

2016 SEP -6 PM 12:49

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**Freetown Zoning Board of Appeals**  
Wednesday, August 3, 2016  
Freetown Elementary School Auditorium  
Memorial Drive, East Freetown

**Present:** James Frates, Nick Velozo, and Brad Paiva (associate).

**Absent:** James Sarcia (associate).

**Call to order:** James Frates called the meeting to order at 6:30 p.m.

**Minutes of Previous Meeting**

Minutes of July 27th were received.

**Recording Meeting**

Mr. Frates asked if anyone in the audience was recording the meeting. Manuel Bandara, 5 Alexandra Drive, Assonet, responded that he was videotaping the meeting on a cell phone.

**Adopt Rule Regarding Review Fees**

A copy of the rule regarding review fees, as prepared by Town Counsel, was received. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to adopt the rule as printed. The motion carried unanimously.

**Case #566 – Edward Carreiro, et al – 17 Ridge Hill Road, Assonet**

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to reopen the public hearing at 6:32 p.m. The motion carried unanimously.

Mr. Frates read the public hearing notice. He then called for a ten-minute recess as Town Counsel was not yet present. A motion was made by Mr. Paiva, seconded by Mr. Velozo, to recess the hearing for ten minutes. The motion carried unanimously, and the hearing recessed at 6:35 p.m.

Mr. Frates called the hearing back to order at 6:45 p.m., with the members of the ZBA present as well as Atty. Jonathan Silverstein of Kopelman & Paige. Mr. Frates announced the limitations of what the ZBA is allowed to consider – questions about hours of operation, noise, sizes of buildings, etc., are outside the scope of the hearing and should not be addressed. The only matter is whether the Building Inspector/Zoning Enforcement Officer classified the operation properly as a scrap yard rather than as a commercial recycling facility.

Atty. Thomas Killoran, Fall River, addressed the board on behalf of the petitioners. Atty. Killoran provided handouts to the board members, and then began his presentation by agreeing that the matter before the board is whether or not the Excel operation constitutes a commercial recycling facility or a scrap yard.

Atty. Killoran noted that the property is in an Industrial 2 zone and that construction on the site has already begun. The petitioners requested that the Building Inspector issue a cease and desist order on April 29th, citing their contention that the project was not properly permitted and requesting that Excel be sent to the Planning Board for a special permit to operate a commercial recycling facility. The Building Inspector denied this request in May, stating that he disagreed it was a commercial recycling facility and believed it still to be a scrap yard. Atty. Killoran noted that in their application for a building permit, Excel identified themselves as a "processing facility" which seemed to indicate that they are more than just a scrap yard. He also noted that Excel's website represents the company as a recycling operation. He further noted that in their application to the Department of Environmental Protection for an air quality permit, Excel identified themselves as a "scrap metal recycling facility" and that the D.E.P., in their approval letter, referred to Excel in the same way.

Atty. Killoran asked that the board take a common sense look at the project and find that it is a recycling facility, not simply a scrap yard. He said Excel would be processing, shredding, etc., metals, cars, appliances, etc. As an example, he noted they could take an automobile and condense it into something the size of a closed fist.

Mr. Frates asked doesn't a scrap yard by definition recycle a product. Atty. Killoran asked for a clearer example for that question, and Mr. Frates responded that Mid City Scrap takes in materials and also sends out materials. Atty. Killoran asked if they shred materials, and Mr. Frates responded that he believed they shred some materials and other persons or corporations may also shred materials sold to Mid City. Atty. Killoran responded that taking an already finished product, processing it, shredding it, etc., and creating a new end product would constitute recycling, whereas items left in a scrap yard typically remain static, more akin to a pick-n-pull lot.

