

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
CITY COUNCIL CHAMBERS**

7:25 P.M.

MAY 4, 2004

MEMBERS PRESENT: Chairman Charles Le Blanc, Vice-Chairman James Horrigan, Alain Jousse, Christopher Rogers, Nate Holloway, David Witham, Arthur Parrott and alternate Duncan MacCallum
MEMBERS EXCUSED: Bob Marchewka Alternate Steven Berg
ALSO PRESENT: Lucy Tillman, Planner

I. PUBLIC HEARING

1) Petition to **Public Service Company of New Hampshire, owner**, for property located at **400 Gosling Road** wherein the following were requested: 1) Variances from Article III, Section 10-305(B)(2) to allow a replacement boiler, air emission control device, conveyor and other appurtenances, (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) with heights between 85' and 125' but which will not exceed 125' where 45' was the maximum allowed height, 2) Variances from Article III, Section 10-305(B)(2) to allow a stack with heights between 250' and 275' but which will not exceed 275' where 45' was the maximum allowed height, 3) Variances from Article III, Section 10-305(A) to allow: a) wood storage building; b) process building; and c) conveyor on storage building extending from Lot 1 over the railroad parcel to Lot 2A, all of which have heights between 75' and 85' but which will not exceed 85' where 70' was the maximum allowed height, 4) Variances from Article III, Section 10-305(A) to allow a replacement boiler with auxiliary equipment, duct work, stack, conveyor fireside wash recycle basin, and other appurtenant structures located within 50' of the required side yard where 50' was the minimum required setback distance; and, 5) Variances from Article III, Section 10-305(A) to allow minor roof appurtenances on any of the following: the replacement boiler, air emission control device, conveyor, stack, wood storage building, process building, and other appurtenances (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) which will not exceed 25' where 10' is the maximum allowed height. All construction being in a district in which the height limitation is 45' for all portions of buildings within 200' of the high watermark along the shores of the Piscataqua River and where the height limitation was 70' for those portions of buildings beyond 200' of the high watermark and in which the minimum required side yards are 50'. Said property is shown on Assessor Plan 214 as Lots 1 and 2 and lies within the Waterfront Industrial District. Case # 12-4

Mr. Robert Ciandella of Donohue, Tucker & Ciandella, representing PSNH, addressed the Board. Mr. Ciandella said he wanted to begin by giving a brief overview of the presentation. As the Board was aware, PSNH is proceeding on the Planning Board side of the Portsmouth planning process. There have been three TAC hearings, and application was approved by them on April 27. A very lengthy application was filed, and he apologized to the Board for the inconvenience. He said there would be four presenters: Dick Despina, Manager of Schiller Station; Amy Siegel, landscape architect; David Choate, realtor; and followed up again by Mr. Ciandella.

The application is about structures and area dimensional variances. It is not about use as no use variance is requested. The application is for structures, heights and setback variances. Mr. Despins will describe more in detail. In the boiler area, where relief is being sought from a 45' height restriction, the new structure will be similar in size and in scale to the existing structure. This parcel is 112 acres. No other property will be affected. In the wood yard area, where relief is sought from a 70-foot height restriction, the proposal is to construct a storage facility structure that will replace an open coal storage pile. The structure will be taller in height but roughly the same size as the coal pile. Because of the size of the parcel, there would be no impact on abutters with respect to light and air. In both cases PSNH is seeking variances from the roof top appurtenance restriction of 10 feet in order to solve appropriate air pollution and other devices which are in the same style and character as those existing. There is an interior setback requested which will also have no impact. One of the directives given by TAC was that PSNH work with abutters to resolve differences and address their concerns. Because of the complexity of the project, they reached a conceptual agreement with the Commerce Way abutters to shift construction in the wood yard area. The wood storage building would be turned to use as a buffer and move truck dumps and wood processing behind wood storage building.

Time is critical for the project, and PSNH has worked hard to get to this point. They want to put before the Board a request to hear all five items on the agenda, close the public hearing, and vote on forcing of the application that relates to areas unaffected by these buildings, areas 1, 2 and 4 of the notice, and leave open the public hearing as it relates to paragraphs 3 and 5 of the notice. He asked the Board to schedule the resumption of the public hearing for May 19 to allow 14 days to advertise, and then go before the Planning Board of May 27.

Mr. Malcolm McNeill asked to address the Board briefly in regard to this issue. Chairman LeBlanc granted him a 2-minute rebuttal.

