

MINUTES
ZONING COMMISSION
SEPTEMBER 7, 2011 – 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 1

I. ROLL CALL

Present: Cady, French, Hudecek, Marquardt, O'Neill, Sutherland

Absent:

Staff: Davis, Gilot, Town Attorney M. Carey

Chairman Hudecek called the meeting to order at 7:00 p.m. and seated Cady for Haviland.

II. PUBLIC HEARING

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)

Attorney Jeffrey Londregan, Conway Londregan et al., represented the Whittle family. Mr. Londregan reviewed the history of the operations, the Zoning Official's findings, the appeal, and the proposed settlement. The excavation and processing of on-site materials was found to be legal because they were pre-existing, non-conforming uses pre-dating zoning regulations. The other uses - processing of offsite material and crushing of all material, are not permitted. The Whittles appealed to the Zoning Board of Appeals, and the Zoning Official's decision was upheld. The decision was then appealed to Superior Court. An agreement was reached between the applicant and the Town, and as part of the agreement, the Whittles must obtain a special permit for the non-conforming uses. A wetlands permit was granted for the property. The two non-permitted uses (processing of off-site material and crushing) need to be permitted. The agreement allows materials to come in off-site only through Gold Star Highway. The amount of fill imported cannot exceed material that can be excavated from the subject property. Also, the importation of off-site materials for processing terminates when the site is fully excavated. The stipulated agreement allows them to process for 50 (fifty) business days in any calendar year, in two seasons, weekdays only, during certain hours, and the Town must be given notice prior to the commencement of The stipulation also limits the type of crushing equipment that can be used and provides for the accounting of off-site material. The use of bringing in off-site material and crushing is personal to the Whittles. If the Whittles sell the property, the special permit is terminated. These uses only remain with the Whittles as long as they own the property. The uses which are valid pre-existing, non-conforming, can continue regardless of the zoning regulations, and don't expire unless they are abandoned.

Paul Biscuti, DiCesare-Bentley Engineers, submitted the proof of mailing to the Commission. Mr. Biscuti detailed the site, existing conditions, and the proposed operations plan. The stockpiles of imported material and the material excavated on-site were shown on a map. An August 1, 2011 survey showed the existing volumes. Mr. Biscuti detailed the proposed methods of measuring the volume of material

excavated from the site. The agreement states that the measurements will be done once a year, and compared over a two-year period. Processing (screening), and crushing were discussed. Attorney Londregan said that excavating on-site and processing on-site material are allowed uses; processing off-site and crushing of any material are the non-permitted uses. The Commission inquired about the noise and the decibel level of the crushing machine. The location of the rock-crushing machine at the site, inside the gravel pit, was reviewed for the Commission. Attorney Londregan said he will get the actual decibel level information for the commission. The special permit would be renewable in two years.

Commissioner French said to satisfy State statute 8.2(b), and the Commission must consider the impact on the Sound with any application they review. Mr. Biscuti explained that Haley Brook goes through the site; runoff will be clean by the time it reaches the channel. No work would occur near the wetland area. Testing of the water runoff has not been done. Runoff, the farm pond, and storing of asphalt and fuel at the site were reviewed. The Whittles have agreed to discontinue further use of onsite storage of fuel, and fueling will be mobile. The quality of material coming from off-site was reviewed, as to whether it is "clean"; it is stated in the stipulation that any future material must be clean fill. A portable fuel tank can be moved within 24 hours if required. Dust generated at the site was discussed; the Whittles keep the area wetted down to keep dust down. Emissions from the crusher must comply with emission standards of DEP.

A Commissioner suggested the Whittle property is located in a general area of concern on the DEP Natural Diversity Data Base and the Chairman had the option to request a State DEEP environmental review.

Rick Whittle, a principal, discussed the dust, the irrigation pond, the crushing process, the materials testing required of the final products. Fruit and vegetable farm is run four months of the year; the gravel pit sustains the farm for survival.

