

AGREEMENT ON TIME EXTENSION

The Board of Selectmen and the Petitioner for a Special Permit

use Special Permit
(identify type of permit)

File No. #10/11/13 - 445

Petitioner Name: Jacob Abraham - Axe Brothers

Project Name: wood manufacturing (acoustic readings)

Location/Address: 848 Main Street

hereby agree to continue the Public Hearing to

(date) August 11, 2014

(time) 8:00 pm

and to extend the legally required time limit in which the Board of Selectmen must render a decision to 90 days following the date of the hearing continuance stated above.

Signed this (date) 6/23/14


Board of Selectmen


Petitioner

This agreement must be filed with the Office of the Acton Town Clerk.

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JUN 24 2014
TOWN CLERK
ACTON

Lisa Tomyl

From: Scott Mutch
Sent: Wednesday, August 06, 2014 11:33 AM
To: Lisa Tomyl
Subject: FW: Official Revised Request for Quotes

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm. Sincerely,

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner
Town of Acton
Planning Department
472 Main Street
Acton, MA 01720
Tel: (978) 929-6631
Fax: (978) 929-6340
Email: planning@acton-ma.gov
Website: www.acton-ma.gov

From: Scott Mutch
Sent: Wednesday, July 16, 2014 11:12 AM
To: 'axebros'
Subject: RE: Official Revised Request for Quotes

Jake,

The Board of Selectmen were specifically looking to discuss the findings of the sound analysis at the August 11, 2014 hearing, so without the data collection being completed and the Engineer's analysis and report in front of the BoS to review and discuss, I'm not sure there would be any interest in further discussing your USE Special Permit at that time. If your schedule does not allow for the facilitation of the sound study to be conducted and completed in sufficient time prior to the Aug. 11, 2014 hearing, you need to contact Lisa Tomyl in the Town Manager's office and seek a continuance of your hearing.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm. Sincerely,

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner
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Website: www.acton-ma.gov

From: axebros [<mailto:axebros@verizon.net>]
Sent: Tuesday, July 15, 2014 3:42 PM

To: Scott Mutch

Subject: RE: Official Revised Request for Quotes

Mr. Mutch, I cannot work with this schedule as I am too busy working elsewhere.

Considering the Towns attorneys opinion, it may be wise to wait until after the site plan is completed.

If the activity is to be moved elsewhere on site I would have that determination before the testing was done, and it would only change 1,000 sq ft. on the site-plan.

Even if the survey is not completed by 8/11 there are still many things to be discussed with the Board.

Jacob Abraham

Axe Brothers Tree Service

978-263-9961

From: Scott Mutch [<mailto:smutch@acton-ma.gov>]

Sent: Tuesday, July 15, 2014 1:51 PM

To: 'axebros'

Subject: Official Revised Request for Quotes

Jake,

Good afternoon. Please find attached a copy of the Revised Request for Quotes which should have all of the corrections which you pointed out yesterday. I spoke with the sound engineer last night and based on everyone's schedules and the Board of Selectmen's wish to have the noise study report/analysis in advance of their August 11, 2014 meeting, the sound engineer would like to install the monitors this coming Friday (July 18, 2014) and have you complete at least 2 (two) full cycles of the wood processing operations also this Friday, July 18, 2014 beginning at approximately 12:00pm noon. The sound monitors would then be left in place for the better portion of the following week gathering information, which exceeds the Request's requirements. Could you please let me know as soon as possible if the revised amount is still acceptable to you.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm. Sincerely,

Scott A. Mutch

Zoning Enforcement Officer & Assistant Town Planner

Town of Acton

Planning Department

472 Main Street

Acton, MA 01720

Tel: (978) 929-6631

Fax: (978) 929-6340

Email: planning@acton-ma.gov

Website: www.acton-ma.gov

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AUG 7 2014

TOWN CLERK
ACTON



James A. Vevone
jvevone@sederlaw.com
Telephone: (508) 757-7721 ext.106
Facsimile: (508) 798-1863

August 7, 2014

**Via Electronic Mail to bos@acton-ma.gov
and Hand Delivery**

Mr. Michael Gowing, Chairman
Board of Selectmen
Acton Town Hall
472 Main Street
Acton, MA 01720

Re: Application for a Special Permit Number 10/11/13 - 445 (the "Application") for outdoor manufacture of firewood (the "Project") at the property located at 848 Main Street, Acton (Assessor's Map C5, Parcel 39) (the "Property") by the Applicant, Jacob Abraham ("Mr. Abraham")

Dear Mr. Gowing:

I am writing to express my concern about the lack of review guidelines for the sound study of the Project that the Board has requested (the "Study"). Mr. Abraham has consulted this firm with respect to the Application and, in particular, the scope of the Study pursuant to a Request for Quotes dated June 24, 2014.

