

TA 17-05 – Existing LCID Landfill Closure

PART 1: DESCRIPTION

TA17-05 is a request by Piedmont Wrecking and Grading Company, Inc. to amend Article 9.23.9 of the Huntersville Zoning Ordinance. The currently proposed text would extend the closure deadline for existing Land Clearing and Inert Debris (LCID) landfills by 10 years. The original text submitted in the application would remove the closure deadline for LCID landfills. Please see the Huntersville Ordinance Advisory Board meeting summaries below for a description of how the draft text has evolved since the original application submittal.

PART 2: BACKGROUND

The Piedmont Grading LCID landfill has been in operation on Everette Keith Road since September of 1985. It has operated as a permitted and compliant landfill under the Mecklenburg County Zoning Ordinance until September 1997 when the Town of Huntersville extended its extraterritorial jurisdiction (ETJ) to the landfill. At that time it was zoned OPS, a residential zoning district which made the landfill a non-conforming use under Huntersville zoning.

In December of 1995 the old Town of Huntersville Zoning Ordinance was amended to add an amortization or “sunset” date requirement where on a certain date existing non-conforming landfills (both Construction and Demolition (C&D) and Land Clearing and Inert Debris (LCID)) are required to come up to the requirements of ordinance or close. In 1996 that sunset date requirement was carried over into the new Huntersville Zoning Ordinance. Various text amendments by the owners of the landfills since that time have either moved back the closure deadline or had it removed.

For instance the ordinance currently allows existing non-conforming C&D landfills to operate indefinitely as long as they have an unexpired Special Use Permit (SUP). Greenway Waste C&D landfill on Holbrook Road recently rezoned their entire landfill and got an updated Special Use Permit approved for their operation. Therefore their landfill has been brought into compliance with current ordinance standards. There are no more existing C&D landfills in Huntersville zoning jurisdiction.

In 2006, Piedmont Wrecking and Grading successfully applied to amend the zoning text to move the sunset date for its LCID landfill on Everette Keith Road back 10 years. After discussion with the Town Attorney in regard to the State Legislature’s “permit freeze” during the recession, it was determined that the Everette Keith landfill now has until March 3, 2018 to come into compliance or close. There are no other existing LCID landfills in the Huntersville zoning jurisdiction. The applicant is applying to amend Article 9.23.9 to again push back the sunset date another 10 years; to March 3, 2028.

The Huntersville Ordinance Advisory Board (HOAB) considered multiple drafts of the proposed text. A summary of their meetings and the different draft texts are below.

- June 1, 2017: The applicant’s first draft submitted removed the reference of LCID landfills in Article 9.23.9 D. The removal would in effect remove the sunset date for LCID landfills altogether and allow them to continue operation indefinitely without complying with any ordinance requirements. This

original proposed text is included in your agenda packet for review. Staff presented the concern that the process for compliance was already present in the text through the conditional rezoning and special use permit process; which ensures that the landfill comes up to Article 9.23 code to “the extent practical”. After discussion, the committee recommended the applicant redraft the text to include some conformance stipulations of Article 9.23.

- July 13, 2017: The updated draft language continued to remove the sunset date but included language that required the landfill to pave their driveway, landscape their frontage to a reasonable degree, and keep the driveway clean. It also included a provision that after 10 years, the Planning Director could direct the landfill to close if there were 3 violations within the 10 year period. This updated text is also included in your agenda package for review. Staff’s concern remained that many of the principles from Article 9.23 were not addressed in the proposed text and that staff would make the closure decision and not the Town Board. After discussion, the Board recommended the applicant meet with staff to come up with appropriate language that sufficiently addressed the requirements of Article 9.23.
- August 3, 2017. At the August meeting, the Board discussed staff’s recommendation that the applicant go through the Special Use Permit (SUP) process, and the applicant’s new proposed language to simply extend the sunset date by 7 years. After discussion, the Board recommended to approve a text amendment that would extend the sunset date 10 years with the following conditions (by a 5-3-1 vote):
 1. Pavement of the driveway entering the facility shall be 100 feet.
 2. Landscaping the frontage of the property to a commercially reasonable degree.
 3. Maintained gravel within the driveway exiting the facility.
 4. Weekly regular cleaning from the exit driveway down to Hambright Road.

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2030 COMMUNITY PLAN AND APPLICABLE LONG RANGE PLANS

The following are examples of relevant plans and policies from the 2030 Huntersville Community Plan that may be incorporated into the Board’s statement of consistency for approval or denial of the request.

- Policy E-7: Sustainability: Extending the life of the landfill would allow an existing recycling LCID landfill to continue to operate and reduce waste through their recycling program.
- Policy ED-12: Business Retention and Expansion: The text would allow the continuation or retention of a local business that has been in operation for many years.

PART 4: STAFF RECOMMENDATION

Rather than moving the sunset date back another 10 years and having to again review the conformity of the landfill for a 3rd time, staff recommends amending Article 9.23 of the ordinance to allow LCID landfills to continue to operate in the zoning district in which it is currently located indefinitely with the issuance of a Special Use Permit (SUP). Staff recommends the Special Use Permit (SUP) process be followed to allow the continuation of the existing LCID landfill for the following reasons:

1. The SUP process will easily allow staff, the public, and the Town Board to review site specific ways the landfill can come up to the current ordinance standards of Article 9.23 “to the extent practical”. Issues

such as screening, buffers, cleaning of streets, site security, street maintenance, consistency with thoroughfare plans etc. can be reviewed and addressed on the SUP site plan.

