

## REQUEST:

### Special Use Permit Amendment by Mike Griffin for the Greenway Waste Solutions Construction and Demolition (C & D) Landfill – SUP16-01

\* The existing permit and findings (Special Use Permit 2009) are attached.

#### **ZONING ORDINANCE CRITERIA AND STAFF COMMENTS**

##### Article 9.23

Off Site LCID and C&D landfills are permitted in the SP District-subject to a Special Use Permit, according to the procedures of Section 11.4.10. The Town Board shall issue a Special Use Permit for the subject facility in the SP District if, but not unless, the evidence presented at the Special Use Permit hearing establishes the conditions below.

*STAFF FINDINGS: The Greenway Waste Solutions Landfill (North Mecklenburg Landfill) is an existing Construction and Demolition (C&D) landfill with an unexpired special use permit that would be allowed to continue to operate in its current zoning designation per Article 9.23.10. The proposed application is to amend the existing special use permit to add adjacent properties to the permit boundaries, add an additional fill area on the site over the stream that bisects the site, and include a recycling facility near Holbrook Road. The applicants are seeking a rezoning of the entire 135 acre property to Special Purpose (SP) concurrent with the SUP application in conformance to Article 9.23.10.*

- **UPDATE 9/19/16:** *The updated site plan has removed the additional fill area over the stream from the application. The special use permit now is solely for the boundary expansion as shown on the plan and for the addition of the recycling facility near Holbrook Road.*
1. That the site will operate in compliance with the rules according to NCDENR for C&D and LCID landfills.

*STAFF FINDINGS: The NCDENR (North Carolina Division of Environment and Natural Resources) is now known as the North Carolina Department of Environmental Quality (NCDEQ). The NCDEQ permit has not been forwarded by the applicant showing evidence of permitting. In addition, after discussion with NCDEQ Division of Waste Management, the landfill in question has been found to exceed state regulatory limits of various groundwater and surface water contaminants and methane gas since 2013. Further, a Notice of Violation was issued on September 16, 2014 to the landfill due to an encroachment upon their required state mandated buffer to the east of the property. As of now, the landfill remains in violation of the required buffer.*

- **UPDATE 9/19/16:** *The current NCDEQ permit has been forwarded and is attached in the Board's agenda packet. The current permit is valid through 10/8/17. The updated letter attached to the SUP application states that the applicants will operate in compliance with NCDEQ rules. Staff recommends that a more specific statement from the applicant be added to the SUP plan or attached letter that addresses the contamination of the site and the buffer violation. It is staff's understanding that the applicants are beginning discussion with NCDEQ*

*on the remediation process to clean up the contamination. They are also in the process of purchasing property to the southeast of the site that will mitigate their buffer violation.*

2. That the proposed use will not endanger the public health and safety, nor substantially reduce the value of the nearby property; and

*STAFF FINDINGS: Per discussion with NCDEQ Division of Waste Management, it appears the constituents leaching from the landfill have contaminated multiple drinking water wells adjacent to the subject property. Two parcels were purchased (including one residence) by the landfill and two homes were added on to municipal water service due to the groundwater contamination. According to NCDEQ, the applicant has been cooperative with the state in installing both shallow and deep groundwater monitoring wells and methane gas monitoring wells, in an effort to analyze and find the nature and extent of both the groundwater contamination and the methane gas exceedances. The applicant has also been cooperative in addressing the immediate issue of the contamination of the adjacent drinking water wells as discussed above. The monitoring and analyzing of both the groundwater and methane gas contamination is ongoing. At this time, there are still many unknowns in regard to the nature and extent of the existing groundwater and surface water contamination and potential methane gas migration. Once the nature and extent is more fully understood, NCDEQ will require mitigation plans for the applicant to begin contamination cleanup of both the active fill area, and the fill area that is closed out and inactive (which is under a different set of state rules). In addition, contamination was also found in the groundwater monitoring wells near the stream, and recently in the surface water sampling of the stream that is being proposed to be piped and covered with the expansion. Please find the groundwater monitoring well locations of the site in a map forwarded by NCDEQ.*

- **UPDATE 9/16/19:** *The proposed recycling facility is located near Holbrook Road, separated from the area that is contaminated and a significant distance from where active monitoring wells are located. Please see the NCDEQ Monitoring well map attached in the agenda packet. There are no new fill areas proposed with the updated application. Therefore since disturbance of the contaminated area is no longer proposed, and the new recycling facility is located a significant distance from the contamination, staff finds the contamination issue of the existing facility and the addition of the recycling facility separate issues that do not conflict. However for record in regard to public safety and health concerns, it is recommended that the applicant add a note in the plan stating the planned schedule of NCDEQ remediation of the existing site and commit to the cleanup in a timely manner.*
3. That the proposed use will not be in conflict with the objectives of the most detailed plan adopted for the area; and

