

## Minutes

Public meeting of Hill Zoning Board of Adjustment

Public re-hearing of Circle 3 special exception

20 October 2008

ZBA Board members present: Robert Helmers, Gerry Weinert, Shaun Bresnahan, John Nesteruk

Applicant: Carl Overlock, Chris Seufert, Mr. Eckman (engineer)

Public: Gary and Jeannine David, Mike Brady, George and Denise Robie, John Lynch, Jan Maloof, Joe Mahoney, John Moses, Tom Burke, Dave Maloof

Meeting was opened at 7:30 p.m.

Reviewed and passed minutes of the 9/22/08 and 7/29/08 meetings without changes.

Open public re-hearing of the Circle 3 Sand & Gravel special exception at 7:15 p.m.

Mr. Seufert made opening comments noting that the main point of the denial was due to nuisance, especially noise, from site operations. He stated that nuisance is a unreasonable interference with the use of a property and that the interference should be substantial. The nuisance was attributed to noise, ground crushing and traffic. The applicant had Eckman Engineering perform studies on noise and traffic.

Mr. Eckman presented the results of the study, providing a map of sampling stations and a booklet with the results. He stated EPA standards of 55 dB (45 dB at night) at the property line for commercial/industrial operations. He also stated a few other standards related to health. He presented a decibel meter and ambient noise in the room was around 50 dB. Noise from "basketball" (actually Girl Scouts running) in gym above increased noise to 60 dB. He noted that an increase of six dB was equivalent to a doubling in the noise level. He presented the map and stated that sites with the greatest noise with the crusher operating had about 45 dB and that ambient noise levels were about 35 dB. All readings outside the property were less than 55 dB. Placing a muffler (taped rags) on the backup alarm of the loader reduced the noise from about 90 to 50 dB at 30 feet. Mr. Weinert asked if muffling a backup alarm would be allowed under OSHA or other regulations. Mr. Eckman was not sure, he thought there may be an acceptable range with sound level less than currently on the loader. The loader has the loudest alarm. Mr. Seufert asked what the noise was with the alarm not muffled. Mr Eckman responded that noise at 50 feet was 90 dB, at 400 feet was 63 dB across open air, a five-fold decrease. Outside the property, noise was between 30 and 40 dB. Mr. Bresnahan asked if the Circle 3 Sand & Gravel had land north of Bootjack Road. They did not.. Mr. Eckman then reviewed the report going station by station explaining the source of the noise. Mr. Burke interrupted, asked what the meter was reading with a motor humming in an adjacent room. It was about 50 dB. He closed the door and the meter read about 45 dB. Mr. Eckman pointed out that it amounted to about a halving of the noise. Mr. Eckman continued with his presentation of the results. Most sites had ambient noise levels of about 35-40 dB. Spikes in background noise or elevated background noises were generally attributed to motor vehicles, wind in the leaves, a babbling brook, animals, power tools or passing vehicles. In general, the increase in noise with the crusher operating was only a few decibels greater. Mr. Eckman said he did not hear the pit at most stations. When asked by Mr. Nesteruk, Mr Eckman stated that he could not hear the crusher or that it or the backup alarms made little or no change in the noise levels measured by the meter.

Mr. Overlock stated that he wished to work with the board to reduce noise levels. They were referring to OSHA standards because the town does not have any noise standards. Mr. Seufert

pointed out that sawmills and woodlots are allowed in the area and asked what level of noise would be expected from those operations. Mr. Eckman was not sure, but noted that the relatively large distances greatly reduce the sound.

Mr. Eckman briefly reviewed the results of the traffic study. Trucks generally drive slower, typically follow the speed limit and accounted for about 8% of the traffic.

Mr. Nesteruk pointed out that the noise is not deafening or creating a health hazard. The nature of the low-level noise is that it is continuous, that is what is upsetting the nearby residents.

Circle 3 Sand & gravel responded that they are willing to work with the board to reduce noise to acceptable levels and that they are now proposing to crush 30 days in the spring and 30 days in the fall. The actual figure for truck traffic was 8.9%, Mr. Seufert pointed out that it is less than 10%. Mr. Overlock stated that they had gotten rid of the crusher and screeners. They would do periodic crushing in the spring and fall. Most material would be removed from the site as raw material. These steps were being taken to minimize processing. However, in some cases it would not make sense to haul material to Franklin for processing and return to Hill or points north with the material. He noted that he would need to some periodic crushing and require some flexibility to remain profitable.

Mr. Seufert stated that there is always a clash of interests in use. Site operations are a reasonable use of the property. Noise levels outside the pit are less than 40 dB and do not represent a substantial interference with other uses. Mr. Nesteruk asked how do you define substantial and gave an example from his work experience. Mr. Seufert stated that they are willing to modify and make noise levels acceptable to all. Circle 3 was trying to be good neighbor. At the initial hearing, they had no alternatives, but at this point, they are willing to consider alternatives to minimize noise.

Mr. Helmers solicited comments from the abutters.

Mr. David asked if the "much quoted" EPA noise standards the same in rural NH and a metropolitan site. He was wondering if it amounts to a one-size fits all approach. Mr. Eckman replied that in terms of EPA, it is probably same.

Mr Robie asked how wind direction affected the decibel meter. Mr. Eckman stated that readings will vary with environmental conditions, and may vary with time due to weather changes and human activities.

Mr. Maloof asked if the pit was going to be turned over to a new operator and who the responsible party would be. The response was that Circle 3 would contract with a sole operator to remove the raw material. Circle 3 would be the responsible party. Mr. Maloof added that residents moved here for the birds and the bees, to enjoy quiet country living. He feared that Dick Edmunds is a large operation that is going to greatly magnify operations. Mr. Seufert disputed by noting that they will be removing raw material, reducing the need for crushing. There will likely be less backing up associated with raw material operations as compared to crushing. Mr. Maloof questioned why there were no representatives from Edmunds present. Mr. Overlock finished by noting that they were seeking a special exception, not an operating permit.

