



## **Hill ZBA Meeting/Hearings Minutes - October 14, 2021**

---

### **\*\* FINAL RELEASE DRAFT \*\***

In-Person regularly scheduled Meeting / Public Hearing(s) RE: Application for Special Exception

The meeting was brought to order by Stephen Thomson, Chairman, at 7:00 p.m.

Board Attendance: Stephen Thomson, Charlie Estes. Frank Marsh, Frank Razzaboni {recused}

Public Audience – The ZBA agenda includes a public hearing on the matter of an Application for Special Exception for an excavation permit application submitted by Green Acres Woodlands, LLC. (GAW) Approx. 49 public attendees signed a register whose names were obtained and are on file with the ZBA Secretary.

Chairman Thomson made a motion to table other board business until after the hearing for Special Exception was concluded. The motion was seconded by Charles Estes. The Motion passed unanimously.

Chairman opened the public hearing at approx. 7:05 p.m. Immediately upon opening, resident Ria Boulay raised an objection to the hearing citing an overwhelming opposition to the application as the reason the hearing should not be held. It was explained that opposition to an application is not grounds to deny an applicant due process. The hearing would proceed.

The Secretary provided a chronological synopsis of this application and explained why the ZBA is the proper board to hear the application, why this is the proper venue, and why the ZBA has proper jurisdiction in this matter. The application for special exception was received by the Town of Hill on April 15<sup>th</sup>, 2021. The application was forwarded to the ZBA and brought before the board at the next regularly scheduled meeting. Upon review, the application was deemed incomplete as a result of the Town of Hill's zoning ordinance Article VIII D, 2. The application was returned to the planning board Chairman, who at his own discretion and without consulting the board, scheduled a public hearing on July 15<sup>th</sup>, 2021 to determine the appropriateness of sight on the basis of non-residential status pursuant to NH RSA 155 E. 4. The planning board had in previous meetings reviewed and discussed a Town of Hill Excavation Regulation, however the Chairman had never publically posted the approved regulations to the Town Forms and Ordinances section as required. The Planning Board Chairman determined the Board would proceed in accordance with NH RSA 155 E without consulting the remainder of the board and without considering the Town of Hill's approved Excavation Regulations. The Board Chairman noted in the July 15<sup>th</sup>, meeting and public hearing minutes numerous issues raised during the Public Hearing that exceeded the scope of the hearing sufficient to make a determination of non-residential status. But then chose to ignore to ignore the testimony and materials provided to the Planning Board to make such a determination.

As a result, (2) independent Appeals of Administrative Decision were brought before the ZBA immediately following the July 15<sup>th</sup> public hearing. On August 12<sup>th</sup>, 2021 (2) separate and independent public hearings were held on the appeals.

After consultation with legal counsel for the Town of Hill and considerable deliberation, the ZBA reached its findings on the appeals on September 9<sup>th</sup>, 2021. One appeal was denied. One appeal was partially denied, partially granted. The decision of the ZBA allowed for the application to move forward. The application for Special Exception was accepted as complete noting the assessment of the Planning Board's finding of site suitable for its intended use as "advisory" in nature. Selectman and Ex-Officio Board member Bresnahan stated concisely that the Planning Board decision should be viewed as advisory and not binding for the ZBA to proceed. It was the determination of the ZBA that the town of Hill Excavation Regulation(s) are flawed, and that they have never properly been utilized since approval in 1981. As a result, the board shall process GAW application pursuant to New Hampshire RSA 155 E. 4. The Town of Hill Excavation Regulations shall not be considered or utilized for this application or the permitting process, if the special exception is granted. The Secretary of the ZBA has taken the appropriate actions to process the application. The abutters were properly noticed, the public posting were timely posted in the new paper, on line and physically posted to the public. The application for S.E. is ripe to proceed to public hearing.

Chairman Thomson called upon the applicant to begin their presentation.

On behalf of GAW appears Maria Dolder, Attorney at Law with Robert Berti, Agent of GAW and other Agents included, Kevin Lemire, Kimberly Lemieux, Jeremy Hiltz, Brown Engineering and Ralph Cutting, Real Estate Appraiser.

Maria Dolder, Esquire from Herbert and Dolder, PA - Counsel for Green Acres Woodlands, opened her remarks with stating that GAW is aware of the burden of satisfying each of the conditions set forth in NH RSA 155 E as well as the Town of Hill ordinance related to special exception.

