

**TOWN OF SEABROOK
BOARD OF ADJUSTMENT
MINUTES OF MAY 22, 2013**

Members Present: Teresa Thurlow, Robin Fales, Henry Therriault, Dr. Robert Lebold and Mike Lowry

Others Present: Paul Garand, Building Inspector, Jo-Anne Page, Secretary and Attorney Walter Mitchell

H. Therriault explained the procedure for the meeting. He stated the meeting had been posted at the Seabrook Town and Seabrook Post Office and in the Newburyport Daily News. He further explained that this meeting is being recorded and available on DVD at the Town Hall.

OLD BUSINESS:

Minutes of April 24, 2013 Meeting

Motion: Dr. Lebold Accept minutes as presented
Second: M. Lowry
Yes: Unanimous

Minutes of April 24, 2013 Meeting accepted as presented.

Case #2012-003 Smart Fuel America, LLC, 15 Batchelder Road, Map 15, Lot 14, Sequence 3 for Variance to Section 15, Subsection 15.300 & 15.301 to Permit The Storage and Use of Hazardous Materials in Zone 3 and Aquifer Protection Zone (REHEARING)

H. Therriault stated that this was a rehearing for a case that was sent back to the ZBA by the court.

Attorney Walter Mitchell stated that this case had been before the ZBA one time and the board had denied the request at that time and had also denied a rehearing request. He said that the Superior Court had sent the case back to the ZBA for a rehearing. He referenced a letter from Attorney Cole, (counsel for Smart Fuel), stating the following:

- The use is not prohibited – this logic is understood in the context of this case
- Judge McHugh's decision was in variance alone, not zoning reference
- Section 6 is irrelevant
- DES has no problem with this use but it does not pre-empt the Town from acting
- Conclusion on rebuttable conclusion – Derry NH case – show specific facts rejecting DES Decision
- Focus on concrete evidence

Attorney Christopher Cole appeared on behalf of this application. He stated that he had Hunt Stehli and Andy Harkness from Smart Fuel with him.

Attorney Cole stated that the ZBA should focus on the second issue in his letter. He said it is a permissible use in this area as per the DES. He stated the following:

The second issue is rebuttable presumption
Methanol is okay in the aquifer protected area with Best Management Practices in place for safe Handling

DES has not made a finding that methanol is unsafe

Methanol is dangerous and a health concern

State regulations are in place for the control of handling

The ZBA would need to show that the DES is wrong

All information has been presented to DES

This work could be done with site plan review and approval

DES knows methanol properties and risks

Diana Morgan, a license geologist signed the letters and she also is Program Director for BMP

Users have to handle methanol in specific ways

Risks are there, but DES has investigated them

DES determination cannot be second guessed

The focus is on BMP

With approval they will go to the Planning Board and this work would be done in a very careful Way

Issue here is about the ordinance

Engineering will take care of issues of storage, drainage, etc.

Either approve variance or send this to site plan review

M. Lowry asked if this had already gone to site plan review. He had pictures that were recently taken of the property. He said he had concerns with what he saw.

H. Stehli stated the following:

Site work had been done – retention procedures

Lights worked on

Swale was on driveway

There was no outside storage

M. Lowry asked if there were drums on site.

H. Stehli said no.

M. Lowry asked about drums on trucks leaking and no outside storage.

A. Harkness said that the pictures M. Lowry had were old. He said there were empty barrels there.

M. Lowry corrected saying that the pictures were taken today.

M. Lowry stated it looked nasty. He said storage should be inside.

H. Stehli said it could be.

M. Lowry said that he did not see a berm when he was on the property. He stated that there was oil under the trucks on property.

A. Harkness stated that there was a berm there and he questioned oil being seen.

Attorney Cole questioned if these were site plans.

M. Lowry stated no, what is there is all new.

T. Thurlow questioned about a berm around the entire property.

A. Harkness said that it is an inside berm.

H. Stehli stated the property is sloped and bermed. He said it is all set for possible collection. He said that berms and a spill kit are on the property. He said it can handle 1,600 gallons. He said that biodegradable oil is there now. He further stated that adding the methanol will take Planning Board review.

