,220 CY of material for on-site processing and including periodic crushing operations. Review is per Section 7.1-10 of the Zoning Regulations. (Whittle Earth Products Facility, Applicant) – Continued

Staff noted the three items requested to supplement the record are: a remediation plan for the area closest to adjacent homes, a geo-tech evaluation on effects of blasting as to wells, and a formal noise evaluation.

Attorney Jeff Londregan, representing the Whittles, addressed the outstanding items from the previous meeting to which staff was referring. He stated that additional material for all three categories has been submitted in the form of a stand-alone sheet drawing depicting the revisions which was prepared by DiCesare-Bentley, Engineers, Inc., a letter from Thomas Nolan, PE, Haley & Aldrich, Inc. summarizing their evaluation of the affects of rock blasting, and a report from Bennett Brooks, P.E., Brooks Acoustics Corporation to assess the noise impact of rock crushing operations.

Paul Biscuti, P.E., of DiCesare-Bentley Engineers, presented to the Zoning Commission to explain the revisions on the Phase I Operation Plan. The processing area is moved away from the Turner property and replaced with corn planting. White pines are planted along the Turner property line as a buffer. On the westerly side of the property, some grading was within the upland review area so this was redesigned to pull anything out of this area. With regard to the 1:1 ratio replacement of materials, the permit must be renewed every two years which will involve revisiting it with the Zoning Commission. Surveys will be done six months prior in preparation for the renewal. If the 1:1 ratio is exceeded on the importation side then operations must be suspended.

The geotechnical evaluation was performed by Haley & Aldrich, Inc. They provided a letter summarizing the findings noting that a condition of the approval is that there can be no blasting within 250 feet of neighboring wells. If this condition is adhered to there should be no impact to wells on adjoining properties.

Bennett Brooks, P.E. presented his report which was prepared to assess the impact of the proposed rock crushing operation on noise decibels. A summary and analysis of operations proposed at the site demonstrate that the sound emissions are well below the DEEP standards.

The Commission had several questions relative to the sound study and the interpretation of the data presented.

Staff feels the applicant has done a good job of providing supplemental information to address areas of concern for the Commission. The hearing must be closed at this meeting as they are at the end of the extensions.

Chairman Hudecek asked for comments in favor or against the application.

Albert Turner, 314 Yetter Road, is against the permit application. He stated the sound engineer did not evaluate the rock excavator hammer in the sound tests. The rock is hammered before it goes into the hopper and the hammer is operating all day long. He thinks the back-up beepers on the trucks add noise and must spike up the decibel levels. Additionally, he has an issue with the rock piles that are as high as 75 to 90 feet. The dust coming off the piles is blowing right into his house. He also stated that they hit water when they are down there and a small pond is evolving. He feels this is a large scale operation. He submitted photos for the record.

David Waikus, 388 Yetter Road, urged the Commission to reject the application. The operations have moved closer to his property line but the noise measurement was not done at this location. There is also no dust abatement in place. He doesn't think the new rock crushing operations should be allowed and he thinks the noise study is faulty. He also noted that the application is submitted by Whittle Earth Products but prior to 1957 the business was Whittles Farm. He feels this operation is going to be run by a third party and in reality will be one of the largest rock crushing operations in the area. He stated this was not made clear at the Superior Court hearing. He feels that property values have declined and that his quality of life has declined.

Martin E. Davis, 10 Spring Valley Road, stated that his property is approximately 500-600 yards from the operations. He is before the Commission to address gun fire that takes place on the property. He questioned whether this would fall under the application being heard.

David Waikus addressed the Commission again suggesting they check with Groton Town Police who have received reports regarding the gun fire. Albert Turner concurred.

Attorney Scott Sawyer, who represents Albert Turner, addressed the Commission. He noted the settlement agreement allowed the applicant to come to the Zoning Commission to request a special permit to conduct rock crushing operations. He stated that the TOG Zoning Regulations do not allow this kind of activity in this zone; therefore, the Zoning Commission cannot allow this special permit. His client's claim is that rock crushing and importation of material is not pre-existing. Sawyer has addressed a letter detailing his objections to the Zoning Commission.

Attorney Londregan stated that there would be time to have a special meeting next week as there are roughly 9 – 11 days left to the extension. He feels it would be difficult to get sound measurements within this timeframe; however, the applicants are willing to do further measurements when the rock crusher is brought back to the property. Noting there were problems in the past when the operation was located much farther to the East, he stated planting pine trees and relocating the operations further away from neighboring properties should address the noise levels. Guns are not relative to this application. Regarding the issues raised in Attorney Sawyer's letter, he submitted a transcript of the administrative appeal calendar for the Superior Court proceedings in which Mr. Turner testified. Attorney Londregan stated that his clients were here to get approval from the Commission and have

regulations put in place in an effort to be respectful of their neighbors. He reiterated that the reason they are before the Commission is because of a Superior Court agreement between his clients and the Town of Groton Zoning Board of Appeals. There needs to be a balance of the rights of the Whittles to have the operation and their neighbors who deserve to be accommodated. It is the contention of the applicant that rock crushing and importation of material are not illegal uses. With regard to the sound emissions, if the noise of the operation is kept under DEEP standards then the facility can operate, if the noise is outside of the standards then operations must stop and the applicant must do whatever is necessary to bring the sound emissions into compliance. This is State law that will not change.

Commissioner Marquadt disclosed that her husband's business occasionally brings materials onto the site. She does not feel that this will sway her judgment but she is willing to recuse herself if Staff or the attorney's want her to. Staff's opinion is that even the suggestion of bias or conflict of interest by a commissioner warrants a recusal especially if enough board members who are knowledgeable about the application are present.