*STAFF FINDINGS: The subject property is not located within the boundaries of any of the Small Area Plans adopted by the Town of Huntersville. However, the East Huntersville plan does mention and recommend a connector road in between the proposed Verhoeff Drive extension to the south and the future Asbury Chapel extension to the north. The north/south connector road could traverse the subject property. In the 2009 landfill SUP, the applicants reserved the right of way in the area of the gas pipeline and buffer at the southwest edge of the property through their main entrance. Please find the 2009 SUP for your reference in your agenda packet. For this application no commitment has been made to accommodate the future connection.*

- **UPDATE 9/19/16:** *The letter attached to the application states that “the site plan makes an accommodation for the connector road on any Griffin owned land once the final locate is determined”. The note on the plan however is not clear and needs to be reworded showing the intent to provide right of way for the thoroughfare connector road through the subject property.*
4. That the comprehensive site plan addresses each of the environmental and development standards below:
- (a) A landfill which would be larger than 10 acres shall be accessed from a major or minor thoroughfare or from a street built to commercial street standards that connects directly to a major or minor thoroughfare-where available. Landfills 10 acres or less must directly connect to a major or minor thoroughfare or to a non-residential collector or non-residential local street where available. However, if such thoroughfares or streets are not reasonably available, the Board may nevertheless issue a special use permit upon finding that the use for which the permit is granted would not likely cause any injurious effect on the property adjacent to the access.

*STAFF FINDING: The existing landfill does not have access to a thoroughfare or a street that is built to commercial street standards. Access is from Holbrooks Road, which is a secondary residential street that traverses a residential neighborhood. The ordinance states that the Town Board may issue a SUP for a landfill that does not front on a thoroughfare or commercial street if it finds that it “would not likely cause any injurious effect on the property adjacent to the access”.*

*When the last Special Use Permit (SUP) application was submitted in 2009, the NCDOT district engineer commented in an email to the applicant that Holbrooks Road “does not possess the pavement structure to accommodate the truck traffic it has experienced and will be subject to with the continued use your company is planning”. The 2009 SUP was eventually approved with an added stipulation that the condition of Holbrooks Road be reviewed in 5 years. Another condition was that the applicant contributes \$25,000 in the next 10 years toward the maintenance of Holbrook Road. In December of 2014 public works and engineering staff inspected Holbrook Road and found that it was in good condition as NCDOT had just finished repaving the street in 2013 (added 4 inches of asphalt). As of this date, the applicant has not forwarded the \$25,000 to NCDOT for the street maintenance.*

*After contacting NCDOT and asking for their input on the current state of Holbrook Road in relation to the proposed expansion and indefinite lifespan extension of the landfill, NCDOT’s concern about the durability of the road remained. They requested that the applicant submit core samples of the road to evaluate its substructure. As of the date of this report staff is not aware of any recent discussions the applicant has had with NCDOT on the durability of Holbrook Road in regard to this application. Please find the emails from NCDOT attached in your agenda package.*

- **UPDATE 9/19/16:** *The newest plan submitted has no updated notes about the maintenance and structure of Holbrook Road in response to NCDOT comments. The letter submitted by the applicant with the application states that they intend to “connect to the future Verhoff/Asbury Chapel Extension and will reserve a right of way for the future connection to a potential industrial street to the south through the Commerce Station Industrial Park by 2034”. Per past discussions with the applicant it is thought that this note is intended to cap or limit their usage*

*of Holbrook Road to no longer than the year 2034, as well as providing a connection from their site to one of the future thoroughfares by that time. Staff recommends that if that is the case, the note be clarified to clearly state that on the special use permit plan. It is still also unclear if the \$25,000 committed to at the last SUP approval would carry over as a condition for this permit.*

- (b) That the proposed or existing use will be in compliance with the rules and regulations as established by Traffic Impact Analysis (TIA) Article 14.