Mr. McNeill, representing Commerce Center, addressed the Board. Mr. McNeill said Mr. Ciandella was correct in that there have been expansive discussions with the assistance of the City trying to resolve issues between Commerce Center, property owners, and PSNH. The conceptualized plan reflects those efforts. However, this plan is not the plan that was advertised and presented to the public. The intent was to work with PSNH over the next two weeks to resolve some remaining issues. The intent was not to speak to the issues in this case but to try to resolve the issues in the interim. If the Board is going to make the decision to act on all five matters, then obviously the approach of the abutter will be different. They were not able to finalize their issues before tonight. Mr. McNeill said regarding items 1, 2 and 4, the Board should give them a full hearing. As to items 3 and 5, they should be deferred. The plan received in the packet is different.

Mr. Holden stated that the Planning Department would recommend deferred action due to the revised plan. Issues could be separated and not go forward on items 3 and 5 until they can be properly advertised.

Mr. Holloway moved that evidence on all five variances be heard and suspend judgment on items 3 and 5 until May 25, 2004. Mr. Witham seconded the motion. The motion was voted unanimously.

SPEAKING IN FAVOR OF THE PETITION

Mr. Despina, manager of Schiller Station, addressed the Board. He said he would give a little background on the project and how it reached the current point. He said it is an exciting project for PSNH. Environmentally, emissions will be cut significantly. New Hampshire is the second most forested state in the nation. New Hampshire grows more wood than it harvests. Burning wood chips will add stability to that market. Using wood as fuel is environmentally friendly. It is a renewable energy resource. The project would have significant economic benefit to Portsmouth and the seacoast area. Great taxes would be generated for the City of Portsmouth by allowing Schiller Station to remain viable for the next 15 to 20 years, which would not be the case under its current condition. The estimated regional economic impact would be almost \$20 million. This project would be done without raising rates to PSNH customers because this project qualifies under the renewable portfolio standards in Massachusetts and Connecticut. Preliminary approval has been granted in those areas. Renewable energy certificates will be sold in those states and offset the costs of this project.

Schiller Station currently has 3 coal-fired 50-MW units that burn predominately coal but can burn oil. PSNH will take one of these existing units, retire it, and replace with a boiler that will burn wood or coal. Wood will be burned predominately so as to generate renewable energy certificates. There are 76 employees with well-paying jobs. The project will be totally on the existing 112-acre site at Schiller Station. This is located in an industrial zone, and the surrounding areas are business and commercial. Gosling Road is the town line on the Newington side. It is heavy waterfront industrial as well.

In terms of approvals, this has been approved in Massachusetts and Connecticut. Air permits have been filed with the New Hampshire Department of Environmental Services, and other required permit applications are being prepared. The New Hampshire Public Utilities Commission has approved. Portsmouth Planning and Zoning approvals are underway. The project was filed in August 2003, and PUC approved the order on February 6, 2004. It was found to be in the public interest. Presentations have been made to the Rockingham Planning Commission and the Newington Planning Board. The City of Portsmouth TAC approved the project on April 27, 2004 with conditions. There are ongoing discussions with local abutters.

Mr. Despina referred to maps of the site and identified the existing structures and those proposed. He said the intent was to have storage under cover at all times. He called attention to several pages of the presentation that traced the wood processing procedures. Only clean wood will be used in the project. There will be no demolition debris. The wood storage buildings will have a fresh cut wood scent. Wood inventory will be on a first-in, first-out basis to keep the turning over and minimize the wood from decaying. There will be no dust associated with this. The storage building will be covered on three sides. The wood conveyors will all be covered. All noise ordinances will be adhered to. All machinery will be enclosed. Mr. Despina said that the project had great wide-ranging support.

Mr. MacCallum inquired about the favorable order from NHPUC in regard to a cost recovery mechanism that had a reward penalty clause associated with it. There were some concerns with how the penalty reward mechanism was structured. Mr. Despins said PSNH and several interveners worked together with the NHPUC staff to modify that portion of the decision and define how it was structured. That was the motion that was filed. A hearing took place April 20, 2004, and decision is pending. All but one of the interveners was in favor, and the Commission staff was in favor of it.

Mr. MacCallum inquired about the wood conveyor exceeding the 70' requirement. Mr. Despins pointed out the location on the plan. He said the maximum height would be 85'. There were various grade changes as the conveyor made its way down toward the station.

Mr. Horrigan said in dealing here with a series of dimensional variances, one of the important criteria that the Board had to consider was the public interest. He said that Mr. Despins had made an argument for that, citing the use of renewable source of energy and reduction of toxic emissions. Mr. Horrigan said he was glad that demolition wood would not be burned, but he wondered about construction wood being burned. He also inquired about quality control. At what point in the process would unsuitable wood be rejected. Mr. Despins said the construction wood was clean wood, and he likened it to the ends of boards cut off at construction sites. There will be absolutely no demolition wood. PSNH would get wood from a timber association and have contracts in place with reputable suppliers in the region. Emissions control would be monitored instantaneously.