A. Harkness said that the inside of the building is all set to handle spills also.

M. Lowry asked about the size of the trucks. He said he was concerned with the traffic in this area.

H. Stehli stated they have 6,000 or 10,000 gallon trucks for methanol. He said that trucks of this size are there every week now.

M. Lowry asked how vehicles can get safely onto the site.

A. Harkness stated that they pull onto the landlord's property and back into their lot.

Attorney Cole said that the question before the board tonight was whether or not DES was right or not. This process can be done. He said science is the question.

T. Thurlow stated science has failed before. She said that it only takes one human error. She stated that that the ZBA has to protect the entire town's water.

Attorney Cole stated that M. Lowry's questions/comments were for the Planning Board.

T. Thurlow said that the ZBA is charged with watching the water aquifer protected area for the town. She said that these materials need DES and Water approval. She pointed out that the State of NH does not have the problems if there is a problem on this site.

R. Fales asked what right the State of NH has to tell us this can go in this area.

Attorney Mitchell stated that the ZBA needed to look at concrete evidence that allowing this would pose a real threat.

Dr. Lebold stated that if BMP is not followed there could be an accident.

Attorney Mitchell stated that he was trying to provide focus on this issue.

Dr. Lebold stated they could have a problem.

Attorney Cole said that town regulations are in place for inspections. He said they could make sure site plan approval asked for rigorous inspections.

Von Richards, 15 Batchelder Road, owner of the property and landlord to Smart Fuel stated that when he first spoke to them about the process he looked into methanol and the process. He said this is used everywhere. He looked at other locations and found around 600 facilities in the country. He said tractor trailers are on his property all the time and this is not an issue. As far as leaking materials, there is a five or six foot high ledge area to help and a berm is there. He said that his employees are there in the building and he is comfortable having this tenant at this location. He stated BMP will address the handling of these materials and this use should be allowed.

Attorney Cole stated that only people with standing in the Town of Seabrook should be allowed to speak at this meeting.

H. Therriault stated that the judge told them they would have to have concrete evidence to deny this request. He also stated that DES letter was accepted and that they had no standing in the Town of Seabrook.

Robert Germanaro, 77 Parker Street, Newburyport, MA stated the following:

He is a former landlord to Andy Harkness

Has not been paid \$31,900

Environmental cleanup of about \$20,000 on property

Attorney Cole requested to strike statements.

R. Germanaro continued with the following:

- An LLC was used to get the license
- He had worked with A. Harkness in making biofuel
- He showed the mask he had to wear when making biofuel
- He had safety data sheets for Methanol
- Exposure can be lethal with damage to organs
- Third option here is to stop trying to put this there and shut down
- Two times this request didn't meet zoning requirements
- Public safety – vote down, it doesn't belong here

Tom O'Hara, 22 True Road, stated that he collects used vegetable oil. He wanted to know the gallons on the methanol. He said that two 55 gallon drums could level a building. He said the water needs protection. He pointed out that there is an apartment building right there with children. He also stated that we cannot control human error. He said recently a truck at left this location with an open tanker and dropped oil. He asked the board to vote no on this.

A. Harkness said there were two 10,000 gallon tanks. One for methanol and one metholaid.

Mike Moodie, Master McGraths Restaurant, stated that he wouldn't want this next to his daughter. He said he had done a "Google" search on the internet on biodiesel. He said he found that plants explode. He said as a business owner he did not want this there. He is worried about explosions with dangerous material.

Attorney Mary Ganz, representing Carmel O'Brien, owner of O'Brien's Store, stated that C. O'Brien had videos on this. She stated this was frightening. She said that the board knows the importance of protecting the water.

C. O'Brien showed the board several videos that she had found on explosions with biodiesel and methanol.

H. Therriault stated that two attorneys agree that the issue is concrete evidence that would negate the DES & BMP letter. He said that there will be humans and machinery involved. He also said that the path to hell was paved with good intentions.

