

PLANNING BOARD MEETING MINUTES
11/13/14

Public Hearing: Public Hearing On Woods' Pellet Mill

[The Board, Dean and Tony Woods, and members of the public engaged in a vigorous and lengthy public discussion of the Woods' Pellet Mill project, including anticipated hours of operation, odors, access to facility, descriptions of the proposed facility, anticipated sound levels, impact on neighbors, water testing, lighting, TIFs, insurance, and visual impact.]

[During the Public Hearing, the Board distributed an email exchange with David Lourie, the Town's lawyer, in which Attorney Lourie briefly answered questions posed by Chair Norm Blake. The document is attached as #1.]

Chair Norm Blake closed the public hearing.

Planning Board Meeting:

Attendance: Norm Blake, Fred Miner, Jo Pierce, Bob Flint and David Strock

MOTION: Jo moved to waive the reading of the minutes of the prior meeting, which had been distributed to the Board members prior to the meeting. With a seconded, the Board voted unanimously to pass the Motion.

First Item: Norm stated that Suzette McLaughlin (who was present) had raised a concern about the potential bias of one or more Board members who own timber land.

Norm stated that Danielle Taylor, the Administrative Assistant to the Selectmen, had requested an opinion from the Maine Municipal Association regarding bias. Norm read the email from A. Meader, Staff Attorney at the MMA (Attached as #2).

Jo stated that he had no interest in FE Woods and, while he owns woodlots, he sells his wood to a logger and the logger independently decides where to sell the wood. He further stated that he believes he can discuss and decide the CUP with the best interests of the Town in mind.

Fred stated that he felt the same way. The logger, not Fred, decide where to sell the wood. He confirmed that he had no interest in FE Woods.

Norm, David and Bob confirmed that they do not believe they have any reason that they would be unable to fairly consider this matter.

Second Item: Discussion of Woods' Pellet Mill Conditional Use Permit

The applicant presented a large diagram that depicted the facility, but stated that it was not set in stone. There was a general discussion about moving the facility 180 degrees, so the debarker and truck dump were farther away from residential houses. There was also a general discussion of moving the facility to the northeast to increase the distance from residences.

The Board discussed the hours of operation with the Woods. The Woods stated that they wanted to have a 24/7 operation, but there were areas of the facility that would not run 24/7.

First, the log yard operation, they wanted to be able to use from 6 a.m. to 8 p.m. (Monday through Friday) and 8 a.m. to 6 p.m. (Saturday and Sunday). The applicant agreed that there would be no activity in the log yard area outside of the hours of operation.

Second, they expected their trucks to be running 24/7, but the facility was constructed so the trucks did not need to back up. The trucks would arrive at the facility empty and be loaded with pellets and leave. With regard to logging trucks coming into the facility, the Woods anticipated this to be 24/7 as well. The trucks would be unload by the trucker, or a fixed unloader at the facility. They expected the chip dumper to only be used during the daytime hours.

On a large diagram of the facility, the applicant drew general areas which he expected would be used 24/7, and those areas around the log yard that would be limited to day time hours. (Diagram attached to original meeting minutes).

The Board discussed air quality issues with the Woods. The Woods stated that the Maine DEP had very strict requirements that they had to follow. The facility needed a “minor source emissions license,” which was a 5 year license that need to be renewed.

Norm – asked that the applicant provide a copy of the license when obtained and to provide the Planning Board a copy of the renewal licenses when received.

David – asked if truck emissions was covered by that license. The applicant stated that the EPA covers trucks.

The Applicant stated that they also had to obtain a “site location order” from the Maine DEP, which was a one-time order. This order covered storm water, sound, and natural resource issues.

Norm – asked what they were going to do with the stumps. The Applicant (and one of his experts) stated that they have not decided, but they are looking to grind them up and use them for erosion control during construction. They stated that issue was one of the issues to be addressed in the “site location order.”

The Board talked to the Applicant about ground water issues, including testing.

Norm asked if they knew the flow of the water in that area. Suzette McLaughlin stated that the water moved from the Baldwin School towards her house on the opposite side of Pigeon Brook Road, at least that was what they were told when there had been issues with the water supply years ago.