Mr. Jousse asked about the number of boilers currently on site. Mr. Despins said there were three operating boilers including the one that would be changed. Mr. Jousse asked excluding the one that will be changed, what is the height of the building that those boilers are in. Mr. Despins said the roof elevation was approximately 110 feet. He said attachment #10 showed the view of new compared to existing boiler. They will all be about the same height. The stacks will also be the same height of the existing stacks, but 2 feet larger in diameter. Mr. Jousse said that with the proximity of an airport, would the new height of the stack be need FAA approval. Mr. Despins said one of the stacks already has FAA-approved strobes, and the FAA has given preliminary approval to the new stack height.

Mr. Witham inquired about covering stored wood chips outside during mud season. Mr. Despins said that the coal pile is covered now with tarps to mitigate any dust concerns, and the same procedure as necessary would be initiated for the wood chips. Mr. Witham inquired about any potential fire concerns. Mr. Despins said the wood is fresh cut, containing 40% to 50% moisture, so it is not likely to instantaneously combust. This is why the wood is turned over and kept moving in a first-in, first-out manner so there is no opportunity for that wood to become a fire hazard. PSNH has met with the fire chief and insurance carrier, and they have accepted the fire protection systems,

Mr. Holloway asked if trucks were the only source of bringing in wood chips. Mr. Despins said that trucks were the only source of delivery. PSNH is working with The City, the Town of Newington, Rockingham Planning Commission, and NHDOT to finalize the traffic route, but

Gosling Road appears to be the best route as it is less than a mile from the Spaulding exit to Schilling Station.

Mr. Parrott asked about the frequency of ash removal and how it was removed. Mr. Despins said the ash removal would be handled the same as coal ash is handled currently. Trucks are scheduled as necessary to come in and haul the ash away. An average of 6 to 8 trucks per day currently remove coal ash. Wood ash is significantly less than coal, so the number of trucks will be around 6 per day. Mr. Parrott asked if other wood-burning plants had experienced any concentration of substances in the wood ash. Samples of wood ash would be done periodically by a third party and not by PSNH. Mr. Despins said wood ash is used commonly in the agricultural sector for spreading on fields, and PSNH hopes to tap into that potential reuse of the ash as opposed to landfilling.

Chairman LeBlanc asked about PSNH receiving sawdust and bark from sawmills. Mr. Despins said these are handled differently to minimize dust but they would be blended in with the wood chips. He said coal is far more granular than wood chips. Chairman LeBlanc asked how high up in the air the trucks went when they were being dumped. Mr. Despins said they are 50 feet in length and go up 63 degrees to less than 70 feet. The trucks will go behind the building so as not to be a problem to any of the neighbors. It will not block neighbors' views, and it will also keep everything contained in the wood yard.

Mr. Ciandella said he wished to follow up on the discussion relating to truck routing. In the TAC documents, seven stipulations address traffic and two of those are about truck management and routing issues. He also wanted to follow up on Mr. MacCallum's question in regard to the PUC. The re-hearing proponent that Mr. Despins described does not challenge or contest the PUC finding of public interest.

Amy Siegel, a landscape architect, addressed the Board. She passed out color visuals showing the existing and proposed structures. She said there were four main ways of addressing visual concerns. The wooden storage building would be used as a shield to minimize the visibility of the industrial activities. The second way to minimize visual concern was to reduce or limit the view of trucks by erecting a 10' noise barrier wall similar to those seen along highways. It is all wood and 940' long. A third option is a façade treatment of the wood storage building on the side that faces abutters. The plans for this have not been completed yet, but they will include surface treatments and colors that are compatible. The fourth option is inclusion of plantings and an evergreen buffer. There is an existing white pine buffer. The proposed plans have not been finalized yet, but the idea is to provide a short-term buffer. In the future these plantings would grow an average of 12 to 16 inches per year and would provide a better buffer for the proposed hotel. This would block view of trucks and reduce noise.

Mr. Jousse said a lot of effort went into making the project more palatable to Commerce Way. He asked how much vegetation there was between the residential trailer park and the site. He asked how much of the site was visible from the residential area. Ms. Siegel said attachment #1 shows the existing site looking southeast. That area is a dense vegetation buffer. Mr. Ciandella said he did not know if a visual survey had been done from the residential area, but he would look into that matter.

Mr. Horrigan said a lot of attention had been given to the west of the site. He asked about landscaping from the river side looking toward the site. Ms. Siegel said the area was too low, and that wasn't much that they could do.

Mr. Horrigan observed how large the building was. He asked if there were anything that could be done to make it more architecturally interesting. Ms. Siegel said they were still addressing the façade treatment issue.