*STAFF FINDING: Engineering and Public Works has determined that based on the expansion proposed, the new amount of traffic that will be generated will not meet the threshold that would require the submission of Traffic Impact Analysis (TIA). Please find the TIA determination from engineering in your agenda packet.*

- (c) Neither clearing, grading, land disturbing activities nor any portion of a C&D or LCID landfill may be located within 100 feet of any exterior property line. Further, the buffer requirements for the site are required per the state permitting criteria. The requirements stated below take precedence over any and all modifications made by the state unless the state standards become more restrictive.

- 500-foot buffer from existing residential water supply wells to fill area.
- 200-foot buffer from adjacent property to fill area.
- No fill in designated wetlands or the FEMA and /or Community Special Flood Hazard Areas.
- 50-foot buffer from delineated streams.
- 50-foot buffer from road right of way to fill area (non-state requirement).

*STAFF FINDING: The submitted letter from Greenway Waste Solutions states that they conform to all the buffers required in this section. However, as shown on aerial photography and from the submitted special use permit plan, multiple existing driveways are located within the 100 foot undisturbed buffer. In addition, the applicants are seeking a variance from the Board of Adjustment for this section of the ordinance in order to encroach/fill the 50 foot delineated stream buffer and to fill in designated wetlands and FEMA flood areas. No new encroachments are shown on the plan other than the ones requested by way of the Board of Adjustment. In order for the applicant to try to address some concerns by staff, the Board of Adjustment has continued the variance hearing per the applicant's request. The hearing is scheduled to continue on September 13, 2016.*

- **UPDATE 9/19/16:** *On September 13, the applicants withdrew their variance applications. The proposed plan no longer proposes to fill the stream and encroach into the required buffers. After review, there are not any newly proposed encroachments on the updated special use permit plan.*

- (d) Driveway access to the facility must be paved for a distance of at least 100 feet from the public street.

*STAFF FINDING: According to aerial photography and as inspected in a staff site visit, the entrance driveway to the facility is paved to a distance greater than 100 feet. However the separate exit drive that connects to the main street driveway where trucks leave the site is not paved for distance of 100 feet. The special use permit plan submitted by the applicant shows the exit drive proposed to be paved for a distance of 100 feet per this section.*

- (e) Vehicular and pedestrian access to the site must be controlled; the site must be closed and secured during hours when filling activities are not under way. A non-climbable fence, at least 6 feet high, shall be installed around the landfill and all of its operations as a safety device. These fences must be constructed of wire mesh with openings not to exceed 2 inches by 4 inches or equivalent and must be placed on the interior side of screening/buffering devices.

*STAFF FINDING: The letter from the applicant states that the site is “closeable and secured from vehicular and pedestrian access” but does not provide how that is done. The letter also mentions that a variance will be submitted for the fence requirement. No variance application has been submitted for this section of the ordinance. The Special Use Permit site plan includes a note stating that “heavy vegetation” prevents access to the site. The submitted information does not provide conformance to the fence and security requirement of this section.*

- **UPDATE 9/19/16:** *The new rezoning plan (separate application) includes a modification request to the Town Board from the fencing section of the ordinance. It states that the new recycling facility near Holbrook Road would be fenced and shows an existing fence along the northern sections of the landfill. However it implies that the remainder of the site, the southern portion, would not be fenced. A note on the plan states that “heavy vegetation prevents access to the remainder of the site”. Staff cannot support this modification request at this time as it is unclear whether or not heavy vegetation provides a secure facility as intended in the code.*

- (f) All driveways which serve the site must be wide enough to accommodate two way traffic for a distance of at least 100 feet from the public street so that no traffic waiting to enter the site will be backed up on any public right of way.

*STAFF FINDING: The letter from the applicant states that “The driveway that serves the site is wide enough to accommodate two-way traffic for 200 feet from the public street. There is ample room such that traffic should not enter the public right of way”. As shown on aerial photography and inspected on a site visit, there is a single driveway entering the facility that is not wide enough to accommodate two way traffic through the scale house and into the facility. This driveway is mainly about 11 feet wide. However, this entrance driveway leading up to the scale house is over*

*100 feet long in conformance to this section. There is a separate and additional one-way exit drive that directs trucks back out to the main driveway. Therefore with both of these driveways combined two-way traffic is appropriately accommodated for in and out of the facility.*

5. That the landfill operator will be responsible for removal of any and all debris, dirt, or other materials which fall from trucks entering or leaving the landfill from all adjoining streets on at least a weekly basis. Failure to comply constitutes a violation of this ordinance and may constitute grounds for revocation of the operating permit.

