

Minutes of the ZBA Hearings June 3, 2021
Town Hall, 21 Main St. Brimfield, MA

In attendance were ZBA members: Pat Leaming, Kevin Moore, Jon Fagerstrom, Paul Vandal and Jeff Fitzgerald.

The board met with Jean Sullivan at 5:45 regarding her Real Estate sign. Pat Leaming and Kevin Moore were absent from the room during the discussion. The board explained to Jean that in order for them to review her application, she needs to have a denial letter from the Building Department and Zoning Officer. While she does have emails, the board asked for an official denial letter in order to begin an appeal.

6:02 pm – Hearing for Lots 2&3 Palmer Road on behalf of Woloshchuk Enterprises, Inc. Mr. Woloshchuk was represented by his Civil Engineer, Donald Frydryk. Abutters in attendance included Tammi Wood, James Dupont, Denise Dupont, Chris DeBruin and Frank Della Rosa.

The first to speak was Don Frydryk.

Don: The application is for a multi-use building with future use, within the business district, which includes a 50x100 building for phase one. Phase two would be a 50x50. Proposed uses are vehicle storage and maintenance for the excavation business and automobile restoration and customizing service. We feel it is not detrimental to the neighborhood. He has a site plan approved by the Planning Board and Conservation. Kevin Moore – For phase one and phase two? Don – PB wanted us to come back for phase two. Pat – Are we here just for phase one? Don – Yes, we'll do just phase one. Discussion took place regarding the new submitted plans, which were based on what the PB allowed. Old plans are no longer being submitted. Kevin – my question is, there was a desire for a multi-use building in the initial project but you went to PB for a single use. Don – Originally, we also had a residential use when we went to the PB but that was taken out. Pat – Do we have a copy of the decision from the PB? Don – Not with me.

Next to speak is abutter, Chris DeBruin of 14 Sutcliffe Rd.

Chris: You will hear from residents tonight that despite the concerns being lodged at the conservation commission, planning board, and now ZBA – to this date no comprehensive "detailed study" has been completed to answer many of the concerns and questions presented on the record by residents. Only one study has been completed and that is a Noise Study, which was completed after residents pressed the planning board to do so.

That noise study is available to all ZBA members, but it was not submitted as part of the Special Permit Application by the petitioner. That noise study focused on uses of the facility that

are **not** consistent with the uses of the facility applied for within this Special Permit Application. The primary focus of that noise study appears to focus on an automotive repair facility and not the **maintenance and repair facility of Heavy Diesel Propelled Equipment/vehicles**. This is **material** for your review. The Noise study established that the Mass DEP limit of 50 Decibels over the course of the monitoring period was minimally exceeded on only 4 anomaly occasions. The highest anomaly being 60DB. The study included a fact sheet for the benefit of the board to identify the noise source decibel levels of sample activities. Although the study was primarily focused on the automotive repair activities inside a closed garage – the fact sheet included decibel levels for bulldozers and heavy diesel propelled vehicles – which are conservatively listed at 87 decibels and 92 decibels. This is 40 decibels over the Mass DEP levels and 30 decibels over the single recorded background anomaly. From this one study, I and the residents are urging you to not award this Special Permit to a heavy equipment maintenance and repair facility as it clearly will create substantial adverse effects upon me and the abutters and detrimentally affect the character of our residential neighborhood.

The petitioner's facility will house heavy diesel propelled equipment for maintenance and repair. The application for Special Permit states that this is just like one of the abutting properties. It is important for the board to understand the facts. The abutting property the application refers to is much further away from the residential neighborhood than the petitioner's property. The tenants of that property are as follows - It contains a low volume passenger car repair facility with all activities occurring inside a garage; a Granite Countertop contractor's office with granite sales display area; and a used car sales company that has no website, no hours, and the same vehicles have been parked there with little activity at all. None of these usages are remotely comparable to a **Heavy Diesel Propelled Vehicle maintenance and repair facility**. Unfortunately, the petitioner's facility must stand on its own and I submit respectfully that the board cannot take that unrelated property's usage into consideration as it is **not** similarly situated in distance or usage.