Mr. David Choate, principal of Grubb & Ellis Coldstream Real Estate Advisers, addressed the Board. By way of background, his firm was retained by PSNH early in the process and has worked over the past several months. Mr. Choate said he had been in the real estate business for over 21 years and had sold or leased property in excess of \$100 million. PSNH asked his firm to look at the prospective impact of the project on the values of abutting properties of the wood storage shed, particularly Commerce Way.

He said the site was visually evaluated from all sides, Gosling Road, Commerce Way, etc. They also contracted with an aerial photograph company to shoot photos from various height levels of the buildings. They also looked at comparable market factors both in Portsmouth and a fairly similar type of situation in Fitchburg, Massachusetts. One of his associates spent a couple of days in Fitchburg gathering data and talking to the people there.

The PSNH property has been a waterside industrial site since 1947, some 40 years before the development of Commerce Way, when it used to be all farmland along Woodbury Avenue. The methodology used was to look at various sites as they look today and what they would look like with improvements after the fact. The biggest effect on value and marketing is that the coal pile that is currently there would be replaced by a more aesthetically pleasing building which would actually be repositioned. It is necessary to look at comparable situations and what has been happening in the neighborhood in terms of value to make the case for diminution of value. There was recently a sale at 155 Commerce Way, which is the property that immediately abuts the PSNH property. It proves the point that values continue to escalate at Commerce Way in spite of all the publicity this project has received and in spite of its proximity to the proposed improvements. In 2002 the property sold for \$2.7 million, and in 2004 it just sold for \$2.8 million.

A number of factors at the Fitchburg, Massachusetts, project spoke to this issue. There was a hotel built there after the power plant. The hotel's general manager said there was no impact on occupancy rates or room rates. The wood chip operation is obvious from the hotel. There was a high-end condominium project constructed after the fact, and units sold just as quickly as other units in town. Another area which has shown industrial development had no impact on the value of surrounding non-industrial property development is the corner of Banfield Road and Constitution Avenue where there was a parcel of land zoned office research. It was purchased for \$280,000 and sold two years later for \$400,000 even though it abuts the Portsmouth Industrial Park. An example of how industrial and other upper scale uses exist is the entire waterfront of downtown Portsmouth. There is obviously a lot of debate whether the salt piles and iron metal piles should come or go, but the reality is that they continue to exist, and

properties both commercial and residential along Market Street continue to escalate in value through the years. The sales in Commerce Way show that there is an increasing value in the property. It is important to note that these are similar increasing values to other areas in town. He mentioned the Sheraton Hotel in Portsmouth continues to maintain that the working waterfront is an asset to their location. There is also a hotel planned for Commerce Way some time in the future.

Mr. Choate said the proposal made by PSNH is a natural extension of past uses. This is an industrial site and continues to be an industrial site. What they are doing is simply upgrading technology to improve the environment and expand the property. No adverse impact on surrounding property values is anticipated. The character of the site as a power-generating source is not going to change. The only thing that will change is the type of fuel.

PSNH has gone to great lengths to assure that a quality project will be built and that there would be no detrimental impact to surrounding property values. Reality is this site pre-existed many of the uses out on the Woodbury Avenue area. The evidence gathered showed non-industrial uses next to industrial uses reflect no diminution of value. Mr. Choate pointed out that the nature and size of the proposed structures were similar to the existing ones. The proposed plan is actually an improvement as the wood will be far more attractive than a coal pile.

Chairman LeBlanc inquired about the values in Oriental Garden. Mr. Choate's associate, Wes Taitur, addressed the Board. There have been no sales in there in the past couple of years. The properties there date before 1971. That date is significant because banks will not loan on any property before that date. So their value relative to other mobile home parks in the Portsmouth area is not commensurate. No one know what is going to happen to the mobile park, but it is assumed that given the value of the underlying land, it will not remain as is for many more years. The interior of Oriental Gardens is very peaceful and quiet. While the ancient structures work against the value, the self-contained nature of the neighborhood worked in favor of it.

Mr. Ciandella reiterated that PSNH was seeking only area dimensional variances, not a use variance. He read from the Supreme Court case, Bacon v. Enfield. There are two distinctions between the two variances, reasonableness and structures related to a change in process. PSNH is an energy-generating facility that has been manufacturing electricity since the late 1940's. It is located in an industrialized zone. The structure for change in process is the substitution of wood for coal. Mr. Ciandella said the granting the variance is warranted under the terms of New Hampshire law.

ELECTED OFFICIALS SPEAKING TO THE PETITION

Chairman LeBlanc asked that any elected officials come before the Board prior to other speakers.