The applicant asserts, that in determining the application for S.E. complete, the ZBA's accepts the Planning Board finding that the site is suitable for its intended use and therefore Green Acres Woodlands, LLC has met its burden of proving the site Non-Residential pursuant to NH RSA 155 E 4. (XXXX)

Robert Berti, Agent on behalf of GAW, LLC introduced himself enduring several rude comments made by attendees of the hearing. Mr. Berti provided his testimony as an overview of the company, its holdings and his experience as a steward of forestry and land preservation / conservation. GAW was established in 1946. Historically GAW originated as Franconia Paper from Rumney, NH. The current site of the proposed excavation is located amongst a 2000 acres active logging operation owned by GAW. The site contains quality sand for septic systems, concrete and could provide quality road sand. GAW is prepared to execute carbon research of the trees around the site to enhance revenues. The applicant asserts that the value to Hill residence is realized through the \$800.00 to \$1,000.00 annual revenues from materials and the expected approximately \$5,000 for each 5-acre lot as it is taken out of current use throughout the stages of operation for a possible revenue benefit of up to an additional \$45,000. (5 acres per 5-year period at a total of 55 acres equals an estimated 55 year period.) ( $\$45,000.00 \div 11 \text{ periods} = \text{approx. } \$4,091.00 \text{ per } 5\text{-acre} / 5\text{-year period of current use taxation.}$ ) Mr. Berti asserts that GAW will work with the Town of Hill to assess these values.

The applicant asserts that the Town of Hill Zoning Ordinance allows, as a permitted use, a Sawmill which the applicant asserts has 5-times the impact of an excavation operation. No materials were provided in support. The presentation included a 5-page aerial photo composition of the proposed site. The first photo shows a view of a 5-acre (Cell 1) "Clearing" disclosing the proposed surface area for excavation. The second photo outlines the proximity of Poverty Pond Rd., a Town of Hill Class VI road to be used for Ingress/Egress to the site. The photo outlines a Natural Berm / Sound Buffer of +/- 20 Feet in Height. The photo also shows the proposed Pit Entrance. The Third photo is a ground photo of the proposed entrance from Poverty Pond Rd. The fourth photo details the visual buffer section along Poverty Pond Rd.

The fifth page, having two photos, shows the undeveloped pit area that will remain forested and managed as a timber resource until the next stage(s) of excavation, as needed. The applicant asserts that these photos detail the minimized impact as well as ensuring a forested state if the project is discontinued. The aerial photo presentation has been saved electronically and shall be incorporated into the minutes by reference.

The applicant asserts the proposed volume and scope of the operation shall produce materials from APRIL to Christmas annually. The proposed excavation shall operate 8 months a year, at a minimum of 5 days a week, for 8 hours a day, to remove approximately 30,000 cubic yards of material annually - which is the equivalent of approximately 16,067 loads (18 to 20 loads daily). The contractor will be utilizing tri-axle dump trucks to transport materials from the site to the state highway Rt. 3A by way of Poverty Pond Rd, a Class VI gravel road. Transportation of materials shall proceed from Poverty Pond Rd. to Currier Rd, a Class V road which is a partially gravel / partially paved road; trucking shall proceed to Murray Hill Road, a partially town maintained / partially State DOT maintained Class V road. The applicant submitted a "Roadway Report" prepared by Brown Engineering dated August 30, 2021. The full report is incorporated by reference. The report has been saved electronically and shall be made available upon request. (XXXX)

Brown Engineering, agent for GAW, prepared an engineering report submitted to the State of NH for approval of the AOT Permit # 1921 which was approved March 26<sup>th</sup>, 2021. Mr. Brown asserts the following:

- A) Surface water shall drain into the lot without erosion out of the site.
- B) He performed a data search returning a finding of no sensitive species.
- C) He asserts there is no adverse impact to wild species according to Dan Geiger.