The petitioner's plan identifies a gas pipeline that runs through the project site. This Pipeline is not currently in use but can be activated by the utility at any time period. In fact, due to the closedown of new pipeline projects, it is highly likely that the pipeline will be activated in the future. The owner of the pipeline has an easement that runs with the land and recorded at the Hampden County registry of deeds. The petitioner's plans cite the original grant of that deed in BOOK 1501 Page 197. The plans submitted by the petitioner inaccurately represent additional easement documents at Book 151 Page 267, which is a document that does **not** relate in any way to this Pipeline easement. Even if we are to assume that the plans accurately depict the easement as only being 33-foot-wide, it appears that the parking lot and driveway into the property will come right up to the edge of that easement. While I am not an expert on the setbacks of Gas Pipelines – everything I have read has indicated that the measure should **start from the edge** of the easement since the exact location of the installed pipeline within it is unknown, and that the good practice risk management setback of any activity, work, or traffic should be 25 – 50 feet minimum from the edge of that easement. In 2018, Massachusetts experienced the Columbia Gas Line explosions – there was one death, over 25

injuries, 40 homes damaged, and 30,000 people had to be evacuated. I think it is reasonable for this board and the residents to expect to have a Detailed Study on that setback and the end usage applied for in the Special Permit of the facility in conjunction with a gas pipeline. It was suggested throughout the hearing process that the petitioner communicate with the pipeline owner and obtain their consent. That consent has never been produced.

Pat: Is there an issue getting consent and documentation from the pipeline owner? We are going to need it because of what the concerns are. Don – It's petroleum. Pat – They put more than petroleum in there. If you could get this to us, we'd appreciate it. Have it state what exactly is running through there and exactly what your plans are going through there. Also, what the risks are. If they find no issue, that should be stated in the document. If they ask for a study, you'll need to do the study.

Chris – One last comment. The frustration we have as voting residents – is that during one of the first hearings an abutter approached the petitioner to ask him to speak with us to see if we could effectively find a resolution to our concerns and he could proceed with his project. The concerns we discussed tonight as well as the petitioner submitting no commercial lighting specifications or lumens to determine the impact on the residential neighborhood, and the risk now of Heavy Diesel Propelled Vehicles (that hold substantially more amounts of oil and gas than passenger vehicles) in the parking lot area to be repaired that inevitably will leak into the storm drainage system on the petitioner's plans that is to be maintained solely by the petitioner which ultimately discharges into my property and aquifers. Again, these are all end usage requested by the Special Permit application that has a bearing on the question of substantial detrimental effects. The petitioner refused to speak with any of us. As such, we are left with you - our Town officials - to protect the established residential neighborhood from suffering substantial adverse effects, loss of use and enjoyment of our property, and detrimental effects on the character of our property and residential neighborhood. The special permit can only be granted if this Board finds that the proposed end usage of this facility will not be detrimental to the established or future character of the neighborhood and town subject to appropriate conditions or safeguards if deemed necessary. I appeal to this board that this facility will be detrimental to me and the residential neighborhood now and in the future and that our concerns have not been adequately addressed to have any appropriate conditions or safeguards associated with it.

Pat: I'd also like to see something done. He's absolutely right with the automotive place. There's nothing going on there and I've been here since 1973. I want to see something to show us what the deal of the diesel and all that is. Don – Are you asking us for a sound study, which was originally submitted to the PB before the project was scaled back. Pat – Do we have that sound study here? Don – No. Pat – we would need to see that. Please get that study to our clerk along with the other document. Don – Just to be clear, the project was significantly scaled back for the Planning Board. Pat – It's never been in front of this board. Don – Mr. Woloshchuk scaled his project back to be considerate to the neighborhood. What you have in front of you is revised to make it more acceptable to everyone and get PB approval. Pat – In order to make sure it's not detrimental, I have to look at all the studies you have.

Next to speak is Mr. Frank Della Rosa of 62 Old Palmer.