[During the public hearing, there had been a discussion of water testing at multiple locations adjacent to the mill’s property, including Glen Reynolds’, Suzette McLaughlin’s and Rick Day’s property, as well as in the mill itself.]

The Board and applicant again discussed the issue of potential sound impacts to the neighbors. The applicant state that the Maine DEP may allow them to use the wood as a barrier, even if it is a semi-permanent.

[DRAFT – NOT FINAL UNTIL APPROVED BY PLANNING BOARD AT NEXT MEETING]

A Board member asked what the sound levels of the emitters without any mitigation. The applicant stated that the chipper was around 110dB, but that would be mitigated, and the backup beepers are approximately 120dB.

The Board decided that it was well past 9:00 and it made sense to adjourn the meeting and continue on November 20, 2014 at 7:00. David agreed to place an ad in the Shopping Guide and send it to the Town office to be put on the website.

Third and Final Item: Motion to Adjourn, which passed unanimously.



David Strock <dastrock@gmail.com>

#1

baldwin pellet mill questions

David A. Lourie <david@lourielaw.com>

Wed, Nov 12, 2014 at 2:31 PM

Reply-To: david@lourielaw.com

To: Norman Blake <wa1ivb@att.net>

Cc: Josiah Pierce <unclejo@cpierce.com>, "rileysauto@roadrunner.com" <rileysauto@roadrunner.com>, David Strock <dastrock@gmail.com>, "famsam@roadrunner.com" <famsam@roadrunner.com>, "rflint57@gmail.com" <rflint57@gmail.com>, Parsonsfield Selectmen <selectmen@parsonsfield.org>

You have asked a lot of questions. I will attempt short and very preliminary thoughts and answers (**Bold Below.**) Most will need more research, discussion with experts (sound or soils engineers) prior to Bd action. Please advise if you have more questions, wish me to review proposed conditions, or attend a meeting.

On 11/12/2014 11:47 AM, Norman Blake wrote:

Hello David...

We have an application before the Planning Board in Baldwin for a wood pellet mill. It is proposed on a 100-plus acre parcel between the school and the railroad tracks. (The school will be closed by the SAD after the end of this school year) On the other side of the tracks is Pigeon Brook road which contains a few residences. **This would almost certainly trigger State Site Location Act review. What is status of that? Usually, you would go first, and add condition that they get State permits within a specified time frame, so you probably do not need to be concerned about it unless they do not plan to do that already.**

The Board has been working in open meetings with the applicants who are local people backed by a troop of investors for the \$35 million project. I think most of the concerns have been worked out, and a couple public information meetings have been conducted.

Most people in Town seem OK with things, but there are two concerns, noise and groundwater.

Regarding noise, the plant is a modern German/Belgian design and the applicants are assuring a certain db sound pressure level maximum at their boundaries. They have volunteered to not move logs in the main log storage yard between 8PM and 5AM. However, one neighbor (who also happens to be a Planning Board member, who is a snowbird, now down in Florida, and who has already recused himself) has brought up an interesting concern. He has asked that, if the noise from the mill is deemed by him to be a "nuisance" after the plant goes into full operation, that the mill would be required to build an earthen sound berm, 16 feet high, along his 900 foot common boundary with the mill property. **Any performance standards, even if "volunteered" need to be made conditions of approval. Earthen sound berm 900' long would probably affect surface water run off, has anyone submitted info on impact, which is likely to be problematic?**

11/13/14
For M... ..

My questions are:

What is the legal definition of a "nuisance"? **There is no workable definition of a nuisance that you could incorporate by reference, and expect the Board to administer. Nuisance is the "unreasonable use of land." It is a judicial standard, and probably too vague for an administrative proceeding. A nuisance is usually a question for the judge, as it usually comes up in equitable rather than legal actions.**

I suggest that you try to come up with quantitative measures for any conditions you expect to impose. Sound impacts are difficult to measure, and are often inconsistent and counterintuitive as to WHERE to measure, as sound can jump, be affected by water bodies, etc. Your ordinance allows you to require the developer to pay for an independent expert review of the applicant's noise study, and is written broadly enough that Bd could hire someone to determine a trigger (imposed in the conditions of approval) that will make the developer mitigate noise effects. The ordinance could specify what actions would need to be taken if there is a failure to mitigate noise, one of which could be the proposed 900' long berm - assuming that makes sense otherwise.

