



## BELLINGHAM PLANNING BOARD

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### **Meeting Minutes** **Thursday, September 9, 2021** **7:00 pm**

#### **Present at the Meeting:**

William F. O'Connell Jr. (WFO), Chairman  
Brian T. Salisbury (BTS), Vice Chairman  
Dennis J. Trebino (DJT), Member  
Philip M. Devine (PD), Member  
Elizabeth Berthelette (EB), Member  
Robert Lussier (RL), Associate Member

#### **Other Officials:**

James S. Kupfer (JSK), Town Planner and Zoning Compliance Officer

The meeting was held in person and via zoom for those who wanted to take part remotely.

Chairman O'Connell opened the meeting at 7:00 pm.

#### **Continuation Public Hearing Red Mill:**

The Chairman opened the continued public hearing for Red Mill.

The Board was informed that at the last meeting, the applicant was finalizing the plan set. The outstanding issues with the Conservation Commission have been addressed. The Board is in receipt of the draft decision which included the criteria for determination and conditions of decision. It was reviewed by both the applicant, board and town planner.

On a motion made by Dennis Trebino, seconded by Brian Salisbury, the Board voted unanimously to close the hearing for Red Mill.

#### **Certificate of Approval of Subdivision Plan and Stormwater Management Plan Permit Red Mill on the Charles:**

On a motion made by Phil Devine, seconded by Brian Salisbury, the Board voted unanimously to approve the Certificate of Approval of Subdivision Plan and Stormwater Management Plan Permit for Red Mill on the Charles.

## **Red Mill on the Charles Downtown Residential Development Overlay District Special Permit Decision.**

**On a motion made by Elizabeth Berthelette, seconded by Brian Salisbury, the Board voted unanimously to approve the Residential Development Overlay District Special Permit Decision for Red Mill on the Charles.**

### **Continuation Public Hearing Asphalt Engineering:**

The Chairman opened the continued public hearing for Asphalt Engineering.

The applicant and Attorney were present. A share screen was provided. The Attorney provided a presentation entitled "Farm Street Property Management, LLC". This was provided to the members in their packer.

The Attorney indicated that after months of working with the Board, the applicant acknowledges that they did come in with an unreasonable request for 100 days. The applicant would like to continue working with the Board on a more manageable and agreeable request. The Attorney informed the Board that the applicant won an award this week for the "Best Place for Paving and Place to work". There continue to be questions from the Board about the environmental concerns relating to hazardous material. The Attorney referenced a letter from SAGE Environmental dated February 20, 2017. It was noted from the letter that "reclaimed asphalt product, when meeting these criteria are handled in accordance with the regulations, is not a waste, but a usable product." The Attorney also informed the Board that there will be no additional truck traffic on Farm Street. There was a sheet on the screen share which explained the finances of the business. The cost of the gravel to date for 1/3 of the year is \$87,242.93. Last year to date for 1/3 of year is \$67,961.13. The Attorney would like to request 60 days instead of the 100. A question was asked about the long-term O & M as relating to stormwater and if there was any documentation which could be provided. The applicant responded that this does have to be reported back to the Conservation Commission and they have supplied this to the Commission.

A question was asked if the DEP permit has a requirement for the daily materials management records as part of the tracking system for documenting what is coming into the site. The applicant responded that this requirement to the DEP is being complied with. There are intake and outtake forms which need to be filled out for all trucks entering and leaving the site. If there is an increase in the crushing days this does trigger a NPLI permit. The applicant responded that this is something the DEP would need to look at and determine.

The Attorney next wanted to discuss the trucks for the business. There was an agreement in 2017 for the need for 12 trucks. The Attorney would like to keep this as a fluid number and would like it in a decision as a finding and not a condition which would allow for some flexibility.