Executive Councilor Ruth Griffin of 479 Richards Avenue spoke to the petition. She said there were three issues that were important to the state, the city, and resident of the city. The Department of Transportation has special funds put aside for air quality. All the money has gone into projects that will enhance the air quality in the state of New Hampshire. PSNH, in

proposing this wood-fired plant, is going to add to that better quality of air. So much of the state is woodland covered, and it is a potential for generating electricity. This project will bring good air quality and use of natural resources.

The second issue is property as it encompasses the Schiller plant. She said she did not want to see any properties lose their value because of enhancement of a project. The wood storage plant is in close proximity to the back of Commerce Way, which is business, but there is property further on to be developed. She has concerns about noise, especially trucks.

The third issue pertains to Gosling Road and Shattuck Way. She said she is a member of the Portsmouth Housing Authority. The road is half owned by the City of Portsmouth. On the City side is Gosling Meadows, where over 100 housing units exist. She is concerned about the safety on Gosling Road. Those people should have the right to go to the mall or walk and use the city streets. She said in Newington there is a Shattuck Way that was built to divert traffic off the Spaulding Turnpike. There is a small segment that does not quite come to Gosling Road. She said at some point she would hope that Portsmouth and Newington could work together and bring Shattuck Way all the way to Gosling Road and back of Woodbury Avenue to divert traffic off Gosling Road.

Mr. Jack O'Reilly, a Newington Selectman, handed out copies and read a letter from the Chairman of the Newington Selectmen, and it was made it a part of the record. Mr. O'Reilly said he thought the traffic issues could be resolved.

Chairman LeBlanc then called upon Linda Panori of 147 Osprey Drive to address the Board. Due to some health issues, she could not stay at the meeting but wanted to be heard. She said the map was wrong. She said when you look at the map as presented, there is a sin of omission. There are 1,200 families that are not on the map. As she looked at the map, she wondered when Commerce Way became dead end. It goes directly into Osprey Landing. Right at that intersection is the beginning of houses. In that neighborhood alone there are 500 families. There are at least another 150 families living at Spinnaker Point. Gosling Meadows is not on the map either, and that is another 123 families. A little bit further down, there are a bunch of houses sitting on a hill, Atlantic Heights, overlooking this project. She questioned where the trucks were going. They will not be seen from Commerce Way office buildings, but she said she will be looking at truck activity from her back porch. The other omission is "poison hill." There is a toxic waste spot on the property. Commerce Way is not going to be affected, but the people in these residential areas will be affected. The houses are valued at \$200,000 to \$300,000. What's their value going to be when you can sit and watch all those trucks going through every day and dropping off wood. PSNH talked to abutters at Commerce Way, but not them. It will affect every bit of their quality of life. It may be a little bit cleaner than what is there now, but it will still be generating dust because it is right there and nothing is blocking it. There are no trees. No one asked the people living there how they felt about looking at truckloads of wood. She asked the Board to consider all the people who live in these neighborhoods and how it will affect their property values.

SPEAKING IN FAVOR OF THE PETITION

Nancy Beach of 44 Lawrence Street addressed the Board. She said one of the problems of our society is we tend to be short sighted. She said she has two sons, suffers from allergies and has asthma. She said if the Board does not grant PSNH the variances to do what is going to be a sustainable energy program, then years from now we will look back and say a big mistake was made. She asked the Board to consider the long-term effects. Consider clean air and sustainable energy. She thinks PSNH is a good community partner. They give thousands of dollars to non-profits not only in Portsmouth but all over the state. They are willing to work with people who want to build hotels to make sure that their views are a little better. She said she was certain that they would be willing to work with the people at Osprey Landing to do the same. She asked the Board to think of the future of our air quality, the air we breathe, and the non-dependency on foreign countries for fuel.

Peter Hamlin, President of the Portsmouth Chamber of Commerce, addressed the Board. Mr. Hamlin said he represented his Board of Directors, who wished to express support for PSNH's Northern Wood Power Project. At their February Board meeting, the Chamber voted unanimously to support PSNH for two reasons: positive economic development and improvement in the quality of life. PSNH will continue to be Portsmouth's largest taxpayer. They have maintained and increased local jobs. This project will result in much needed emissions reductions, cleaning the air now and for the future. It will create a renewable energy source without increasing customer rates.

Sky Mylin of 20 Cottage Road said she was addressing the Board as a member of the Board of Trustees of the Society for Protection of New Hampshire Forests and as a citizen of Portsmouth. She said the Society has supported the PSNH project. Her organization has been in existence for 100 years and promotes the wise use of conservation in New Hampshire's forests. This project fits their criteria. It is positive not just for Portsmouth but for the entire state that is much more involved in the forestry industry. The Society owns and operates 37,000 acres of forest in eight counties. That is a very broad area that this project will be supporting. As a citizen, she said she was also a member of "Portsmouth Listens," a group of 300 people working together over the past year to give the City of Portsmouth a vision to be incorporated into a long-range master plan for sustainability, health, etc. Clean air and keeping the industrial base contemporary were important issues.

