

Statement of Richard J. Gifford, 2357 W Old State Rd

Guilderland Town Board Meeting, August 16, 2022

Good evening Mr. Barber and members of the Board.

My name is Rich Gifford. I live in the northwest corner of the Town at 2357 West Old State Road.

I am a lifelong resident and have lived in my home for 39 years. I grew up just down the road. My home is on the National Registry of Historic Places.

I am here tonight on behalf of my neighbor and myself to ask for the Board's help.

Before saying anything more, I want to share with you that a number of people advised me that I should butter you up, that if I said anything of a critical nature, you would be defensive and not hear our concerns.

I don't believe that. I believe you will listen with an open mind.

We also know that working in public service is not easy. It can be very rewarding and, at times, very thankless.

Last November, we came to the Town with a concern.

The concern was the commercial dumping of over 5,000 cubic yards of tree waste material from off-site locations on open pastureland adjacent to our properties. The dumping violated Town ordinances. It also disrupted the natural drainage system, covered wetlands identified on the National Wetlands Inventory, caused groundwater backup on our properties, created a fire hazard, and created an environment for rodent infestation.

Mr. Barber and other Town officials were copied on a December 21, 2021 package of information detailing our concerns, and a January 9, 2022 follow-up.

The Town was responsive initially. However, after about three weeks of dialogue, the Town issued a directive telling us that our emails were taxing the Town's resources, that the Town considered our concerns to have been addressed sufficiently, and that any further communication should go to the Town Attorney. From that point onward, the flow of information pretty much

stopped.

With the help of an intermediary and after three and a half months of trying, we were able to get a meeting with the Town. At the meeting, the Town did not dispute that the dumping was a code violation and advised us as to the evidence it would need to pursue it. The Town also revealed the operator's claim that the waste material came from clearing trees on the site. As I mentioned, this was an open pasture. There were no trees to clear, as shown on the aerial photographs I will leave with you.

Pursuant to the Town's request, we have provided substantial evidence. The Town has not disputed it. Last May, we learned that the Town Attorney had recommended that the Town send a letter to the operator warning against the transport and dumping of waste material from off-site.

Over the last eight weeks we have sent four email messages asking about the status of that recommendation. The Town has not replied. We simply cannot get an answer. The Town's silence is depriving us of critical information we need to participate in the avenues available to us.

The absence of an answer has also raised a second concern.

The operator has recently submitted an application for a Special Use Permit. This comes nine months after first being told to do so by the Town and after being cited recently for operating without a permit back to December 1, 2021. The Town has allowed operation nonetheless. Continued operation as currently allowed perpetuates the negative impacts I described at the start.

Mr. Barber, members of the Board, we would appreciate your helping us get answers to our questions and responses to our concerns. Many other questions have gone unanswered as well.

I am leaving a hard copy with additional information to be included in the minutes of the meeting. Thank you.

August 29, 2022

Mr. Thomas Remmert, Chairman, Town of Guilderland Zoning Board of Appeals

Mr. Stephen Feeney, Chairman, Town of Guilderland Planning Board

Guilderland Town Hall

5209 Western Turnpike

Guilderland, NY 12084

Dear Messrs. Remmert and Feeney:

We are writing in regard to the Special Use Permit (SUP) application filed by KT Tree Services (KT) on August 5, 2022. Each of you were copied on a December 21, 2021 email which detailed our concerns with KT's commercial dumping of waste material from off-site and creation of a waste material dump adjacent to our properties. The dump, comprised of over 5,000 cubic yards of waste material, has disrupted the natural drainage system, covered wetlands identified on the National Wetlands Inventory, caused surface and groundwater backup on our properties, created a fire hazard, and established an environment for rodent infestation. We therefore request permanent cessation of all dumping and complete remediation of the site and removal of all waste material dumped in violation of Town codes before review of this SUP.

The Town directed KT to file for a SUP last December. The Town has since allowed KT to operate without meaningful constraint and in violation of Town ordinances, including most recently when it issued a Letter of Violation - Order to Remedy (June 14, 2022) followed by Appearance Tickets (July 18, 2022 and July 29, 2022) for operating a tree service company without obtaining a SUP. The Town has not acted to curtail the illegal operation in any meaningful way.

Three issues regarding the SUP application require immediate attention before the onset of the review process. They bear directly on the ability of the oversight bodies to carry out their responsibilities. The ability of the Zoning Board, Planning Board and other oversight bodies to fairly and objectively perform their duties depends on the quality of information provided by an applicant. These bodies cannot function without accurate information in the first instance.

