

Town of Goshen
Zoning Board of Adjustment
Meeting Minutes
June 22, 2010

Present: Chairman Thomas Lawton, Allen Howe, Peta Brennan, Raymond Porter, Robert Johnson, ZBA Secretary Dianne Barden, Attorney for Town of Goshen , Bernie Waugh .

Others Present: Mr. & Mrs. Shawn Carroll, Mr. Carroll's attorney - Tim Britain, Lilyan Wright, Paul Barrett, Virginia Schendler, Linda Janicke, Susan Flemming, Bea Jillette, John Wirkkala, Mary Wirkkala, Keith Hall.

Meeting was called to order 7:10pm by Tom Lawton.

Town of Goshen's attorney Bernie Waugh began the meeting with the following:

1. Allen Howe and Raymond Porter both corresponded with him in reference to a draft of decision.
2. Peta Brennan corresponded with him about things to add or change in the original draft.
3. Attorney Waugh didn't share any correspondence with anyone but the person he was working with about that person's correspondence.

Raymond Porter presented his draft first (copy included in file). The board took some time to read the draft. The ZBA began their discussion with this draft. The following was discussed.

1. Allen Howe's first commented on three points raised by the public at our June 8th meeting. He explained how the Planning Board could require monitoring of the aquifer. He also referred to the dust shown in a video at the last meeting. He felt the dust level was unacceptable, but that it did not represent standard operating procedure for Mr. Carroll's excavations. Mr. Howe also explained that the Davis site restoration is in progress, there's a bond in place and the permit doesn't expire until December 2011.
2. Mr. Howe then stated that he did not agree with the conclusions after reading Mr. Porter's draft decision. He felt the expert information on property values either wasn't applicable at all or that the information presented shows risk to property values. Five of twelve (41%) paired comparisons did show a negative impact on property values (average decrease 8.4%, maximum decrease 17%). Regarding noise, Mr. Howe said we are talking about the same noise. Individual trucks are as noisy as in the previous application and proposed daily and annual excavations are even a bit larger than the previous proposal. Mr. Howe can't see how noise that was offensive in the last application could not be offensive now. Mr. Howe said that the existence of a noise ordinance now doesn't alter his conclusion. The noise standards represent the normal

situation and what the board is dealing with is a special exception---this is not the norm--and thus the applicant must show that the noise is not offensive.

3. Robert Johnson's comments were that regarding property values we should be looking at the whole town. He suggested that if the Davis pit were restored first, that would increase property values. He also felt the proposed pit would not reduce property values because it would not be visible.
4. Tom Lawton's comments were concerning the property value decrease of 41%. He was not convinced that Mr. Rauseo's report addressed that to Mr. Lawton's satisfaction. The burden of proof is the applicant's to prove otherwise. Also he is concerned with character of the area and the noise factor considering that 12 to 13 hundred feet from the Davis pit the noise could be heard.
5. Mr. Howe stated that one additional concern he had was that the property analysis relied on relatively small sites in terms of daily and annual excavations compared to the proposal. Even though the Davis site was included in the analysis, recent excavation at the site has been far less than the proposed 200,000 cubic yards per year.
6. Peta Brennan's comments were concerning no comparable expert reports on the aqua firm, traffic and noise problems.

Robert Johnson made the motion to entertain amendments to Mr. Porter's proposed decision that is under consideration. Seconded by Mr. Porter

Mr. Howe and Ms. Brennan said they had no amendments to offer. Mr. Howe asked Atty. Waugh for clarification. Mr. Howe read Section IX.B. Special Exceptions which reads "If the Board of Adjustment approves an application for a special exception, it shall have the authority to impose appropriate relevant conditions upon the exercise of the special exception as are reasonably related to the above criteria or any other applicable standards contained in this ordinance.

Mr. Howe then asked how specific do the amendments have to be? Mr. Waugh answered that the jurisdiction over laps and the board can add valid conditions to the draft. An amendment would be need to be related to one of the standards that the ZBA has jurisdiction over. The board would have to decide that without the amendment the proposal would not meet the special exception standards and that with the amendment it would.

There were No amendments were offered.

Tom Lawton called for a vote on Mr. Porters proposed decision.

Vote taken: 2 yes (Mr. Porter and Mr. Johnson) 3 no (Mr. Lawton, Ms Brennan and Mr. Howe)

Motion defeated.

