

Wilton Zoning Board  
42 Main Street  
P.O. Box 83  
Wilton , NH 03086

October 15, 2019

Dear Wilton Zoning Board Members,

In order to grant Quinn Properties, LLC the requested height variance for a proposed asphalt plant to be constructed on their property in our industrial zone, the Zoning Board must consider five criteria and grant the variance only if they are all met. We are therefore providing the Board with this additional information and hope that you will consider it carefully as you make your determination.

“The Spirit of the Ordinance”

At the March 10, 1981 Town Meeting the residents of Wilton voted 408-198 in favor of entirely rewriting the zoning ordinance for the Industrial District. The revision process was requested by petition, guided by the sounding board and given the approval of the Planning Board. The Article of the ordinance that was adopted at that time continues to regulate what is and is not allowed in our industrial district and includes the height restriction that is being appealed by Quinn Properties LLC.

In the March 5, 1981 Milford Cabinet and Wilton Journal, Wilton’s sounding board chairman, Dana Packard, in referring to the industrial zone, is quoted as saying, “This article has been rewritten entirely. The recommendations establish standards designed to retain Wilton’s character, insure safe traffic flow, prevent undesirable industry, protect Wilton water sources and encouraging desirable industry.”

A March 19, 1981 Milford Cabinet Wilton Journal piece references "the newly created industrial zone" and Planning Board chairman Ed Bushey is quoted as saying, "The planning board and the sounding board are making a real effort to stay ahead of the problems which the town could be faced with in the future.”

Clearly, almost 40 years ago the good people of Wilton, including the members of their planning board and sounding board, took their power and responsibility seriously as they thoughtfully crafted and adopted, in a 2-1 vote, a zoning ordinance that they believed would promote the health, safety and general welfare of our community by preventing undesirable industry, protecting our natural resources and preserving the character of Wilton for many years to come.

In addition, although the town has reviewed and changed many articles of its zoning ordinance since 1981, including amending the permitted uses in the industrial district to include commercial uses, they have steadfastly maintained the restriction on height for structures in the district, thus solidifying their commitment to the standards that were adopted in 1981.

The Wilton Economic Development Committee reached the same conclusion. Based on their survey at the voting exit polls they conclude “an asphalt plant at the proposed location or any other location, is not aligned with the desire of most residents or appropriate for our roadways and bridges, or in keeping with the protection of our natural resources.” They also say that an asphalt plant “could actually put at risk the future businesses and services our residents have told us they want.”

It is feared that granting this variance would be the beginning of our slide down the slippery slope of allowing large polluting industries to set up shop in our town, thus forever changing the character of the town and endangering the health of its residents. The small batch asphalt plant in Amherst, that is shown in the video, is confined to a 4 acre space. B-10 is a 65 acre lot. Quinn Properties LLC owns an additional abutting 33 acres. New Spartan Properties LLC, which shares an address with Quinn Properties LLC, controls 44 acres that abut B-10 to the north in Lyndeborough. If these properties were to be used together they would allow for a very large operation indeed. If Granite State were to merge with the Quinn Properties, there would be even more space for this petroleum based industry to expand in our midst.

At the present time, there are no industries in Wilton that produce a sufficient amount of pollution to require them to report to the EPA through the TRI program. In contrast, Milford, which did not adopt a height restriction for their industrial district until 2005, has 7 TRI reporting industries. It seems that the height restriction that has been in place in our town since 1981 is serving its intended purpose of keeping out “undesirable industries” that have managed to make their way into some of our neighboring towns.

#### “Substantial Justice is Done”

Since a variance was granted for lot B-10 in 1988 the property has changed hands three times. It was sold to New Spartan Properties LLC in February of 2003, sold again to Quinn Trust, Thomas M. on February 14, 2018 and then sold a third time to Quinn Properties LLC, on February 14, 2018.

When Quinn Properties LLC purchased lot B-10 in 2018 to use the property for a nonconforming use, the town’s zoning ordinance restricting the height of structures in the industrial district to 45 feet had been in place for almost 37 years. At the time of purchase, it was possible to search public records and on-line archives to determine that the town had, in fact, put the ordinance in place, including the height restriction, as a means of retaining Wilton’s character, ensuring safe traffic flow, preventing undesirable industry, protecting Wilton’s water sources and encouraging desirable industry - not because of the capacity of the town’s fire equipment, as asserted in Quinn Property LLC’s 6/21/19 application.

When Quinn Properties LLC references the fact that a variance to the height restriction was granted in 1988 as evidence that it would do substantial justice to grant it again, it seems that

they are suggesting that if a variance is granted and then abandoned it naturally follows that it should be granted at any future time that a property owner decides it is convenient to have that variance. The possible implications of this assumption are concerning. If that were the case then there would be no reason for unexercised variances to expire. It would also mean that property owners would be wise to proactively seek all sorts of variances for their properties so that at any time in the future, when an owner of that property might want to have that variance on the property, it would simply be a matter of re-applying and reminding the board that it was granted once before.