The first issue is the critical error of fact that appears on the first page of the Short Environmental Assessment Form. In response to the question asking the amount of land to be disturbed, the answer given is 0.0 acres. This is false and misleading, a fiction. The disturbed area is substantial – approximately an acre – as can be documented by DEC's site investigation, Google Earth photos, and the Town's May 4, 2022 site visit. The applicant cannot claim zero land disturbance on land that has already been disturbed in a massive way. In other words, "the disturbance clock" cannot start as of the filing of the application. The Town has allowed KT to create a dump, and the result is available for the world to see. The current size of the dump

is already in violation of the proposed SUP site plan. This application misrepresents the critical element of land disturbance and continues the pattern of deception which has been on display over the last 10 months.

The Town cannot, on the one hand, allow massive commercial dumping for over 10 months, and then on the other, pretend that no further disturbance on already-disturbed land is a net zero.

How does the Town deal with a critical error of fact in a SUP application? Shouldn't the application be returned for correction and resubmission? Alternatively, if the clock starts at the time of filing, the land must be remediated and restored to its original state so that all the review bodies are looking at a clean slate. As is, this application's presentation regarding disturbance to the land is fundamentally flawed. How does the Town propose to address this issue?

The second issue is as follows: KT is currently under investigation by the United States Army Corps of Engineers (USACE) for potential violation of the Clean Water Act. The Town has enabled the potential violation through its inaction. Depending on the outcome, KT could be ordered to cease and desist from all dumping, and to remediate and restore the polluted area to its original condition. This would invalidate the proposed site plan provided as part of the SUP application. The oversight bodies would be looking at a site plan that has no future. How does the Town propose to address this issue?

The third issue relates to the area of disturbed land. Using the April 22, 2022 Google Earth aerial imagery, the area covered by the waste material appears to be one acre. Our understanding is that any disturbance of one acre or more requires DEC involvement regarding stormwater issues. How does the Town propose to address this issue?

We will be providing written comments on the entirety of the SUP application. We have asked for a timeline showing the milestones in the SUP review process, but the Town has not responded. We look forward to your earliest reply regarding the three pressing issues described above and our request for the SUP review process timeline.

Thank you.

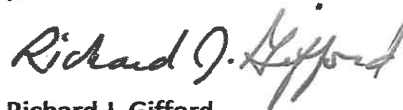


Dwight Sickler

2369 W Old State Rd

Schenectady, NY 12306

Sincerely,



Richard J. Gifford

2357 W Old State Rd

Schenectady, NY 12306

cc: Guilderland Town Board, Albany County Planning Board, NYS Dept of Environmental Conservation, NYS Dept of State, Guilderland Coalition for Responsible Growth

September 7, 2022

To: Town of Guilderland Planning Board
From: Richard J. Gifford 2357 W Old State Rd Schenectady, NY 12306
Subject: KT Tree Services Special Use Permit Proposed Site Plan

Recommendation: The Planning Board should: 1) undertake an in-depth review of the property with the assistance of the Town Engineer and other technical experts as needed; 2) suspend its consideration of the site plan until the outcome of the US Army Corps of Engineers investigation into potential Clean Water Act violations is known; and 3) order a permanent cessation of dumping, removal of the existing waste material, and remediation and restoral of the natural landscape and contours before further consideration of the proposed site plan.

Background

The site plan before the Planning Board is unusual in that it is after-the-fact. KT Tree Services (KT) has been operating for well over a year. Although the Town directed KT to file for a Special Use Permit (SUP) in December 2021, it has allowed KT to operate with no constraints. KT only filed for the SUP after being served an appearance ticket for operation without obtaining the required permit. My neighbor, Dwight Sickler, and I filed initial comments on the SUP application and site plan by letter dated August 29, 2022. These comments on the site plan expand on those initial comments.

The site plan does not reflect reality.

Although a document filed as a site "plan" is by definition future-oriented, the real site plan and placement of uses is already on display. The placement of activities presented in the proposed site plan do not reflect the reality on the ground, which is immediately apparent with a site visit. The proposed site plan does not provide the Planning Board with an accurate picture on which to make an informed decision.

The primary area of concern lies in the northeast corner, an area of approximately 1.5 acres abutting my and my neighbor's northern property lines, where KT has established a commercial dump. Over 5,000 cubic yards of waste material has been dumped, spread out, compacted, and buried. The dumping has disrupted the natural drainage system, covered wetlands identified on the National Wetlands Inventory, caused surface and groundwater backup on our properties, created a fire hazard, and established an environment for rodent infestation.

The current area of the dump is approximately an acre. This is about twice the size of the area identified for "Log Processing" on the site plan. The Log Processing area is shown as a rectangle measuring 150' x 125' -- about .40 acres. The actual size of the area on which logs, branches, brush and wood chips are currently dumped is approximately one acre. It extends well beyond the outline shown on the site plan in an irregular shape in all directions. This includes a row of logs stacked immediately against our northern property lines, approximately 150' long and 15' wide, separate and apart from the designated area.

