



Georgetown Zoning Board of Appeals

Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833

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MINUTES OF A PUBLIC HEARING
203 East Main Street, Georgetown MA
Applicant: G. Mello Disposal Corp
Owner: Town of Georgetown
ZBA File #18-02

Continued from Nov. 7, 2017, requested continued
(12/5/17 to 1/9/18 then to 2/6/18, 3/6/18, 4/3/18, 5/1/18 request to continue)
June 5, 2018

Board Members Present: Jeff Moore Chairman, regular member
Paul Shilhan, regular member
Dave Kapnis, regular member
Shawn Deane, regular member
Gina Thibeault, regular member - Absent
Sharon Freeman, associate member
David Twiss, associate member – Voting named 11/7/17

Applicant present – Jason Mello, VP of Operations, and Gregg Mello, owner
Engineer – Richard Barthelmes of Lynnfield Engineering Inc.
Attorney: Nancy McCann of McCann & McCann, 89 Newbury St, Danvers, MA 01923
Ken Cramm, Traffic Engineer, Bayside Engineering
Patty Pitari, Zoning Administrative Assistant

**Note Board Members are referred to by their Initials & Attorney N. McCann (NM), Engineer Richard Barthelmes (RB), traffic engineer Ken Cramm (KC)*

Chairman Moore opened the Continued Hearing at 8:37pm, and introduced the Board members.
JM – It has been some time, we have not discussed since February 6th, 2018.

Attorney Nancy McCann recapped the application

NM – On behalf of the applicant, we have our engineer and traffic engineer here. (listed above)
The property at 203 E. Main currently owned by Town, and occupied by DPW and G. Mello, and we requested a number of special permits from you, we have a renewal of DEP license that is pending. We have a request to alter and expand the non-conforming use, per the building inspector and this board confirmed that. Also; more than one building on a lot, work in floodplain, and separate special permit application for water resource district.

NM - We had the full traffic presentation last time, as well as noise, at the end of last meeting, we started discussing public benefits that this use brings.

NM had given the exhibit to Patty and the board has in their packets, marked as Exhibit #34.
Jason Mello read from that exhibit. (see attached to minutes), bullet points were; Disaster relief, town community service, educational contributions and local athletics support, he listed many services free of charge. Then stated over past years his family has contributed to the town, what will change with this proposal is a cleaner, more efficient facility.

NM – Since last meeting we did a survey of the East Main St. section of about 450 Ft. East of the site to about 350 Ft. West of the site, we did that because there was not a good survey of record, at the registry of with the town or state of what the layout actually was, knew the width of the layout, but were the payment is within that layout is important to know, so the applicant hired Eaglebrook Survey to do a layout and prepared the survey plan in your packet exhibit #29, and exhibit #30 (conceptual plan) from that we were able to come up with options to perhaps for traffic concerns, we have maintained from beginning a major benefit to address traffic is internal circulation new layout, We head from last meeting about trucks exiting the site, and making a swing and making those trucks go into the opposing lane, with this this survey, we believe there is an adjustment we can do, our traffic consultant put a page together for you, in your packet, (exhibit 28 Memo and 33 traffic data), this improvement we think will eliminate the traffic movement that was a concern, and existing problem, and it is an adjustment to driveway location.

JM lets audience know they will have a change to speak.

Ken Cramm, Bayside Engineering, Traffic Engineer

Memo from Ken Cramm 4-17-18 the memo was prepared to provide additional information relative to the layout of East Main St. (Rt. 133), and the driveway to 203 E. Main St. relative to the expansion of the existing Mello transfer station.

It explains project description, existing conditions and Future Conditions, (exhibit 28)

KC – We went roughly 450 Ft. East of the site of driveway, and about 350 Ft. west of the site, **other** side of driveway to see where the road is in the layout.

We knew the layout was 60 ft. because Peter Durkee gave us the only set of plans, and I still have under lock and key, and they were drawn on Velum paper.

KC - The plans shows the road is generally in middle of layout and we took that plan and along with what we know is what we call Auto turn software program widely used, and it shows how a truck etc. what its radius/turning path would be, with that we did the plan, he explains/show on plan, the 1st option, we would widen the driveway along the North side and that will allow us to shift the entire stripping of the driveway, we will still maintain other edge, and it will allow a traffic trailer to exit turn right and not cross the center line, which is show on your plan.

The 2nd option is but we did not draw it up, as we didn't want to do it, this plan here, he shows the layout line and the edge of the road, there is about 15-17 ft. roughly from edge of the road to the layout line, if we were to provide a left turn lane, all the widening would occur on the North or West side of the road I guess you would call it. That would bring road closer to 196 E. Main St., we don't want to do that. This is our proposal.

JM – I have a couple questions, is a light in this location is feasible?

KC – Well there is not enough volume of traffic to warrant a traffic signal based on state standard you have to meet at least 1 of several volume related, this doesn't meet, you need 75-100 cars leaving site per hour not coming out of site. Not E. Main, on the site.

