

**HOPKINTON ZONING BOARD OF ADJUSTMENT
PLANNING BOARD
MINUTES
AUGUST 3, 2010**

Planning Board Chairman Bruce Ellsworth called the joint public hearing/meeting of the Hopkinton Zoning Board of Adjustment and Planning Board to order at 7:00 PM on Tuesday, August 3, 2010, in the Hopkinton Town Hall. Planning Board members present: Timothy Britain, Christopher Lawless, Michael Wilkey, Jane Bradstreet, Edwin Taylor and Cettie Connolly. Zoning Board of Adjustment members present: Acting Chairman Charles Koontz, Harold Perkins, Toni Gray, Greg McLeod and Dan Rinden.

Note: The Zoning Board of Adjustment's Rules of Procedure was provided to the applicants, during the application process, and additional copies were available at the meeting for the general public.

ZBA#2010-11/PB#2010-07 Justin Welles of White Mountain Wood Grinding, LLC – Applications for a Special Exception and Site Plan Review for the production of wood chips and mulch from virgin wood, storage of raw materials, such as stumps, logs and brush, and the storage of finished materials such as ground chips and mulch. The property is owned by Crathern Family Holdings, LLC (formerly known as the site of O.D. Hopkins), located at 59 Mill Road in the M-1 (industrial) district, shown on Tax Map 228 as Lot 22. The application was submitted in accordance with Table of Uses 3.6.G.8, and 3.6.G.11 of the Hopkinton Zoning Ordinance. *Correction: Table of Uses 3.6.G.6 (Bulk Storage of Fossil Fuels) was incorrectly cited in the Notice of Hearing.*

Mr. Welles addressed the boards advising that his business is a wood recycling operation that takes wood that is typically burned or buried, such as stumps and other clean waste products, and recycles it into bark mulch for landscaping and bio mass chips. The proposal is to create a holding yard in which brush or stumps, from the Town or tree service companies, would be brought in and stockpiled, sorted and grinded. Stumps would be turned into mulch and brush and low grade logs would be turned into bio mass fuel. It is estimated that one truck per hour would enter the site. Hours of operation would be Monday – Friday from 7 AM to 5 PM and Saturdays from 7 AM to 3 PM.

There will be no demolition or contaminated wood brought into the site or used. In fact, the Cratherns are willing to guarantee this by way of including language in the lease agreement.

Since the residents are limited to bringing logs no greater than 5-inches in diameter to the landfill, Chairman Ellsworth questioned whether residents would be able to bring larger logs to Mr. Welles' site. Mr. Welles replied no, explaining that the use of his site by the public would not be permitted as it would be difficult for him to control the types of materials brought in to the site in addition to the fact that it would expose him to potential liability. Instead, Mr. Welles proposes to bring his excavator to the Transfer Station to gather up the wood and bring it back to his site, noting that he currently does this for other communities. If such an agreement was worked out with the Selectmen, then the size of the material would not be an issue.

In response to a question concerning the potential noise produced at the site, Mr. Welles explained how he had done extensive testing on his equipment. For example, the grinder, which would not

operate on a consistent basis, produces 75 db at a distance of 300 feet. This is no different than typical highway noise of 66 db or trucks traveling the highway at 84 db.

Chairman Ellsworth questioned whether one noise, such as the excavator, cancelled out the grinder or vice versa. Mr. Welles responded by saying that the grinder cancels out the excavator, noting that the two pieces of equipment operating together do not increase the level of noise.

Mr. Wilkey inquired as to whether the holding yard would be utilized year-round. Mr. Welles replied yes, stating that during the winter months the brush and trees come in from ice and wind storm clean-ups. Additionally, because there is less of a need for landscaping material he would focus on producing bio mass fuel (wood chips).

In response to Mrs. Connelly's inquiry concerning whether or not the site would be a permanent site for the business, Mr. Welles stated that he will have a three year lease due to the fact that the Cratherns plan to sell the property or develop it at some point in the future. So, the time line for the operations at the site is dependent upon what happens to the property in the future.

Scott Crathern stated that the money from the lease will help pay for engineering costs for future development of the property.

Mr. Welles clarified that no buildings are proposed to be constructed and that his business is very mobile; in fact, there will be some days in which he will not be at the site and/or the grinder will not be operating.

Mrs. Robertson questioned the size of the building in which O.D. Hopkins operated his business from the site. In response, Mr. Crathern stated that the size of the building that once stood at the site was approximately 40,000 square feet. While the building was destroyed by fire the concrete slab still remains.

In response to Mrs. Robertson's inquiry as to the number of truck trips when producing bio mass, Mr. Welles estimated one truck trip per hour which he based on other yards that he had worked in.