KT is already in violation of the proposed site plan.

KT is already in violation of the proposed site plan based on the misleading outline of the Log Processing area, as well as other features that will be covered in the following pages. The site plan should be returned for correction and possible reconsideration. Alternatively, if the site plan were to be accepted as presented, the Planning Board should order immediate removal of the waste material, remediation of the disturbed land, and restoral of the original contours so that the natural drainage may resume, and thus bring the placement of uses into compliance with the proposed site plan.

The "Log Processing" area should be relocated.

The actual location of the Log Processing area could not be worse. It is sandwiched between wetlands and should be relocated. More than ample, open and hardpacked space is available at multiple locations elsewhere on the 12-plus acre property that does not threaten wetlands and neighboring properties. Relocation would also facilitate effective compliance monitoring going forward, should a SUP be granted, which is a necessity given the applicant's history and the Town's acknowledgement that KT's dumping of waste material from off-site locations is a code violation. Hiding it out of sight serves no good purpose.

The site plan includes inaccuracies and omits critical information.

The site plan omits identification of a trench approximately four feet wide and running several hundred feet from Route 158 to the east along the northern border of the residence. This trench appeared over the past few months and runs well into the wetlands identified on the National Wetlands Inventory. What is its purpose? The site plan should be amended to show the trench, and its function should be explained fully.

The Project Narrative includes only one brief reference to the 5,000 cubic yards of wood chips that have been dumped, dispersed, compressed and buried to an average depth of 3' across an area approximately one acre in size. This reference is under "Wood Product Storage," and it states that "This will be the area for wood chip storage & log storage for future proessing." However, the site plan omits any reference to space identified for "wood chip storage." It cannot occupy the same space as the Log Processing area since it already encompasses an acre of disturbed land. Moreover, the suggestion that wood chips are being stored for future processing is farfetched based on the facts evident from the past many months. This is waste material, pure and simple, transported from off-site and dumped on Town lands in violation of the Town Code. None of it has left the property. If it were really being "stored for future processing," it would not be dumped, spread out, compacted, and buried.

Final consideration of the site plan should be suspended until the outcome of the US Army Corps Of Engineers (USACE) Investigation Is Known.

Wetlands on the property are under the jurisdiction of the USACE. After a site investigation in July 2022, the USACE launched an investigation into potential violation of the Clean Water Act. The outcome of the investigation could result in a cease and desist order, and an order to cease all dumping, remove all waste material, and remediate and restore the land to its original contours. Such an order would make the proposed site plan moot and require a replacement for the Planning Board's consideration.

The site plan conflicts with the stated purpose of RA3 Districts, as well as several criteria for site plan approval, and should be disapproved pending the receipt of additional information and correction as needed.

The existing placement of land use activities, as well as their proposed placement as depicted on the site plan, are inconsistent with, and conflict with the stated purpose of the RA3 District and evaluative criteria for special use site plan review and approval.

280-11. Rural Agricultural (RA3, RA5) Districts

A. Purposes (excerpts). ***"ensure an economic and physical environment for agricultural use of land" "support low-impact development and land uses that protect natural resources" "promote the maintenance of the natural landscape"***

The existing placement of uses, as well as the proposed placements depicted on the proposed site plan, eliminate agricultural use of the land, destroy natural resources, and pollute and disfigure the natural landscape.

280-52 Special use permit review

A. Purpose "The purpose of the special use permit review is to consider ***the proper placement of uses*** in the community and zoning district ***that are only suitable in such locations under appropriate conditions. Special uses require consideration*** of factors ***so that they are properly located*** consistent with the objectives of this chapter ***and are not detrimental to neighboring properties.***"

The existing placement of uses, as well as the proposed placements depicted in the proposed site plan, are detrimental to neighboring properties, as described earlier.

C. Site plan review by Planning Board.

(2)(c) ***"The effect of the proposed use on the other properties in the neighborhood, and whether it will materially affect the value of such properties and the use and enjoyment of such properties by the occupants and other effects of such use on the health, welfare and safety of the occupants of such properties."***

The establishment of a tree waste dump adjacent to our properties on what was an open pasture has devalued our properties and has detracted dramatically from the enjoyment of those properties.

280-53 Site plan approval.

A. Purpose (excerpt). ***"determine that a proposed development...does not adversely impact adjacent land uses or the health, safety or general welfare of the community."***

The dump established by KT adversely impacts our properties. A wide swathe of waste material approximately 200' long x 25' wide x 3' deep has been dumped and compressed directly against our property lines. The dumping has created a dam that has disrupted the natural drainage gradient causing standing water, ponding and backup where it never before existed, and rendering large portions of our properties unuseable. The compressed waste material has created an environment for rodent infestation. My neighbor has had rats on his premises for the first time.

