

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
APRIL 20, 2011**

**Members Present:** Clayton M. Harrison, Chairman  
Christopher Graham  
Kimberley A. Fernandes, Clerk  
Donna Lambert, Alternate  
Kendal Tripp

**Absent:** Gerald Coutinho, Vice Chairman

**Also Present:** Ralph Souza, Building Inspector  
Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

**Excel Recycling, Inc., 37 Charlotte White Road – RE: G.L.c.40A, § 16**  
**Determinations – To see if the Zoning Board of Appeals will vote to determine: (1)**  
**By majority vote that Excel's current application (dated: March 2, 2011) is an**  
**application which was favorably and finally acted upon by the Board within the**  
**prior two years; and (2) if so, whether, by unanimous vote, the Board will determine**  
**that there are specific and material changes in the conditions upon which the**  
**previous unfavorable action was based and describe those changes in the records of**  
**the proceeding and refer the matter to the Planning Board.**

**Sitting on Petition:** Harrison, Tripp, Graham, Fernandes, Lambert

**Attending:** Attorney Ilana Quirk, Kopelman & Paige, Town Counsel  
Attorney John Markey, representing petitioner  
Attorney Robert Feingold, representing abutters

**Abutters:** Ed Vieira, 7 Kelsey's Way  
Gary Mauk, 4 Princess Pine Way  
Scott Smith, 63 Center Street  
Gary Allen, Tickles Road

Attorney Quirk stated that under MGL Chapter 40A, section 16, the Board will vote to make a determination as to whether Excel's current application, which was Excel's application dated March 2, 2011 and acted upon favorably within the past two years and if so, whether the Board will determine that there are specific and material changes in the conditions upon which the previous unfavorable action was based, describe those changes in the records of the proceeding and then to refer the matter to the Planning Board. The vote required from the Board for approval will be a 4/5's vote. Mr. Harrison asked if the Board finds this petition favorable, does it go to the Planning Board. Attorney Quirk stated yes, the Planning Board will then make a determination; no merits of the changes, only that there are changes and from there it will be referred back to the Zoning Board.

Attorney Feingold challenged the fact that Mr. Tripp was sitting on the petition; Mr. Tripp had recused himself at the beginning and there is an affidavit on file from Mr. Harold Tripp. Mr. Tripp stated he sat the first hearing; as for the second hearing, he came back from vacation and made sure to review the material. As for Harold Tripp, he is no relation. Attorney Feingold also stated there was two errors in the Notice of Public Hearing and this matter should be ruled unfavorable. Attorney Quirk stated this is not a public hearing; this is for an Administrative Finding, which is not required to be advertised or abutter notification; all parties are being notified out of courtesy.

Attorney John Markey stated that Mr. Steve Gioiosa, SITEC Engineering was attending tonight to explain what is being proposed. Attorney Markey also noted for the record, that Mr. Costa and his son have done everything to work with the Town; when given an order, they have complied. The other side does not want justice and balance. The neighbors are constantly appealing. Mr. Costa has invested in this community and is once again trying to work with everyone. The abutters just want to see Mr. Costa out of business. As for the complaints of noise and traffic, Mr. Costa has been addressing those issues.

Mr. Gioiosa addressed the original plan and the issues of noise, traffic flow and safety. Mr. Gioiosa then showed the second revised plan, which showed no expansion, only repositioning of equipment and areas of concern. In regards to the noise, there were two processing areas; the baler would be shifted to the west and the addition of a sound suppression buffer system. The shearer would be in the northern section of the area away from the boundary by 700 feet. This reposition would lessen sound impacts. Another concern was truck safety and access to the property. The scale has been relocated back further north on the property to eliminate backups and to provide public safety. There is improved geometry of the entry point. The turning radius will be smoother coming from the public way; this will improve safety and traffic. The movement of equipment and relocation is not an expansion of the operation. Mr. Gioiosa stated this is a significant change from the original plan. It was noted this revised plan was dated 01-04-11 and contained two sheets; sheet one-existing conditions plan and sheet two-existing traffic improvement plan.

Attorney Markey stated he would like the focus on this presentation and issues that were discussed. Mr. Harrison stated this is not a hearing, a determination only.

Ms. Fernandes asked about the trucks coming in; where is the turn-around to get out. Mr. Gioiosa stated there is a large turning area not being used at this time. Ms. Fernandes stated that if one truck is on Charlotte White Road, parked and waiting, and the flow is coming through, what is the remedy. Mr. Gioiosa stated that originally, it was a single driveway with stacking. Now, with the scale moved, the stacking point is further onsite; four vehicles can be safely stacked but that is a very rare scenario. This is a huge improvement and there is good site lining. There can be two vehicles side by side without being on the road. The owner could also widen the entrance but that would take the vegetation away.

Mr. Graham asked if the applicant had control of Lot 9 also. Attorney Markey stated yes, it is a long-term lease for Lot 9; his client has had control of Lot 9 since January and he has cleaned out the lot.

Mr. Harrison called for any comments from those attending.

Mr. Vieira stated with the new plan, the processing area is closer to me on Lot 9, which is not grandfathered; this is not a junkyard like Thad's was.