The applicant also submitted an investigation and analysis performed for GAW by RJC & Associates, Real Estate Appraisers, Ralph Cutting, Appraiser. The full report is incorporated by reference and shall be made available electronically upon request. As the reports states; "Based on my investigation, it is the opinion of this appraiser that the proposed Green Acres Woodlands, Inc. Pit operation would result in neither increased nor decreased property value in the outlined area...." The Applicant asserts there will be no diminution of property value. (XXXX)

The Applicant asserts there will be no facilities on site and the site will be in compliance with Zoning. As result the applicant asserts that they meet all requirements of NH RSA 155 E and Town of Hill Special Exception requirements. The Applicant concluded its presentation.

---

**In Opposition** – Town of Hill Residents request to have incorporated from the previous hearings, all comments, written materials including petitions and letters submitted to the Town through each of its boards and members. All petitions, minutes of previous Selectmen's, PB's minutes and ZBA hearing/meeting minutes relating to GAW shall be incorporated for reference. All letters and material submissions shall be incorporated for reference and shall be made available electronically upon request.

Abutters – In favor of or in Opposition to GAW's application for S.E. -

Appearing in person and in opposition to: Mike Brown and Mary Kay Eckert of 631 Currier Rd. (recently located to Hill having purchased the property of Lucy Natkiel) - question the appraisers report of local comparisons of surrounding Towns. The board shall review the report individually prior to deliberations. Mr. Brown questions the comparison of logging truck gross weight in comparison to aggregate trucking gross weight. GAW in response states the weights are approximately the same. Potentially a logging truck could weigh more.

Mary Kay questions if the impact study of species included “Human” habitat. The answer is that it did not. The impact study is a wildlife assessment. Human assessment is not considered under the wildlife study guidelines.

Shaun Bresnahan, Selectman and Ex-Officio Member of the Planning Board, asserted that the Planning Board’s role was “Advisory” to the ZBA’s special exception process in finding the site suitable or appropriate for its intended use.

Lucy Natkiel, formerly of 631 Currier Rd. as of submission of the application, requested that her previous statements be incorporated for reference and she states as follows: Safety from the undeniable INCREASE in trucking and heavy equipment traffic traveling on narrow roads of poor conditions, hills, roads having no shoulder and subject to steep slopes, utilizing sections of Class V and Class VI roads for ingress and egress, presents a significant hazard to pedestrian traffic, domestic animals and wildlife safety. The proposed excavation in a densely populated area will produce dust, noise and a general nuisance that will result in property diminution and deterioration of quality of life. The Excavation shall create loss and hazardous conditions for recreational use of the existing trails/roads (atv,) with the inevitable loss of the peaceful and quiet tranquil conditions currently associated with the area and surrounding neighborhood. Mrs. Natkiel requests previous testimony be included from the Planning Board Public Hearing which includes the expectation of increased taxation due to deteriorating of already strained road conditions and depreciation of home values associated with noise, dust, and the general nuisance factor of loud loaded trucks for transportation of materials. Pursuant to the recommendation of the assessor related to other homes effected by close proximity to excavations in the Town of Hill, the assessor recommends a 10% property tax reduction annually (without abatement) as a result of the noise and dust nuisance factor imposed by trucking from Excavation(s). There were concerns expressed over bike traffic, the noise of back up indicators and spillage from fuel storage at the site and/or spillage resulting from the need to supply fuels for the operation. Mike Munson opposes the noise and dust that will be produced with 100+ decibels of sound emanating from the site 5 days a week. Mike Brown questions what activities will be generating noise from the Pit. The answer is that a Front-End Loader will be used for loading trucks. There will be the sound from screening and crushing of materials and the sound of trucks. “Red” Merker – asked if all the agents preparing reports and analysis were on the payroll of GAW? The answer was All are agents for GAW so yes. Tracev Elder of 562 Currier Rd states that the benefit proposed to the Town by Mr. Berti is not criteria for a Special Exception. The proposal for reclamation doesn’t address maintain successional wildlife, red spruce or white pines synonymous with the surrounding area.