DT asked what the stripped section what is that. KC – that is just channelization device only on pavement, stripped payment.

DK – Any issues with conservation widening the driveway? KC – I can't answer that.
DK – You need to find that out.

NM – During last hearing Mr. Cramm made a presentation at last hearing. I put a page together, so I put the numbers together the way it made sense to me, you have a vehicle page (exhibit 33). With the increase tonnage being proposed, we will see an anticipated Weekday vehicle count comparison, increase of 62 vehicles per day, and the board indicated concern on where did we come up with this number, this breakdown may make it more clear. #1 We are not having an increase in tonnage on the weekends its weekdays only and during weekdays the increase in tonnage is coming from commercial vehicles, and you can see the increase from the existing which is 50 ton, to the next level up 100 tons, the anticipated traffic increase is 12 vehicles, see exhibit 33. (attached) hopefully you find this helpful.

NM – We don't anticipate an increase in passenger vehicles except for one additional employee, so the 62 vehicle increase is a diminimus count .29%, that is part of our argument, not detrimental to the neighborhood.

JM – The vehicles trips is that customers per day? All of these number so we get the units clear, let's take existing conditions you have a total of 151 what customers? Or vehicle trips per day.

KC – Total vehicles.

JM – That is vehicles entering the site per day? KC - Correct

DT – Do those include DPW? KC- No.

JM – There are various units being used throughout the report and its gets very confusing, we have peak hour of vehicle trips, we have vehicle trips per hour, a vehicle trip is in and out, so one vehicle customer is really 2 vehicles trips and so it's confusing. I don't know why there are 37 different units in your report. Because your report looks at for example you show weekday morning peak hour, so you can look at vehicle trips, I see 53 vehicle trips per hour, how many peak hours? You have a morning peak hour flow?

KC – Those numbers shown on those networks are simply cars turning right in, cars going straight on E. Main St., those are not trips, and those are vehicles.

JM – So you can add up the in's and the out's and you can say that is so many vehicle trips for that hour, the one peak hour which I think was the max of the 4 of 15 minutes you calculated.

KC – Correct.

JM – How many weekday morning peak hours are there? There is probably only one that constitutes the 4 highest 15 minute intervals, but how many of these hours are there in a day? and I can't tell looking at what I have. So I see under existing 53 vehicle trips per hour, just add them up, how many is that per day, so I take the 151 on your table and double it to 302?

NM – The report includes DPW correct to Mr. Cramm

KC – yes they do, so it depends which network you look at. You are looking at the 2024 build peak hour conditions, so these include our new additional traffic. What these include perhaps a was remiss we should have had a network that simply showed existing conditions, no build conditions and build condition, and what we didn't do we should have done one of those flow networks which simply showed the new site generated trips, whatever they were, which correspond to.....well these are totals.

JM -What are new vehicles trips per day?

KC – 124 per day, not with new employee 126.

JM – So on Saturday? KC – zero. JM – your talking incremental I am talking total, so on Saturday your showing under new build conditions 237 Vehicle trips per hour, how many vehicles trips would there be per day on a Saturday, are there 4-5 peak hours on a Saturday, what do you call peak? Is it 9 to 1 or 2? This table you just summarized does not include Saturday.

KC – It's in report.

SF – While you are looking that up for Jeff, SF asks about not increasing small vehicles on Saturday, NM – no, not increase in tonnage on Saturday.

SF – How do you control for that? NM – It's the way we control for it now, we are not increasing tonnage on weekends.

Jason Mello we won't take big trucks.
Back to JM question

KC - 11am-12pm is peak hour. JM – How many vehicle trips per day on Saturday?

KC – We never counted to total vehicle trips per day.

JM – That want I wanted to know, and you never counted the total vehicle trips per day in any of these?

KC – Correct.

NM –We can tell you what the new tonnage is coming from larger commercial vehicles and Jason said we are not going from 50 tons to 300 the first year, buildout is only 62 vehicles per day because the trucks are of larger capacity

DT- Goes over information from last meeting. Asks about preferred times.

DT – Is it possible to fit those 62 cars in that timeframe, or are you looking at from a 7oclock window or to a 4pm window is my question. J. Mello – Currently we are 7am to 3pm. if you shrunk that from 9am to 2pm could you still, because there is less traffic in am going down trying to make the turn there, how do you solve that one problem, 7am to 9am when kids are getting to school (rush hours) and I can't make that turn, which was what Jeff said, is it possible to shift to ½ hour to 9am to 2pm limit larger vehicles from 9-2. Because then the kids are out about 2, and the buses start. Is that feasible?

Jason – The hard part is getting the tonnage back out.

DT – If you're taking a right hand turn out it would be a lot less impact on downtown area.

J. Mello – Currently all tractor trailers exit east going right, what is all commercial vehicles exited east.

JM – The real issue is someone trying to get in there.

DT – It's a lot less impact if you take a right hand turn in and right hand turn out only.

Mr. Cole of 211 E. Main St. interrupts stating, I don't want 60 more trucks going by my house in a 4 hour period.