Mr. Horrigan had a question for Ms. Mylin. He said that early in the project, PSNH sent out newspaper articles included in information packets regarding the proposal. He said they were balanced accounts featuring both those in favor and opposed. He said it referenced opponents to the plan as being owners/operators of smaller wood-burning power plants. They were alleging there would not be enough capacity in New Hampshire forest products to sustain an operation such as the PSNH project over the long run. Ms. Mylin said the Society had been working the timberland owner's association to develop programs that use low quality wood. There is a lot of pine, not the more quality woods seen in the furniture-making industry. Pine is good for chips. She said the timberland association felt there was a substantial amount of wood to support this operation.

Eric Kingsley of Innovative Natural Resource Solutions, Concord, New Hampshire, addressed the Board. He said his firm is working with PSNH on this project. Their focus is sustainability

of New Hampshire's natural resources. New Hampshire grows 1.8 times the amount of wood that is harvested on an annual basis. There is significant volume in the woods. The timberland owners' association, the Society for the Protection of New Hampshire Forests, the New Hampshire Audubon Society, and New Hampshire State Foresters would not have thrown their support for a project if they had any concerns about its viability.

Harvey Woodward, a logger from Nottingham, addressed the Board. He said he has been logging for about 20 years. He said he was in favor of this project, and there was a good market for wood chips. He said he could not help but think of the boat coming into Portsmouth, dropping off the coal, and then leaving. He liked the idea of local loggers producing the wood chips, and the money they earned would be spent locally.

SPEAKING IN OPPOSITION TO THE PETITION

Rich Depertina of 116 Dunlin Way addressed the Board. He said his house is one of the houses that did not show on the list of abutters. He said there are more abutters in the neighborhood than there are at Commerce Way. His concern is that he supports wood burning. He thinks it is wonderful. Coal is the worst thing that can be burned. The people on Dunlin Way are constantly receiving the benefits of coal dust from PSNH. Coal is constantly moved around on the site. Whenever the coal is moved, the dust goes on to their property, into their homes, and into the lungs of the children and the adults who live there. He said the Board should not allow anything to change until PSNH solves the issue they are currently facing before they are allowed to move forward with a new product. If they cannot control coal dust now, then maybe they won't be able to control wood dust down the road. If they can build a facility to enclose wood on site, why isn't there an enclosed facility on the site to control the coal. There is a big black tarp on some of it, and some of it is not always kept covered. He said if that were oil, it would not be allowed to discharge onto the ground or onto other people's property. Coal dust should not be allowed to do so either. Granting a variance is a privilege, and that privilege should be granted on some historical precedent of compliance, with being a good neighbor, and not affecting the property values or health of a neighbor. A variance should be contingent upon PSNH complying and satisfying the needs and controlling the coal dust, then when that is resolved, put in the wood processing.

Carla Rogers, of 15 Dunlin Way and a neighbor of Mr. Depetina, addressed the Board. She said her neighborhood is not represented on the map. She said she agreed with Mr. Depetina and was in favor of a wood-burning facility. She said she could write her initials in the coal dust on her ceiling. She read a statement about the coal dust problem, which was made part of the record. She said PSNH should have to control their coal problem before taking on a new product. She said the coal dust was damaging her property and she had concerns about what effect it would have on the health of her children.

Frank Quinn, attorney for Crossings at Fox Run, addressed the Board. Their primary concern is the traffic that will be generated on Gosling Road because of this project. Mr. Holloway questioned earlier if Gosling Road was intended to be the exclusive means of access onto this property. Up to this point that is the way PSNH had presented this project.

His client opposes the variance based on the public interest prong of the 5-part variance test. Estimates say that there will be 70 trucks a day. That is just an estimate, and there will be times during the year such as “mud season” when it will be a greater amount. The suppliers up north will have to stockpile supplies because there will be times when they won’t be able to get it out of the woods. Gosling Road is already a heavily burdened road. PSNH will continue to truck out coal to their other facilities. Then they are going to add the burden of least 70 trucks a day, or 140 “trip-ins” on this already burdened road. One does not have to be a traffic engineer to understand the impact on congestion, on traffic, and on safety. This is not only an issue for The Crossings but for the housing authority and other property owners in the surrounding area.

Mr. Quinn said one thing that was not been referenced at tonight’s meeting in any detail was the master plan that speaks to the well-known congestion of Gosling Road at Woodbury Avenue. There were numerous references to crash sites on Gosling Road. This variance would certainly have an adverse effect on his client and surrounding properties.