Atty. Killoran then introduced Sam Chapin. Mr. Chapin identified himself as a registered professional engineer with twenty-nine years' experience with solid waste, recycling, and related regulations. Mr. Chapin indicated he had reviewed the documents presented by Atty. Killoran to the board, conducted a drive-by inspection of the Excel operation in Assonet, and also visited other licensed scrap yards in town. Mr. Chapin stated that in his professional opinion, Excel is operating a commercial recycling facility in Assonet and not a scrap yard. Mr. Chapin noted that state regulations differ between a scrap yard and a recycling operation, and Excel more correctly fits under the category of recycling.

Mr. Chapin noted that processing – separating, baling, etc. – constitutes recycling. He stated the state does not have a definition for "scrap yard", but scrap yards are accepted as storing, keeping, buying, or selling junk or operating an automobile graveyard, not processing materials. Excel, in his research, has a detailed acceptance regulation for materials they will take in. These regulations would not generally allow for useable secondhand parts to be resold for a useful purpose. Mr. Chapin noted that while you could go into a scrap yard and buy an alternator for a 20-year-old car, you could not walk into the Excel property and have the same fortune.

Mr. Chapin provided Bugs Stevens, D&M Auto, and East Freetown Auto Salvage as examples of scrap yards operating in town that meet the definition of a scrap yard and the expectations of what one would encounter at a scrap yard. He stated Excel would not be comparable to these other operations. Mr. Chapin concluded by stating that Excel promotes themselves as a recycling operation, and the nature of their business is a recycling operation.

Mr. Frates asked Mr. Chapin if he could provide an example of a commercial recycler. Mr. Chapin replied that it was easier to describe a non-commercial recycler; a homeowner sorting bottles and cans would not be a commercial recycler. Most likely, all processors of materials would be commercial recyclers.

Atty. Killoran stated the petitioners had no more presentations to make at this time, and yielded the floor.

Mr. Frates asked if anyone would like to speak on behalf of Excel.

Atty. John Markey, New Bedford, identified himself as the attorney representing Excel, accompanied by Martin and Jonathan Costa, owners. Atty. Markey states that our by-laws have definitions of scrap yards, etc., and he agrees with Mr. Chapin that scrap yards process materials. Excel will buy scrap metal and sell scrap metal, and in between will use a modern processing system that is the next evolutionary step in the scrap business. Atty. Markey stated that the Building Inspector sent Excel to the Board of Selectmen prior to their purchasing the property and that the Selectmen approved the project by a 2-1 vote. D.E.P. reviewed the project and signed off on it.

Atty. Markey used the example of Republic collecting recycling materials curbside in town as commercial recycling. Plastics, papers, etc., would constitute recycling. Buying and selling scrap metal, as Excel would be doing, should not be considered commercial recycling.

Mr. Velozo asked if any metal would be kept on site. The younger Mr. Costa replied that they would store and process metals on site. Atty. Markey clarified that materials would come in and go out, as they do not want materials just lying around.

Mr. Paiva asked if a scrap yard is more or less regulated than a commercial recycling facility. Mr. Costa indicated that the project was reviewed by the D.E.P. and would be subject to further inspections and reviews as a condition of keeping its permits and licenses in order.

Mr. Frates asked what mitigations were planned for sight and noise. Atty. Markey responded that this would be the first shredder to be enclosed for noise mitigation and would also be surrounded by a very tall fence. Both were designed for mitigation, and neighbors have been welcomed to observe and comment.

Atty. Killoran stated that the question is not whether or not a commercial recycling facility is a business, but whether or not this business, by the process they undertake, is a commercial recycling facility. He continued that there is an unequivocal statement that they will process – by state standards, processing makes them recycling. The initial product is taken, processed, and an end product is produced. Atty. Killoran added that some issues, such as noise, etc., are still in dispute but not apropos to this forum.

Mr. Chapin stated that yes, Excel has received an air quality permit, but they do not require other permits from the D.E.P. Their hours of operation, etc., are still not addressed and would be best addressed by the special permit process. Mr. Chapin clarified that he was not inclined to prevent the project, but to condition and regulate it through the special permit process.