JM – Lets Mr. Cole know we will get to him.

JM – We talked about that before.

NM – We can think about the time limitation that you're talking about I think it might be a bit onerous, we have to remember the increase in vehicle trips is .2% of vehicles on this stretch, and the tie ups in the morning that is causing the traffic concerns, is not here.

JM – But it's a 42% increase of the vehicles entering and existing the site.

NM – Other businesses in this corridor are not limited to 9-2 is extremely onerous.

NM - In addition to survey Mello has already begun addressing noise concerns with backup alarms that are more noise friendly. We talked about at last meeting, he has started installing them.

SF – I believe there was a question from February, about circular movement and residential drop off and changes there, it might back people up. NM – I think it will be an improvement, I don't remember being asked to make changes to that, we can go over it again. SF – it's ok.

JM – I want stop and get to audience please. If you all can please state name and address.

Audience

Don Soini, 123 E. Main St. – Opposed - read from paper, he handed Patty after will be exhibited in next hearing, not letter sent in mail and also handed out 2 pictures of truck pulling out.

Mr. Soini had 3 pages he read from and he gave a history of transfer stations, He is not in favor of the expansion, Odor, noise, litter, reputation. He stated that the transfer station wanted to increase about 20 years ago from 50 ton to 150 ton, and it was not popular, the Selectmen held a hearing in the Perley School Gym and invited all residents, all had same concerns I just stated, just as today they had a solution for all our concerns, their request was denied, now its different abutters. I don't want more trash. I contacted the DEP and Conservation as to if the clearing away of any part of the capped dump will be allowed, and it has not been determined.

Their contract they can take trash from anyone they want, we are smallest town to have transfer station in a residential neighborhood, etc..... I contacted MEPA

Submitted letters from planning, conservation, planning member Tillie and a parker river letter dated 5/29/17. (See full speech attached to these minutes).

Patty will mark as exhibits.

JM lets applicant respond to Mr. Soini statement

J. Mello – About 25 years ago, we did apply for a tonnage increase it went to town meeting and they approved it 80% to 20%, we backed out before it went to selectmen and board of health approval.

JM – When was the 10 year contract?

J. Mello – close to it, it was around 1994.

NM – We will address the entrance being narrow.

Dan Walsh, 202 E. Main St. – Opposed concerns– My main point is its already in an nonconforming area, abutting a residences on one side and across the street, and behind state forest, just because it's there doesn't mean we have to increase it, It does need to improve traffic now, on weekend the cars are

stacked on E. Main St., my driveway is right across the street, It's not the right place for it, maybe the industrial area close to highway, there is a sweeping corner, UFP up the street, it's just not a good location, as it is today, just straighten out clean up, noise isn't that much, the town needs to step up, limiting the number of vehicles from other towns, if you out of town maybe pay more, I don't know why other towns pay the same as we do. Not in best interest of the town.

Shawn Sexton, 196 East Main St. – I am right across the street, and they have been a wonderful neighbor, with exception of the traffic it does get tight during weekends, Is this increase in tonnage increase operating hours. JM – No.

Shawn Sexton - How does this changes is going to help with traffic problems already, it's a bad curve and entrance.

NM – Responds the change in the layout will bring people more easily in and out more efficiently.

Cory Cole, 211 E. Main St. -Opposed – I have not lived hear long, I knew the dump was there when moved in but the more I read about the expansion it will negatively affect my property and my quality of living I came from Lynn and I am use to the city, I moved up here, I thought I was moving to a nice town, and you're going to have a mega dump coming in the entrance of the town, it doesn't make sense to me, I put a lot of money into my house and I think it's going to hurt me, and the Town.

John Burne, 6 Reynard Lane – I am 600 ft. from transfer station, me it's the amount of noise, every morning 7 days a week supposed to start 6-6:30, its starts earlier sometimes, we wake up to the constant signal of the front loader, maybe they can retro fit the one they have, my concern with expansion is the noise, it hard to listen to the beeps all day long, please take into consideration. The line of traffic is as long as line of noise.

JM – They are addressing the type of alarm on the equipment, has that been done yet. J. Mellon – No.

NM – The enclosing of the building should address and provide some mitigation.

JM – How will you load the recycle? RB, engineer – There is an existing truck loading well

JM – That loader is not going to be inside, it's will deal with more recycling, and that is not included in your tons per day, so that is in addition. Some talk about alarms.

PS – On the Bayside letter states “licensed to process 50 tons per day of recyclable material, what does that mean, is that incorrect information? Is the other stuff recyclable if you're burning it?

Mr. Barthlemes – That is a mistake, it should not say recyclable. The existing facility is permanent 50 tons a day, should say non-recyclable.