Commissioner Sutherland disclosed that last Friday she took a tour of the facility along with OPDS staff member Deborah Jones and Mr. Whittle.

Dave Waikus stated that according to both DEEP and the Ledge Light Health District dust should not be crossing the property line. There is currently no dust abatement.

The public hearing was closed at 8:28 p.m.

III. APPROVAL OF THE MINUTES OF November 2, 2011

MOTION: To approve the minutes of November 2, 2011, as amended

Motion made by French, seconded by Marquardt.

Discussion of the minutes on Page 5 under the section Receipt of New Applications.

Motion passed 3-1-1, 1 opposed (Marquardt), 1 abstained (O'Neill).

IV. PUBLIC COMMUNICATIONS

The Commission received a memorandum from Staff relative to the November 2, 2011 amendment to the previously adopted minutes of September 7, 2011. In reviewing what the Commission did, based on FOI, Staff found that it was improperly done. The memorandum offers suggestions on the proper procedure to use when undertaking this type of action. The Commission stated that it felt its action was correct according to Roberts Rules. Staff stated that the provisions in Roberts Rules do not trump FOI and a proposed amendment needs to be added to the agenda after which they can take action. Chairman Hudecek asked how to fix what had been done. Staff reiterated that to make the change to the minutes the Commission needs to add the amendment to an agenda, then take action and vote appropriately. The Commission stated it would like to have some time to read the memorandum and do its own research.

A transcript of a portion of the September 7, 2011 meeting, made by Town Attorney Eileen Duggan, was provided to the Commission.

Town Attorney Michael Carey reviewed the section of Roberts Rules Newly Revised (RRNR) which speaks to the issue. Specifically Roberts Rules 11th Ed. Page 19 Section II says that if a tape is ordinarily on as a custom that tape should remain on throughout the meeting. He also qualified that the minutes are meant to be a record of what is done, not what is said. The Assembly is responsible for setting up how the minutes are done. Per FOIA, the minutes must record votes and then be made available in 48 hrs.

V. CONSIDERATION OF PUBLIC HEARINGS

1. Special Permit #321, 0 Yetter Road (Whittle Earth Products Facility, Applicant)

The Commission discussed the impact of the use on the neighbors, the impact of the use on the environment, and the implications of the stipulated judgment.

Carey noted that the stipulated judgment is an agreement between the owners and the ZBA and the Zoning Commission can impose reasonable limitations on the use.

It was the Commission's consensus that, subject to certain limitations and conditions, the uses could be permitted.

Staff said they will have a draft motion prepared for the Commission at the next meeting.

MOTION: To table the discussion of the special permit consideration until the next meeting.

Motion made by French, seconded by Marquardt, so voted unanimously.

VI. OLD BUSINESS

1. Discussion of proposed text amendment to Zoning Regulations Section 8.3

Staff drafted some language specific to this section which deals with submission criteria for special permits. There are other sections they also want to clean up. Staff would rather give a comprehensive section to the Commission rather than just one this part of Section 8.3.

2. 2012 Meeting Schedule

MOTION: To adopt the 2012 Zoning Commission Meeting Schedule as presented

Motion made by Sutherland, seconded by French, so voted unanimously

VII. NEW BUSINESS

1. Receipt of New Applications – None

2. Request for Interpretation of Special Permit #289 (Central Hall)

Staff noted that the applicants have a special permit and standing site plan approval. In the process of finalizing the site plan for recording, adjustments to the plan are being made but some affect the parking issue. Staff feels they should submit an additional special permit

application. The applicants are here to make a presentation to the Commission to determine if the changes rise to the level of a public hearing; however, they have submitted an application to the Planning Department as of today.

Staff identified plan modifications and explained the options. If the changes don't rise to the level of a public hearing the Commission can act on the changes in lieu of a public hearing. The letter included in the agenda packet frames out what the changes to the permit are. Basically the three parking fields currently associated with the site plan will be allocated differently.

Ken Navaro, Historic Mystic, LLC, Rod Desmarais, and Clint Brown, P.E., DiCesare-Bentley described the proposed minor changes. The total number of parking spots is the same. Central Hall residents will be in permanent, controlled spots. The transient shopper or staff member is being assigned to the Mystic Art Association lot where they will come and go more quickly. The fire department has been apprised of the changes and has no issue with them. Most of the current tenant leases are in compliance with the plan already and as the others renew they will be brought into compliance as well. The applicant does not feel the changes rise to the level of a public hearing as there are no substantive changes such as sidewalks or lighting.

Staff noted that the design is somewhat the same. Essentially the applicants are trying to transfer some of the spaces to a different lot and make some adjustments to get 24 spaces (100%) for the Central Hall condos. The Planning Commission met regarding the site plan application on Tuesday night at which time the applicant provided an extension taking it to the end of January. Staff recommends the Zoning Commission not take action tonight. He also noted that the Planning Commission, which reviews the referral, will not meet until after the Zoning Commission's next meeting.

Chairman Hudecek stated an application has been submitted to the Town. The Commission will review it next month, but questioned whether should it be noticed and go to public hearing. The Commission consensus is not to go to public hearing.

VIII. REPORT OF CHAIRMAN – None

IX. REPORT OF STAFF – None

X. ADJOURNMENT

Motion to adjourn at 10:06 p.m. made by French, seconded by O'Neill, so voted unanimously.

Mariellen French, Secretary
Zoning Commission

Prepared by Lynda Galetta, Office Assistant II