Chairman Ellsworth questioned whether he has an operation at another site that the public and/or boards could view. Mr. Welles replied no, explaining that currently he is working in Attleboro Massachusetts.

Mr. Taylor inquired about dust control and whether the trucks and equipment would create dust. Mr. Welles responded by saying that he is aware of the potential for dust and the need to control it. In fact, he stated that the creation of dust is detrimental to the engines in his equipment. Usually dust is controlled by operating the grinder on rainy days. Additionally, they usually add water during the grinding process, using a hose similar in size to a garden hose. In addition to reducing the amount of dust the water helps the grinder in processing the wood chips and mulch.

Mr. Taylor questioned whether there is an on-site water source. In response, Mr. Welles replied yes, stating that there is an existing well and septic system on the property; however, he only plans to utilize the well.

In response to Mr. Britain's inquiry as to the time period in which it takes to set-up, produce and stockpile material, Mr. Welles indicated that the process involves the bringing in of the wood and

separating the material. Typically, brush and logs have a quick turn-over time because there is a steady market for the finished product.

Chairman Ellsworth questioned whether there will be an increase in the potential for fire because of the operations. Mr. Welles replied no, stating that stumps are a very low fire hazard and all brush is piled in a similar manner to the piles at the Transfer Station. Mulch can be a hazard if not correctly stored, noting that piles should not exceed 16-feet in height. Chairman Ellsworth noted that the Town's Ordinance allows for a height not to exceed 25-feet.

Mrs. Robertson noted for the record that the Police Chief, Fire Chief and Public Works Director are aware of the proposal and, at this time, have not submitted concerns or comments.

Mr. Taylor then asked Mr. Welles whether there are any State regulations that regulate this process. Mr. Welles responded that he was not aware of any regulations, advising that he typically works closely with the Natural Resource Conservation Service on State projects and they have not discussed any regulations. The only thing that is regulated is the trucking, which is regulated by the NH State Police.

Mr. Welles responded to an inquiry concerning provisions for run-off into the adjacent wetlands by stating that he takes the material produced, such as chips or bark mulch, and makes wind rows of it so that any potential run-off is filtered before entering the wetland. Typically, the rows are 2-feet high and 3-feet wide. This is what is typically done on many engineered projects, suggesting that it is more suitable than using silt fencing as the natural material will decompose.

Mr. Welles then advised that he would like to begin work at the site as soon as possible. First, he will clean-up the site as it is over grown and then complete the erosion control measures before operation.

When asked about the types of trucks that would enter the site, Mr. Welles responded that the trucks are typical 6-wheel dump trucks and tractor trailers.

Chairman Ellsworth inquired as to whether signage is proposed. In response, Mr. Welles stated that he has no intentions of advertising the site. In fact, he typically gets business by word of mouth. Mr. Welles' business includes himself and one employee, noting that the business is very small.

With respect to the condition of Mill Road, Mr. Welles had spoken with an employee of the Public Works Department who had indicated that the road is plowed typically to the fork. For a road that has minimal use the condition of the road appears to be very good. Mr. Welles is willing to maintain that portion of the road from the fork into the site that is approximately 700-feet long.

The members briefly discussed with Mr. Crathern the location of the right-of-way (access drive) to the site and whether it is located on State property or on Crathern property. While the plan of Provan and Lorber, Inc. shows the access drive as being along State property, Mr. Crathern disagreed, indicating that it is located on his property and is the same access drive that was utilized by O.D. Hopkins.

Following discussion, a motion was made by Mr. Britain, seconded by Mrs. Bradstreet, to accept Application #2010-07 as complete and for consideration. Motion carried unanimously (Britain, Lawless, Wilkey, Bradstreet, Taylor, Connolly and Ellsworth).

At this time, Chairman Ellsworth turned the hearing over to Chairman Koontz for Zoning Board of Adjustment review of the Special Exception criteria.

Mr. Welles reviewed the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

A Special Exception is required for the operation of a commercial sawmill per section 3.6.G.8 of the Zoning Ordinance. A Special Exception is required for open storage of raw materials per section 3.6.G.11 of the Ordinance.

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

The proposal will adhere to Town specifications for storage. All equipment is designed for what its intended use and therefore there is a minimal potential for fire, explosion or release of toxic materials.

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

There should be no detriment to property values as the lot is well screened with trees and other vegetation. Most of the operation will be screened by the trees that are in the highway median. The Crathern family owns all directly abutting property and the property in question is in the industrial district. There will be no buildings on the site.