Joe Bonavita, 7 Bernay Way – For everyone here, I appreciate where you're coming from, I want to start with one of Don's comments, years ago when everyone voted against the expansion, one thing came to mind, we voted against Target coming to town, and about 10 years ago we voted against sewer, and I think we are regretting it as well. I did propose looking at a time change, of 9-2 based on traffic, for big trucks that might be good, one thing is the financial impact on the town, we battle every year with the budget, this year we came up short, we don't have the commercial base, that supports the services we have in town, if this is voted there will be a renegotiation of the lease that goes in general budget, that is a positive impact on financial end of things, the comprise is if we can go 9-2, that will

help issues. He speaks of town election and every person I have spoken to agrees we need to increase our commercial base in term of revenue, people are tired of increased tax residential rates.

Mr. Bonavita continues to speak on finances for the town. He feels it needs an opportunity.

SF – I think you talked about land around Rt. 95, better location. JM – landlocked?

Bonavita – The town has to figure out what current owner wants to do. That land case he said he can't develop the land in accordance with the land the town owns.

SF – What about in 5 years, I want to figure out what are options.

SF - Discussion with Mr. Bonavita. Mr. Bonavita I think anything is an option, other board can look at.

JM – For the record the Selectmen have not taken any action other than the renewal of the lease whenever that was, have they taken any other position on this project, since that time?

Bonavita – No.

JM – Has the economic development committee to your knowledge taken up the discussion of this re development and other alternative sites?

Bonavita – It was, we don't have a lot of opportunities to expand, there just isn't the land to do so, we are looking at all possible avenues to increase commercial base. We talked about this on National Ave, but we talked about other things that we would like to see there as well, we are going thru a study with MVPC is doing a site plan, John Cashell is heading that project, he should be getting a feasibility study within the next week or two. It's affecting the taxes on residents.

Motion to beyond 10pm rule DT/SF, discussion; just to hear expert. All in favor, motion carried.

Don Soini – Since Mr. Bonavita brought up my name let's not forget the dump was closed in 1981, the goal because they were trying to protect the environment, the goal was now to keep it but don't expand it. Why can't you put solar panels over there if you need money, there are other options without sacrificing property values.

NM – I want to echo about revenue to the town, the handout we gave you explains the benefits to town.

Steven Philips, 204 E. Main St. – Is there going to be commercial recycling drop-off? is it separate?

JM – There is a municipal solid waste, recycling is not part of that number, Jason – No it's not, JM to J. Mello do you see an increase in recycling capacity as well?

J. Mello – I see an increase in the amount of recycling we pull out of what is dropped right now, that we can then divert as cleaner recycling, but just a straight recycling vehicle coming in, I don't see that. We try to separate as much as we can now by excavator and by hand.

Steven Philips, 204 E. Main – The beeping and increase in traffic, adding more trucks loaders creates more noise, also roadway, the curb in front of my house get torn up, trucks run up on asphalt curb, some is from plows, but I have seen the trucks go over, very dangerous for my children, and now

adding more trucks doing damage to our roadways, 17 years ago when we moved in, but it was in a good town and a good value at the time, and it was a 50 ton transfer station, we didn't move in to live near a 300 ton transfer station, last Saturday was a disaster, it was a dangerous with trucks backed up on East Main St., when I look at this traffic pattern now you have people darting in and out of cars, people waiting for scale, waiting for the window, the traffic inside the facility is a real concern. The location in a residential area, it's not a good situation. They invited in the 1950's now is different.

NM – That is the point of internal circulation proposed.

Noah Pasackow, 2 Reynard Lane – This is first meeting I have been to, the only way I know this, is from neighbors, etc.. This is going to make an impact to this town, is the acreage changing from now to proposed?

NM - No.

Pasackow - Is paved space changing - RB, engineer – No.

Pasackow is the paved space changing, DT – No.

More discussion on traffic what about expanding entrance.

JM – Can we talk about the flow on the site?

RB, engineer get up to plan on board and explains plan showing flow the current operation, and the Engineer is pointing to plan and stating here and there, see video tape for locations. Relocation residential drop off to the North onto the existing landfill, we filed a use application with DEP to do that, and a NOI with Conservation Commission. Red arrows are residential vehicles, blue are vehicles that would be delivering materials, so residential would take a right to a circle. He explains and points to parking spaces and roll off container's located here. See video on GCTV.

JM – how many lanes coming in.

RB – We are showing 2.

Discussion following on trucks on new arrangement. RB about 10-12 trucks.

JM – How many trucks can you get queued to the scale before you start interrupting the flow of the residential traffic, because as some point you only have one lane, that's it.

Brief discussion on 3 lanes. Discussion on circle, and stop sign can be done.

JM – from stop sign back how many trucks, 8-10 trucks perhaps on a rollover before you start impacting people's ability to continue on to the site. J. Mello – but that backup is on weekends, we are hoping it fits 15-18.

DT states he went down on weekend there was a line, if they can get the residential to go on right side and commercial on second lane and have lane coming out, that would allow for more trucks to sit in line, I can't image that would be worse than what we have now.

Break in recording – Cable Tv person must stop to change dvd, brief recess.

EXHIBITS Read into the record by PS New for tonight.

