



TOWN OF HOPKINTON

OFFICE OF THE PLANNING BOARD

TOWN HALL
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HOPKINTON, MASS. 01748
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April 13, 2004

Wayne R. Davies, Chairman
Zoning Board of Appeals
18 Main Street
Hopkinton, MA 01748

Re: **Material Recovery & Recycling Facility- E. L. Harvey & Sons, Inc., Wood St.**

Dear Mr. Davies:

At its meeting on March 22, 2004, the Planning Board reviewed revised plans presented by representatives of E. L. Harvey & Sons, Inc. for the proposed development of land on Wood St. for a Material Recovery & Recycling Facility (MRRF). The Board noted that there were several fairly minor changes to the plan, with the overall layout and design the same as was reviewed previously. The Board had the following concerns after review of the plan:

1. The traffic pattern within the site is of serious concern to the Board. While this will be a topic of site plan review, the uses permitted by the Board of Appeals will affect the number of truck trips and the internal traffic pattern. The Board noted that there are several locations within the site where there will be conflicts between trucks going in different directions and to different areas. In many respects, the site layout presented is a result of the applicant attempting to locate several uses on a site that has many physical constraints. If the Board of Appeals issues special permits, the Planning Board recommends that the decision be written to allow for flexibility during site plan review, so that buildings, driveways, parking areas, etc. can be modified and moved if necessary.
2. The Board asked the applicant how much of the land in the Water Resources Protection Overlay District will become impervious, and the applicant replied that they had not done this calculation. This is important because Zoning Bylaw Sec. 210-70.C states that any use which renders more than 15% or 2,500 sq. ft. of a lot (whichever is greater) impervious requires a special permit from the Board of Appeals. The applicant should provide this information and apply for the special permit if necessary. The applicant stated that 17 acres of the entire site would be impervious (42%).
3. While many of the activities previously proposed within 100 feet of the Agricultural district have been removed, two still remain: 1) the access road to the C&D building; and 2) the new

parking spaces along the base of the capped landfill. At the meeting, the applicant stated that these could be moved. They must move them in order to comply with the requirement.

4. The site previously contained a defined storage area for containers (dumpsters) on the top of the capped landfill. This area has now been changed to a parking lot. Therefore, there is no designated space for storage of the dumpsters, which are rented out. The applicant stated they would probably place them in the parking lot on the top of the landfill because they don't think that all of the parking spaces will be needed. This may be so, but the Board is concerned that the applicant intends to use the parking lot for a use which is not shown or designated on the site plan. If the site plan that is approved does not show a dumpster storage area, the Board will not expect to see one on the property, and if one appears in an area designated for something else (especially in an area that provides something required by the bylaw, such as parking spaces), it is possible that the Board will ask that they be removed. If the applicant intends to store them on the property, there should be a designated area on the site plan.

In addition, correspondence to the Board of Appeals from Stephen Richmond, Bowditch & Dewey, dated March 1, 2004, states that the containers will be fully screened by a berm along Rt. 135 and trees along the Mass. Turnpike. The Board questions how screening can be assured when there is no designated area within the site for the containers, and how the proposed screening can be effective when the containers are placed on the top of the existing landfill.

5. The Board is concerned about the potential for spills from overfills and leaks from the pipes at the fueling island. These are the most common ways for this material to make its way into the ground.

In the original materials submitted, the applicant stated that the fueling island would be an accessory use to the proposed maintenance garage. The Board, in its letter dated Sept. 18, 2003, questioned whether this use could be an accessory use to another accessory use, given the definition of accessory use in the Zoning Bylaw. The applicant now claims that the fueling island is an accessory use to the MRRF and not the maintenance garage. While the Board would agree that it would be an accessory use to the MRRF if all the trucks using the facility could take advantage of the refueling, this is not the case. The refueling would only be limited to ELH vehicles, not all of the trucks using the site. Therefore, it should not be considered an accessory use to the MRRF, but a separate use proposed for the property.

The Board recommends that the Board of Appeals not approve this use for the property. At the meeting, the applicant stated that they do have a fueling area on their adjacent property in Westborough that could be used, and the new one is proposed as a convenience. The Planning Board does not believe that a special permit should be granted to allow a use that is not permitted and potentially harmful to the resources protected by the Water Resources Protection Overlay District adjacent to it, merely to serve a convenience.

6. The applicant indicated that they have blocked off access from the back of the property to their Westborough property because it passes through the Agricultural district, and the Board

is pleased that this zoning violation has ended. However, the applicant indicated that they are seeking a land swap with the Commonwealth of Massachusetts in order to use land in that area for the use, and that they would either seek a zoning change for the property or a variance from the Board of Appeals to use the land. If the applicant is successful in obtaining the property, the proper way to allow an Industrial use of it is through a zoning change at Town Meeting. The Planning Board feels that it would set a bad precedent for the Board of Appeals to issue a “use” variance to allow Industrial uses on Agriculturally zoned property, and may not fit within the statutory conditions for granting variances in MGL c.40 sec. 10 (soil conditions, shape, topography..). The zoning of the land is a decision for Town Meeting to make.