Dr. Lebold asked if there was a relationship with methanol and MTBE gas additive. He said that had contaminated a lot of water in the state.

H. Stehli said he was not aware.

Attorney Cole said MTBE is an additive but not in this case with the methanol.

Attorney Ganz handed articles to the board members regarding disasters with this product. She said she didn't want this to be a disaster.

Carmel O'Brien, Deer Crossing, wanted to know where the sediment from the corn oil went. She said that there are large amounts out there.

A. Harkness said it was taken off site to another company out of town.

M. Moodie, Cimarron Apartments, asked them to explain the process.

H Therriault stated that would not help in this case.

Attorney Ganz, pointed out that there is safety data for use of this.

Dr. Lebold said that other hazardous materials had been denied by the ZBA in this area.

Von Richardson, 17 Batchelder Road, said that fire safety is the big question. He asked if there was any letter from the fire department.

T. Thurlow stated that was an issue for the Planning Board.

W. Moodie asked if they were moving location or actually changing the process they did.

A. Harkness said that they were adding methanol to the process.

R. Germanaro said that this had been successfully voted down twice. He said let the court and the attorneys handle it.

Attorney Ganz questioned the number of vehicles.

Attorney Cole said that would be a Planning Board issue.

M. Lowry asked if there had been methanol in Massachusetts.

A. Harkness said there was.

H. Stehli said Smart Fuel was not involved at this location.

R. Germanaro said that A. Harkness gained IRS approval to manufacture and jumped to NH. He said this doesn't meet zoning and it was the moral obligation to the public to vote this request down.

M. Lowry asked how many years at Folly Mill Road. He also asked why move now.

H. Harkness stated four years. He replied it was a business opportunity

T. O'Hara asked about the BMP obligation. There was a lid left open that would be a violation and the tanker issue had to be cleaned. He said this was not good management and that there was human error involved.

A. Harkness said that this was an ex-employee.

Attorney Coles said that the safety sheet dated 2005 was the same as the issues for the DES letter from D. Morgan. He stated the lawyers in court again isn't the way to go. He pointed out that concrete evidence that DES was wrong is the issue here.

T. Thurlow stated that there was still human error.

Attorney Cole said concrete evidence that this was a wrong decision by the DES is the issue.

H. Therriault stated that the ZBA can issue a variance when certain criteria are met. He asked where the hardship was. He said that this company is a tenant in the town aquifer area.

Attorney Cole said that the variance criteria is not relevant here as explained by Attorney Mitchell.

Attorney Mitchell stated that he had not said that.

Attorney Cole said the only issue is to rebut the DES approval.

H. Therriault stated that he had not heard a hardship for this request.

Attorney Cole stated that they don't require a variance. He said the uses are only prohibited without DES approval.

R. Fales asked why we had zoning if this was the issue.

Attorney Cole said that this is the way it is in the town Zoning Ordinance.

Dr. Lebold asked if they were being asked to ignore the five criteria for a variance.

Attorney Mitchell said that would be legal question for him at the close of the meeting. He also pointed out that the information from R. Germanaro about the monetary dispute was not relevant to this issue. He also pointed out that the environmental cleanup issue had been mentioned.

R. Germanaro stated the following:
There were waste vegetable oil and methanol barrels
He is still doing clean-up
He is disgruntled about clean-up costs
Vote on five criteria and shoot down application
Let them do vegetable oil with no methanol
Don't let the attorneys scare you

T. Thurlow asked how R. Germanaro wetlands were affected. She also wanted to know how much area had to be cleaned up.

R. Germanaro said the following:
The area was fenced in
Material was sucked out of the ground
It had been removed
He had used speedy dry

T. Thurlow asked what the State of Massachusetts had said. She asked if Newburyport was aware of the spills.

R. Germanaro stated he had not involved the state. He said the spills were in the building and the bermed area.

W. Moodie stated that he has two 10 gallon grease traps at his restaurant.

H. Therriault stated that if there were no more questions or comments it was time close the public hearing on this case.

Attorney Mitchell stated that this matter could be continued to a later date for further discussion.