He addressed the hardship aspect of the PSNH project. If the variance is not granted, PSNH will still continue to use this property. They will still generate electricity on this property. They will continue to use the two boilers that burn coal. They will continue to be an energy-producing citizen within the City of Portsmouth. The hardship that they present to the Board is simply a convenience for them to modify the means of producing energy from one of a coal-burning facility to a wood-burning facility.

Mr. Quinn said that in his opening remarks Mr. Ciandella emphasized that PSNH was not applying for use variances. The sole presentation was about dimensional variances such as height of stacks, roof lines, etc. This appeared to him to be a direct conflict in statement from PSNH. What he thinks the Board has been presented is a non-conforming use and PSNH’s efforts to expand aspects of this non-conforming use. Whether it is the width or the diameter of the stacks, whether it is the height of a roof, they are seeking relief that is essentially the extension of a non-conforming use.

In conclusion. Mr. Quinn said his client is not anti-wood. They are not anti-environment. They are not anti-PSNH. They are not anti-development. What they are is anti-the impact of the safety, traffic, and congestion that will undoubtedly be brought about if this variance is approved under the current submission made by PSNH.

The Town of Newington would potentially support the development of Shattuck Way. It runs parallel to Woodbury Avenue. It is also known as Industrial Way. This would a natural route for trucks carrying wood chips to take. This Board does have the power to impose variances with conditions. If the Board were inclined to grant the variance as presented, it is suggested that consideration be given to the use of Industrial Way, as was suggested to the TAC.

Mr. MacCallum had a question for Mr. Quinn about statistics on how many trucks currently used Gosling Road. Mr. Quinn said the traffic study done by PSNH showed an increase of 1% to 2% increase in truck traffic as a result of the 70 “trip-its” per day. Mr. Parrott asked Mr. Quinn if he considered 2% to 3% increase to be significant. Mr. Quinn said yes, because Gosling Road is an extremely intensely used road, and it will become more so with the development that has taken

place on the Newington and the Portsmouth sides. If there are 70 trucks filled with wood, and each truck is the equivalent of two car lengths, that is like having 140 round-trip cars travelling on this road between 7 a.m. and 7 p.m. This is in addition to the regular workday traffic already being experienced. Mr. Parrott asked what Mr. Quinn would estimate the growth rate to be over the years. Mr. Quinn said it will increase regardless of PSNH, but he said there is a wonderful alternative of a road that is called “Industrial Road” that will take cars off of Gosling Road.. That road currently exists only in Newington but it could be extended to reach into Portsmouth. That is what is currently being studied with TAC. Mr. Parrott said the point he was trying to make was that Mr. Quinn was suggesting the this Board something over which it had no authority.

Mr. Joey Robbins, Executive Director of the Housing Authority, addressed the Board. As stated earlier by a number of folks, the Housing Authority owns 124 units of family housing on Gosling Road. There is an incredible amount of traffic. He would like to have the entire planning function involved in an intensive traffic study done that would encompass all issues including noise.

Mr. McNeill said he would not speak tonight. He was confirming that the public hearing on would be left open for items # 3 and 5 for a meeting on May 25, 2004. Chairman LeBlanc and Ms. Tillman agreed.

In rebuttal, Mr. Ciandella urged the Board to look at the information package in regard to traffic. The TAC conditions of approval were very complicated. He said what is being done is far more than convenience. It is a change being driven by environmental and marketplace concerns and a host of other things. This is not a change of use issue. It is a dimensional variance issue. The City of Portsmouth Planning Department has already determined there is no change in use, but there is a change in process

Mr. MacCallum had a question in regard to how many trucks use Gosling Road per day. Mr. Ciandella said that Mr. Gorrell, the author of the traffic study, was in the audience tonight and was best qualified to answer questions.

Mr. Gorrell gave an overview on the traffic study. He said that the PSNH project would add about 70 trucks a day to the traffic on Gosling Road. In terms of trucks in and out of the facility, that would equate to 140 one-way trips between the hours of 7:00 a.m. and 9:00 p.m.

The public hearing was closed on Variance 1, 2, and 4. Variances 3 and 5 are open until May 25, 2004.

Mr. Holden suggested a clarification be made in regard to condition 9 of the TAC Committee that stated heavy truck deliveries shall only use Gosling Road to access or egress the PSHN site and shall be restricted during peak hours until such time as upgrades are made.

DECISION OF THE BOARD

Mr. Witham moved that the three variances be granted as presented and advertised. Mr. Horrigan seconded the motion.

Mr. Horrigan said he would like to add a stipulation that the variance only be granted for a wood-burning facility. He said if PSNH wanted to convert back to coal at some time in the future, he wanted them to come back before this Board for approval.