*STAFF FINDING: In the letter attached from the applicant, it is stated that they “have taken pride in keeping the roadways clean”. However no commitment has been made to weekly clean the road as required in this section. On several site inspections to the site the majority of Holbrook Road seems to be clean and debris free. However the area of street immediately in front of the facility’s driveway is often covered with dirt from trucks exiting the facility.*

- **UPDATE 9/19/16:** *In the updated letter from the applicant, they’ve stated that they “plan to continue to exceed section 6.5 of the franchise agreement with the Town of Huntersville that states that we must pick up debris from our customers vehicles”. This statement however does not make it clear that the cleaning of Holbrook Road would take place on a weekly basis.*

6. That use of the site for any purpose shall be limited to the hours of 7:00 a.m. until 6:00 p.m. Monday through Saturday, if the site adjoins or is across the street from property located in a residential district.

*STAFF FINDING: The Greenway Waste Solutions landfill is adjacent to a residential zoning district therefore the restricted hours of operation will apply. The letter from the applicant has stated that the use will be limited from 7:00 am to 6:00 pm.*

7. That a timetable has been submitted with the application indicating the development phases and the projected life expectancy of the landfill.

*STAFF FINDING: The letter from the applicant states that an updated timetable has been submitted with the application. However staff has not located it in the submittal.*

- **UPDATE 9/19/16:** *The updated letter from the applicant states that based on current waste acceptance rates and anticipated recycling rates, they project the life of the landfill to be over 20 years.*

8. That a reclamation plan is provided that shows how the site will be reclaimed upon the closing of the landfill. The reclamation plan shall state the proposed method of conservatorship and perpetual maintenance or use. It shall demonstrate that the site, when closed, will pose no threat to public safety; that the finished contours and groundcover will reestablish a compatible

appearance with surrounding lands and buildings; and that the method of maintenance or use will cause no future environmental degradation.

*STAFF FINDING: No updated reclamation plan (or closure plan) has been submitted by the applicant for this application.*

- **UPDATE 9/19/16:** *There is no reclamation plan/closure plan submitted with the updated submitted as required. The letter submitted with the application though includes a statement regarding NCDEQ monitoring the site post closure.*

9. An existing LCID landfill shall not be required to be brought into compliance with the provisions of this ordinance provided:

- (a) The landfill has been continuously operating since 1991 and was not within the zoning jurisdiction of the Town of Huntersville in 1991;
- (b) The landfill has a valid LCID or demolition landfill permit and/or obtains any renewals of the LCID or demolition landfill permit required by the State of North Carolina and/or Mecklenburg County;
- (c) The landfill has a closure plan approved by the State of North Carolina and/or Mecklenburg County; and
- (d) In no event shall the landfill operate under a LCID landfill permit later than December 4, 2016 and further provided that on the earlier of the final date permitted for operation of the landfill or the date the landfill permanently ceases operation, the owner and/or operator of the landfill shall immediately commence and continuously pursue to completion closure of the landfill according to the provisions of the then current closure plan approved by the State of North Carolina and/or Mecklenburg County. Failure to complete closure according to such approved plans shall be a violation of this ordinance enforceable by all remedies and penalties available to the Town.

*STAFF FINDINGS: The Greenway Waste Solution Landfill is a Construction and Demolition Landfill (C&D) and is not subject to this section of the ordinance. This section of the ordinance applies to Land Clearing and Inert Debris Landfills (LCID).*

10. Any existing C&D landfill shall be permitted to continue operating in the zone in which it is located provided that landfill has an unexpired special use permit. Any expansion beyond the property boundary of an existing C&D landfill as approved on November 11, 2005 must be located in the SP district with a special use permit in accordance with the provisions of this Section.

*STAFF FINDINGS: The current special use permit for the Greenway Waste Solutions landfill is current and unexpired. However the applicants do wish to expand the boundaries of the landfill as shown in the attached Special Use Permit site plan. Therefore the rezoning application submitted*

*for these properties must first be approved designating them Special Purpose (SP) prior to this special use permit being approved.*

**STAFF RECOMMENDATION:**

Staff cannot support the application at this time due to the outstanding issues mentioned above.

**PLANNING BOARD RECOMMENDATION:**

On August 23, 2016 the Planning Board unanimously continued the application per the applicant's request until their September 27, 2016 meeting.

On September 27, 2016 the Planning Board reviewed the application and considered the request. At the end of the discussion, per the applicant's request, the Planning board unanimously continued the application until the Board's October 25, 2016 meeting. The purpose of the continuance was to clarify unresolved items on the plan.