Motion: Dr. Lebold Continue this case for deliberation and conclusions
Second: H Therriault
Yes: Unanimous

Case continued to the June 26, 2013 meeting.

Motion: R. Fales Take a five minute break
Second: Dr. Lebold
Yes: Unanimous

Meeting recessed at 8:25 PM for a five minute break.

Meeting reopened at 8:30 PM.

NEW BUSINESS:

Case #2013-007 Midas Seabrook, 441 Lafayette Road, Map 8, Lot 43, Sequence 1 for Variance to Section 13, Sub-section 13.200 to permit Alteration of Non-Conforming Sign in Zone 2 (Commercial)

Henry Kuria, owner of Midas Seabrook, appeared on behalf of this application. He stated that he had purchased the business in February 2013. He said that the sign was six years old, things have changed and the business is not doing well. He pointed out that he has six employees at this location. He said he wants to change the sign but it still won't be in compliance.

P. Garand stated that H. Kuria wants to change and non-conforming sign and still be non-conforming.

H. Kuria stated he wanted to add a digital sign. He said they were not getting a lot of business. He would like the change the sign to advertise repair and maintenance. He wants to keep the Midas sign and add a digital sign. He said he would be getting rid of the middle part of the signage that was there now.

P. Garand stated that it could be no taller than 20 feet in height and the bottom part of the sign had to be six feet off the ground. He also said that the sign could only be 50 square feet on each side.

Dr. Lebold stated that the middle part of the signage needed to be taken care of. He also asked what the total size of the new sign was.

P. Garand stated that the proposal was 24½ feet on each side.

Dr. Lebold asked if the height of the post would be dropped.

H. Kuria stated yes.

P. Garand said that the new digital portion of the sign needed to be at least six feet off the ground. He pointed out that was a requirement so that vehicles could see under the sign.

Dr. Lebold stated that if the middle part of the sign went away, the digital portion could be higher.

P. Garand said it would be close and the middle portion that was currently there was going away.

H. Therriault asked what was non-conforming about the sign.

P. Garand said the height and area were both non-conforming.

Mary Little, Autumn Way, said that the signage is on at night and too bright. She asked about waiting to change the sign until the possibility of the road being widened in that area.

P. Garand said that the State would take care of the sign issue if that happened.

H. Kuria stated the light on the sign is on from 6 PM until 6 AM.

P. Garand pointed out that the lighting would need to be looked at.

H. Therriault stated that if there were no more questions or comments on this application it was time to vote on the application.

	T. Thurlow	R. Fales	H. Therriault	Dr. Lebold	M. Lowry
1	Yes	Yes	Yes	Yes	Yes
2	Yes	Yes	Yes	Yes	Yes
3	Yes	Yes	Yes	Yes	Yes
4	Yes	Yes	Yes	Yes	Yes
5	Yes	Yes	Yes	Yes	Yes

Motion: Dr. Lebold Grant sign adjustment to be more compliant with regulations, with the following conditions: The sign be 24 square feet on each side; Dig sign 6 feet above ground; Remove middle sign altogether; Raise digital sign on the pole; Cut pole as close to 20 feet as possible; and Building Inspector will check on sign brightness on off hours.

Second: M. Lowry

Yes: Unanimous

Request for Variance at 441 Lafayette Road is granted.

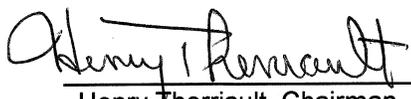
Election of Officers

Motion: Dr. Lebold Henry Therriault, Chairman
Second: R. Fales Mike Lowry, Co-Vice-Chairman
Yes: Unanimous Robin Fales, Co-Vice-Chairman

Officers for ZBA are: Henry Therriault, Chairman, Mike Lowry, Co-Vice-Chairman and Robin Fales, Co-Vice-Chairman.

Motion: H. Therriault Adjourn meeting
Second: Dr. Lebold
Yes: Unanimous

Meeting adjourned at 8:45 PM.


Henry Therriault, Chairman


Date