A question was asked about how the contaminants are separated out. The applicant communicated that a small portion of what is pulled out from other sites goes to the property. A large portion goes to Aggregate Industries. The product which is removed is assessed prior to loading the truck at which point the driver is then advised on where to go with the product. It was communicated that according to the RCC permit page 10 of 15 under #2 operational records. The applicant responded that everything that is taken in and shipped out is logged. The Board does have the opportunity to view those logs. Currently on site, one of the piles is broken asphalt and the other is reprocesses material. There are never contaminants sent to the shop. The State has allowed this to be recycled material.

Another question was asked about the company names and entities. Farm Street Property Management LLC is essentially the landlord of the property owner. Asphalt Engineering is the entity who holds the permit with DEP.

Another concern is the Water Resource District Zone 2. One of the board members does not think the documents presented make recognition that there is a Water Resource District within the DEP Permit. The applicant

communicated that this was part of the initial meeting with the Conservation Commission before getting the storage permit. This was submitted again through the DEP process. The Planning Board has not received any documents from the Commission about this. The Planning Board asked if the applicant has anything on this from their files which could be provided.

The Town Planner clarified that back in 2017, the stormwater and material on site was peer reviewed. The Board would like some documentation referencing that this does not apply to the water resource district. The applicant did have to comply in terms of separation of groundwater which was vetted through the peer review process.

The Board asked for sampling of the groundwater. The Attorney asked if this has not qualified for testing in the past, then why should the applicant have to do it now.

The Chairman proposed the following an increase in crushing days from 20 to 60 days which is a 200 % increase. The applicant indicated that the business operations can be maintained without material from other sites, accordingly the applicant will crush only material from the sites under the applicant's care, custody and control and accept no material from outside companies. There will be a transfer of assets "crushed materials" from Farm Street property management to asphalt engineering, based on information provided to the Board at the last meeting. The applicant will not sell their product to any vendors. Accordingly, the Bellingham Planning Board will not be providing the applicant with permission for sales to outside companies. Based on the increase of the business operations, the Board will allow for truck traffic to increase 30 % from 12 vehicles to 16 vehicles daily. The hours of operation will stay the same, however based on the presentation it says dusk. There are hours when it does not go beyond 8:00 pm or dusk. The Board does not want the applicant working in the dark. The Board would like the applicant to start shutting down the operations an hour before sunset or the lack of light in the sky. Based on the snowplowing operations, the traffic count will not be included in trips associated with the snow plowing operations in accordance with the bulk storage permit. The applicant will not be permitted to use their property as a snow farm for snow collected off site. When evening work may be needed, the Board will allow Asphalt Engineering to operate up to 4 nights per year, while still adhering to the traffic count. The Planning Board should be notified two or three days in advance prior to night work so the neighbors can be aware they may hear additional truck traffic at night.

In order to protect the Bellingham Aquifer for all the residents, the Board is requesting the following conditions:

- The applicant indicated that the material logs could be reviewed.
- Periodically there will be some stormwater sampling, probably not more than quarterly.
- An opportunity for the building inspector to review the operations but not more than quarterly.
- The current modification enhancements will meet the definition of an amendment to the current permits this allowing the applicant to avoid the process of reapplying for new permits, rather the Board is broadening the permit granted to Asphalt Engineering.

The Attorney asked for two minutes in the hall to discuss this offer with his client.

The Attorney communicated that they appreciate the offer but there are two items of concern. First, the applicant has been forthcoming about the vehicle operations on site and at times it does exceed that number and there hasn't been an issue with traffic on site. The Attorney noted that without knowing the trips per day, it is hard to meet that condition. The applicant would like to stick with the math perspective which includes that their limitations on the trucking on gravel is set by how much material which could be brought in which is limited by how much they can crush. If there is 60 days for crushing, this would essentially create the limitation on not having excessive trucking. The applicant would like to leave the trucking as it is since it will be regulated by the crushing regulation. The other concern is that without coming up with a clear scope for water testing. The applicant does not know what kinds of limits they are putting on themselves since without knowing, if they set themselves up for a more stringent testing regime than is required by DEP, the applicant will have to spend more funds. The Applicant understands the value

in protecting the watershed and wetlands but does not believe that this should not be a condition. The applicant communicated that she did call her Consultant Sage and they indicated the whole property was designed to be outside the setbacks of the sensitive areas. The Attorney suggested to use the towns peer reviewer since the applicant will be paying for this.

