



**TOWN OF FREETOWN
BOARD OF SELECTMEN**
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AGENDA
MEETING OF TUESDAY, MAY 30, 2017
FREETOWN ELEMENTARY SCHOOL
43 BULLOCK ROAD, EAST FREETOWN, MA 02717

6:00 P.M. Call to Order Chairman Lisa A. Pacheco calls the meeting to order at 6:03pm. Also present: Selectman Robert P. Jose, Selectman Charles B. Sullivan, Town Counsel Mark R. Reich, Esq. Staff present: Health Agent Kevin Bernardo, Senior Clerk Timm McIntosh. Town Administrator Jack Healey is absent. The meeting is being recorded by FREECAM and Mr. McIntosh. Chairman Pacheco leads the Pledge of Allegiance.

Weekly Public Discussion

This meeting has one item on its agenda: Discuss/Vote on Annual Renewal of Excel Recycling, Inc., LLC. Present: Martin Costa & Jonathan Costa and Atty John Markey, all of Excel Recycling.

Selectman Pacheco begins by noting that the proper process wasn't followed initially, so now we're left with trying to come up with a license that can try to restrict what Excel can do. Selectman Sullivan explains why he recused himself at the last meeting, citing ethics concerns, as he abuts the Excel property. He says he'll be joining the gallery, and will make comments as a resident, not as a Selectman, and he leaves the stage. Selectman Pacheco says Atty. Reich has reviewed all complaints received by the Board. Selectman Pacheco wants to publicly thank outgoing Health Agent Kevin Bernardo for personally checking out all complaints. Mr. Bernardo receives a round of applause in thanks from the residents.

Atty. Reich goes through the statute governing the sale of second hand merchandise license Excel currently has, and explains that the Board of Selectmen can revoke the license at its pleasure. It is generally a one year license.

Selectman Jose explains a letter received today from the Department of Environmental Protection (DEP). It states they cannot be at tonight's meeting. Selectman Jose reads the letter aloud. DEP is still reviewing the matter. He also reads an e-mail from DEP as well. The e-mail talks about sound testing, and says the review is expected to be finished in the first week of July.

Selectman Pacheco opens the floor to residents for comments, asking them to stay on topic as it pertains to the license before the Board tonight.

Steve Tripp – 4 Alexandra Drive – Mr. Tripp presents the Board with materials that fell off an Excel truck on the 24 off-ramp, and speaks to explosion heard earlier to today. He says the Police responded, and a police report was made. Mr. Tripp doesn't understand how it got to this point. He says Mr. Costa said it wouldn't come to this, but here we are. He says there's EPA with the littering and pollution concerns as well, especially at the gas pipeline, but he doesn't believe anyone cares.

Donna Amarantes – 39 High Street – Ms. Amarantes also speaks to the explosion. She presents Board with shards of metal wrapping that litters her yard. She notes that when the sun is shining on her yard, it looks like a Christmas tree. She also echoes Mr. Tripp's comments on the litter at the gas pipeline.

Pedro Neves – 9 Alexandra Drive – Mr. Neves wants to thank Mr. Bernardo and speaks about the wonderful job he's been doing. He understands the stress has gotten to him. Mr. Neves says the day DEP did their sound testing was a "fake day." He says he's in favor of recycling and business in general, but notes that everything happening today is on the OSHA report the zoning board has. He also speaks to explosions, says he sometimes feels like he's in a war zone. Mr. Neves also regularly feels extreme vibrations. He says this is not what he moved to Assonet in 2012 for. He appreciates that Excel has been trying to do, but says this is what these facilities do. Mr. Neves believes the issue is the person that allowed this in the first place. He says the noise from the facility, though not necessarily the shredder, is throughout the day, sometimes as late as 10 at night. Mr. Neves also speaks to the families that previously came to an agreement with Excel, and that he is not happy that those families spoke on his behalf. He also has concerns with the pollution, saying that he's noticed that he's becoming immune to the smell. He wants the vibration spoken of more. Mr. Neves says this can't go any longer, but stresses the major point that the facility is just in the wrong place.

Paul Magee – 1 Otta Way – Mr. Magee notes that if restrictions on licenses are being violated, the Board can revoke it at any time. Selectman Pacheco says the license is what it is and DEP puts the restrictions in place, we are waiting for their report on those.

Mr. Neves gets up again and says Excel sometimes works until 11:00 at night, and was told by the police they can apparently operate 24/7.