The concern of dust being created is also a concern for the equipment and employee. All material to be utilized will be clean wood. There should be no heat or glare created as a result of the business. All equipment will be parked on-site in an organized fashion.

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

Trucks will enter the property at an average rate of one truck per hour with most trucks exiting off I-89 directly onto Mill Road. Therefore, there should be very little increase in the level of traffic congestion in the vicinity. The existing businesses in the area, such as McLanes already have numerous trucks entering and exiting their facility.

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

The business should not create a demand for municipal services. On-site waste will be taken care of by utilizing a private dumpster.

6. No significant increase of storm water runoff onto adjacent property or streets.

There will be no changes to the existing run-off in the area. In fact, it is believed that the installation of a natural berm as an erosion control measure should improve the quality of run-off.

- 7. An appropriate location for the proposed use.

The site, located in an industrial district, is an ideal location for the business. The site has direct access to the highway while being secluded by existing trees and vegetation.

- 8. Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

There should be no adverse affects on the health and safety of the residents in the area. The goal of the business is to fit into the community while providing the Town with the benefits of recycling of clean waste wood.

- 9. In the public interest and in the spirit of the ordinance.

It is believed that the business will be a good addition to the community. The use is proposed in an industrial district and will have an opportunity to provide landscaping material to local landscapers. Additionally, instead of having to burn brush and other trees that are disposed of at the Transfer Station the business will provide the ability to recycle the material.

In response to Mr. Koontz's inquiry concerning security measures, Mr. Welles indicated that he plans to install a gate at the entrance of the site and possibly security cameras for liability purposes.

Mrs. Robertson noted for the record that she had used Google Earth in an attempt to determine the distance from the concrete pad to the homes on Dolly Road. Listed below is an approximate distance to each residence:

Name:	Distance+/-
Duval	938'
Pishon	935'
Douglas	940'
Furness	990'
French	946'
Monroe	1100'
Green	1200'

Mrs. Robertson then noted that she had downloaded information used by the National Hearing Conservation Association listing various types of activities and their associated decibels. *Note: The information was to assist the boards in comparing the noise level of the Applicant's equipment to other types of activities.*

In response to an inquiry from Chairman Koontz concerning whether or not the business would cause additional insects on the site, Mr. Welles stated that the business should not cause additional insects on the site. He then gave an example of a quarantined place in Massachusetts due to an insect found, explaining that as a result logs are not permitted to be brought into New Hampshire from that area.

Public Testimony was opened.

Abutter Nicholas Pishon of Dolly Road expressed the concern with the potential for additional insects as a result of Mr. Welles using water at the site. He wondered if there would be standing water that would increase the mosquito population. Mr. Welles replied no, stating that any water sprayed on the concrete slab or on the wood products should instantly be absorbed.

Mr. Pishon then expressed concern with the potential for noise to be created as a result of the operation of the equipment. He noted that while his property is wooded the trees are tall pines which provide little barrier for sound.

Mr. Pishon inquired about the affects, if any, that the operation of the equipment may have on the quality of the air, suggesting that during the time when O.D. Hopkins' facility had burned there was a great amount of smoke that covered Dolly Road. In response, Mr. Welles stated that it would be to his benefit to make sure that the equipment is well taken care of, which would limit any types of pollution in the area. He noted that the equipment has been manufactured to operate on diesel. There should be no adverse affects on the air quality.

Mr. Welles responded to a question involving his operation of the business after dark and whether there would be a need for lighting. He stated that during the winter months there may be times between the hours of 4:00 and 4:30 PM that a truck would enter the site to unload. During that time there would be no need to use the excavator as the trailers have dumps.

Mr. Pishon suggested that the boards consider placing a time limit on the approval so to determine whether there is any negative impact to the neighbors as a result of the noise that may be created.

Gary York of Dolly Road expressed concern with the negative affects that the noise may have on property values. He encouraged the boards to receive an independent noise study, noting that the buffer along the highway towards Dolly Road is mostly large pines and trees that tend to lose their leaves during the winter months. He concurred with Mr. Pishon in that the boards should grant temporary approval.

Abutter David French of Dolly Road also expressed concern with the noise and the affects on his property values. While he commended Mr. Welles for his project, he suggested that there really is no buffer between the highway and the residences along Dolly Road. He suggested that a concrete berm be constructed along the Crathern property so as to reduce the affects of noise. In response, Mr. Welles explained that the area in question would be further back than the location of the concrete pad. In the location proposed there is an existing embankment of approximately six to eight feet in height that acts as a barrier to the highway.

Mr. French requested that the boards allow the operation with a probationary period.