Mr. Frates stated that the Board of Selectmen, through their permit process, could regulate many of these issues.

Mr. Frates then opened the discussion to the assembly.

Wendy Graca, 3 Dr. Braley Road, East Freetown, likened this project to the LNG pipeline proposed for East Freetown, and said she was opposed to this project on account of its emissions and impact on air quality.

Paul Magee, 1 Otta Way, East Freetown, asked if residents were only present to listen or if they are able to have a say on the project. Mr. Frates stated that the business is already in operation, but whether they were properly permitted is what's at issue. Mr. Magee asked if this was an LLC or a family-owned business. Atty. Markey responded that it is a family-owned LLC. Mr. Magee asked for an attorney to explain to people the different between a family-owned business and an LLC. Mr. Frates stated this was not relevant to the proceedings.

Manuel Bandara, 5 Alexandra Drive, Assonet, stated that this business is less than one thousand feet from his bedroom window. He stated that the business is already too noisy and that the neighbors were not given any consideration when the business was being permitted. He stated he is not necessarily against the business, but its proximity to houses. He did not believe that they had a building permit. Mr. Frates requested that Scott Barbato, Building Inspector, address that matter. Mr. Barbato stated that Excel was issued a building permit. They applied, they met the criteria, and they were issued a permit.

Mr. Frates reminded the assembly that the ZBA is limited in what it can consider on this issue.

Luis Campos, 8 Mill Street, Assonet, asked about the process that led to the permitting – what was investigated, what was reviewed in terms of noise, etc. Mr. Frates stated that much of that was outside the purview of the ZBA. Mr. Campos expressed concerns about air quality, water quality, and the hours of operation. He felt that there should be an open discussion about all of these issues.

At this time, Atty. Silverstein addressed the assembly to state that while the members of the ZBA may share many of the same concerns, most of those matters raised so far are outside the board's purview. The ZBA has no legal right or authority to discuss air quality, air pollution, noise, or other like matters. Those are matters to be discussed with the D.E.P. He stressed that it was not that the ZBA members are not interested or don't care, but that they simply are not allowed to discuss those issues; only zoning.

Mr. Campos stated that while there seemed to be state regulations in place, the town seemed to lack local regulations.

Kimberly Zachary, 2-C Bryant Street, Assonet, stated residents are just looking for a voice and to advocate for quality of life issues. She said it sounded like there was no clear difference between a recycling operation and a scrap operation, and wondered how the board could make a decision if nobody seems to know which is which.

Atty. Markey reiterated that the D.E.P. has many regulations and a lengthy application process for this type of project.

Joe Branco, 7 Alexandra Drive, Assonet, states that this project will ruin his neighborhood. He agreed that people have a right to make a living, but stressed that it is too close to the residential area. He stated his house has vibrated because of this operation his children no longer like to play in their yard, and that his home is no longer peaceful.

Mr. Frates stated again that the board sympathizes with the quality of life concerns, but that this was not the forum to air those concerns. The ZBA has no say over these issues, only whether or not the permit process was followed correctly.

Ellen Lima, 41 High Street, Assonet, states that she has lived in town for 63 years and that her family has been here at least five generations, and she does not remember a project going through so quietly as this one seemed to have. She was concerned that many were not notified about the project and hearings. Mr. Frates stated that the Building Inspector determined the project to be a by-right undertaking that did not require much of the notification often seen in other projects. Mrs. Lima stated the only reason she knew about the hearing was because Charlie Sullivan, a High Street neighbor, informed her after he was notified as an abutter. Mrs. Lima asked what had been done to record the air and water quality before the project began. Mr. Frates again stated that this was not a matter for the ZBA. Mrs. Lima stated she wanted her questions put on the record.

Atty. Silverstein added that the D.E.P. permits regulate air and water quality, and that those permits are under appeal and review right now. He stated that the D.E.P. process was the correct forum for these concerns.