Mr. Holden said that issue had come up before the PUC, and the credits that PSNH received were based specifically upon burning wood. In the event of an emergency or a site problem, there might be a rare instance where they would need to burn coal. The plant is designed for wood, and the PUC review is designed for wood. Mr. Horrigan said he was concerned about the long-term use of the facility and a potential environmental problem.

Mr. Witham said as he looked at the three variances, it seemed like a fairly straightforward proposal for two height variances and one setback variance. He said putting a fourth stack alongside three other existing stacks blended in. The height of the boiler room was essentially the same height at the structure it abuts. He said it kept the area compact. He could see no visual impact on the skyline. The height and size of the existing structures are similar to that one proposed and the size of the facility is what is needed for this facility to operate. As far as the setback from the railroad track, he said there has been no opposition from the railroad. The addition to the existing structure has same feel as what is there. It is zoned industrial, and these additions are all part of an industrial site. He understands that abutters have concerns about what they are looking at, but it is an industrial zone, and this is what you would expect to see in an industrial area.

He said in regard to truck traffic, he would have to separate it from this variance request. It is not a use variance. He said he knew Attorney Quinn thought they should be tied together. Mr. Witham said a variance request for height of structure took into account movement of air and light, but he did not feel that these variances were tied in to truck traffic. He said he appreciates that the abutters have coal dust issues in their homes. He did not see that as relative to the variance request. He said PSNH was not in violation of any zoning ordinance, and it appeared that PSNH has made some efforts to try to improve the situation. Mr. Witham said Ms. Panori's observation of the distance between her porch and the trucks was a slight exaggeration. He did not see any diminution in property values. He said it is reasonable to expect that a 112-acre industrial site would grow over time. He said this project is a responsible way for facilities to grow.

Mr. Witham addressed the five criteria. The requested variance is in the public interest. He said the benefits in air quality strongly outweigh any other ramifications. He said it is a unique in that it is an industrial waterfront property on 112 acres with only 76 employees. The area is condensed. It is zoned industrial, and it is reasonable use of the property to expand within the marketplace. It would be unfair to PSNH to make them stay strictly coal and miss out on opportunities to grow. He saw no adverse effect on light and air. He did not think the private or public rights of others was injured. He did say the only possible injury he could see was view, but that is not protected, and there is no view from the east. It is consistent with the spirit of the

ordinance as it will provide better air quality to the public as a whole. He agreed with Mr. Choate that there was no diminution to surrounding properties.

Mr. Horrigan agreed with the spirit and thrust of Mr. Witham’s remarks. He said he could not view this as strictly a proposal for dimensional variances. The petitioner cited the environmental effects, generation of more electricity, and creation of jobs. There is a rationale for this project. The nature and use of this facility is a legitimate concern. He thought the public interest was well served by a wood-burning plant. Visual effects are not in zoning ordinances, but they do have some implications on surrounding properties. It is a reasonable use according to the simplex criteria. He said it is a project that enhances the public’s interest and public health of the community.

Mr. Jousse said he supported the motion, but he wondered if the motion maker and the second would agree to two stipulations being added. He said that residents of a nearby area have some concerns and problems. He proposed that sound and visual screens be erected for residential abutters similar to those being done for Commerce Way, as necessary. He thought a great amount of effort was going into visual/sound screening done for commercial properties, and nothing was being done for the residents who live downwind from the site. Also, there should be some stipulation that traffic and safety concerns for the City of Portsmouth and the Town of Newington be satisfied.

Mr. Holden said it was quite likely that a TAC meeting, which could quite likely occur prior to May 25, would prepare a similar exhibit showing the adjacent properties and what the view corridor would be on those properties. If it showed that some screening is needed, he expected that there would be a proposal to that effect. This would then be available to this Board at the next meeting. Mr. Horrigan said he wanted the abutting neighbors to receive notice of this meeting. Mr. Holden said they would receive notice.

Mr. Witham and Mr. Horrigan agreed to the proposed stipulations as suggested by Mr. Jousse.

As a result of this consideration, motion was made to grant Variances 1, 2, and 4 as presented and advertised with two stipulations:

- 1) That sound and screening for the residential abutters be provided where necessary.
- 2) That the condition of the TAC Report #10 plus Shattuck Way be considered.

Chairman LeBlanc announced that these three variance were unanimously approved, and the other two variances were pending for May 25, 2004.



ADJOURNMENT

There being no further business to come before the Board, the Board voted unanimously to adjourn at 11:20 p.m.

Respectfully submitted,

Mary Ann Brown
Acting Secretary

These Minutes were approved as presented at the Board of Adjustment Meeting on February 15, 2005.

Mary E. Koepenick
Secretary