Correspondence was received by staff from the Turners and Waitkuses and entered into the record. Those emails requested the hearing remain open and continued as they were unable to attend tonight. Copies of the wetland permit, stipulated agreement and the Town Engineer's memo were included in commission packets. Staff distributed a memo of recommendations to the commissioners.

The Commission discussed the one-for-one parity of imported materials to on-site materials to eliminate the site becoming solely processing/crushing of off-site materials rather than an on-site mining operation.

The Chairman asked for public comments.

Mark Grabherr, 204 Yetter Road, asked for clarification as to whether the 50 day annual limit could be carried over from one year to another. Attorney Carey said no. Mr. Grabherr also commented on the potential effects on groundwater and wells in the neighborhood.

Kathy Neugent, 215 Yetter Road, said she had concerns with the asphalt at the site, the noise level and blasting; and enforcement of the agreement.

Bill Davies, 235 Yetter Road, said he was concerned about the noise level of rock crushing which in the past was high, even indoors, and why this use is in the RU-40 zone rather than in an industrial zone.

Dan Gaddis, 177 Yetter Road, spoke in favor of the application.

Frank Murdock, 147 Yetter Road, had concerns with the potential threat to the water table for the homes in the neighborhood.

Mr. Biscuti discussed the test pits done at the site. The Commission discussed the potential effect of blasting at the site. There has not been a determination by the zoning official regarding the blasting with regard to the Order.

Attorney Londregan reviewed the agreement with regard to processing for fifty days in a calendar year, processing will only be during the spring and early fall when leaves are on trees, during certain hours and days, all trucks will access and leave via Route 184 (except the farm trucks). He said he would have the noise information for the next meeting.

The Commission discussed water testing on Haley Brook as it leaves the site, to establish a baseline. Mr. Biscuti explained the strict controls for water testing.

Some commissioners discussed visiting the site; staff recommended that anyone who wants to go out to see the site should advise staff, as the public hearing is still open.

Attorney Carey said any information gleaned from such a visit must be included as part of their decision and that information made available to public.

Attorney Londregan had no issues with site visits, and recommended anyone interested contact the Town Attorney or staff to coordinate such a visit with his office.

Staff distributed copies of their recommendations to the commissioners.

Motion to continue the hearing to the next regular meeting on October 5, 2011, made by French, and seconded by O'Neill. Motion passed unanimously.

III. APPROVAL OF THE MINUTES OF July 6, 2011

MOTION: To approve the minutes of July 6, 2011, as presented.

Motion made by French, seconded by O'Neill. Motion passed 4-0-1, 1 abstention (Hudecek).

IV. PUBLIC COMMUNICATIONS

Staff said that the Town and Chairman received a letter from Mr. Haviland announcing his immediate resignation from the Zoning Commission. The Commission concurred to add the election of a new Secretary to the October 5th agenda.

V. CONSIDERATION OF PUBLIC HEARING

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

The public hearing was continued to October 5, 2011.

VI. NEW BUSINESS

1. Discussion of proposed text amendments Zoning Regulations Sections 8.3 and 8.4

Staff noted they are working on the drafts of additional criteria. Staff is developing a model for special permit criteria for the Commission's consideration, noting that the current language is too vague. The Commission discussed their ideas regarding criteria. The Chairman suggested that in prior discussions as to special permit criteria, he perceived that the Commission preferred the existing more general criteria. Staff advised the Commission regarding the need for defensible criteria. The Chairman requested the recorder be turned off at 8:57 p.m.

A text amendment application was received from Michael Hoelck.

VII. REPORT OF CHAIRMAN

The Commission discussed sending a card to Mr. Haviland. The Chairman will sign for the members.

VIII. REPORT OF STAFF - None

IX. ADJOURNMENT

Motion to adjourn at 9:01 p.m. made by French, seconded by O'Neill, so voted unanimously.

Stephen Hudecek, Chairman
Zoning Commission

Prepared by Debra Gilot, Office Assistant III