Leia Adey – 7 Friend Street – Alexandra Dr homes are comps to hers, which is on the market, so she's explored the neighborhood and experienced the conditions. She doesn't understand how these people live with this. Ms. Adey says the Board has to do something. She speaks to the complaint against the ZBA she's previously filed, and wants to make sure the Board has everything she submitted. Selectman Pacheco notes that was through the ZBA, which is totally different than the Board of Selectmen. She reminds the crowd what is being discussed here, they are not discussing the ZBA. She again goes over what the license is for, and the gallery laughs at the license. Selectman Pacheco says this license wasn't her decision but it is what we are going on now. Selectman Pacheco wants to make sure everyone knows the Board is listening.

Michael Cabral – 42 High Street – Mr. Cabral asks if the Board has seen what's going on in person. Selectman Pacheco and Selectman Jose have. Mr. Cabral then plays a video from the Board through the microphone. Selectman Jose says he can't hear anything, asks Mr. Cabral to e-mail it to Mr. Bernardo to enter it into the record. Mr. Cabral says he believes the Costas have been cooperative, it's now turning to the Town. He says this is impacting lives and happiness. It is Mr. Cabral's belief that Excel has given all the information, now someone from the Town needs to be accountable.

Cindy Senra – 16 Alexandra Drive – Ms. Senra wants to know how can we justify renewing the license if we know the license isn't what they are doing? After conferring with Atty Reich, Selectman Pacheco says this isn't a public hearing, noting that all these complaints are for DEP, not the Board of Selectmen. Ms. Senra asks how to schedule a meeting with DEP. Atty. Reich says he knows this is difficult. He says both he and the Board has been in touch with DEP, and fully expects a later meeting with DEP. He would want them more involved. He says a meeting with DEP will certainly be held, probably in July. He says these comments aren't falling on deaf ears. Ms. Senra says the Board is expecting us to live

through this through the summer. She wants a cease and desist order until DEP makes their ruling. She sometimes hears them working at 11:30pm at night.

Charlie Sullivan – 46 High Street – Mr. Sullivan says that a year ago, the Costas said they wanted to be good neighbors, but he hasn't seen that. They know there's a sound issue. Mr. Sullivan says the sound barriers are not enough on the east side, they actually amplify the sound. He says it's time for the Board to decide what to do to put Excel and DEP's feet to the fire. In December, it was 90 days, but it's almost 6 months later. He added up assessed values affected which amounts to around \$14M. Mr. Sullivan says he's heard that Excel is worth \$14M. He says it's imperative that the Town protects the value of the town more than the businesses in it. They are not keeping their promises.

Travis Bowie – 2 High Street – Ms. Bowie says truck traffic has become unbelievable and wonders why Excel is going through backroads of town, and not just right off Exit 9.

Jose Branco – 7 Alexandra Drive – Mr. Branco says everyone here sounds like a broken record. He says he is one of the most affected. There was debris in his pool and yard. Mr. Branco says we need the Town to step up for the residents. We need to fix the problem, not just blame DEP, because the license came from the town, not DEP. Mr. Branco states Excel's been in business over 5 months, they aren't new anymore. He recalls that Mr. Healey said we need to do something if it was an issue. He notes that there are days they are running and there's no noise. Mr. Branco says he has Jon Costa's number and has talked to him and he's very responsive. He wants someone to be accountable. Mr. Branco wants to know how do you renew a license if you know there's a problem? He says "Mr. Marty" blames the weather, but Mr. Branco says it has nothing to do with the weather. He also echoes Mr. Neves on the "fake day" belief. He says the Costas never say that it's noisy; they say it's the residents that are not comfortable with the noise. Mr. Branco finishes by saying enough is enough.

Bob Lima – 41 High Street – Mr. Lima says we should look at the potential for long term health issues here. We wonders if we should be monitoring the surrounding wells, as rain water is going through all those uncovered hazardous materials.

Mr. Magee wants to know who issued permits. Selectman Pacheco says the Building Inspector said they didn't need a special permit, which means they didn't have to initially go to the ZBA, though some residents forced it there. The ZBA's rulings must be made unanimously, but the ZBA did not rule unanimously in this case. Selectman Jose says the residents could bring it to land court.

Manuel Bandara – formerly of 5 Alexandra Drive – Mr. Bandara took a loss on his house because he couldn't handle it anymore. He notes the right people are never at these meetings. Selectman Pacheco says we can't control who's here, and she's as frustrated as we are. Selectman Jose, showing his frustration, explains that he's gone through hell getting DEP on board and to attend this meeting. He wanted them here to explain themselves, but they would not appear. He says he's tried everything he can do, even speaking to the State. Selectman Jose apologizes for getting heated. Mr. Bandara also echoes Mr. Neves, saying the testing days were not representative.

