

BETHLEHEM PLANNING BOARD
MEETING MINUTES
November 5, 2014
BETHLEHEM TOWN HALL MEETING ROOM

Present: Dave Wiley, Mike Bruno, Chris McGrath, Peter Roy, Sandy Laleme, Alecia Loveless, Libby Staples, Andrea Bryant, and Jeanne Robillard

Absent: Don Lavoie

Dave Wiley calls the meeting to order at 6:03 pm. The first order of business is to address the matter of recusals and to set the board for the public hearing. Andrea addresses the board and states she has decided to recuse herself so she can express her concerns to the board directly and honestly; because she is directly affected by the landfill she feels it is her responsibility to recuse herself. Dave appoints Libby Staples as a full board member for Andrea.

Dave addresses NCES Attorney Bryan Gould regarding the applicant's motion to have Alecia Loveless recuse herself from the proceedings. Attorney Gould states he does not want this to be a laborious part of tonight's meeting, and stands by the motion that Alecia is bias and therefore should recuse herself.

Dave addresses Alecia. Alecia declines recusal stating:

"I decline to recuse myself for the hearing because I am not biased toward the applicant. I feel that what we have before us is a legal application for expansion by NCES as is provided for by our town settlement agreement and will be governed by state statute and the stipulation, as well as town ordinances and our site plan review. I have not had the opportunity yet to go over the application in whole with the other board members, but anticipate a thorough application with few problems and look forward to working with NCES toward completion of their project.

Dave request comment from concerned citizens regarding the recusal of Peter Roy and Sandy Laleme. Andrea feels that Peter Roy and Sandy Laleme are bias due to their support of NCES and thinks they should recuse themselves.

Peter states he supported the settlement as a private citizen and feels it is a separate issue from this application. Subsequently he was elected to the planning board and feels it is now his duty to support what he feels is the majority wishes of the town are and therefore will not be recusing himself. He also points out that when Jeanne Robillard's, a vocal opponent of NCES, term as alternate was up in 2013 he was the deciding vote to keep her on the board as an alternate, which is an indication of his lack of bias on this issue.

Sandy Laleme points out that #7 of the Settlement Agreement states that agreement states, “The Town’s board of selectmen agrees to support publicly the approval of this Agreement and the Zoning Amendments by the Town’s votes, “ and therefore will not be recusing herself.

Dave then informs the public that now, with the board for tonight’s hearing set, they will adjourn for executive session with both the town attorney and the planning board attorney to discuss the application.

Motion by Sandy Laleme, seconded by Mike Bruno, to adjourn for legal counsel. Chairman Dave Wiley asks for a roll call. All members in favor, the Bethlehem Planning Board adjourns for legal counsel.

The Planning Board returns to session at 6:40. Dave informs the public that the board was downstairs with the lawyers to discuss the scope of the regulations and how they apply to this application.

Dave then informs the public and the applicant that both the town attorney and the planning board attorney have reviewed the matrix as presented by NCES, and they are in agreement, with the exception of subsection 7.2.3.23, which is missing. Phil Hastings provides the board with a revised version. Dave asks the board for a motion to accept the revised matrix as the board’s determination as to what regulations will apply to this application.

Motion by Sandy Laleme, seconded by Peter Roy that the Bethlehem Planning Board stipulates they are in agreement with the matrix as presented and reviewed by the Town and Planning Board attorneys. All members in favor, motion carries.

At this point Dave opens the public hearing for NCES Stage V Landfill Expansion at 6:43 and reads the public hearing notice.

The Planning Board reviews the checklist/Table 1 of the matrix. (Attached)

Motion made by Peter Roy, seconded by Mike Bruno to accept the application as complete. All members in favor, motion carries.

NCES Attorney Phil Hastings presents the plans and invites Adam Sondal of CMA engineers to give a brief overview of the project.

Attorney Hastings states this is a straightforward application with no changes since the conceptual meeting in October. He then reviews Table 2 of the matrix as it applies to the application.

Dave then asks the board for comments and/or questions, and points out that, per the stipulation agreement, the Planning Board can vote to send the plans to the town engineer for review in order to

establish the plans are in compliance with the agreement. Dave requests that the board do so, and asks for a motion.

Motion made by Chris McGrath, seconded by Libby Staples, to send the Site Plan Review application to town engineer, Tom Roy to review the plans to verify they are in compliance with the settlement agreement. All members in favor, motion carries.