Many individuals wishing to be recognized for their statements - include the following:  
{Excerpted for Content and Congeniality}

- Steve Taylor – “2 miles of Bootjack Road experience Noise, Dust, Nuisance and reduced property values – Trucks literally shake houses going past. The logging operation for the last 2 years, that was supposed to be temporary, is what started the whole process.”  
Additionally, Mr. Taylor points out that residents on Bootjack Road subject to the trucking of materials from the current excavation in Hill are subject to a 10% discounted of property tax for the nuisance from noise, dust and issues related to trucking.
- Lucy Natkiel – “There are safety concerns due to road erosion, narrowing roads, ditches and poor overall conditions that already exist because the Town already cannot afford to maintain our existing roads.”
- There is not a conclusive Wetlands Scientist study included that considers the wetlands habitat, its wildlife and these wetlands are already not in good condition.
- Christina Schaffer – “concerned for safety of Horses, Dogs, and Pedestrians who walk Currier. Poverty Pond and Tioga Road(s).
- Linda and Norman Holt are against the pit. “Including 261 signature garners by petitions.”
- Cindy Pescinski and Judy Pescinski are strongly opposed. “road conditions could be unsafe given weather conditions.

- Ria Boulay opposes the presentation submitted by Counsel for GAW – The ZBA speaks for the people of Hill and has an obligation to the people to rule as the people want. **(XXXX)**
- Anne Gagne - “The environmental impact is major...diesel, noise, dust and road dirt, Smoke, fumes and pollution to air quality are a health concern. Concerns include water run-off, transportation of water for use at the site.” The sound measure is for Site Safety and not travel or road requirement. No study was provided for surrounding area. **(XXXX)**
- Class VI Road Policy was not followed during process allowing GAW to upgrade sections of Poverty Pond Rd. Permits not issued for upgrade or Driveway per Class VI Policy. **(XXXX)**
- “The totality of the Pit is many years (a life time) that provides no benefit to the Town of Hill or its residents.”
- The Members of the ZBA have a Duty to follow town regulations – “Honor Your Duty – Authority.” Town of Hanover -116 NH 34 (1976)
- James Cunningham asks - “Has anyone looked at using road through Danbury?” [Town of Danbury Selectmen collectively submitted a letter in opposition of impact to Danbury roads. GAW states using alternative access through Danbury was determined to be **not cost feasible**.
- Debi Langlais, standing closely and pointing, questioned GAW directly – “What are you going to do to ensure our safety?”
- Mike Munson stated that residence are aware of an abatement suggested by the tax assessor made to properties located in route to and from the excavation on Bootjack Road that provides a 10% annual discount to property taxes.
- Anne Gagne asked “is GAW planning to sign a Bond?” (Bond amount is set by P.B. if S.E. is approved)
- Gene Seip asks – “How many trucks will be going over Murray Hill on Murray Hill Rd?” “...been in Hill for 28 years and Murray Hill Rd has never been repaired. Road is under constant deterioration without update.” (No answer to how many trucks using Murray Hill.)
- Christina Schafer “No Data has been presented – just opinions not supported by Data.”
- “Pollution is Visible – Data is required to evaluate potential Pollution levels.”
- Jeff Leliberte states “NH RSA 155 E requires that no diminution of property shall occur however this Excavation will unreasonably change the character of the area, roads and character of the neighborhood(s).”
- Christopher Seufert questions “How did you find the roads suitable? What road study or report was used to find the roads suitable? Brown Engineering, Agent of GAW prepared the Road study. Can’t trucks and pit operators use alternate types of alarms? **(XXXX)** Applicant asserts safety conditions of the excavation are set by “M-SHA.”
- Judy Pescinski – During Mud-season roads are insufficient – Applicant asserts they do not operate during mud season.
- Shaun Bresnahan Sr. states – “The petitioner may say XYZ...But residents know from better experience what this we be like.”

At 9:15 pm the Board took a 10 minutes recess. The hearing resumed at approx. 9:30 p.m.

Shaun Bresnahan came forward to produce an independent Road and Residence study which he performed in the fashion he has performed for the State of NH Forestry Service in his capacity as a State Forester. (Refer to study incorporated by reference.) The study details roads widths for Currier Road as of July, 2021. The study references 26 different places Currier Road is narrower than 18.97 feet for both lanes of travel. The study details 23 places where the road is 19.5 ft narrowing to 18.97 ft in the distance of the same 26 places that Currier Road narrows to 18.97 ft or less. The same study details 74 residential properties located along the proposed trucking route of less than a total of 6 miles. Approx. 11 of the residential properties are located within 100 ft from the road. 5 residences, along 3000 feet of roadway measured are within 50 feet of the proposed trucking route. Mr. Bresnahan measured a total of 103 points (54 points at