Peta Brennan then presented her motion second (copy included in file).

Peta Brennan made a motion to consider amendments to the original draft. Mr. Lawton clarified his understanding that this motion would deny the application based on the original decision and also propose amendments to that decision. Ms. Brennan concurred. This was seconded by Allen Howe. The board was given time to review her proposed changes.

1. Peta began with changes for #41, 23, 15 and 47.
2. Peta Brennan began with #41 in the original document. Ms. Lathams qualifications were not considered on the property evaluations and that other opinions should be considered besides Mr. Rauseo's opinion.
3. Allen Howe stated that amendment 41 was not necessary. Peta Brennan agreed.
4. Peta Brennan wanted 15, 23 and 47 left in as it gives a human element to the proposal. Also it makes a correction about the hours of operation.
5. Operating Hours at the pit are 7am to 5p.
6. #47 is about the visibility of the pit from some of the roads near the pit believed to be stated by Kim Gaddes. Suggested that it not be changed. Peta Brennan agreed.
7. Mr. Howe discussed his thinking and said he would leave out all amendments, except for 23, if it could be verified.
8. Tom Lawton asked to verify where we stand. Ms. Brennan has deleted all proposed amendments except for 15 and 23.

Tom Lawton clarified the motion is to deny the application based on the original decision with Ms. Brennan's amendments 15 and 23 included.

Allen then stated that he has proposed some amendments that are significant and that are related to the original document. Both Ms. Brennan and Mr. Howe's amendments relate to the original decision document. He would like to table Peta Brennan's amendments, move to the amendments Mr. Howe proposed, and then come back to Peta Brennan's amendments later it might be more efficient. Mr. Howe's amendments do not delete anything related to Ms. Brennan's amendments.

Peta Brennan tabled her motion.

The board then received redline copies of the entire original decision with Mr. Howe's proposed amendments incorporated. The Board was given time to review the document.

Allen Howe made a motion that the amended document, which denies the special exception, be accepted by the board.

Tom Lawton seconded the motion.

1. Peta Brennan wanted to know why #7, pg 3 was being deleted. Allen Howe stated that it is irrelevant. She then asked Mr. Waugh if he had seen the document and he stated that he had helped Allen Howe to make the changes to this original document.
2. Allen Howe stated he wanted to add something about property values to the document. He also wanted to add some thought about character of the area. He wanted to make sure an argument was presented to demonstrate the board was not applying character of the area in a manner that would prohibit gravel excavation in town.
3. Peta Brennan asked why #18 was being taken out. Allen stated that there was no reason to be included as we are not considering what could be in the future. We are looking at the application before us.
4. Peta Brennan asked about 2 26, 27 and 28. Allen Howe stated that the questions have been answered and no longer needed.
5. Mr. Porter questioned the 41% of the comparisons the property value was diminished and 59% the value was the same or greater. Mr. Howe believes it is a matter of deciding if the 41% is an undue risk. The risk was not assessed by Mr. Rauseo. Mr. Howe believes the 41% risk of loss is too high and not adequately addressed. Mr. Howe and Mr. Porter discussed this further. Mr. Howe granted that this was not a highly scientific study, but he is using the information that was presented to the board. Mr. Porter said he would look at the other 59% and come to a different conclusion regarding property values. Mr. Porter asked Mr. Howe about the 18% range on the downside of the property values and what was the range on the upside? Mr. Howe answered he had not calculated that.
6. When Mr. Porter brought up the 41% risk Peta Brennan agreed 41% risk is too high.

Tom Lawton asked for further discussion and there was none.

Peta Brennan's tabled motions will be brought to the table after the vote.

Tom Lawton asked that all in favor of Allen Howe's motion to deny the application for a special exception and accept the document as presented.

Vote of: 3 yes 2 no.

3 Yes: Allen Howe, Peta Brennan, and Tom Lawton.

2 No: Robert Johnson, and Raymond Porter

The motion to deny the special exception presented by Mr. Howe passed.

Tom Lawton then asked for further motions and Peta Brennan responded with a further motion.

She would like to add the quote from Fred Trommsdorf. No one seconded the motion.

Any further motions or amendments asked by Tom Lawton.

Motion to adjourn was made by Allen Howe and seconded by Peta Brennan. Meeting brought to close at 10:20pm.

Respectfully Submitted by:

Dianne Barden

ZBA Secretary