

Transcription

PZC Public Hearing – July 2, 2019

Tim Coon 5:50 mark We are looking to do retail for, um, local, huh, landscapers, what have you, that want to come here and utilize this product, so there will be some (inaudible) set up down in this area where they can come in, there will be a scale and a scale house located, um, for weighing material, and this will be the majority of the area where material will be stock piled. Down in this area, it will be a kind of staging area.

Ron Giroux 36:47 mark Um...on the trucking...so you say 20 trucks are your trucks. So there will be no... um...sub-contractor trucks going down there picking up rock or material (*Tim Coon...* "No") other than the retail? (*Tim Coon...* "The retail"). So that can be up to a lot more than 20 trucks a day. If you're selling, if you are advertising for stone at retail use, that doesn't stop any concrete plant or whatever from sending, you know, fifteen to twenty trucks there (inaudible).

Herb Holden 37:21 mark We are anticipating utilizing this material mostly for ourselves, but, I mean, we want to be open to the public if the public wants to come in. Uh...we are anticipating using it for our own projects, that's why we are giving you the numbers of our own trucks.

Ron Giroux 37:38 mark Right. If you are saying you are having twenty trucks of your own, (*Herb Holden...* "Yup") which might be minimal, which might be a good thing, but all of a sudden the market value on rock keeps going up and up, because it's harder to get, that there could be a line of trucks...There could be a lot more than twenty trucks going in there per day, is what I am trying to get at, so...To say you are only going to have twenty trucks a day is kinda misleading to the public, in my opinion. Because, if the market value shows that, that rock is valuable at a certain time and they know you have a huge stock pile, they are going to buy it from you and you are going to sell it to them.

Herb Holden 38:13 mark Well I'm sure, but, I also don't want to tell people that I am going to do a hundred loads a day, when I have no indication...

Ron Giroux 38:20 mark Right, but there is a chance of more than twenty trucks...

Mike Murphy 46:28 mark The traffic report...You know, they talk about the public sales, as well as the public sales and trips to the site...Remember, this is a use that is permitted in the Town, in the regulations and in the zone. It just needs to be done properly...The zoning regulations govern those things...

Ron Giroux 54:01 mark (*In reference to gate location*) If your operation starts at seven or eight, you don't want trucks there at six-thirty, stacking up on the highway. So, I think the gate location along with your re-design of your entrance, I don't know where your slope is, if you have enough so you can make it, you know, I know you guys with your, um, architectural designer, if you could give that gate location a little more consideration...there may be a small landscaping guy with a trailer, parked there and, you know, a school bus or something can't get by, or somebody gets nervous, or somebody texting, or whatever...

Tim Coon 54:40 mark We decided to expand the width of the driveway to two-flow, uh, two-way traffic, um, for safety concerns.

Ron Giroux 1:15:18 mark *(In response to a question about using paving contractors as an example of "staple contracts", and the type of traffic it produces).* That's different. That's not an operation they are asking to put there. It's a gravel operation. Which they will sell to that type of industry. So they can't do that here. It's not in the regulations.

Unidentified Commentator 1:37:09 mark (Trucks) coming in for retail sales – are they going to be required to be covered, you know, coming in off that road, spilling rocks and dirt...

Herb Holden 1:37:57 mark Again, retail operation is more for so we can be a benefit to the Town, because if we, you know, were not doing this for ourselves, basically where we are anticipating the majority of the material to be sold for the projects we are working on. But we wanted to be open to the community, in case the community needed something...I mean, so, you know, the idea was, yeh, we could do it all ourselves, and just bring our own trucks, but, but, I don't think that helps the Town of Lisbon. Um, you know, we don't anticipate it being a large portion of our business, but I don't feel we should be removing it.

Public Hearing – August 6, 2019

Jay Ussery 10:34 mark One of the things you will see in your memo, uh, from the planner, talks about retail use. In our original presentation, my partner, Tim, and Herb, talked about some limited retail use of the facility, and the traffic report that was submitted at the last meeting, also talked about some limited retail customers using the facility. I guess it has been determined, based on your regulations, that the zone that we are currently in, that the retail use is not allowed, only can be used for commercial use, that's the main use of their business. Retail use, the elimination of the retail use, is not an issue with them. No problem eliminating that from their proposal, from the application. And it will moreover reduce traffic to a certain extent, because we can take those trips out of the traffic report, although as you heard at the last meeting, the traffic report, the traffic engineer, determined there was essentially no impact to the roadway network in this vicinity, in the traffic generated by this facility.

Mike Murphy 33:58 mark The other issue raised in my report, uh, some of the public was concerned about the retail sale on site of the, um, the materials, and in looking at the regulations, in looking at the definitions, if this was an industrial or commercial zone, that type of retail sale would be implied and certainly would be, would logically be, permissible. If you let anyone else sell something, you would let them sell the material. However, this is a residential zone, and the town's regulations do define excavation as only as the removal of the material. So, um, I have provided, you know, definition and explanation of the definition, and reviewed both of those, the two issues I just mentioned, property values and the issue of retail sales, with the town attorney as well. So, that's why we followed up with those recommendations. So that recommendation would be, should the Commission eventually approve the plan, that we remove any references to retail sale on site or onsite material bins, etc., etc.