Exhibit 28 - Memo from Kenneth P. Cram P.E. (traffic engineer) dated 4-17-18

Exhibit 29 – Plan marked C-1 Record Plan Survey, stamped by Michael Juliano on 4-10-18 for Richard Barthelmes of Cornerstone Construction Service, LLC. Exhibit 30 - Plan C-1, Conceptual Improvement plan dated 4-16-18 NOT stamped (just conceptual) BY Bayside engineering of Woburn Ma.

Exhibit 31 – Letter from Mr. Soini dated 4-27-18, received zba mailbox on 4/30/18

6/5/18 ZBA Minutes of 203 East Main St. G. Mello Disposal, lessee #18-02

Exhibit 32 – Sound study questions from Epsilon 20 to Richard Barthlemes, engineer, dated 4-16-18

Exhibit 33 - Weekday Vehicle Count Comparison (1) (no date)

Exhibit – 34 – G. Mello, (not dated) Disaster relief, town community service, etc. (see attached)

Back from recess.

JM – How many feet of 2 lane do you have. RB – 200 ft.

SF - I was down there and it think if it was 3 lane, I think it was confusing, if it was clearing marked.

JM – If this was approved it would go to Site Plan Approval with Planning at least.

Don Soini, 123 E. Main – Can we get a model, of what is proposing? JM – I think it would be nice to have that analysis done, more discussion on trucks lining up.

Robert Croce, 4 Reynard Lane – How high is that building going to be. J. Mello – I think 32 ft.

DT – bylaw on that.

Gregg Mello – Explains history of Mello for 20 minutes. We are trying to improve.

JM – So it was a dump , then landfill, then the town capped it, and put in transfer station in 1981, who used it then, G. Mello – everyone. JM and you charged everyone you came, it was not the towns.

JM – We are going to move on to board.

Board Discussion

JM – Your DEP permit expired in April 2018 correct? You met with them in February to update them is that right, you're not operating illegally.

RB – No, we have a permit application, we met the first week of April, and DEP wants us to upgrade the exiting facility and the permit renewals are for a 10 year period, in Feb, they said we need to get back to you to tell you how we are going to do this because there will be an allowance for a continued operation under the existing conditions and then they will look for us to implement this proposal or another. They requested we submit a permit renewal application, and we did they have that.

JM – Did they give you an extension? RB – They didn't' say anything, Mark Fairbrother had indicated that once the application was filed we were kind of in compliance the section chief said they we have to talk about it, and that was last we spoke to them.

JM – Does that include a timeframe?

RB - We gave them a schedule, for the permitting effort, not just local, DEP, and construction phase for building and then another permit from them to operate.

JM – what is that schedule? I have a sense there is not big rush, you have continued for some months.

RB – We moving other permits forward, have to go to conservation, planning. Maybe a permit to construct in December and we can't do in winter, probably in fall of 2019. We are waiting from something from writing from state.

JM – So they are giving you an extension to existing permit? RB – That is our understanding.

JM – I hope it's more than just an understanding, RB – we are waiting for something in writing from them, JM - those permits are 10 years, DEP. J. Mello – Yes. JM - and renewal of lease with selectmen is 10 but staggered. RB – yes.

JM – Who determines or sets limits on tonnage? Is that DEP how much you are allowed to bring in and out of facility?

RB – 3 entities, MEPA, we have that, BOH modified our site assignment, and then we need an operating permit from DEP, that will stipulate the tonnages.

JM – Are the BOH and MEPA timeframe?

RB – With MEPA we have approval for project in front of you, if it substantially changes, we go back to MEPA, with BOH the site assignment runs with the land, does not have an expiration date, but the BOH has regulatory authority to reduce tonnage at the facility at any time.

AKwesell – MEPA can't is only a certificate, so MEPA can't.

JM – The only regular recurring review of what's going on at site that might impact or change the tonnage requirements, other than BOH, would be DEP, every 10 years is permit renewal, what is process to renew permit?

RB – Updated plan of operations for facility, site plan, there is a formal permit application process to go through.

PS – So we are voting on More than one building on a lot, Floodplain.

NM – We don't believe it is in floodplain, after speaking with building and reviewing plan.

JM – There is also a Water Resource special permit, and special permit to expand the nonconforming use, more than one building on a lot and floodplain, I think we focused on use first, or other would probably be moot.

NM – Separate application for Water Resource.

PS – Is the tonnage tied specifically to the expansion of nonconforming use?

SD – That goes to Jeff's question, about DEP so is that this board's purview to put a condition on.

DT – Without the building you can't increase tonnage is that right?

J. Mello – Without the new building, we won't get a new permit.

NM – You don't have jurisdiction over the tonnage.

DK – Wait the DEP so to get with compliance you would have to add the second building and it has to be enclosed but that does not tie in directly to your request with an increase in tonnage, you don't have to increase tonnage, is that correct?

J. Mello – Correct.

DK – So DEP is not saying you need a building and we want you to increase your tonnage.

NM – Yes, I think I agree with what you're saying.