E. Application for site plan approval.

(5) A site plan including the following information:

(f) ***"Existing natural features, including wooded/vegetated areas, trees with a diameter greater than 12 inches, watercourses, wetlands, drainage patterns..."***

The site plan omits identification of trees with a diameter of 12 inches or more growing to the west of my property line. The site plan does not show drainage patterns such as the pond that drains from the Olochowicz property at the furthestmost southeast corner.

(h) Location of all existing or proposed site improvements, including:

The site plan does not show a large trench approximately 4' wide excavated to the north of the residence and extending several hundred feet back to the east from Route 158, into the wetlands shown on the National Wetlands Inventory. What is its purpose?

H. Factors for consideration.

(1) The Planning Board's review of an application for site plan approval shall include, but is not limited to, the following considerations:

(i) *"Adequacy of provisions for the control of stormwater and drainage..."*

The waste material dam at the north end of our properties has destroyed the natural gradient and caused surface and ground water backup. The site plan does not include provisions for control of this disruption. The remedy is permanent cessation of dumping, removal of the waste material, and remediation and restoral of the original contours.

(j) *"Protection of adjacent properties against noise, glare unsightliness or other objectionable features."*

A dump has been created on what was once a clear pasture at the end of our properties.

(k) *"Retention of existing trees and vegetation for protection and control of soil erosion, drainage, natural beauty and unusual or valuable ecology, and whether impacts to sensitive environmental areas have been avoided or minimized to the maximum extent practicable."*

NO EFFORTS HAVE BEEN MADE TO AVOID OR MINIMIZE ENVIRONMENTAL IMPACTS. The dump has obliterated a clear pasture, covered wetlands, and suffocated vegetation and wildlife over approximately one acre.

September 14, 2022

Good evening Mr. Feeney and Planning Board members.

My name is Rich Gifford. I live at 2357 West Old State Road. I am a life-long resident of the Town and have lived in my home for 39 years. I grew up just down the road. My home is on the State and National Registries of Historic Places.

My and Mr. Dwight Sickler's northern property lines abut the land KT Tree Services is leasing. The applicant has transported from off-site and dumped over 5,000 cubic yards of tree waste material on open pasture adjacent to our properties. The dumping violates Town ordinances. It has also disrupted the natural drainage system, covered wetlands identified on the National Wetlands Inventory, caused surface and groundwater backup on our properties, created a fire hazard, and created an environment for rodent infestation.

I have submitted two sets of written comments on the proposed site plan and appreciate the opportunity to comment here tonite.

Before I say another word, I want to acknowledge the responsiveness and professionalism of Town Planner Ken Kovalchik. He never once told me I was taxing the resources of his department with my questions. He has replied to our emails promptly and thoroughly. He is a credit to the Planning Board and its mission.

You have Mr. Sickler's and my written comments. I will touch on a few of the most important points in a moment.

Before I do, however, I want to cut through the information you have been given and share with you briefly some very important milestones as background.

On November 24, 2021, the Town reported to us that KT Tree Services said it wouldn't dump, that it would clean out where the wetlands were, and that it was only cleaning up what Knightes had left behind.

On December 3, 2021, the Town reported to us that KT claimed it was only doing what Knightes had been doing. Knightes Farm Machinery sold garden tractors and chainsaws. KT Tree Services cut down trees and dumped 5,000 cubic yards of waste material on Town lands.

On December 7, 2021 the Town told us quote "He has been told not to dump. And especially not to dump in wetland areas." unquote.

On December 10, 2021 -- three days later, I emailed the Town with a supporting photo showing freshly dumped material on new-fallen snow saying quote "I just heard the dump box crash down and saw a truck speed away from the dumping area." unquote.

On December 8, 2021 the applicant appeared at my door. Among other things, he told me quote "I am all legal with DEC and everything like that." unquote. DEC had not yet visited the site and would not get there until March of 2022.

In response to my question as to how high the waste material was going to get, the applicant told me, quote "Wood chips turn to peat moss in five to eight years." unquote.

At an April 13, 2022 meeting, the Town shocked us when it revealed that the applicant claimed that the 5,000 cubic yards of waste material had come from clearing trees on the property. Google Earth images we brought to the meeting showed clearly an open pasture with no trees to clear. The Town's own staff commented that there was no way that waste material came from tree clearing.

Also at the April 13th meeting, the Town told us that the applicant assured it that all dumping had stopped the week before. Nine days later, an April 22nd photograph I shared with the Town shows a full truckload being dumped.

A June 30th letter to me from US Congressman Paul Tonko includes a statement attributed to the landowner which reads quote "In the interim, the landowner has not put out any materials since March." unquote. We have supplied the Town with several photos and video showing repeated dumping long after that.