Mr. Abraham hereby requests that the Board: (i) specify acceptable Project decibel limits; and, (ii) refine the scope of the Study so that it complies with the Massachusetts Department of Environmental Protection ("DEP") Noise Control Regulations, 310 CMR 7.10, and the DEP's Noise Pollution Policy Interpretation (the "DEP Interpretation").

The Property is located in the Small Manufacturing (SM) Industrial District. Pursuant to Section 3.6.3 of the Town of Acton Zoning Bylaw (the "Zoning Bylaw"), outdoor manufacturing requires the issuance of a special permit by the Board of Selectmen as the Special Permit Granting Authority. The Zoning Bylaw does not specify criteria for the issuance of an outdoor manufacturing special permit in the SM zoning district. Thus, the discretion of the Board is limited by *M.G.L. c. 40A* (the "Zoning Act") and the laws related thereto.

Massachusetts law requires the Board to act reasonably. *See, Vazza Properties, Inc. v. City Council of Woburn*, 1 Mass.App.Ct. 308 (1973). If an applicant meets the requirements of the Zoning Bylaw and there is no valid ground for denial of the application, the special permit

should be issued. *See, Murphy v. Zoning Bd. of Appeals of Lawrence*, 2 Mass.App.Ct. 876 (1974).

The scope of the Board's requested Study imposes an unnecessary burden on Mr. Abraham with no way for him to evaluate the standard the Board intends to use in reviewing the Study results. The Board has requested that the Study consist of measurements of both ambient sound and sound with the Project activity in at least three (3) locations for a period of eleven (11) hours for five (5) consecutive days. The DEP recommended sound analysis examinations take measurements at the source's property line and nearest residence or other sensitive receptor. Also, these examinations do not run for the length of time requested by the Board. Furthermore, as described below, the Board has not specified the intent of the requested Study.

The Board has not specified what it will consider an acceptable decibel level. As you are aware, the DEP Noise Control Regulations, 310 CMR 7.00, as interpreted by the DEP Interpretation, prohibit sound levels exceeding ten (10) decibels above the ambient sound levels. The DEP is tasked with regulating air pollution pursuant to *M.G.L. c.111 §§142A-M*. The Board is not bound by the DEP standard in issuing a special permit; however, the DEP standard, which was developed over many years by an agency tasked with regulating such matters, should be given deference. In any event, the decibel limit imposed by the Board must be reasonable.

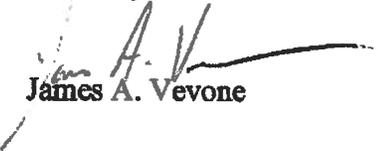
The review of any special permit requires an analysis of the proposed use with respect to the zoning district and the neighborhood. In this matter, the Project is appropriate for a SM zoning district. Abutting the Property is a milling operation. Northeast of the Property on Main Street is a shooting range. The Project proposed by Mr. Abraham is consistent with these other uses.

To limit the use of the Property to higher standards than others in the zoning district would be singling out the Property and Mr. Abraham for differential treatment, which is not permissible under the Zoning Act. It is well-established under the case law in Massachusetts that there must be uniformity within districts for each class or kind of structures or uses permitted. *See, SCIT, Inc. v. Planning Board of Braintree*, 19 Mass.App.Ct. 101 (1984). This is particularly true in this situation, where the only challenge to the Application is posed by a residential property that required a special permit to be constructed in the SM zoning district.

Mr. Abraham requests that the Board: (i) specify parameters as to acceptable Project decibel limits within the regulations promulgated by the DEP; and, (ii) refine the scope of the Study to be in accordance with such DEP regulations.

Thank you for your attention in this matter.

Sincerely,


James A. Vevone

cc: Scott Mutch, Zoning Enforcement Officer (via electronic mail to smutch@acton-ma.gov)
Mr. Jacob Abraham