PZC Regular Meeting – September 3, 2019

Agenda Item 6.b. Special Permit Application for Earth Products Removal - K&H Properties, 397 N Burnham HWY

M. Murphy 17:25 All references on the plan to retail sale of excavated materials from the site and visitation to the site by the public or contractors shall be removed from the plan. The final plan shall also address the prohibition of retail sale from the site. This is based on the fact that the definition of excavation does not include retail. If this was industrial zone or commercial zone it would be obvious that you would allow people to come there and purchase, but the residential nature of the zone and the regulations don't uh, permit that and we have, um, you know, that is something we have gotten legal opinion on as well.

SUMMARY DATE: July 31, 2019

TOWN PLANNING STAFF SUMMARY SHEET FROM: Michael J. Murphy, AICP, 860-885-8697/mmmurphy@seccog.org

APPLICATION / PROJECT NAME

K & H Properties Earth Products Removal

APPLICANT / PROPERTY OWNER

Herb Holden

PUBLIC HEARING / DECISION TIMEFRAMES

August 6, 2019 PH/ Decision 65 days after
close of public hearing

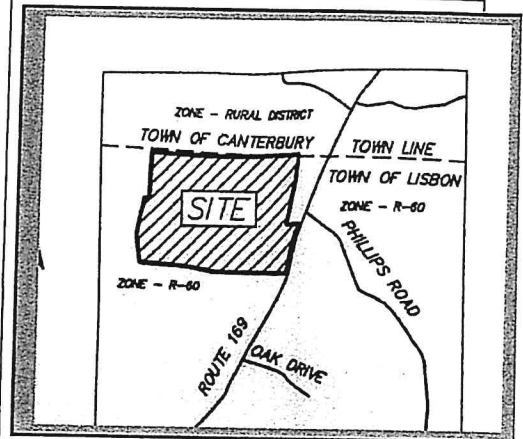
**PROPERTY ADDRESS / LOCATION
INFORMATION**

397 North Burnham Highway

BRIEF SUMMARY OF REQUEST

Request for special permit to allow earth products removal in accordance with section 10.4 of the Lisbon Zoning Regulations. The property consists of 86.7 acres in the R-60 residential district.

WAIVER REQUESTS: N/A



MAP SOURCE location map

EXISTING ZONING	EXISTING LAND USE	SURROUNDING ZONING & LAND USE	SITE IMPROVEMENTS	SIZE OF PROPERTY
R-60	Vacant/previous excavation	North: R-60/res South R-60/res: East: R-60/Rte 169/res West: R-60/vacant	Proposed excavation equipment.	86.7 acres

PLANNING STAFF ANALYSIS AND RECOMMENDATIONS

COMPATIBILITY / COMPLIANCE with the POCD-2016 and other appropriate plans, policies or studies:

See my earlier staff reports for initial details.

PROJECT HISTORY AND BACKGROUND:

See prior reports dated May 29th and June 24th for earlier information on the proposal. The hearing was extended to allow for the applicant to address issues and concerns raised by staff, commission members and the public.

LAND USE/ DEVELOPMENT COMPATIBILITY with APPLICABLE REGULATIONS AND/OR DESIGN STANDARDS:

Regulatory Issues

The locational requirements of sections 11.1, 11.3 and 11.4 within the SPECIAL PERMIT section of the regulations as well as notification requirements of section 11 are key points in this application review. Staff has also noted requirements in section 10.4 and 10.16. The following key issues(A and B) required additional analysis and legal interpretation in my opinion, including consultation with the Town Attorney:

- A. The public has raised particular concerns about **impacts on property values** (section 11.3) that might arise from the approval and implementation of this special permit. Although this test is not an automatic requirement, the commission has included provisions for review of this requirement in the regulations

so the commission may consider the overall impacts a project will have on property values. The question of whether there would be an effect on property values is for the Commission to decide, assuming it has enough information to make a decision. So, staff has advised the applicant's team that it would be the applicant's own burden to prove that there would not be a harmful effect and that they should consider providing information during the hearing to address the concerns raised, although this is not a requirement of staff or the commission.

- B. The additional concern raised by the public involved the question of **permissibility of retail on-site sale from the site via pick-up by the public and/or contractors**. While the sale of material from a site is normally assumed when it is a larger excavation in commercial /industrial zoned sites, this is a residentially zoned parcel and the regulations in Lisbon only define excavation as removal of material from the site. See definition of **Excavation** in section 19. This would imply that only the applicant may remove and basically deliver material from the site, and that no retail on-site sales are permitted. The regulations do specify about uses involving on-site sales (e.g. agriculture), but these do not appear to extend to excavation uses.