Last, despite being directed by the Town to obtain a Special Use Permit in

December 2021, the applicant only filed after being cited for a code violation and served with an appearance ticket.

I share these data points with you to underscore a consistent pattern of misinformation from the applicant that colors everything you have seen and heard. Before relying on anything presented to you, I urge you to subject it to careful examination and verification. Please do not take anything at face value.

With that background as the lens through which the proposed site plan should be viewed, I will offer a few comments.

First, I thought Mr. Kovalchik's September 8th memo was excellent.

Page two sets forth the Home Occupation II Requirements. One of them calls for a quote "minimum twenty-foot side yard setback and a minimum twenty-foot rear yard setback" unquote for storage of materials. The applicant has dumped a swathe of waste material comprised of wood chips, logs, branches, brush and vegetable matter approximately 200 feet long, 25 feet wide, and 3 feet deep directly against our northern property lines. This appears to violate the setback requirements.

Page three references a suggestion from the Stormwater Coordinator to remove the wood chips to allow an unobstructed flow of water. We endorse this suggestion in the strongest way possible.

Page three references a question to DEC about whether wood chips are considered an impervious surface. That question may not get to a related issue which is the decomposition of the wood chips and whether that material is impervious, especially at lower depths where the flow of stormwater might be prevented. Peat moss, for example, absorbs water but once saturated, becomes impervious -- lowly permeable and comparable to that of very fine and silty sand, according to one source. Also, peat moss is said to dry to an impervious, water-shedding surface.

Page three includes reference to the ongoing Army Corps of Engineers investigation. It states quote "an adjacent property owner submitted a

complaint to the ACOE alleging violations of the Clean Water Act." unquote. This might be shaving things too closely, but I'm pretty sure that property owner is me, and I only contacted the ACOE to describe what was happening. It was the ACOE that cited the Clean Water Act, not me.

Page three recommends updating the site plan to reflect the entire area being use for log processing. This is a necessity, since a long row of logs has been laid out directly against, and in some cases over, our northern property lines.

Page four hits on a critically important issue. It states quote "The applicant should clarify whether the wood chips are being used for resale use or as a surface for driving vehicles over." unquote. This goes directly to the past pattern of misinformation. There is no way that one acre of woods chips are being stored for resale. They have been dumped, spread out, compressed, mixed and buried with other waste material. Contamination resulting from decomposition cannot have been avoided. The applicant himself told me the wood chips turn to peat moss in five to eight years, so that sure doesn't sound like resale to me. And if resale were intended, wouldn't wood chips be piled for easy loader access? These wood chips are waste material transported from off-site job locations and dumped by KT for its convenience on Town lands in violation of the Town's Code.

Before closing, I want to highlight a few of the points from my September 7th memo.

I will start at the very end. There, I referenced one of the factors for consideration in a site plan review quote "Retention of existing trees and vegetation for protection and control of soil erosion, drainage, natural beauty and unusual or valuable ecology, and whether impacts to sensitive environmental areas have been avoided or minimized to the maximum extent practicable." unquote. Let's be very clear: **NO EFFORTS HAVE BEEN MADE BY THE APPLICANT TO AVOID OR MINIMIZE ENVIRONMENTAL IMPACTS.** Five thousand cubic yards of waste material have been dumped. The dump has obliterated a clear pasture, covered wetlands, and suffocated vegetation and wildlife.

The site plan does not reflect reality. The area being used as a wood chip dump and log storage area is approximately an acre in size. The proposed site plan depicts it as a neat rectangle of about four-tenths of an acre. Reality and the fiction of the proposed site plan have to be reconciled. The disturbed area has to be remediated and restored to be consistent with the proposed site plan, or the proposed site plan itself should be revised to show what is really going on. Right now, the applicant is already in violation of the proposed site plan.

The Log Processing area should be relocated. The proposed location could not be worse. It is sandwiched between wetlands. More than ample, open, hardpacked space is available at multiple locations elsewhere on the property that does not threaten wetlands and neighboring properties. Relocation would also facilitate effective compliance monitoring going forward, should a Special Use Permit be granted, which is very desirable given the applicant's history and the Town's acknowledgement that the dumping of waste material from off-site is a code violation. Hiding it out of sight serves no good purpose.

I urge the Planning Board to adopt the following recommendations: 1) undertake an in-depth review of the property with the assistance of the Town Engineer and other technical experts as needed; 2) suspend its consideration of the site plan until the outcome of the US Army Corps of Engineers investigation into potential Clean Water Act violations is known; and 3) order a permanent cessation of dumping, removal of the existing waste material, and remediation and restoral of the natural landscape and contours before further consideration of the proposed site plan.

Thank you for the opportunity to comment.

Statement of Richard J. Gifford 2357 W Old State Rd
Guilderland Town Board Meeting September 20, 2022

Good evening Mr. Barber. You know who I am. For the record, I am Robyn Gray.