Who can determine if it's actually a nuisance? (, although the remedy involves the exercise of judicial discretion. I'm guessing that it would come down to a judge or jury.) **Violation of a municipal ordinance is a *per se* nuisance**

Could the board set up a condition to effect a remedy (such as the earthen berm) as a to-be-determined-later condition?**YES**

What if such a berm failed to satisfy the neighbor's noise concern? **He/she could try to bring a private action for nuisance, but that would be difficult to win.**

(In this case, the mill will have four or five rows of logs in storage over on that side of the site. We have already told them that the rows would have to be set up parallel with the referenced boundary, which I suspect will probably mitigate much of the problem)

If someone complains that the noise at the boundary is in excess of the db sound pressure level (memory indicates it was 65 db), who can measure that for the record? (I'm assuming some sort of credentialed engineer.) Who would pay for that, in both cases of whether the level was below or in excess of the stated level?

Last time I ran into these issues I was impressed by Scott Bodwell of Resource Systems in Brunswick 725-7896. I do know if he is still doing this, or if contact info is still good. You could allocate cost of determining compliance in your condition.

Regarding groundwater, there are many stumps on site that will have to be disposed of, either off- or on-site. There may be some chips placed on the ground between the log rows to reduce mud and dust. Also the mill will be storing some wood chips that will go into the mill and become pellets. These will be on concrete and I think will be pretty closely controlled as they are the plant's input. However, it has been requested that the mill conduct water tests before construction on one person's well, then at intervals later that stretch out to around 5 years, if memory serves, to see if any leaching of wood wastes has made "tea" in the groundwater. **Yes establishing a base line before they start processing seems like a good idea.** There are actually a couple other residences that are closer to the actual works of the plant and, if we incorporated this, I would be tempted to voluntarily enlist one of them into the water test plan.. I don't see this as being particularly

burdensome. Do you have any legal concerns about only testing one or two neighbor's well, or would we be advised to include anyone, within reason, who wished to be included? **You can include anyone who is willing to participate, You may also want to require the owner to put dry wells on the periphery of property and to do water run-off tests every 5 or 10 year period (sooner if anyone's well appears affected), and file reports with Town like you might do with a gravel pit, so that you can actually determine if the contamination in those wells is travelling from the project.**

I have included the emails of the other Planning Board members, and you may safely reply to all. Again, the local buzz is pretty positive on this project and we don't anticipate anything like the Great Tower War. Your opinions have always kept us on the straight and narrow in Baldwin. I have already received authorization from the Selectmen to engage your services, so send an invoice along to Debbie when ready.

Regards,
Norman B. Blake
Chairman, Baldwin Planning Board



Dear Danielle,

If Baldwin has no ordinance provision dealing with conflict of interest, then state law 30-A M.R.S.A. 2605 governs your question. As we interpret 2605, if an issue before the Planning Board is one which involves a business which employs a Planning Board member, the board member in question would have a legal conflict of interest only if he is directly or indirectly the owner of at least 10% of the company's stock or at least a 10% interest in the business. If that is not the case, then the member is not legally required by law to abstain from the discussion and the vote.

However, 2605(6) states that a town official (which includes Planning Board members) "shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention." Even though the wood lot owners do not have a legal conflict of interest which would require them to abstain, they may voluntarily decide to abstain in order to avoid the appearance of a conflict. A conflict of interest arises where an official, by reason of his financial interest in a matter, is tempted to serve his personal interest to the prejudice of the public interest he is sworn to serve. A financial interest sufficient to disqualify a board member must be clear and demonstrable, however, not remote or merely speculative.

If the two woodlot owners choose not to abstain, then it would be necessary for them to announce for the record what their relation/interest to the wood pellet mill is (future supplier of raw materials?) and to state that they feel that they can make an objective decision on whether the mill's application complies with all relevant ordinance requirements.

The link below takes you to our "Information Packet" regarding ethics, bias and conflicts. The first PDF attached above is the Planning Board manual, which provided a more detailed discussion of these concepts.

I hope that this information is helpful.

Yours truly,
Amanda A. Meader, Staff Attorney

Legal Services Department