Frank: I am the nearest abutter. Mr. DeBruin outlined many things I had planned to say. But a couple more things need to be said. The scaled back project is a result of my retaining counsel to protect our property rights and it's a result of our counsel attending the PB meetings that we had those concessions made. I'd also like to highlight that I was the one who approached the petitioner and asked if we can talk about this and work something out. I was told, you built in a commercial area. That's why he got that land so cheap. That is the extent of the negotiation. We were willing to compromise. We've already experienced significant noise on the property because of the de-forestation, but I expected that because the land had to be cleared. But we feel the second use is going to make significant additional noise and quite frankly, we are disappointed that the PB did not take additional steps to protect us. The residents, who are losing the peaceful enjoyment of their home. Once a residential home is built in the area, that resident has certain rights. I'd expect the town to protect those rights. We are not unreasonable. But we are considering the drop in our property values. And in my case, retirement. I'm 65 years old. I don't plan to move and don't want to be forced out because I cannot enjoy my home. It's an emotional argument but it also has some legal aspects that Mr. DeBruin laid out far better than I can. So, I want to go on record with my concerns. Pat – Of course. And thank you.

6:27 – Mike Woloshchuk final statement. I had a conversation with Mr. Della Rosa and he said if you don't use Old Palmer Rd as the access, we'll drop everything. So, we cut the project way back. Only using one building. Cut the access from Old Palmer Rd. And here we are, still getting hassled by him. What's going to happen when another guy wants to build a building? Are you going to put everybody through this? We're in a commercial district. Pat – Let me stop you. We put everyone through this because this is the zoning board. But this is the first time you've been in front of us. Whatever took place with the other boards, it has nothing to do with us. We are just here to...(interrupted by Mike) Mike – I understand but I want you to realize we've cut way back and made a lot of considerations. Still getting hassled and he went back on his word. Still getting hassled by you. Pat – Please direct your questions to the board. Mike – I'm getting fed up with all this here. Pat – Again, this is the first time you've ever been in front of our board and we take pride in being a professional board. Mike – Thank you. Pat – Are there any rebuttals or anything else? None. Pat – Ok, if you can get those documents to us to review and we'll decide when to come back. We are not able to make a decision today without reviewing the documents referenced. But once we receive them, I will make sure it's at the earliest convenience for everyone. Hearing is continued for a "to be determined date" based on receipt of requested documents and availability of the ZBA.

Five-minute recess.

Webber Road, Ops, LLC hearing. 6:38 pm

Maura Doyle, CEO of Pioneer Cannabis Company. To clarify we are, Webber Road, Ops, LLC doing business as Pioneer. I'm part owner, we are friends and family business. You've probably seen me with my father at these meetings. We are the majority owners. Maura, along with her attorney, Nick, from Lake Shore Legal, explained some of her business history and her desire to employ with the diversity of the County, which is about 49% women and 25% minorities. The CCC checks on a yearly basis that you are meeting that criteria. There will also, be a hiring preference to Brimfield residents.

Nick went on to explain more about the details of the packet with their business plan. Webber Road, Ops, LLC satisfactorily answered the questions the ZBA previously had as well as attained the additional HVAC engineering letter that the board had asked for, pertaining to a commercial HVAC charcoal unit for odor mitigation. Paul Vandal spoke of how these systems are designed and are supposed to perform a certain function but because this is all so new, it's hard to guarantee that it will meet its expectations.

The board asked that should an odor problem become an issue, that Webber Road, Ops, LLC will tend to the matter within 7 days, even if it means upgrading the HVAC system. Maura agreed.

Pat asked about a backup plan for overflow parking, should they have more than expected at their opening, or during the Antique Show weeks. Maura explained that she will get her opening week plan signed off by Chief Kuss but will default to pickups and appointments only if the parking capacity has filled. Pat asked that she provide the ZBA a copy of her opening week plan when it has been signed off by Chief Kuss.

No abutters or opposing views came forward.

Pat motions to grant the Special Permit with the conditions are discussed. Seconded by Kevin Moore. All in favor, motion passes.

Pat mentions that he is looking for a quick meeting next week for the possible reorganization of the board. Pat suggests Monday or Tuesday. 6:00.

Pat motions to adjourn. Seconded by Kevin. Meeting adjourned. 7:02 pm

Kevin Moore _____

Jon Fagerstrom _____

Paul Vandal _____

Jeff Fitzgerald _____