PS – Question, for example; If your delineated tonnage is tied specifically to one of these permits, do you eliminate our ability to change the tonnage, to limit the tonnage, to something we deem better, or if you tied the tonnage to the proposed new building which you say needs to be done for DEP, if its tied to 300 tons, then we can't even grant you a permit to upgrade the facility unless we grant you the 300 tons.

AKwesell – No.

NM – No.

JM – You can condition the local permit by this board on the application before us, I have concerns down the road, about if this may or may not supersede the board to limit the amount of use, these can be mutually exclusive findings, I think. This is what was submitted an update and includes everything in application, we can vote on that.

PS and BOH approved based on new facility? RB – Yes that is what we presented.

J. Mello – They did put conditions on it, odor control, dust control and litter.

NM – so the increase in tonnage in and of itself, is not necessarily an expansion of a nonconforming use, but we are proposing a new building, which is an expansion and alteration of a pre-existing nonconforming use, and the impact of the increase of the tonnage is something this board can consider, with regard to the nonconforming use alteration.

AK – Tonnage is definitely an expansion of a non-conforming use.

JM – My view is there is sort of 2 expansions of a non-conforming use. You could also say we don't want to build a new building but we want to increase tonnage that would also be an increase of a non-conforming use.

NM – I don't know that I agree with that, however we applied for the whole thing as part of a package.

JM – if you were granted 50 tons a day, and you built the new building, and were not asking for anything more, your saying that in order to increase 50 to 300 tons down the road, you don't need a special permit for an increase of a pre-existing non-conforming use down the road?

AK – The increase in tonnage is definitely an expansion, the entire use is being expanded.

JM – This is my concern with this project, that if this upgrade happens, it's going to be out of this board's control, down the road, it's inevitable regardless of what this board would find as far as tonnage, I think it's ultimately going to be 300 tons a day, because the renewal of the DEP permit is done every so often, and they will grant the 300 tons, the BOH has already granted, they are not looking at the same things that we are looking at. One of my concerns really is whether we grant and additional to the amount of tons or not, is if we do to tons or not, I think it's going to happen at some point down the road

SF – I thought we could condition it.

DT – I thought we could approve the building piece, and modify the tonnage to where we deem it appropriate, is that not the case?

AK – No a special permit can only be conditioned on time, place, the conditions that relate to the proposal, is an increase in tonnage, and so a condition same as time is appropriate to regulate when things go in and out, but this board can't necessarily say you can only have so much more tonnage, it's what the proposal is before you. There is case law where there is a trucking terminal, and the terminal increases significantly, that's an increase in a non-conforming use, that's what is going on here, and the court found that a lot of it had to do with traffic and noise and so it was definitely an expansion of a non-conforming use, the board could ask the applicant to not go up to 300 tons, and ask the applicant to propose a lower amount, but the conditions are really only based upon the proposal.

DT – hypothetically we can say, we like you to reconsider and go to x number of tons, and then we modify that application to that number and then we take under advisement and vote.

AK – Yes, they don't have to reapply if they reduce it.

NM – I would agree with that

SD – What would prevent them from then going and applying for an increase in tonnage, with DEP?

JM – I am sure with DEP if this arrangement can handle it, I think we spoke about this, what can the site handle. Now down the road they may want to come back to us, or DEP comes up for renewal in 10 years. When the investment is made in this facility, my concern is regardless of the concerns of this board is ultimately it is going to be end up being _____inaudible noise, someone cover microphone with paper.

SF - If we ask them to reduce to 200 tons and let's just say approved wouldn't the increase to 300 still be an expansion of a nonconforming use.

AK – it's an expansion of a non-conforming use. SF – so they would have to come back.

PS – I believe so.

JM to applicant, but your saying it's not an expansion of a nonconforming use, so...

AK – I don't agree I think it's an expansion of a non-conforming use.

NM – I think we get into an enforceable condition is it is part of the special permit, let's say we reduce the application to 250, and you issue a special permit with 250 tons limitation, that is enforceable by this board, and if we increase it later to someone more, we have to come back.

AK – Do you think that right now without any changes to the site, can go to 300 tons with no approval from the ZBA?

NM – Without any changes to the site, Umm....AK- You don't think that is an expansion of a non-conforming use?

NM – I think there is case law that says that it's not, I think that your building inspector say that it is, and he gave an opinion to that affect, and we have applied based on that opinion, I think there are some cases out there that indicate in a landfill just an increase in the tonnage itself, without considering other factors..

AK – But considering other factors, so your saying not considering traffic?

NM – No, if you don't consider other factors, just strictly in a vacuum, increasing the tonnage from 50 to 100 tons, that is not in and of itself an increase in the nonconforming use.

AK – I never heard of a case referring to in a vacuum, how could you have a vacuum because the whole thing is the use, but you don't agree you should be here.

NM – I think we do need to be here, because we are proposing an alteration of this site

AK – But there are 4 special permits, but you don't agree with the first one that you increase the nonconforming use because of tonnage?

NM – I think there are cases out there that say that we don't have to, the Building inspector has said otherwise, we have not appealed his decision.

