

**Moretown Development Review Board
Minutes of DRB Hearing Held June 13, 2013**

Hearing on Appeal of Scott Baughman and Lisa Ransom from Decision of Zoning Administrator dated May 1, 2013

Members of the Board present: John Riley; David Russo; Erick Titrud; Jim O'Neill; Paula Mastroberardino (Alternate)

Others present: Mike DiMaggio, Scott Juanich, Jim Dumont, Lisa Ransom, Scott Baughman, Tom Douglass, Martha Douglass, Sandy Fortune, Max Fortune, Maryann Raymond, Steve Schaeffer, and Rick Blake.

John Riley called the meeting to order at 6:30 p.m. The meeting was held at the temporary town offices off U.S. Route 2. By letter dated April 29, 2013 Attorney Dumont on behalf of Lisa Ransom and Scott Baughman asked that the Zoning Administrator find Moretown Landfill, Inc. (MLI) in violation, asserting certain actions Moretown Landfill had taken with respect to existing Cell 3 were not authorized and within the scope of MLI's permit for Cell 3.

By letter dated May 1, 2013 Zoning Administrator Deborah Feldman declined the request to issue a Notice of Violation. An appeal from this decision has been taken, and the matter is before the Board under 24 V.S.A. 4465 which allows interested persons to appeal decisions of the Zoning Administrator to the Development Review Board.

In support of the April 29 request Attorney Dumont submitted to the Zoning Administrator a January 17, 2013 ruling of the District 5 Environmental Commission; a jurisdictional opinion of the District Coordinator dated March 7, 2013; and an April 4, 2013 response by counsel for MLI. All of these materials were provided to Board Members and received without objection.

Attorney Dumont then supplemented his initial position articulated in the April 29 letter with a verbal presentation including a reference to a 2010 decision by Environmental Court Judge Durkin.

Attorney Juanich responded for the Applicant stating MLI's position that it disputes that the cited activities are not within the scope of the existing permits, and that so long as the Zoning Administrator considered and made a decision within her discretion as to whether to issue a notice of violation, that such inaction should be upheld by the DRB.

Deborah Feldman then spoke outlining her reasoning in declining to issue a Notice of Violation, and actions she has taken as Zoning Administrator with respect to the Landfill's activities.

Discussion arose as to the standard by which the DRB should review the decision of the Zoning Administrator. Attorney Dumont on behalf of the Appellants contends that the role of the Zoning Administrator is ministerial and she is to literally apply the zoning ordinance. Mr. Dumont believes that the matter should be considered by the Board, de novo. That is no deference should be accorded the Zoning Administrator's ruling, and the Board should look at the question of whether a further permit is required based on the evidence before it. Attorney Juanich indicated the review should be appellate in nature, and that the position of the Zoning Administrator should only be reversed if an abuse of discretion.

There was also discussion as to whether the Board needs additional evidence in order to consider this matter. Cell 3 was granted zoning approval in 2005. Although the minutes of the hearing before the DRB apparently are available, the Town's zoning files were destroyed and lost when the Town office flooded during Tropical Storm Irene in August 2011. As part of the Cell 4 application considered by the Board in Fall 2012 through Spring 2013 (subsequently withdrawn by MLI) MLI upon request of the Board had submitted its 2005 Cell 3 permit, and the DRB meeting minutes granting conditional use approval (as well as Cell 2 approval from 1997).

John Riley asked if there were any objections to making that permit and minutes part of the record in this proceeding. There was none. The minutes incorporate by reference 40 pages of engineering plans prepared by Tighe & Bond. On questioning, Mr. DiMaggio stated he believed such engineering plans were probably among the landfill records, though he had not personally verified that.

Martha Douglass offered the comment that if the position of the Landfill is that the actions it took with respect to Cell 3 are within the scope of its 2005 permit that it should have reviewed and provided evidence from the plans to that effect.

A question before the Board is whether in reviewing the decision of the Zoning Administrator it should be limited to the information and evidence the Zoning Administrator had in reaching her decision, or whether it can consider additional evidence in reaching a decision on the merits of the appeal.

It was apparent there was not clear consensus among Board Members as to how the Board should proceed on that issue. A Motion was made, duly seconded that the Board continue the Appeal Hearing to Thursday, July 11 at 6:30 p.m. at the Temporary Town

Offices off U.S. Route 2. The Board would enter deliberative session following the evidentiary hearing tonight to consider the above question and make an interim ruling as to whether it would request additional evidence as to what was approved as part of the Cell 3 Application in 2005.

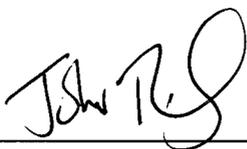
It was also discussed and agreed that Attorney Dumont would have up to seven days to submit any other written arguments and summary as the Appellant's position. Attorney Juanich would have seven days to respond.

John Riley will create an email list of the parties who had appeared in this proceeding with all those present agreeable to receiving communications in this proceeding by e-mail attachment. First item of business for that list will be to circulate the prior Cell 3 and Cell 2 approvals as had been submitted by MLI during the Cell 4 application.

The public portion of the meeting ended and the Board entered deliberative session at approximately 8:05 p.m. The Board exited deliberative session at 8:55 p.m.

Jim O'Neill moved, seconded by David Russo, that the Board request that the Applicant submit as evidence in this proceedings the plans prepared by its engineers Tighe & Bond as referenced in the 2005 approval for Cell 3. All approved. The Board believes that the core issue in this appeal is whether the changes in the gas well system, trenching, and placement of a temporary cap are substantial and material alterations from the plans and operational plan approved as part of the Cell 3 permit in 2005, and that the plans are necessary and relevant evidence to make that determination.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John Riley", written over a horizontal line.

John Riley, Acting Clerk