

Minutes

Public meeting of Hill Zoning Board of Adjustment
15 December 2008

ZBA Board members present: Robert Helmers, Gerry Weinert, Shaun Bresnahan, John Nesteruk
Circle 3 sand & gravel: Chris Seufert, Carl Overlock

Public: Mike Brady, George and Denise Robie

Note: the applicant, Mr. Gary David and Mrs. Jeanine David were unable to attend due to an emergency.

Meeting was opened at 7:40 p.m.

The meeting was called to consider a motion for a re-hearing of the granting of a special exception for the Circle 3 Sand and Gravel site on Bootjack Road. The special exception had originally been denied on July 29, 2008 because testimony at the public hearing indicated that site operations were causing a nuisance. A request by Circle 3 Excavation for a re-hearing was thereafter granted to re-consider the definition of nuisance and the special exception was granted on November 3, 2008. An abutter, Mr. Gary David then filed a motion for a rehearing, listing a number of points and errors the zoning board had made in granting the special exception at the re-hearing.

The chair asked for comments from the board. Mr. Bresnahan said the motion raised some questions and that Mr. David had some points. When asked to elaborate, he noted that the motion had cited that the applicant had not provided much evidence about the diminution of property values or health risks.

Mr. Helmers suggested they review some of the key points for the public record. Mr. Helmers stated that he had not taken into consideration the prior illegal existence of the pit or the benefit to the town in lower costs of materials when he considered the request for a special exception as those facts were irrelevant to the special exception criteria. He asked if any of the other members had based their decisions on these facts. No other members had based their decisions on these facts.

The applicant had stated the board had made inappropriate conditions in approving the special exception. Mr. Bresnahan noted that the applicant had stated at the hearings that the zoning board should not be legislating. Mr. Helmers did not agree with the view that the board had made unlawful conditions. Mr. Weinert noted that the matter had been discussed at the hearing. The planning board would review regulation of pit operations and the zoning board had avoided making regulations. Mr. Helmers stated that he had based his decision to approve the special exception, based on the Circle 3 sand & gravel proposal and did not base it on any unknown conditions that the planning board would impose as a regulation.

Mr. Bresnahan asked if anyone had looked up the definition of mining. There was a brief discussion about the jurisdiction of RSA 155E over crushing operations. The board had discussed this at the re-hearing and felt that RSA 155 E did in fact cover crushing. The board retained this view.

Regarding the applicant's contention that Circle 3 Sand & Gravel had presented insufficient evidence that the operation will not create health hazards, Mr. Bresnahan noted that Mr. Burke's comments at the hearing were about asthmatic children who visit the Burke's residence. He wondered if the board had to account for every such visitor. Mr. Nesteruk noted that the board

cannot account for all guests who might visit or have any control over weather, pollen or other conditions that my aggravate health problems.

After a brief discussion, the board agreed that its original decision that the area is not a residential area is correct. The distinction between residential area and residential zone is a matter for the courts.

Regarding lack of evidence for diminution of property values, Mr. Bresnahan noted that the devaluation of Mr. Burke's property was based on his testimony without any supporting evidence. Mr. Nesteruk noted that the conditions causing the nuisance during earlier operations at the pit had been rectified.

The applicants contend that the zoning ordinance does not allow gravel pits. The board agreed that the RSA 155 E allows gravel pits, effectively trumping the town zoning ordinance.

Mr. Helmers acknowledged that very little evidence was presented at the public hearings regarding diminution of property values. The decision therefore was based on the individual judgements of the board members

Mr. Helmers noted that in judging the Circle 3 Sand & Gravel request for a special exception, he had not considered past activities of Circle 3. He had considered the applicant as any new individual and had envisioned how conditions, as proposed, would affect the adjacent areas. Mr. Helmers did not believe that the proposed operations would create a nuisance. He felt that the board was correct in granting the first re-hearing because it had used an inappropriate standard for nuisance. Mr. Helmers did not see that the motion for a re-hearing by Mr. and Mrs. David demonstrated that the board had made any errors in procedure or judgement and he did not see the need for a re-hearing.

A motion to deny the request for a re-hearing by Gary and Jeanine David to reconsider the granting of a special exception for Circle 3 excavation was made and seconded. The motion passed by a vote of 4 to 0.

Meeting adjourned at 8:00 p.m.

Robert Helmers
chair