19.5 ft or less) and the maximum width did not exceed 21.83 feet in width. He measured Murray Hill Road in three locations which was 22.0 feet wide. There was discussion between Mr. Bresnahan and members of the audience regarding the width of tri-axle dump trucks being 9 feet wide and full-size pickups being 7 feet wide leaving 3 feet of clearance from the road edges and center in the portions of Currier Road that are 19.5 feet wide or less. This will be tighter if two tri-axles have to pass leaving 2 feet of clearance. Audience commented on emergency vehicle and school bus passing tri-axle trucks; Mr. Bresnahan figure they are about as wide as a tri-axle and he witnessed a school bus traveling 2 feet off the pavement to allow a tri-axle dump truck to pass. (Selectman's notes) Mr. Bresnahan asserts NH RSA 155 E, 4. III applies to Non-Residential area. While the site itself is Non-Residential in nature, the route to and from the proposed excavation is quiet neighborhood wherein the lies on Currier Rd (1 of 4) dangerous intersections

Because of the specific interest and strong feelings shared in opposition to this proposal over a period of several months the Board was more lenient than usual in allowing residents to express their frustrations and pent up anxiety associated with this request.

On more than one occasion, an opponent of the proposed excavation paced, with a binder in hand, despite the numerous requests to direct all questions to the board, and did address GAW directly and intently as if performing cross examination of their presentation. Questions were direct and accusatory in nature at times. They were not proffered in a manner the Board would generally allow. This individual represented they were an abutter from the Andover/Danbury area and were not present at previous hearing.

Orr and Reno, Jeremy Eggleton on behalf of a group of residents known as the Munson Coalition, presented a letter to the Board (9 pages to be incorporated by reference) and states the following: Testimony is Evidence; Testimony is sufficient to refute written reports. The Board may find the intended use is not permissible and may utilize its own experience over reports to rule that under NH RSA 155 E, the site is Non-Residential as it is intended in the Town of Hill's Master Plan. Chapter 4, Pg. 5 states Poverty Pond Rd is increasingly residential. 100 Decibels, 8hrs a day, 5 days a week for 8 months a year will forever alter the characteristic of this increasingly residential sections of town. As stated previously – the town currently recognizes a 10% abated rate of property tax to residents subjected to trucking of materials from other excavations within Hill Town limits. Poverty Pond Road to NH Rt 3, as a trucking route for materials, passes nearly 50 residences within close proximity of the roads that will very likely be subject to the assessors pre-determined abatement rate of annual tax.

Roberta Laliberte concluded "Noise is an issue – this will be a Nuisance. The overwhelming consensus of the Town of Hill residents is a strong opposition to the proposed excavation.

Shaun Bresnahan talked to the GAW Accessor's report and questions the conclusions. A house on Route 4 next to a gravel pit isn't the same as Currier Rd. Someone who purchases a property on a route 4 may not be concerned by the noise from traffic. Residents of Hill living on Currier chose this location because it is quiet. He also referred to the 2007 Master Plan which identified the Currier & Murray Hill Road intersection as being listed as one of (4) dangerous intersection in Town. (Selectman's notes)

The applicant

Asserted that the use of NH 155 E was initially determined by the Planning Board. The applicant did not have the opportunity to prepare a presentation for anything other than NH 155 E.

The Public Hearing concluded and the Hearing was called to a CLOSE at 10:50 p.m.

Frank Marsh made a Motion that the Board recess and reconvene at the next regularly scheduled meeting to deliberate after having an opportunity to review the presented materials. The motion was seconded by Steve Thomson. Charles Estes raised the requirement pursuant to the Town of Hill ZBA procedures that the Board render its decision on special exception within 14 days of the hearing concluding. The Motion to deliberate at the next regularly scheduled meeting exceeds the 14-day requirement. The parties represented by legal counsel were consulted. Legal counsel stipulated on behalf of their respective parties, and the ZBA stipulated on behalf of the Town of Hill, to waive the procedural requirements providing the board the opportunity to review the abundance of materials and notes presented. After no further discussion, the motion carried unanimously.

Steve Thomson made the motion to enter Recess and continue deliberations at the next scheduled meeting on November 11<sup>th</sup>,. Charles Estes Seconded and the Motion carried.

The board is in recess.

Respectfully Submitted,  
Charlie Estes, Secretary ZBA