JM – All that provided you're within your DEP permit will be a higher level permit than the town your not going to go to 150 tons, or 200 at the existing site because DEP ??????????Inaudible. Your permit expired anyway, but DEP is regulating you on the tonnage right now. Going back to Amy's example if you weren't asking for any change to the site, which may be down the road if the site is rebuilt, you're not going to be asking for any changes to the site, Mello has that capacity.

NM – You will because you're going to condition it by the special permit, because this special permit is based on certain tonnage, that's how we applied for it.

SF – We either can ask them to go back, and reconsider and reapply.

AK – They don't have to reapply to reduce it.

SF – But what your saying is it's not going to stop you from going to 300.....inaudible 4 people speaking at once.

JM – Nancy is saying if you have an enforceable condition in the permit then they would have to come back.

DT to AK – do you agree with that.

AK – I am not sure this board has the power to issue that condition, I would have to look at that because special permit is pretty limited under Section 9.

NM – If we reduce the request to 250, then that is the special permit that is issued, that's not then a condition, that's a special permit to operate with 250.

AK – But then what is the difference between having it at 50 now and going up, your expanding a nonconforming use, there you would be the same thing

NM – We would get our special permit.

AK – But it goes back to Jeff's concern that now the facility can handle it, so they will just go up, because they don't think they are expanding a nonconforming use

DT – But is her (Atty McCann) argument legitimate to say that because we have the special permit issued at a certain number, they can't go against that special permit.

PS – She (AK) suggesting that may not hold up in court.

AK – And the fact that she is claiming that if nothing else changes they can go up in tonnage as of right, so therefore if you do 250 and the facility gets built out, and all they want to do in tonnage, she thinks that can happen as of right, that's how I am hearing it, I might be putting words in your mouth, I apologize.

NM – Yes you are., that is not what I am saying, we are here on a particular application, we are asking for particular thing, we are not asking to be able to change that in the future, we are asking for a specific special permit, 300 tons is on the table, we are open to discussion for a lower amount. It is not to then go in and do something different later on.

JM – There is still the concern of whether or not that can be restricted by or a condition of our special permit. I have said from the beginning that they have to go a long way to convince me that it is not more detrimental to the neighborhood that what is there now, and my concern is once you invest dollar one, into this site, to SF point maybe it's a temporary thing, no way they are not going to spend a million plus, or whatever, It's not going anywhere, it started as (the history) it started as a dump, they capped it and the town worked out a deal where they turned it into a transfer station, I read a lot the old town meeting minutes, this was for the operation of a transfer station for municipal solid waste, what's happened here is this has gone from a use that is for the convenience and welfare of the town of Georgetown and its somehow migrated now into a commercial refuse facility, because what we have heard over that last 6 months is most of the tonnage is commercial tonnage, it's not the towns tonnage it is grown to something that is beyond what I think a lot of people in town envision it to be, and I think there is a real problem with what is going on over there now, it's a residential neighborhood, this is not an appropriate site for this use as it sits today, its legal, it's been there, it doesn't mean it's a good location, when this was considered and established as a town land fill this was a mile out of downtown it was then probably considered the outskirts, it's no longer the out skirts, it now it's a residential neighborhood, and today if we envision what's going on 10, 15, 20 years, I we are going to look back and say the town was crazy to expand this, it doesn't make sense.

JM – I think we need to get a legal decision before we make a decision anyway, my concern this is a scope creep, this is not the right place there are other places in town, now if we had the selectmen as a board saying, this is why, we have one, I think there may be other Selectmen that I think would respectfully disagree, the planning board, the town planner, I talked to a lot of people in town, where are all the other officials in town on this? We are it, I think at least the economic development committee should have reviewed this. So there is not a lot of other officials in town weighing in on this.

DT – I have heard all comments and commentary on where to put this, and I have heard also why that is not going to happen, and also if land is land locked, land could be locked for years, there is no guarantee that land is coming up, but we have a transfer station now and while I agree the current traffic pattern and the litter and dust need to be corrected I believe that plan does that, that makes it better for the residents around than that is one piece, now I can't speak to the tonnage, I would also defer to what information is uncovered if we put it in there. DT talks about history, some things you have to just deal with.

Mr. Corey Cole, 211 E. Main – You don't have to make them worse.

DT – I don't think it makes it worse. I think we need opinion also.

JM – Stops back and forth discussion.

DK – I believe I asked you at previous meeting, how did you come up with this number, and I understand that there is substantial investment in there, and it's probably not feasible to say spend let's say 1 million dollars and stay at 50 tons, I think 300 tons may be sweetens the pot more, then say your breakeven was 75 or 100 but the 300 number is quite profitable, and I remember you saying, who know if I will hit that, but I think from a financial standpoint I think you made a decision that I am going to shoot for the 300, is that the threshold that you're looking for, as a board member, I have been in town since 1979, I use the transfer station a lot, no problems, but I just don't know that, I like the traffic pattern better, I think if it was painted, and had signs, and people trying to get in and out of the scale, it gets blocked, now how does this benefit the town as a whole, I understand commercial tax base, me I am on the fence as how I will vote. I think there is a huge financial interest, but what does town getting back out of it. I respect everything the Mello family has down for the town.