Mr. Burke began asking what trucks were doing on Dearborn Road the previous week and why they were operating after 5:00 p.m. Mr. Helmers asked that comments be directed to the board.

He read and submitted a letter noting that continuous noise in the area is a nuisance. The area was woodland in 1997 and that is why he bought property there, to enjoy peaceful country living. The noise emanating from the site is a commercial operation and is inappropriate for a residential area. Mr. Burke equated the noise from the motor in the adjacent room (earlier) to the noise from the pit adding that he does not have a door to stop the noise. The applicants questioned the truck, but Mr. Burke pointed out that regardless of whom the individual driver was, these violations would continue if the pit continues to operate.

Mr. David noted that although there was little change in noise when the crusher was not operating, noise does not have to be harmful to be a nuisance. He also stated that the ZBA does not have the authority to grant permission to crush and process stone. He provided a letter to the board. He discussed the main points of the letter. He suggests that noise, traffic and dust are not appropriate in a residential area. He stated that the ZBA mis-interpreted the lack of complaints as no complaints. Mr. David attributed the lack of complaints to frustration and resignation of residents who felt that the town boards were not taking appropriate measures and not listening to their concerns. He noted that he had attended a selectmen's meeting in which town counsel and members of the of board (ZBA and/or planning) were present and in which the Circle 3 matter was discussed, adding that the boards had chosen to ignore unlawful activities at the site. He questioned the accuracy of the estimated number of truck trips per day. Residents are not objecting to removing gravel, only the manner in which it is being removed. Mr. David asked where is the evidence that dust and traffic concerns have been addressed, suggesting the testimony of applicants and third parties with whom he disagrees. He suggested that evidence that the concerns have not been addressed can be found in the testimony of residents, many of them long-term with expectations of living in a rural area. He finished by saying the crusher is non-compliant, asked the board to show where it had authority to grant crushing operations, the EPA criteria for noise levels are not appropriate in Hill and that the Zoning Ordinance states that noise from occupations must not cross boundary lines.

Mr. Helmers read two letters from butters who were not able to attend. Mr. David provided the letters to Mr. Helmers prior to the meeting. Mrs. Pepler stated she had pulmonary health problems and was not able enjoy the outdoors because of the dust. She attributed the reduction in dust to heavy rains in 2008, not to Circle 3. The second letter by Mr. Munro questions the appropriateness of this type of operation in an area as rural as Hill and was concerned that approval of operations of this magnitude would set a precedent allowing further serious degradation of the rural character of the area.

Mr. Helmers opened comments from general public.

Mr. Lynch stated that he was surprised that the ZBA had used the backup alarms to deny the application as the federal government regulates them. The town loader is louder than the trucks due to blind spots in reverse. He expressed concern over alteration of back up alarms. He also noted that the town received better price for earthen materials. Circle 3 has been "good neighbor" to Hill and adjacent towns. The town pit is inadequate to meet the needs of re-building the roads in the town. He questioned if it was wise to ship material to Franklin and then back to Hill. Road repairs will require a large amount of crushed material. If the ZBA does not allow crushing or excavation, they will be penalizing the taxpayers who will have to pay more for the raw materials.

Mr. Moses equated nuisance noises to town trucks in the winter operating in the middle of the night (presumably during snow plowing).

Mr. Brady asked where the road study was done. (Only on Bootjack Rd). He noted that with the changes that the applicant has suggested (2 months of crushing), the operation would be equivalent to construction or logging activities. He stated that the purpose of the board is to address circumstances that are not clearly defined in the Zoning ordinance. With the appropriate conditions and permits, the town will have better control over conditions, especially with a sole contractor operating the site. This will give the town the chance to correct mistakes made in the original permit.

Mrs. Maloof noted she objected to the continuous noise. Her house was for sale and prospective buyers left after hearing the noise.

Mr. Burke requested the ZBA write the Selectmen's office and ask what can be done about the devaluation of property. What are the residents to do if selectmen allow commercial operations in residential area.

Mr. Brady rebutted that both he and Mr. Lynch were speaking as residents, not selectmen.

Mr. David responded about Mr. Brady's comment on duties and responsibilities of ZBA. He cautioned the board not to legislate. The ZBA is to interpret the law, they should not make the rules. The ZBA should remain in the bounds of their authority.

Mr. Nesteruk said he did not see where the ZBA could not allow crushing operation. Mr. David replied that if it is not stated, then it is not allowed.

Mr. David then began to discuss the memorandum in opposition. Mr. Helmers interrupted to explain that Mr. David had presented the memorandum to the board just prior to the meeting. Mr. David submitted the document as a formal submission at this time. Mr. Seufert requested a copy and was given Mr. Nesteruk's copy, which he quickly read.

Mr. Bresnahan asked Mr. David to clarify the basis of his statement that the ZBA did not address concerns of abutters. Mr. David referred to the letter from the Selectmen's office. Mrs. Maloof said she complained to the police twice in 2008.

Mr Seufert, referring the memorandum, stated that nothing says that 155 E refers to crushing and there are no court decisions listed. Mr. David replied that the crushing is relative to nuisance, referred to the court decision in Rye NH and asked the board to read the memorandum.

Mr. Brady said it is not the role of the ZBA to set operational standards. That is appropriately done in the planning board who has jurisdiction over excavations.

Mr. Helmers asked if the board had sufficient information to deliberate. The board decided to recess and review the information that was provided. Mr. Helmers will set a date (hopefully in next two weeks) and notify all parties and get out public notices.

Meeting adjourned at 9:30 p.m.

Robert Helmers  
chair