**Suggestions for Sampling:**

- Testing after crushing and rainstorms.
- No water sampling from December to February
- Suggestion to do quarterly and include some criteria

The question raised was what is being peer reviewed. The cost of the testing will vary depending how much may be needed. The applicant asked if any other applicants have been requested to do this type of testing. The applicant requested to see if she could review what other applicants have been required to do.

The Attorney communicated that there is a risk to the applicant to agree to sampling. The applicant does have a good successful business with the 20 days. The Attorney does not want to hurt the business by agreeing to this. It appears to the Attorney that the Board is expecting a higher threshold from what the DEP will require. The Board is essentially creating a new testing regime and the Attorney has not seen this ever in his practice. He communicated again that the project was vetted thoroughly by Conservation Commission and the State.

The Building Inspector was present at the meeting and communicated that there will be a criterion for testing with the DEP with the increased volume.

The applicant responded that the permit does account for the water district areas. The DEP looked at the districts, overlay, and how the property was designed based on what the DEP wanted back with the original permit. There was a huge cost to design it as recommended by the State. DEP will make the determinations on all the new numbers.

There was a suggestion to include the minutes and other documentation to the State when this applicant applies for the new permit. The DEP will determine if there is a requirement for sampling. The Board discussed putting it as a finding or condition.

There was conversation among the Board that there needs to be an assumption that the Conservation Commission did do their job when looking at the application back in 2017. This application was vetted through the various departments back in 2017. The Board does agree that the State has entities in place which checks applications for compliance in the various districts.

The Board discussed that there could be a condition that testing is required. There would need to be a determination of what the applicant would need to test for and how many times a year would this need to be done. The Attorney is concerned about the depth of the scope of the testing and the cost this would place on his client when it is not warranted by the current DEP permit. The Board did indicate that water resource areas do change through time, and this was last looked at back in 2017.

The Planning Board wanted the applicant to get something in writing from the DEP that this permit has been reviewed for the location of it being in the water resource district and that the water sampling is not required. The Attorney for the applicant responded that the DEP will not write this type of letter but when the new application is filed those areas will be reviewed by the DEP. The current permit indicates that there are no hazardous materials are on site. The applicant further asserted that in the letter dated February 20, 2017, from Sage Environmental that the Mass DEP encourages the reuse and recycling of the reclaimed ABC rubble in accordance with established regulations and best management practices. If there were hazardous material on site, the permit would not have

been issued. The applicant responded that the application does look at the water district area and was part of the original permit.

The remaining items which need further clarification include:

- Verification that the DEP allows this type of activity in the water shed resource district.
- More narrative about the definition of dusk within a decision relative to the crushing operation (protection from a risk management and safety standpoint)
- The Board would like to know if the increase of 60 days would require water sampling.

There was a recommendation that the Planning Board hold an additional meeting on September 30, 2021, with the only agenda item being Asphalt Engineering.

The Board advised the Town Planner to draft a decision with the considerations as noted from discussion.

**On a motion made by Dennis Trebino, seconded by Brian Salisbury, the Board voted unanimously to continue the hearing for Asphalt Engineering to September 30, 2021 at 7:00 pm.**

### **Other Business:**

#### **Bellingham Shores Covenant:**

The Board was informed that Fafard has sold the project to Eastland Development. The Board is in receipt of documentation about a new notification of new ownership and transfer of covenant.

### **Meeting Minutes:**

**On a motion made by Brian Salisbury, seconded by Dennis Trebino, the Board voted unanimously to approve the minutes from August 12, 2021 as presented.**

Respectfully Submitted,

*Amy Sutherland approval 10.14.21*

Amy Sutherland  
Recording Secretary