

**RE: ZBA meeting this evening**

Heather Lewis <hllewis6@hotmail.com>

Wed 2/15/2023 3:53 PM

To: Hopedale Zoning Board <Zoning@hopedale-ma.gov>

Dear Development and Industrial Commission and Zoning Board of Appeals,

*(no email address found for Development and Industrial Commission, please forward to appropriate parties if possible)*

During the Development and Industrial Commission meeting from February 7<sup>th</sup>, on the topic of 75 Plain Street, there was some incorrect information stated (outlined below for reference). As well, it was noted that Commission was asked by the interim Town Administrator to write a letter to the Zoning Board in full support of the project, ahead of this evening's upcoming Zoning Board meeting. However, at this juncture, no weight or consideration should be given to said letter by the Zoning Board, or the letter sent from the interim Town Administrator himself, for two simple reasons:

1. Per the Zoning Board themselves, they are now only permitted to review/discuss/consider, and apply their decision-making, solely as it relates to the groundwater protection district. The letter of support from the interim Town Administrator, and presumably the letter from the Development and Industrial Commission are rooted in financials, which are irrelevant to the Zoning Board's current purview.
2. The Development and Industrial Commission meeting from February 7<sup>th</sup> made it clear that there is general lack for depth of knowledge on the details of this proposed project. And with the interim Town Administrator being in place only for the past few months, there is no baseline for the full history on this proposed project, which began in Fall 2021. Therefore, it seems logical that a letter of full support from either is unfounded.

Since we will be unable to attend this evening's Zoning Board meeting, due to other conflicts, the 'ask' is that the Zoning Board not give merit to the two letters of support mentioned above.

And otherwise, the remaining purpose is for awareness...

As noted above, this section notates the incorrect information stated during the referenced Feb 7<sup>th</sup> meeting, which begins at the 36:45-minute mark. Whether or not it changes any outcomes, it seems a fair ask that a Commission offering their full support ought to have correct facts to draw from.

- The property at 75 Plain Street is not zoned Commercial as was stated in the 2/7 meeting. It is zoned Light Industrial. And while a "warehouse" in the traditional sense (long-term storage) is allowed in a Light Industrial district "by right" (Zoning By-laws Sec. 11.4) all of the following subpoints apply:
  - A high-volume Distribution Center such as the proposed project (the markings of which are determined by 24/7 hours of operation, traffic/truck trips, number of truck bays, and number of trailer storage spots) is not listed as a permitted use. Additionally, a Distribution Center is classified under land use code 316 by the Massachusetts Department of Revenue, which is a Commercial classification, not

industrial.

- Regardless of a “by right” use, for any property in the groundwater protection overlay district (as is 75 Plain Street), the groundwater protection ‘scope of authority’ section 17.2 applies. Any new construction reconstruction, or expansion of existing buildings and new or expanded uses are subject to compliance with the requirements of the groundwater protection district.
  - Section 17.6(a) lists all the permitted uses. Neither a warehouse nor a distribution center appear on the list of permitted uses.
    - While the applicant believes they only need a Special Permit as it relates to Section 17.6(c)(6), they do not conform the prerequisite of being a permitted use under 17.6(a).
      - While significant weight is being placed on the land court’s default decision in the case of *Rosenfeld Concrete Corp. v. Town of Hopedale*, recorded 10/27/2022:
        - According to the Registry of Deeds, Rosenfeld did not own the land at 75 Plain St. at the time of the litigation being filed, or the date the default judgement was recorded.
        - The first point in that default judgement is factually incorrect. On page 2, under the section entitled “ORDERED, ADJUDGED and DECLARED:”, it states as point #1, “That warehouses are a by-right use in the Light Industrial and Ground Water Protection zoning districts in the Town.” And as noted previously, the Town by-laws list the permitted uses in the Groundwater Protection District in section 17.6(a) – a warehouse is not one of them.
        - Given the above, (a change from one non-conforming use to another non-conforming use), this would seem to trigger section 4.5 of the by-laws. It should also be noted the full text of the by-laws was not provided by the plaintiff to the court for review and they had only the plaintiff-supplied information at hand.
- Another concrete company cannot just jump in and start concrete/cement plant operations. The operations at Rosenfeld have been dormant for many years. As those concrete/cement operations are non-conforming in the first place for the LI zoning (Section 11.4), the “Abandonment” Section 4.4 of the zoning by-law applies here: “A nonconforming use or structure that is abandoned or not used for a period of two (2) years shall not be reestablished and any future use shall conform to the regulations of this by-law.”

- The anticipated tax revenue from the proposed project seems to be thought of as a ‘million-dollar windfall’. But once dug into, it should be noted that the estimate was generated using the FY 2021 Commercial/Industrial tax rate, which was higher than the now FY 2023 Commercial/Industrial



- On the topic of the community gifts from the applicant, it should be noted that those were offered on a *conditional* basis. As well, that conditional basis applies to the entire Project Mitigation package. See page 19 of the *Closing Memo from GFI – April 25, 2022*. The \$625,000 total in community gifts to the town are due, not immediately, but after construction and prior to the issuance of an occupancy permit (equating to years away).

- Respectfully,

Heather &amp; Tom Lewis