I am here on behalf of Mr. Richard Gifford, who could not be present tonight. He has the following comments.

Good evening Mr. Barber.

I have four issues to discuss with you tonight.

Issue One

I appeared at the August 16th Town Board Meeting to ask for your help. I am still asking. It was somewhat embarrassing. Despite four email requests dating back to June, I could not get an answer from the Town Attorney to one simple question on a very important matter.

Let me refresh your memory.

In explaining why a business that was operating without a required special use permit was not a code violation, the Chief Building and Zoning Inspector advised us that since there was no special use permit in place, there was nothing to hold the business accountable to other than those ordinances that apply to all residents, for example, the noise ordinance. Operation without the required permit did not rise to the level of a code violation. As it turned out, that interpretation was turned on its head when the Town cited the business in question for operating without a special use permit just last month.

My neighbor and I embraced her explanation though and countered with the ordinance prohibiting dumping of waste material of any kind on Town lands, an ordinance that likewise applies to all residents.

At an April 13th meeting, the Town acknowledged that the transporting and dumping of waste material from off-site was indeed a code violation when it explained to us the kind of evidence it would need to bring a code enforcement action.

Subsequently, we gave the Town the evidence it asked for, and the Town did not dispute it.

The Town Attorney apparently considered the evidence and the law, and reached the conclusion that violations were ongoing. In a letter dated May 20, 2022 from the intermediary who was trying to assist us, we were advised, and I quote, "Interestingly, I was recently advised by Town Attorney Melita that he had recommended that the Town send a letter to KT Tree Services to warn against the transporting and dumping of materials from offsite locations." This is a pivotal recommendation.

I have now asked on five occasions what the status of that recommendation and letter is. The answer is critically important to my neighbor and me, and the Town's refusal to provide it is denying us due process. The Town's proverbial lips appear to be sealed. I can't figure out why. Does the Town have something to hide?

When the special use permit application in question was finally filed, a really bad possibility suddenly occurred to me. Among the activities described in the application was the transport of waste material from off site locations to the property. Had the Town decided not to enforce ongoing code violations, as recommended by its own counsel, because doing so would impinge on one facet of the applicant's application? Was the Town really choosing to look the other way for the benefit of a business applicant and to the detriment of the residents who were being harmed by the illegal activity?

Mr. Barber, the Town's silence is unacceptable. The ceo of any organization sets the tone, and you appear to be tone deaf. You can't duck the question and tout the commitment to transparency to which your website devotes the most sincere pronouncements. Responding to legitimate questions from residents should not be a heavy lift. When can I expect a response?

Issue Two

Last week, my neighbor and I attended the September 14 Planning Board meeting that would consider the site plan included as part of the aforementioned special use permit application. What happened demonstrates that the Town only pays lip service to transparency.

Consider the following.

The special use permit and site plan were filed on August 5th. For 39 days, the site plan remained as initially filed. On the 40th day, Town officials made a site visit to the premises which I only discovered by accident. On the 42nd day, just hours before the Planning Board meeting at 7pm, a revised site plan was filed. It included a major change to the very area and activity that was our primary concern. The size of the area nearly doubled, growing from four tenths of an acre to three quarters of an acre, and the footprint, which had been separated from our property lines, was now directly against them. We did not know about the revision until we saw it projected on the large screen at the meeting. We were the only public commenters. We could have been notified directly with a simple email note, but we were not.

"So what" you say? My neighbor and I dedicated significant time and effort to the review of the original site plan and filed three sets of written comments with several recommendations. The Town Planner provided the Board with an excellent four-page memorandum, replete with a number of important recommendations based on the original site plan. The revised site plan raised new concerns and, moreover, failed to show the twenty foot setback required for storage of materials as set forth in the Home Occupation II requirements. It seems there was a rush to a revision which included a major error. Why?

The Town's conduct surrounding this matter is unacceptable. In the interest of proper notification and to provide a reasonable time for review, the Planning Board should have put the item over to its next meeting. There was obviously no urgency. The Town had allowed the applicant nine months to file for a special use permit before finally compelling it to do so by citing a violation and issuing an appearance ticket. Now for some reason there was a rush. Why?

It gets better. On Monday, the Town admitted to us that the changes to the site plan came at its behest as part of the site visit. The Chairman of the Planning Board that was to consider the site plan for the first time at its Wednesday night meeting, ostensibly without prejudice, asked for changes so that it would then pass muster on the first go-round. Why weren't my neighbor and I afforded the same courtesy? Why weren't we part of the discussion? This scenario violates all norms for openness and good faith engagement.