As to the past and current owners of lot B-10, Quinn Brother's Corp. had over a decade after they abandoned the variance for lot B-10 to petition the town to amend the zoning ordinance by a vote at a town meeting. New Spartan Properties LLC had over 15 years and Quinn Properties LLC has had over a year to do the same. This course of action was, in fact, suggested to Quinn Brother's Corp. by Thomas Mitchell and Arlene Laurenitis at Wilton's December 28, 1988 ZBA hearing. It is quite possible to have the zoning ordinances amended in Wilton, as evidenced by the fact that since 1981 the town has amended the zoning ordinance that governs the industrial district no less than seven times. It is interesting to note that in each of these instances the town left the height restriction in place, thus re-affirming their commitment to it.

It is neither just nor reasonable to expect the residents of Wilton to grant waivers to their zoning laws each time a property owner decides, after they purchase, that they shouldn't need to adhere to the zoning restrictions that they knew existed on their property at the time of purchase. It is also not just or reasonable to ask the residents of Wilton to grant variances whenever a property owner decides, after they purchase, that conditions known to them at the time of purchase make it unsuitable for their needs, or make it harder for them to operate a more lucrative business on the property. If this were the case then it would be difficult to enforce any of our zoning ordinances. In addition, having a variance that expired almost 30 years ago does not justify the granting of one now and the past three owners of lot B-10 have had ample opportunity to avail themselves of the the process open to everyone to ask the town to amend the town's zoning laws, but they have failed to do so.

“Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship”

The State's guidance to zoning boards of adjustment states that “When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist.” The height restriction in our industrial district is applied equally to all of the property owners in the district. A virtual exploration of the district conducted via USDA Soil Maps, New Hampshire's Contour Maps, NH Property Maps and Google Maps, suggests that B-10 is very similar or almost identical in topography, soil type and visually to B-11, which belongs to Granite State. We again refer our ZBA to State guidance that says, “Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed.” As it is highly unlikely that lot B-10 is so different from properties in the district as to make the height

restriction any more of a hardship for Quinn Properties LLC than it is for other property owners in the district, it is doubtful that Quinn Properties LLC faces an unnecessary hardship in this case.

As for Quinn Properties LLC's concerns about the changing markets and reduced demand for the product, of their current non conforming use, it is doubtful that Quinn Properties LLC was unaware of these market conditions when they purchased the property in February of 2018 and it is unlikely that there are no other possible viable uses for their property since, according to their June, 2019 application, there is currently a nonconforming sand and stone extraction operation on the property.

"The variance will not be contrary to the public interest"

It is surprising that Bill Belanger, salesman for the asphalt plant, was able to say at the 1988 ZBA hearing that "to his knowledge there have been no explosions or fires involving this equipment". A Google search of asphalt plant fires/explosions in the US in the past 5 years found 31 newsworthy events while a Google search for fires/explosions at construction aggregates facilities found 3. The construction aggregates industry reports 10,000 operations while it is reported that there are about 3,500 asphalt mix production sites operating across the United States. This strongly suggests that asphalt mix operations are at least 31 times more likely to experience a newsworthy fire/explosion event than operations that quarry and process stone, sand and gravel.

According to the Asphalt Chemical Data sheet from United States Oceanic and Atmospheric Administration's CAMEO database of hazardous materials: "These products have a very low flash point and if a tank, rail car or tank truck is involved in a fire it should be isolated for 1/2 mile in all directions". When combating an asphalt fire, unmanned hose holders are to be used and the containers must be cooled with "flooding quantities of water until well after the fire is out". They go on to state: "for a massive fire, use unmanned hose holders or monitor nozzles; if this is impossible, withdraw from the area and let the fire burn." We wonder how long and how far the fire would go on for if the "let the fire burn" option had to be taken. We are also wondering if our town's emergency responders have the capacity to evacuate areas 1/2 mile in all directions while also combating a dangerous and potentially explosive situation.

Contrary to what Quinn properties asserted in their 6/21/2019 variance application, operating an asphalt batch plant should not be considered "an extension of the existing sand and stone extraction operation." It is an entirely different industry - one of the "undesirable industries" that the residents of Wilton have been guarding against with their zoning ordinances, since 1981. The North American Industry Classification System (NAICS) code for asphalt mixing is 324121. This is a petroleum industry code not a quarrying and mining industry code.

All of the industries in the NAICS 324 Petroleum & Coal Products code are covered by the EPA's Toxics Release Inventory (TRI program). "TRI is a publicly available database that contains

information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as federal facilities. (United States Department of Health and Human Services). The TRI program requires facilities in certain industries which manufacture, process, or use significant amounts of toxic chemicals, to report annually on their releases of these chemicals. The reports contain information about the types and amounts of toxic chemicals that are released each year to the air, water, land and by underground injection, as well as information on the quantities of toxic chemicals sent to other facilities for further waste management.” (United States Department of Health and Human Services). Although smaller asphalt mixing plants don’t have to complete TRI reports for the EPA due to their size, they are still engaging in an industry that is known to release toxins into the environment but, owing to their smaller size, are regulated at the state level.