Mr. Gary Mauk stated he has known Mr. Costa for a number of years; he is always helped out in a charitable way when approached. Mr. Costa has been abused for the past three years. The neighbor's have made false claims such as oil on their property which they collected in a jar but could not remember from what area it was collected. The DEP has been called a number of times and have found nothing when they come down. Mr. Mauk stated he has lived in Town for 35 years and recycling car parts and scrap metal recycling has always been done on this property. Mr. Costa's licenses have been illegally held by this Town. The Town has spent an enormous amount on legal fees and the bills continue to run; this is wrong to continue this action. Mr. Harrison agreed this needed to be moved ahead.

Mr. Scott Smith stated he works for Mr. Costa and he is trying to do good in this Town.

Mr. Gary Allen stated the Town should support Westport businesses.

An abutter at 53 Charlotte White Road stated this is a major improvement, there is very little noise, and other businesses make more noise than Excel.

Attorney Feingold stated the idea of a unanimous vote was not his idea; that came from the Town Bylaw. The reason for the vote is that it has to go to the Planning Board. The state is adverse to re-applications. Attorney Feingold stated this has gone to court and there have been hearings on numerous times, which amounts to costs, anxiety and tension. Attorney Markey wants to work cooperatively. Mr. Costa never came to the ZBA before operating. Mr. Moniz leased to see if there was going to be any problems for two years; he knew he was taking a risk. Whether it was Excel or any other recycling, any neighbor would do this type of reaction to having this type of operation at their boundaries. The statute must find specific changes. Attorney Feingold stated to the Board to remember their reaction when Mr. Costa tried to change the size by expanding to 16 acres and now it is almost 18 acres. Thad's was a junkyard, now it is metal recycling. Attorney Feingold stated that it is common sense that a 16-acre recycling plant is more detrimental than what Thad's ever was. Thad's was an auto graveyard with maybe 18-wheelers coming twice a month to pick up. There is no material change and that is why they failed the test when they went to the Planning Board. Pictures show trucks on Main Road and Charlotte White Road and using both sides of the road to turn into the property, which only stacks four. If this is a precedence of the R.I. operation, there will be more than four vehicles waiting. Attorney Feingold stated that basically, the use of common sense is needed here, this is nothing personal against Mr. Costa; any recycling company that tries to come to this property would meet opposition in a

rural/residential area. Attorney Feingold stated the proposed plan does not say there will be a sound barrier around the perimeter. Except for the baler, all the equipment can be moved around; the barrier is the only protection against some of the noise; even when a sound barrier is mentioned, it does not specify what is to be used. Attorney Feingold stated that to be a material change, it has to make a difference; once permitted, they can fill with equipment and work day and night. This is a 200% expansion, full tilt to the boundary line. There was supposed to be a redesign of the entrance but photos show there is no difference at the access point. A Cease & Desist was issued and only the use of the crane was permitted four feet from the bottom. This is like a shell game. Attorney Feingold stated that in reading the preamble to the Zoning Bylaws, it is stated this will increase public safety issues, property values, etc. The neighbors did not cause this problem and they are begging it be stopped. Mr. Harrison stated that the Board has received a number of affidavits and letters from the abutters.

Attorney Markey that this Board will be approving the material change; this business is being compared to a multi-million dollar corporation in Johnston, RI. Mr. Costa is a small operation and he is trying to take over from Mr. Moniz and continue the business that was established there. Attorney Markey stated that he understood there is a bylaw trying to be passed in order for the Board to be able to impose conditions. As far as specific materials, that was not addressed and that will be worked on with the Board as this goes along.

At this time, Mr. Harrison called for any more input from either side, seeing none, the comment period was closed at 8:02 PM.

**Motion** made by Ms. Lambert to grant the request of Excel and allow the applicant to move to the Planning Board. \*Motion is withdrawn by Ms. Lambert.

**Motion** made by Mr. Graham that the Board determines the application dated 12-02-10 was unfavorably and finally acted upon by the Board within the prior two years; and the Board determines that there are specific and material changes upon which the previous unfavorable action was based; 1. the addition of Lot 9 is substantial and material; 2. the reconfiguring of the entrance to the site is substantial and material; 3. moving the scale further into the site to mitigate trucks staging in the roadway is material and substantial; 4. sound mitigation devices around the equipment is material and substantial; and 5. relocating equipment within the site is material and substantial. Taken as a whole, the new conditions are material, substantial and specific to the original plan; the Board will refer the matter to the Planning Board for comment. Second by Ms. Lambert. The Board voted unanimously in favor.

Mr. Harrison stated the determination of the Zoning Board is to allow this matter to proceed to the Planning Board and once a determination is made by the Planning Board, the application will come back to the Zoning Board for a full hearing. Mr. Harrison stated that when the Planning Board schedules this matter, all abutters will be noticed.

**8:14 PM – Executive Session**

At this time, Attorney Quirk requested that the Board enter into Executive Session for the purpose to discuss strategy with pending litigation.

**Motion** made by Mr. Graham to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to discuss strategy of pending litigation. Second by Mr. Tripp. The Board voted unanimously in favor.

**Roll Call Vote:** Mr. Graham-aye. Mr. Tripp-aye. Ms. Lambert-aye. Ms. Fernandes-aye. Mr. Harrison-aye.


Mr. Harrison announced that the Board would return to Open Session in order to adjourn.


**9:10 PM – Open Session**

**Motion** made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting. Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,

  
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Diane Pelland, Principal Clerk  
to the Zoning Board of Appeals

APPROVED:   
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Clayton M. Harrison, Chairman