Planning Board Attorney Jae Whitelaw interjects and suggests the Planning Board vote to authorize the board to contact the town engineer and retain him to review the plans. She feels the board needs to vote to have that be a requirement. Be specific about what it is you are looking for. She reminds the board one of the things they are interested in is having the engineer review the restrictions or conditions for berms, and heights that are in settlement agreement and those are the sort of things you need the engineer review.

Motion by Sandy Laleme, seconded by Mike Bruno, to modify the prior motion that the PB authorize that Town Engineer Tom Roy be contacted to review the plans submitted by NCES for the Stage V Landfill Expansion to ensure compliance with the town's settlement agreement on file, and that the expense of such review be paid for by the applicant.

Attorney Hastings questions what authority the Planning Board has to do so. Dave refers to Town Attorney Brenda Keith. Attorney Keith states the town zoning ordinances and comments, just like any applicant, if there is an engineering question the town is allowed, at the applicant's expense, to send it for engineering reviews, and that is what the Planning Board has decided to do. Mike feels this is a protection for both the town and for NCES. Attorney Hastings doesn't necessarily object to the town's need to get expert opinion to help make the decision, he just wants to be clear that the town has the authority to do so and doesn't want this to be construed as NCES waiving and consenting to that, and if in fact the Planning Board does not have that authority, NCES reserves their right to object later if they find out the board has exceeded their authority.

Dave opens the floor to the public and asks everyone to remember that this project has a narrow scope and already has the approval of NHDES.

Cheryl Jensen questions if it is true that, under these provisions, "permitting the Planning Board to retain an inspector to verify compliance with conditions of site plan review, there is no action required by NCES?" Mike Bruno states in order to insure all parties are in compliance the Planning Board will have the town engineer validate the plans. Attorney Hastings adds that section 8.11 speaks to verify compliance with the Site Plan Review, and no action is required by NCES because there haven't been any conditions imposed.

Andrea Bryant feels it is wise to have Tom Roy review the plans, and questions if DES has cross reference our stipulations/regulations? Dave comments that state issues are separate from Planning Board issues, and the Planning Board has a limited scope.

Peter Menard requests that going forward there should be a committee to go over plans and to be part of the inspections, and requests information from Adam Sondal regarding when plans will be available for the construction. Attorney Hastings objects to the cross examination of the NCES engineer. Dave requests that Peter talk directly with the chair. Sandy reminds everyone that the Board is here for Site Plan Review and not to future modification plans. The board needs to stay with what they are supposed to do. Dave refers to Town Attorney Brenda Keith regarding how specific the plans were to be. Did the agreement delineate whether the approval from DES as submitted or did it require to see the construction plans, or wasn't it specific. Attorney Keith's feeling was the plans at time of Site Plan Review were not specific. Attorney Hastings refers to paragraph 6 of the supplemental stipulation.

Jae reads supplemental stipulation, specifically paragraphs 5 and 6 to say that NECES has submitted plans to DES and DES has taken action on that, to the extent that anything shown on those plans meets requirements of the town's site plan review, and that are applicable. They don't need to show those again on your plans, so you would want to cross reference with the DES stuff, which is one of the items that the engineer will pick up on. Attorney Hastings feeling is that what was submitted to DES was what the Town required. Dave, we are not going to drag this out. We are going to submit what we have received from the applicant to the town engineer for review. Attorney Hasting states, that if in the course of that process it turns out NCES needs to modify , if they need to make some substantive changes, and if those are within the town's jurisdiction then they will be back for modification.

Andrea wants to know if there will be talk about bonds and impact fees. She presents pictures to the Planning Board of seepage that is coming out of the Landfill that were taken in September. She goes on to speak of the potential future health risks to our community, and feels the town should impose impact fees on NCES for future clean-up. Attorney Hastings remarks there is limited authority for the Planning Board in this regard due to the stipulation. Cheryl asks if the Board will consider setting any sort of bond. Planning Board Attorney Jae Whitelaw states she will weigh in at the continued public meeting. Attorney Hastings states in a normal Site Plan Review a bond would be okay, but the stipulation states a request for bond is not allowed.

Motion by Sandy Laleme, seconded by Peter Roy, to continue the public hearing to December 10, 2014. All members in favor, motion carries.

Motion by Alecia Loveless, seconded by Mike Bruno, to adjourn at 7:55. All members in favor, motion carried..

Respectfully Submitted,

Dawn Ferringo
Planning and Zoning Clerk