Three New England asphalt plants that are large enough to have TRI reports (Pike Williston, VT; Pike Wells, ME; Pike Hooksett, NH) report releases of the of the following: POLYCYCLIC AROMATIC COMPOUNDS (more specifically polycyclic aromatic hydrocarbons), BENZO(G,H,I)PERYLENE and LEAD. In addition, there are a host of other EPA documented emissions from “typical batch mix” operations, including from storage tanks, dryer, screens and mixer and load-out that are too numerous to list here but are listed in the written documentation that we are submitting to the Board. Perhaps even more concerning is the fact that the asphalt industry has recently begun experimenting with using a variety of waste products, such as shredded plastics, printer toner and incinerator waste as “filler” so there is really no telling what might be trucked in and cooked up on the site.

The December 28, 1988 minutes record the testimony of Bill Belanger as he cited Wells Maine as an example of “this plant” as follows: “does not believe that it would have been approved by that town if it did not meet all criteria for public and environmental safety.” The past ten years of the EPA’s TRI reports from Wells Maine note 32 pounds of Polycyclic Aromatic Compounds released from 2009-2018 and one pound of lead transferred off site from the plant. Bill Belanger also testified to the ZBA that, “what comes from the stack is basically steam”. If POLYCYCLIC AROMATIC COMPOUNDS were “basically steam” they would not be regulated by the EPA.

The World Health Organization has this to say about BENZO(G,H,I)PERYLENE:

“Upon heating, toxic fumes are formed.”

“This produces toxic fumes”

“This substance may be hazardous to the environment.”

“Special attention should be given to air quality and water quality.”

“Do NOT let this chemical enter the environment.”

“The substance can be absorbed into the body by inhalation of its aerosol and through the skin.”

“ Evaporation at 20°C is negligible; a harmful concentration of airborne particles can, however, be reached quickly.”

The NIH has this to say about POLYCYCLIC AROMATIC COMPOUNDS:

Non-cancer health effects associated with exposure to PAH mixtures include skin dermatitis, respiratory diseases (emphysema), impaired immune system function, decreased fertility, and

adverse birth outcomes (reduced birth weight, altered growth and development). Multiple studies have reported an increased risk of cancer in occupations with exposure to PAH mixtures, such as aluminum production, chimney sweeping, coal gasification, coal-tar distillation, coke production, iron and steel founding, paving and roofing with coal tar pitch. Lung and skin cancer were the primary cancers observed, but there is also evidence of increased risk for bladder, mouth and throat, and blood cancers.

As for lead: according to the World Health Organization, “There is no known level of lead exposure that is considered safe.”

The New Hampshire Rivers Management and Protection Program came into effect June 29, 1988. The Souhegan River is protected under this program and the Stony Brook is considered a ‘major tributary’ of the Souhegan. The possibility of this plant brings with it concerns about potential nonpoint source pollution for our region’s water resources. Are we really going to grant a variance that will allow an industry like this to bring potential toxic run-off to our Stony Brook and to allow trucks, laden with hazards, to drive right over and alongside a major tributary of the protected Souhegan?

Although we consider freedom from fear of fires and explosions, clean, safe air and unpolluted water of primary importance, we are also concerned about other factors such as noise pollution. When providing evidence for both appeals in 1988 and 2019 Quinn representatives offered assurances such as “no noise to speak of” and “you can stand next to the unit and conduct normal voice conversations.” From a distance of about 220 feet from an asphalt plant in Amherst NH, which has been said by the applicant to be similar to the proposed plant, a one minute sound sample averaged 85dB. One of the ‘pops’ from the plant measured at 90dB. Normal household conversation is in the 50 dB range. The quarrying operations currently operating in our industrial district as a grandfathered nonconforming use are easily heard from up to ¾ of a mile away. It is hard to imagine that the noise from the proposed operation could go unnoticed.

Road hazards will also increase if this variance is granted. Propane and reclaimed asphalt will be trucked in and product trucked out. Huge trucks will be traveling over and next to regionally protected waterways on small bridges and narrow, winding roads on their way in and out of town. This is an environmental disaster waiting to happen. Unfortunately, because B-10 is owned by an LLC it is not clear who would be responsible for paying for environmental cleanup or fire/explosion damages if any were to occur.

“The values of surrounding properties are not diminished”

It stands to reason that there will be some loss of property values in the two mile radius surrounding the proposed asphalt plant and that there would thus be a corresponding loss of tax revenue for the town. This is a risk the town should not take lightly and it would be another reason to deny the requested variance.

Sincerely,

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Anthony Graham, 608 Abbot Hill Road

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Marilyn Jonas, 27 Fairfield Lane

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Dodie Finlayson

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Richard Khan