Mrs. Lima expressed additional concerns relative to quality of life, air quality, water quality, and hours of operation.

Joyce Bandara, 5 Alexandra Drive, Assonet, asked if this meeting is not the correct forum for these questions, what meeting is? Mr. Frates responded the D.E.P.

Kevin Garganta, 18 South Hillside, Assonet, stated that it seemed to him that the question of the night could be easily summarized as if the project is found to need a special permit, many of these concerns could be aired to the Planning Board. If it is not found to need a special permit, then it moves forward as-is. Mr. Frates concurred with this interpretation.

John Nordeste, 1 Alexandra Drive, Assonet, thanks the board for their service as he did not realize the ZBA is a volunteer board until Atty. Silverstein mentioned so earlier. He stated that he and his wife are not opposed to the business, but just to its location. He understood that that area is zoned Industrial, but its proximity to a residential area should have been considered. He continued that there is an obvious question as to whether or not Excel is a recycling operation, and he urged the board to take the time to research and consider the matter rather than jump to any sort of conclusion or decision during this session.

Mrs. Graca asked why people were not informed of the process if Excel went through the proper process. It was reiterated that there was no requirement to notify people under the process followed.

Elizabeth Polochick, 10 Parker Drive, East Freetown, identified herself as the former chairman of Keep Freetown Hazard Free, an early 1980s group that blocked the Liqwacon hazardous waste plant from being constructed. She recounted that there were many site visits and much research in that situation.

Dan Rezendes, 112 Bullock Road, East Freetown, asked what Excel applied for a permit for. Mr. Frates responded a scrap yard. Mr. Rezendes asked if they met the requirements of the D.E.P. Mr. Frates responded that yes, they had. Mr. Rezendes asked who determined whether it was a scrap yard or a recycling facility. Mr. Frates responded that Mr. Barbato, Building Inspector, had made that determination. Mr. Rezendes recounted the confusion earlier in the meeting over which was which. Mr. Velozo responded that Mr. Barbato had made that determination.

Joe Travassos, 15 Alexandra Drive, Assonet, stated that his family's house has also shook. He asked what consideration was given to the fact that the previous tenant of the property was a mulch facility. Mr. Frates replied that no consideration would have been given to that; it would not have been relevant to the zoning questions at hand.

Terrence Quinn, 1 Rodney Drive, Assonet, asked what liability the town would have if the ZBA remanded the project to the Planning Board for a special permit and the special permit was denied. Atty. Silverstein said it would not be proper to speculate on that. Mr. Quinn stated he had no opinion on the project either way, he was just curious about the liability.

Edward Carreiro, 3 Alexandra Drive, Assonet, stated that he felt if he applied for the wrong permit and then was stopped or denied to progress in a project, it was his fault for applying for the wrong permit, not the town's fault for issuing the permit he applied for.

Mr. Bandara expressed frustration that the board would not answer many of the questions being raised. He asked who they should talk to. Previous responses were reiterated as far as the D.E.P., etc., and Mr. Frates also noted the appeal period after this hearing concludes.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to close the public hearing. The motion carried unanimously.

Atty. Silverstein noted the timeline for action; 65 days to hold the public hearing, 100 days overall to render a decision, and 14 days to file the decision with the Town Clerk.

Mr. Paiva asked that the hearing be continued to allow time to review the submitted materials. Atty. Silverstein stated that because the public portion of the hearing was closed, it was not necessary to continue to a specific date and time if the board could not agree on a date.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to continue the hearing to Wednesday, August 31, 2016, at 6:30 p.m., at the Senior Center. The motion carried unanimously. [Note: This was later changed to 7:00 p.m. at the Freetown Elementary School auditorium, allowable as advised by counsel.]

**Meeting Adjourned**

The meeting adjourned without vote at 8:23 p.m.

This is a True Record by me.

Attest:   
Michael T. McCue, Senior Clerk