In response to an inquiry from David Dufault, of Dolly Road, concerning the difference in Mr. Welles' business and that of a similar business in Henniker, Mr. Welles explained that the operations use similar products. The business in Henniker deals a lot with loggers and brokers of wood chips. Mr. Welles believes that he can operate a more responsible recycling facility by being selective of the materials that he accepts at the site.

Mr. Dufault referred to a noise issue that he believed that the City of Concord had with a steel manufacturer. He indicated that the issue was dealt with by requiring the owner to construct a building around the grinder. Mr. Dufault recommended that the boards consider the same in this

particular case and that the boards only grant temporary approval so to determine whether the noise from equipment has an adverse affect on the neighbors.

Robert Warburton of Dolly Road questioned the distance the operation of the equipment will be from the edge of the highway. In response, Mr. Welles indicated there will be 150 feet from the job site to the highway.

Mr. Warburton also suggested that a trial period be granted.

Public testimony was closed.

In response to Mr. Perkins inquiry as to the affects, if any, a six month trial period would have on the business, Mr. Welles indicated that the time period is “doable”.

Mrs. Gray indicated that she is in favor of the six month period. Mr. McLeod then noted that he is content with the proposed hours of operation.

There was brief discussion as to whether it would be possible to have an acoustical study, in advance of operating from the site, using comparable sound in measuring the decibels. Mr. Welles did not believe that he could replicate the same sound taking into consideration the features of the site.

Chairman Koontz asked each member of the Zoning Board of Adjustment whether they were in favor of imposing a six month time period at which time the Board would consider, based on complaints or comments received, whether an acoustical study is necessary. If necessary, the requirement of an acoustical study would be determined at another public hearing. Vote: Rinden—yes, Perkins—yes, Gray—yes and McLeod—no (preferred acoustical study in advance of voting).

Motion made by Mr. Perkins, seconded by Mrs. Gray, to grant a conditional Special Exception (ZBA Application #2010-11) for the period of six months, and at the end of the period if the Board deems it necessary a hearing will be held to determine whether an acoustical study, at the Applicant's expense, is appropriate to determine whether the sound level is in compliance with section 5.5 of the Zoning Ordinance. Motion carried unanimously (Perkins, Gray, McLeod, Rinden and Koontz).

Following the vote, Chairman Koontz declared the Zoning Board of Adjustment's portion of the hearing adjourned – 8:40 PM.

Chairman Ellsworth noted that should residents in area hear noise as a result of Mr. Welles' equipment it does not necessarily mean that the business cannot operate. An acoustical study would determine whether the noise level is in compliance with the Noise Ordinance. Chairman Koontz concurred, suggesting to residents in attendance that they communicate with the Applicant.

In response to an inquiry from Mr. Taylor as to when the actual six month time period begins, Mrs. Robertson stated that it begins tomorrow (August 4th). Mr. Crathern then asked if the time period could begin September 1st. In response, Mrs. Robertson noted that is a matter for the Zoning Board of Adjustment to decide; however, there were no longer members of the Board present.

A review of the plan shows a wetland area adjacent to the concrete slab. Mr. Welles noted that there is a 50-foot wooded buffer to the wetland. He intends to leave the area undisturbed.

Chairman Ellsworth questioned whether or not Mr. Welles only accepts wood from New Hampshire. Mr. Welles replied yes, stating that the cost of trucking is prohibitive and therefore limits his resources to New Hampshire.

A question was then asked involving any tax implications as a result of the operations from the site. Mr. Crathern responded by stating that a portion of the property would no longer qualify for current use. Mr. Lawless noted that the Town will save labor costs in no longer having to burn brush at the Transfer Station.

Chairman Ellsworth noted that any decision of the Planning Board is restricted by way of the six month time restriction imposed by the Zoning Board of Adjustment.

Motion was then made by Mr. Britain, seconded by Mr. Lawless, to approve Application #2010-07 subject to the condition set forth in the Special Exception granted by the Zoning Board of Adjustment, and furthermore, with the condition that the operations as representative by the Applicant be adhered to, including all erosion control measures and hours of operation. Motion carried unanimously (Britain, Lawless, Wilkey, Bradstreet, Taylor, Connolly and Ellsworth).

With no other business, Chairman Ellsworth declared the meeting adjourned at 8:52 PM.

Karen L. Robertson
Planning/Zoning Director

Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply to the Zoning Board of Adjustment for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.

In accordance with RSA 677:15, any person(s) aggrieved by any decision of the Planning Board concerning application(s) may present to the Superior Court a petition, duly verified, setting forth that such a decision is illegal or unreasonable in whole or part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within thirty (30) days after the Board's final decision regarding the application in question has been filed and becomes available for public inspection in the Planning Office.