

**MEMORANDUM**

**TO:** City of Old Town Planning Board, City Manager and Code Enforcement Officer

**FROM:** James N. Katsiaficas, Esq., Perkins Thompson

**DATE:** August 22, 2017

**RE:** Response to Mr. Spencer's Questions on Planning Board Review of Juniper Ridge Landfill Expansion Application

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Mr. Spencer has submitted a letter to the Planning Board dated August 11, 2017 that poses several questions, both procedural and substantive. Some questions I can answer directly, while others are for the Planning Board or its Chair to answer, perhaps with the benefit of the legal advice offered in this memorandum.

1. "I read your By-Laws and noticed that there can be a 'major opponent' at the Public Hearing. Please instruct me what I need to do to achieve that status."

Answer: The Bylaws do not say how a person is recognized as a "major proponent" or "major opponent" who may speak for up to 30 minutes under Section VI B of the Bylaws, except that under Section VI D either "shall be encouraged to present written information for distribution either in advance or at such public hearing." Also, Section VI B of the Bylaws states that "All interested parties shall be given an opportunity to be heard; however, the Chairperson may limits [sic] discussion to new information and pertinent issues. The order of presentation shall be as follows unless the Board rules otherwise."

Therefore, I recommend that anyone who wants to be considered a "major proponent" or "major opponent" at the Tuesday, September 12, 2017 public hearing request this status by notifying the Planning Board of this request with any accompanying written information by the close of business on Tuesday, August 29, 2017. The Planning Board still may alter the order of presentation and the time limits, and the Chair still may limit discussion to new information and pertinent issues.

2. "Who can speak at the Hearing- Old Town residents only? Can proponents from outside Old Town speak? If that is the case, should non-resident opponents be given time to state their opinions? Will it be open to Indian Island and Penobscot Nation residents? The entrance to JRL is in Alton; will their residents be able to speak?"

Answer: The public hearing is open to the public. Anyone from anywhere may speak, although Board members likely will take the speaker's connection to the affected area into account when deciding what weight to give the speaker's comments.

3. “Who authored the PB’s Procedural Outline?”

Answer: I prepared a draft of the Procedural Outline for the Planning Board Chair to review and approve, based upon the process discussed at the July 11, 2017 meeting that you also attended, where the Planning Board, applicants and members of the public discussed the process for reviewing this landfill expansion application under the City’s Chapter 24 Solid Waste Facilities Ordinance. Much of that July 11 meeting was devoted to developing consensus and addressing issues and questions regarding the review process, and the Procedural Order is the result of that meeting.

4. “On what authority is that document’s decision on ‘Relevancy’ based? During the BEP Public Hearing process, numerous issues of concern to we opponents were deemed ‘irrelevant’, such as Environmental Justice and a cost-benefits analysis.”

Answer: The Planning Board has before it an application seeking review and approval under Chapter 24 of the City’s Code of Ordinances. Central to review under Chapter 24 are the criteria in Section 24-12. The Chair of the Planning Board has discretion under the Bylaws and the Procedural Outline to limit testimony and submittals to that which is relevant to the standards and criteria of Chapter 24. Without prejudging the Chair’s determinations of relevance, matters of “environmental justice,” cost/benefit analysis, out-of-State waste and climate change do not appear directly related to any Chapter 24 criteria. The Maine Legislature has circumscribed what the City may regulate, and within that narrow area, the City may not be more stringent than State law and regulations.

5. “At the beginning of the NEWSME presentation this past Tuesday, their attorney Tom Doyle said “I speak on behalf of the applicants”. He should not be allowed to infer that he speaks for the State as owner, which has very different priorities than does Casella, which is a publicly traded corporation which has a fiduciary duty to its shareholders to maximize profits.”

Answer: NEWSME and the State of Maine are co-applicants for this landfill expansion proceeding, and the State has authorized NEWSME’s attorney to speak on behalf of both applicants.

6. Mr. Spencer’s comments about odor, landfill gas, odor complaint processing, NEWSME’s financial guarantee, grounds for application denial, and leachate all are for consideration by the Planning Board in the review, public hearing and deliberation process, and so I am not addressing those comments here. As to the standards in Chapter 24, the criteria are not subjective, but point to objective standards (“reasonable,” “no unreasonable adverse effect,” and “adequate provision”) similar or identical to those that have been upheld by the Maine Supreme Judicial Court.