Issue Three

The conduct of the Planning Board Chairman at the September 14th meeting was

offensive. He interrupted my neighbor's comments and challenged him, entering into a debate that was unseemly, hostile and combative. He allowed the applicant to stand a few feet from my neighbor as he spoke. I wonder if that would have been allowed if we had done the same with the applicant. The Planning Board Chairman advocated for the applicant and seemed bound and determined to dismiss our concerns -- many of the same concerns identified by the Town's own professional staff in the the Town Planner's four page memorandum. The Planning Board Chairman declared that his only interest was in the proper identification and protection of wetlands. When I asked if he had the same interest in protecting our properties from the degradation wrought by the dumping of 5,000 cubic yards of waste material that destroyed the natural contours and blocked the natural drainage, he was silent. He ignored the recommendations of the Town's expert staff. He ignored the many considerations the Planning Board was required to consider as set forth in the Town's Code and as outlined in our memos. And he ignored our primary concern. Only when I pointed out the twenty foot setback requirement did one of the Planning Board members endorse it, but even then its addition to the Planning Board's advisory recommendations does not comport with Code requirement.

The Planning Board Chairman's conduct is particularly ironic when viewed against the Town Board's draft "Rules of Public Conduct and Rules of Procedure for Public Bodies." When the Town Board next revisits its draft rules, it would do well to add a set of rules governing the conduct of its own chairpersons. It should include guidance to keep them in line -- that their role is to listen politely, refrain from interrupting speakers, refrain from advocating for any parties, especially petitioners, and to refrain from debate with residents who come before them. If they can't leave their own personal prejudices at the door, they should relinquish their responsibilities.

The Town Code identifies an ideal forum for discussion and debate of special use permit applications. It is the preapplication conference, a non-binding forum where an applicant and all interested parties can come together and iron out issues in an open and transparent public manner before an application is filed. Though not required, it is recommended for special use permits. On May 6th, my neighbor and I emailed the Chief Building and Zoning Inspector asking the Town to take the lead in arranging such a conference with the applicant. The Chief Building and Zoning Inspector never replied to our request.

Since the September 14 meeting, the Town has assured us that the Planning Board decision and recommendations to the Zoning Board of Appeals is a non-binding advisory opinion only. That means the hard work of the Town's staff in formulating its memo to the Planning Board was a waste of time, effort and taxpayer money. That memo, by the way, includes a suggestion from the Town's Stormwater Coordinator that the thousands of cubic yards of wood chips should be removed to allow for an unobstructed flow of water.

Issue Four

Going forward, I recommend that all Planning Board chairpersons pass a vision test before assuming their duties. I say this because the current incumbent dismissed our assertion that logs were stacked up directly against our property lines in violation of the twenty foot setback requirement. The Chairman was quite puffed up about having visited the site and said he did not see any logs. The next morning, I forwarded three photos to him showing clearly two stacks of logs on the northern and western borders of a size and proportion that one has to work hard to miss. I am leaving you a copy so that you can see what was obvious. A site visit requires a willingness to see what is so, not what you prefer not to see.

To sum up, based on my experience, the Town's processes need substantial improvement. For starters, I have a few modest recommendations for your consideration:

1. The Town should respond to residents questions.
2. The Town should establish a customer service goal that all inquiries will be responded to within 30 days.
3. The Town should treat its residents with courtesty instead of contempt.

Thank you.

October 13, 2022

To: Town of Guilderland Zoning Board of Appeals
From: Richard J. Gifford 2357 W Old State Rd Schenectady, NY 12306
SUBJECT: KT Tree Services 7160 Route 158 Special Use Permit Request No. 4911

Recommendations: The Zoning Board of Appeals should:

1) review the Town Planner's September 8, 2022 Site Plan Review memorandum in its entirety, paying particular attention to recommendations that the Town Engineer become involved, that the woods chips be removed to allow an unobstructed flow of water, that the applicant clarify whether the wood chips are being used for resale or as surface for driving vehicles over, and that trees greater than 12" in diameter be shown on the site plan per Town code requirements;

2) review my September 7, 2022 comments to the Planning Board, paying particular attention to the applicant's past conduct and to 280-53 Site plan approval H. Factors for consideration. (1) The Planning Board's review of an application for site plan approval **shall include**, but is not limited to the following considerations: (i) ***Adequacy of provisions for the control of stormwater and drainage...***"

3) interview the Town attorney regarding his recommendation that the Town send a letter to the applicant warning against the transport and dumping of waste material from off-site locations and why that letter has not been sent, and then provide a written statement to the public as to its status and interplay, if any, with the Special Use Permit application;

4) suspend further consideration of the application pending the outcome of the USACE investigation into potential violations of the Clean Water Act;

5) broaden the Planning Board's recommendation that "No storage of logs should be within 20' of the side or rear property lines." to include not only logs but all waste material being "stored", including wood chips, brush, branches and other waste material, pursuant to the setback requirements cited in Home Occupatiopn II - 280-40.H.4; and

6) undertake an in-depth overall review of the property related to the alteration of the original land contours and disruption of the natural drainage system, with the assistance of the Town Engineer and other technical experts as needed.