Ed Brightman – 102 High Street – Mr. Brightman notes that Excel doesn't bother him. He asks BOS who is running this shredder thing, DEP? The Board says yes. He questions why the Board can't do anything about the shredder. He asks what happens if they shut it down. Selectman Pacheco says we don't have an answer. Mr. Brightman asks Atty. Reich for an answer. Mr. Brightman says he remembers the fly ash, says there wouldn't have been a massive fine if they shut it down. He suggests the Town shut it down. He says DEP would step it up then.

Selectman Pacheco asks Excel to speak. Atty. Markey thanks everyone for largely being respectful to Excel. He notes this has been a long process for both the neighbors and Excel. He says the people who were originally involved obviously didn't have a grasp on the topography of the area. His clients have tried to work with new engineers. It's not perfect yet, but they've made a significant investment to be better neighbors. They are trying to be as compliant as possible. They aren't denying anything; for example they acknowledge the "explosion" today, it was actually a container that was dropped, that was going to be a further sound barrier. Atty. Markey appreciates the Board's situation. Atty. Markey says he understands the license as being more about the type of people the Costas are, about whether or not they are accepting or selling stolen goods, more than the business they are running. He can't address all the issues here, but DEP is aware of all of them. The issues spoken here are all for DEP. He hopes the Board has a sense of where the company is coming from.

Atty. Reich appreciates the comments and the presentation. He admits the Board is in a very limited situation here tonight. We all would have appreciated if DEP was here. He's been in touch with DEP's attorney, but says we can't require them to be here. He again refers to the statute for the specific license. He understands the new DEP timeframe is a long time, and he'll be contacting them tomorrow to complain about that. He explains the options the Board has: the Board can vote against, and there would be no more business running, or the Board can issue a permit with restrictions, including compliance with DEP regulations. He says even if they issue it, it can be revisited in July when DEP can appear, and the Board can revoke it then if need be. The Board can also add restrictions which don't currently appear on them.

Selectman Jose asks the Costas if they recognize what's before us. He asks if they have they entertained every solution possible? Atty. Markey says you can never do that. The truck issue is a new one that they are hearing, and it will be addressed. They haven't ruled out doing more, but speaks to investment made so far. They are working and cooperating with DEP. Selectman Jose says they could address all of these issues at once if you completely enclose the site. He speaks about the benefits of a closed site vs. an open site. Getting heated again, Selectman Jose states that it's not reasonable for the residents or for Mr. Bernardo to have to deal with this on a daily basis. He notes this is one reason Mr. Bernardo is leaving us. Selectman Jose says he can't force them to enclose the site, but it's the only way he can see this is solved. He informs Excel that he is going to suggest restrictions, and they are going to hurt. Selectman Jose says he has an issue until all of the residents' concerns are placated.

Selectman Pacheco says there are some things they can restrict and some they can't. She finds it "unconscionable" that Excel is operating the hours they are. She says Excel knows the residents are going to complain but they still do it anyway. She says it's time to get real. She knows if we close the business, DEP will wipe their hands clean and can't test anymore. Selectman Pacheco says all of this is why she voted no initially, and she struggles with this. She wonders if the Town will get in trouble if they do this. Selectman Pacheco notes she is the only one who initially backed up the residents. She's very bothered by what Excel is doing.

Selectman Jose makes a motion, which is seconded with discussion by Selectman Pacheco. His motion, verbatim: "With the warmer weather and increased outdoor public activity and the large number of both founded and non-founded complaints by the health inspector it would be only prudent to restrict the hours of operation to 8am-4pm, Monday through Friday, no weekends, no federally observed holidays. Hours of operation shall cover all commercial and non commercial operations including but not limited to: deliveries, moving materials on site, business with the general public, sorting, processing in any manner, and conveying both ferrous and nonferrous materials, and the running of the shredder or any other mechanical device or equipment. However it shall not limit maintenance on said devices. Outside maintenance shall be allowable between the hours of 7am to 7pm Monday through Friday on an as needed basis but shall not be used to circumvent the normal hours of operation restrictions. Failure to

comply with these hours of operation may lead to greater restrictions and/or complete revocation of the license without notice.” Selectman Pacheco makes a motion for an amendment to the first motion, seconded by Selectman Jose, limiting the maintenance hours to 8am – 5pm. Both motions pass unanimously.

The Board stresses there are no exceptions to these regulations.

At 7:28pm, motion (Jose/Pacheco) to adjourn, passed unanimously.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timm McIntosh", written in a cursive style.

Timm McIntosh, Senior Clerk