2. Moving the closure date for existing LCID landfills and C&D landfills has been done several times in the past by two different landfills. Going through the SUP process for LCID landfills now would put an end to that process and allow the applicant to continue to operate indefinitely with no sunset date.
3. Greenway Waste used the SUP process to allow their landfill to continue operation indefinitely, thus setting a pattern to follow.
4. If an existing landfill is going to continue to operate for several years past the ordinance sunset date, staff believes the public and adjacent property owners should be included in the process and have input on the permit. The SUP process would give adjacent property owners specific notice and allow them to comment if desired.
5. Staff does not anticipate the SUP process being an unreasonable burden on the applicant. Considering the fact that a landfill plan already exists (attached to the state permit), it does not seem like much in the way of site design would be needed to produce a SUP site plan. Much of the agreements worked through to bring the site up to code to the extent practical can be included with simple notes on the plan. The SUP process is a 3 month process that could yield an unlimited amount of operation time for the applicant.

The staff recommended text amendment that would allow the landfill to continue to operate in its current zoning district with the issuance of a special use permit is attached in your agenda packet for review.

PART 5: PUBLIC HEARING

The Public Hearing was held on August 7, 2017. An individual from the public expressed opposition to the application due to the truck traffic that would continue to take place through a heavily developed residential area. The applicant presented the updated text proposed as recommended by the Huntersville Ordinance Advisory Board. The new language presented by the applicant at the hearing would allow the landfill to continue to operate for 10 years (until March 3, 2028) with the following conditions.

1. In the event that a driveway is permitted for entrance into the facility, paving of the driveway entering the facility for a distance of 100 feet from the public right of way;
2. Landscaping along street frontages to the extent commercially reasonable;
3. Installation of gravel within the driveway exiting the facility;
4. Regular cleaning of the public right of way from the exiting driveway to the nearest intersection.

PART 6: PLANNING BOARD RECOMMENDATION

The Planning Board reviewed the application at their August 22, 2017 meeting. Two adjacent property owners attended the meeting and expressed their general concern about the storm water runoff from the site, the effect on their property values, and the perceived lack of cleaning of the street by the landfill owners. The draft minutes of the meeting will be forwarded to the Board once completed for reference. After discussion, the Planning Board recommended denial of the amendment “as being inconsistent with the best practices for evaluating a continued operation of LCID landfills. It is not reasonable and in the public interest to amend the zoning ordinance because a SUP is preferred for adherence with precedent and allowing

community input”. The recommendation was made by a 5-1 vote. Following the meeting, the applicants submitted updated text with additional changes in an effort to address the discussion by the Planning Board. That language is represented in the latest proposed amendment ordinance included in your agenda packet. The changes included:

- An added condition that any new driveways are paved a distance of 100 feet from the public right of way, unless the planning director states it’s not reasonable to do so due to topographic conditions.
- The street cleaning condition has been modified to match the ordinance requirement of Article 9.23 in regard to weekly cleaning of the street and removing of dirt, debris, and materials.

After the Planning Board meeting, staff received a letter from Scott Munday from LStar Ventures, a nearby property owner in Bryton expressing opposition to the proposed text amendment. That letter is included in your agenda packet.

PART 7: ATTACHMENTS AND ENCLOSURES

- Original Draft Language
- Revised Draft Language
- Applicant Amendment Ordinance

PART 8: STATEMENT OF CONSISTENCY – TA17-05

Planning Department	Planning Board	Board of Commissioners
APPROVAL: N/A	APPROVAL: N/A	<p>APPROVAL: In considering the proposed amendment TA 17-05, to amend Article 9.23: <i>Off-Site Land Clearing and Inert Debris and Construction & Demolition Landfills</i> of the Zoning Ordinance, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</p>
<p>DENIAL: In considering the proposed amendment TA17-05, to amend Article 9.23: <i>Off-Site Land Clearing and Inert Debris and Construction & Demolition Landfills</i> of the Zoning Ordinance, Planning Staff recommends denial of the amendment. The recommendation is based on staff's view that the Special Use Permit process is the more appropriate method to allow the continuation of a non-conforming landfill operation due to its ability to include the public in the decision making process and bring the site more fully into conformance with Article 9.23 of the zoning ordinance.</p>	<p>DENIAL: In considering the proposed amendment TA 17-05, to amend Article 9.23: <i>Off-Site Land Clearing and Inert Debris and Construction & Demolition Landfills</i> of the Zoning Ordinance, the Planning Board recommends denial based on the amendment being inconsistent with the best practices for evaluating a continued operation of LCID landfills. It is not reasonable and in the public interest to amend the zoning ordinance because a SUP is preferred for adherence with precedent and allowing community input.</p>	<p>DENIAL: In considering the proposed amendment TA 17-05, to amend Article 9.23: <i>Off-Site Land Clearing and Inert Debris and Construction & Demolition Landfills</i> of the Zoning Ordinance, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>.</p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because....(Explain)</p>