General Comment

This is a Special Use Permit application, after-the-fact. The Town has allowed KT Tree Services to operate without conditions since December 1, 2021. In that time, the track record established by the applicant raises serious doubts about conduct going forward, as documented by the Town's Notice of Violation Timeline and by documented misrepresentations to me, the Town and Congressman Paul Tonko. For this reason, should the Zoning Board of Appeals, after further information gathering and consideration, decide to grant a Special Use Permit, it

should do so only after including strict conditions pursuant to its authority and establishing a comprehensive monitoring plan to ensure compliance.

Comments on the Special Use Permit Application

Application

My understanding is that the applicant is leasing the land from the owner of record. Does the Town have a copy of the written authorization by the owner to the applicant authorizing the application? If not, should it? My recollection from inspecting the application materials on August 9, 2022 is that the lease expired July 15, 2022 (subject to check). Does the applicant have a current lease? Should it?

Project Narrative

"Regular Operations will occur from 7 AM to 7 PM each day." KT Tree Services has operated machinery as late as 10:30 pm in the dump area. On weekends, heavy machinery has been heard as early as 7 AM, disrupting otherwise quiet mornings when the roar of Route 158 traffic finally subsides. Use of heavy machinery on weekends should be prohibited.

"Garages, Barn, & Storage Trailer." Several unlicensed vehicles are stored on the property.

"Firewood Processing Area" The process applicable to "incoming wood products" is stated as being limited to splitting firewood "predominantly for heating purposes, but also "to include outgoing firewood deliveries." This description should be fleshed out in greater detail. Is the "predominantly for heating purposes" for the buildings and residence? Is "Log Processing" and "Firewood Processing" one in the same?

"Wood Product Storage" "This will be the area for wood chips storage & log storage for future processing." This brief reference represents the most important aspect of the application from my and my neighbor's perspective. This description is vague and needs a detailed explanation. For what kind of future processing are the wood chips being stored? Based on the past many months of actual experience, this is a smokescreen for permanent dumping. This is the only reference to the 5,000 cubic yards of wood chips that have been dumped, dispersed, compressed and buried to an average depth of 3 feet across an area approximately one acre in size. The site plan omits any reference to space identified for "wood chip storage." The suggestion that wood chips are being "stored" for future processing doesn't hold up. This is waste material, pure and simple, transported from off-site and dumped on Town lands in violation of the Town Code. If it were really being "stored for future processing," it would not be dumped, spread out, compacted and buried. It would be stored in piles for easy loader access. In her August 29, 2022 email to the ACPB, the Chief Building and Zoning Inspector states "The application includes the activity of mulching wood chips stored on site." The Project Narrative makes no reference to mulching, and my understanding is that a mulching facility requires a separate DEC permit. This characterization is not representative of the facts. It does, however, provide the Town's justification on behalf of the applicant for continued dumping. However, according to the Department of State's rules, the

ZBA "may not change legislative rules regulating land use, or change boundaries." Legislative rules translate to a town's code. The Town of Guilderland's Code prohibits the dumping of waste material from off-site locations.

Short Environmental Assessment Form

"3.b. Total acreage to be physically disturbed?" Answer: "0.0 acres" This answer is false. The total acreage that has been physically disturbed is approximately one acre. In her August 29, 2022 email to the ACPB, the Chief Building and Zoning Inspector attributes interpretation on my part as to what "disturbance" is. That is misplaced. I made no such interpretation. I merely picked up the same language used by DEC's Trish Gabriel in her March 9, 2022 email reporting on ECO Swann's site inspection in which she wrote "The **disturbed** area is less than one acre, measuring approximately 125 ft by 175 ft based on ECO Swann's notes..."

"5. Is the proposed action, a. A permitted use under the zoning regulations?" Answer: "Yes" I found no reference to tree removal services in the list of Permitted Uses, Special Uses or Home Occupation "services." "b. Consistent with the adopted comprehensive plan?" Answer: "Yes" Dumping 5,000 cubic yards of waste material is not consistent with "Guilderland's settlement patterns... ..are based on a recognition of, and shared sense of responsibility for the town's natural, agricultural, open space and scenic resources..." (excerpted from the comprehensive plan).

"6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?" Answer: "Yes" In no way is the dumping of 5,000 cubic yards of tree waste material on open pasture land consistent with the natural landscape.

"13.b Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?" Answer: "No" The berm/dam comprised of compressed wood chips at our northern property lines has disrupted the natural drainage pattern, causing ponding and surface and groundwater backup, thereby physically altering the supply of water to the existing wetland.