Several other points raised by staff, the commission and the public have been addressed as noted, or are expected to be addressed by the applicant. These include:

- Providing safety to the public during maintenance of extensive cuts created by blasting. Planning staff and the ZEO will likely recommend that the applicant maintain a suitable fence at the top of cuts that is more durable than a mere construction fence.
- The revised estimate for improvements has been submitted to the Town Engineer for review.
- The sight line profile has been submitted to the Planner and shows the level of clearing necessary to provide public safety along Route 169.
- The applicant has indicated they will install an additional anti-tracking pad at the end of the paved apron into the site.
- The applicant will confirm turning movements from the site do not encroach on the centerline of Rte 169.
- The 2-15-89 A-2 survey has been provided and is consistent with the site plan provided for the application.
- The applicant will correct scale discrepancies on individual sheets.
- Public notice signage was re-installed at two locations along the site's Rte 169 frontage as required by the zoning regulations within the requisite time window of 10-30 days before the August 6th continuation. These signs are being reviewed.
- Staff expects the applicant to provide certification of noise level information by professionals and/or the manufacturers of processing equipment.

Staff reserves comment regarding these and additional matters based on the information that may be presented at the continued hearing.

RECOMMENDED ACTIONS, INCLUDING ANY MODIFICATIONS, CONDITIONS, REASONS FOR APPROVAL OR DENIAL, ETC.:

Staff will not have any specific motion or recommendation for action at this meeting.

ATTACHMENTS (CIRCLE):

SUBMITTED PLANS

APPLICATION FORM(S)

LEGAL NOTICE

LEGAL DESCRIPTION

PUBLIC COMMENT(S)

AGENCY COMMENTS

APPLICANT RESPONSE

STUDY EXCERPTS

OTHER (DESCRIBE):

TOWN OF LISBON
PLANNING AND ZONING COMMISSION

NOTICE OF APPROVAL AND GRANT OF SPECIAL PERMIT

This is to certify that on September 3, 2019 the Planning and Zoning Commission of the Town of Lisbon granted a Special Permit in accordance with the provisions of sections 10.26 and 11 of the Lisbon Zoning Regulations as follows:

1. Owner of Record: K&H Properties
 2. Applicant: K&H Properties, 59 Broad Brook Road, Broad Brook, CT 06016
 3. Description of premises including street address, map, block and lot(s):
397 North Burnham Highway, Lisbon, Connecticut; Map/Block/Lot: 73/018/003
 4. Description of special permit including relevant regulations authorizing activities and any conditions of approval:
Application for Special Permit for earth products removal and related improvements and operations at 397 North Burnham Highway, subject to the following conditions:
 1. All work, structures and scales shall be maintained outside buffer areas.
 2. The gate to the facility shall be located further into the facility, below the road and out of clear visibility to reduce the queuing of trucks out onto Route 169.
 3. The bond shall be provided as per the recommendations of the Town Engineer in the amount of \$150,000 and in a form acceptable to Town Counsel prior to recording the plan in land records. \$5000.00 of this total shall be provided as a cash bond to address any E&S control emergencies at the site.
 4. Processing equipment placement on site shall conform to the regulation setbacks and the study requirements of the Brooks Acoustics report to control maximum expected equipment sound levels at the site and conform to state noise limits in effect.
 5. The permit shall be limited to two (2) years from date of approval, subject to renewal (s) and revocation provisions in the regulations.
 6. No fuel shall be stored on site.
 7. The applicant shall provide a copy of the Storm-water Pollution Control Plan (SWPCP) upon its submittal to DEEP to address NPDES requirements.
 8. No construction or development activities shall commence until after the pre-construction meeting is conducted with Town Staff.
 9. Design modifications provided for gate location, anti-tracking pad, and apron design shall be included on the final plan. Any changes to designs required by CONNDOT at the time of encroachment permit application shall be reviewed with the Town Planner for conformance with Commission approval. Any substantive change shall require re-review by the Planning and Zoning Commission.
 10. All references on the plan to retail sale of excavated materials from the site and visitation to the site by the public or contractors shall be removed from the plan. The final plan shall also address the prohibition of retail sale from the site.
 11. In order to protect the public from hazardous grades and/or slopes per section 10.4.5.i, 4' high minimum portable chain link type fencing or an equivalent shall be placed around resulting blasted cuts of 15' high or more, and steeper than 2h:1v. A detail shall be approved by the town and included on the plan.
 12. The applicant shall work with the Fire Marshal to perform pre-blast surveys at neighboring properties as required.
 13. That a sight line as-built (stamped by P.E. is provided by the applicant to insure required clearing has been accomplished on Route 169 prior to initiation of truck traffic
 14. Technical items of staff required by the commission to implement its approval shall be included on the plan.
- (continued page 2)