JM – I actually agree with that.

PS – I think we need to find out, what we can do, we need to ascertain the 300 or another number, I think the lower the number the better.

NM – Is there a number that you think you would be comfortable with.

SD – Is 300 the ceiling or the max that you can go. J. Mello – It actually supported 600 tons.

AK – Who supported that, J. Mello – the traffic study supported that.

SF – If it were lowed, is that enforceable by us, that's my issue.

SD – I think we need an advisory opinion from town counsel to understand that if we can condition that maximum tonnage.

Discussion between multiple people on number tonnage.....inaudible

JM – Finding we have to make, a series of findings; that have to do with detriment of neighborhood, set aside the floodplain for a minute, you have to come to the conclusion that this use or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood, that is essential or desirable to the public convenience or welfare, that it will not overload any public water of any other municipal systems as to unduly subject any area to hazards effecting health, safety or general welfare, that this proposal will not impair the integrity or character of the district or the adjoining district or adjoining districts, and will not cause an excess of that particular use which could be detrimental to the character of the neighborhood. It has to meet all these findings, It's what each board member feels your comfortable making all those findings, if you think there is a problem there now at all that is detrimental to the neighborhood, it's not in the right place, not properly zoned location, it starts there, in an industrial or commercial, we wouldn't even be talking about this.

JM – I am just saying you start there, so is there a problem there now, and are all those problems going to be mitigated by these upgrades and then down the road do you foresee the vision of there being potential problems down the road, I am just giving my opinion, it's up to everyone individually to decide.

JM – I would be much more comfortable if I knew that a lot of other people and boards in this town have vetting this. This is a really really important decision, I think for this town, I have been on this more for more than a decade, I have not seen a decision as important as this one for the town, that is just me, its quality of life, wear and tear on the roads, additional traffic and for other districts not just the abutters, all the mitigation measures that have been proposed to try and alleviate this problem or that problem or the other problems are all there because the site is maxed, they are trying to squeeze more into a very limited site, so they are trying to do everything they can do to try to allow that site to do more than it can, you have that intersection, that there is nothing they can do.

PS – We have not gotten to water resource or floodplain. JM – Depending on how we feel on this use first.

JM – I think we need a legal opinion on what we can do.

NM – Agrees.

Discussion on it they can go up in tonnage without zoning. Multiple discussion at once.

J. Mello – the site assignment dictates the tonnage the DEP will not override the site assignment.

JM – They don't have the same concerns the zoning board has.

NM - I am willing to provide any information I have on what I said tonight to town counsel, and it doesn't sound like I am hearing a tonnage level is a comfort level.

DT – I think 150.

JM – How did you come up with 150 tons?

DT – I figured 300 was their max they could handle and they figured they were probably not going to get 300, and 50 now and I think 150 is reasonable to going crazy at 300, without having increased detriment. DT – I am all for cleaning it up, and increased lease, we need commercial business.

SD – I not sure reducing tonnage but I am not sure this board can condition that, my concern is with Jeff.

Discussion on compaction that only works with household trash. JM – it's getting late.

AK – Asks applicant if they would entertain any kind of restriction in your lease with the town as to tonnage?

AK – I can look into.

J. Mello – We are willing work out a way to make a restriction.....

AK – That may be the easiest way, unfortunately the down side would be it does take it out of this board's hands. The lease could be renegotiated, but it's not with this board, it's with the Selectmen, it would serve as a restriction.

SF – could we condition when lease renewed. AK – Yes there are special permits that allow for renewal, but my hesitation is that the court case I am talking about saying something about a 3 year this would be 10 years, answering SF question.

AK – You could put a condition that not building permit shall be issued until the lease is presented.

SF to zoning, AK – well the lease is not with you, the condition would simply be that the lease shows the amount of tonnage.

JM – This may be subject to Major Development Review by the Planning Board that would do a lot of things that I am saying that has not been done yet. Read 165-80.2, I don't know we can make a finding on that.

AK – We would not be able to make a finding on that but the building inspector would not be able to issue anything without the special permit if it applies, there is a couple things it could apply to like vehicle trips per day or the gross floor area because of the building.

JM – Some days you exceed 20%. I think we need to look at that and find out.

AK – I would need more details but for example it says that if any of the expansion exceeds 20% of the existing and then d. is gross floor area, so the new building I think would definitely expand the floor area over 20%, and vehicles trips per day.

JM – you want to revisit in a month. J. Mello – Jeff you won't be here in August.

NM – Why don't continue to July 10th.

AK – I will see if Johnathan Eichman is available.

Motion by SF to continue to July 10, 2017, following business, just say 7:30, seconded by DT no discussion, all in favor – yes. Motion carried.

Patty Pitari
Zoning Board Administrative Assistant

Approved 7-10-18