The site plan still shows a significant paved area within the Agricultural district which appears to be intended for Industrial uses. If the Board of Appeals approves a “plan”, it should not include approval of this area for any use not allowed in the Agricultural district.

7. The applicant indicated at the meeting that they believe they have proved to the Board of Appeals that the maintenance garage is an accessory use to the MRRF, and in correspondence to the Board of Appeals, has stated that it would be relocating its existing maintenance facility to the Hopkinton property. The Board would agree that a maintenance garage would be an accessory use to the MRRF if all of the trucks using the facility could make use of the garage. However, the garage is only for ELH trucks, which are used for MRRF and non-MRRF activities. The maintenance garage use is a separate one that would service ELH vehicles whether or not their use is MRRF related, and is not available to all of the trucks using the facility. ELH seeks to relocate their maintenance garage from Westborough to Hopkinton as a business decision, and since it already exists independently of the MRRF, it does not appear to be an accessory use to the MRRF.
8. Previous correspondence from the Planning Board requested additional information relative to the proposed warehouse use on the site, so that it could issue its report and recommendation required by Sec. 210-37 of the Zoning Bylaw, to the Board of Appeals. This information requested has never been submitted to the Planning Board. Therefore, no report or recommendations have been issued.
9. The Board maintains that a special permit for a Solid Waste Transfer Station should not be issued, as it is not an allowed use in the Industrial District. When the changes to the Industrial district were proposed and adopted in order to accommodate the Harvey’s requests in 1996, the intention was to allow recycling centers only, not solid waste transfer stations. The Water Resources Protection Overlay District (WRPOD) is a district which overlays other districts, and is intended to further restrict uses within the underlying zoning district, not expand them. Sec. 210-70 states *“Uses otherwise not permitted in the underlying zoning district shall not be permitted in this superimposed district.”* The bylaw needs to be amended to allow for the proper use special permit before one can be issued.

While the Board understands that a recycling facility could be considered a type of solid waste transfer station, this does not mean that the use is allowed. This type of interpretation could lead to some unintended conclusions or consequences. For example, the Bylaw allows

medical offices in some districts. It is common for hospitals to have medical offices as an integral component. Could someone then successfully make the argument that if the bylaw permits medical offices, then hospitals must also be allowed? The Zoning Bylaw is specific about which uses are permitted, and those not listed are prohibited. The Board of Appeals should be careful that its interpretations in this matter are appropriate, because other property owners will apply it to other properties and other uses.

10. A commercial leaf and yard composting operation is not an allowed use in the Industrial district, as outlined in the Board's letter dated Sept. 18, 2003. The applicant has indicated that such use could be considered agricultural or farming. This would be the case if the material was grown and harvested from the applicant's property and then composted and sold by the applicant. However, this is not the case. The material would be brought in from other places, composted, and sold as part of a commercial enterprise.

The applicant also indicates that it could also be considered a manufacturing use. The term "manufacturing" is defined in *The New Illustrated Book of Development Definitions*¹ as:
Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors.

The book also contains a Comment:

The term manufacturing covers all mechanical or chemical transformations, whether the new product is finished or semifinished as raw material in some other process. Manufacturing production usually is carried on for the wholesale market rather than for direct sales, although retail sales to the ultimate consumer is becoming more prevalent. Processing on farms is not usually classified as manufacturing if the raw material is grown on the farm. The manufacturing is accessory to the major use of farming.

The North American Industry Classification System (NAICS) is the industry classification system used by the statistical agencies of the United States. It is an economic classification system that groups like businesses together and provides definitions of each. It was developed on behalf of the U.S. Office of Management and Budget, coordinating with counterparts in Canada and Mexico. The system was adopted in 1997. The 2002 NAICS defines Manufacturing as:

The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified in ... Construction. Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials-handling equipment...

¹ Moskowitz, Harvey S. and Lindbloom, Carl G. *The New Illustrated Book of Development Definitions*. Center for Urban Policy Research, Brunswick, NJ, 1993.

The materials, substances, or components transformed by manufacturing establishments are raw materials that are products of agriculture, forestry, fishing, mining, or quarrying as well as products of other manufacturing establishments. The materials used may be purchased directly from producers, obtained through customary trade channels, or secured without recourse to the market by transferring the product from one establishment to another, under the same ownership. The new product of a manufacturing establishment may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become an input for an establishment engaged in further manufacturing...

The use "compost manufacturing" is classified in the "Fertilizer Manufacturing" sector. However, neither fertilizer nor compost manufacturing are listed within the types of manufacturing permitted in the Industrial district, either by right or by special permit. Therefore, it is not an allowed use. The Industrial district is not written to permit just any type of manufacturing, only those listed.

Thank you for the opportunity to review the proposed site development plan as they relate to the special permit requests. Please contact the Board if you have any questions.

Sincerely,

John H. Coolidge
Chairman

Cc: E. L. Harvey & Sons, Inc.
Bowditch & Dewey
Board of Selectmen
Conservation Commission
Board of Health
Director of Municipal Inspections