

MADOFF & KHOURY LLP
124 WASHINGTON STREET, SUITE 202
FOXBOROUGH, MASSACHUSETTS 02035

JUNE 3, 2022

**Memorandum in Support of Application for Special Permit and Site Plan Approval
with Respect to Concrete and Asphalt Recycling Services to be conducted at
157-165 Lowland Street, Holliston, Massachusetts**

Holliston Asphalt & Concrete Inc. and M&M Estates LLC, together with their equity holders and affiliates **Master Paving Corporation and Middlesex Asphalt Services, Inc.**, submit this memorandum in support of their **Application for Grant of Site Plan Review and Special Permit filed for Special Permit and Site Plan Approval]** under the Zoning Bylaws (the "**Bylaw**") of the Town of Holliston, Massachusetts (the "**Town**"), Section III-A Schedule of Use Regulations #42a "**general industrial uses**" and #49 "**outside storage of building or other materials not covered elsewhere in this bylaw**") for the processing and outside storage of building materials and equipment year-round at that property located at 157-165 Lowland Street, Holliston, Massachusetts (the "**Property**").

Historical Use of the Property

The Property is located within an Industrial District under the Bylaw and was originally developed as a concrete batch plant which, following the closing of that plant, has been used over the past 40 years as an active earth materials recycling facility.

Most recently, pursuant to a Certificate of Action Special Permit and Site Plan Review Decision of the Town's Planning Board (the "**Board**") dated August 11, 2011, a copy of which is attached hereto as **Exhibit "A"** (the "**2011 Decision**"), the prior owner of the Property, Michael Brumber and his entity American Recycled Materials, Inc. (collectively, the "**Seller**"), from whom the Applicants purchased the Property as of April 1, 2022, operated a facility at the Property which processed and recycled asphalt and concrete materials and stored the same outdoors on a year-round basis, along with the gravel, loam and wood chips.

To conduct such operations, the Seller maintained and operated at the Property portable crushers, screeners, conveyors, and loaders which process and moved the recycled and other materials on-site. By 2011 Decision, the Board authorized the Seller's storage and processing of asphalt, concrete and other materials as identified on the site plan approved in connection therewith in outdoor piles labeled raw and processed materials. The perimeter of the site was and remains surrounded by concrete barriers and earthen berms.

In addition to the 2011 Decision issued by the Board, the Seller obtained from the Massachusetts Department of Environmental Protection (the “**MDEP**”) a Permit for Recycling, Composting or Conversion operations (the “**RCC Permit**”), a copy of which is enclosed here with. Under these approvals, the seller processed and recycled asphalt concrete building materials which were stored within the Property and handled gravel and loan on the site. The Applicants have applied to, and have been informed by, the MDEP that the RCC Permit is in the process of a transfer from the Seller to the Applicants.

Paragraph 1 of Conditions of Approval set forth in the 2011 Decision specifically stated that the Special Permit and other approvals therein were not transferrable or assignable and thus, despite the Seller’s recording of the 2011 Decision at the Norfolk County Registry of Deeds in 2011, the 2011 Decision does not “*run with the land*,” and the Applicants hereunder seek the Board’s approval of a modified and improved site plan and operations proposal under the same provisions of the Bylaw in order to operate a similar, but improved, asphalt and concrete recycling operation at the Property, in line with the use of the Property over the past half century, yet respectful of and responsive to the interests and rights of the neighbors in the Industrial District in which the Property sits, along with the proximate residential property owners and occupants.

Features of the Property and Stormwater, Noise and Parking Issues and Proposed Improvements to Such Conditions

The site is situated on a gravel outwash of highly permeable sandy soil and is surrounded by large earthen berms. No rainwater – runoff or dust control water (which is pumped out of the sentiment pond on the Property) can leave the site due to the surrounding berms and a large underground stone leaching facility covering the southwest corner of the Property, positioned in a triangular area which is the lowest aspect of the Property. The storm water is fully contained on the site via an existing stormwater operation and plan which includes a complete stormwater management/containment berm that surrounds the entire yard as well as the large retention pond of the western edge of the site and an in-ground infiltration basin. The Property and the operations thereon are described so that storm water is collected in the Southern corner of the Property where any residual sediment and material is collected for re-use. A portion of the stormwater runoff is directed into a retention pond where the sediment is allowed to settle and periodically recovered for re-use.

As outlined in the Application, the Applicants are proposing to significantly improve the stormwater management process used by the seller in its proposed future operations.

By the Application, the Applicants seek the relief to utilize the Property in an equivalent manner as allowed under the 2011 Decision, provided, however, that the Applicants are proposing to make improvements to the site to reduce and streamline the recycling facilities and the operations maintained on the Property.

The Applicants have proposed in the Application to limit the processing of concrete and asphalt product to cleaner quality of such materials, with the goal of eliminating associated debris. Further, the Applicants shall not engage in the processing of loam, wood chips and other earth materials formerly processed by the Seller under the 2011 Decision and will eliminate the processing of brick materials.

Also, the Applicants seek under the Application the Board's approval to construct a new office, garage and operations center as identified in the Application. The location is in the current area of the equipment storage and smaller repair shelter. The structures currently existing will be razed and a new facility will be constructed which will reduce the noise generated at the Property upon start-up of trucks and other vehicles.

Further, the Applicants propose to extend the berm to wall off sound transmission to the West and Southwest and to install fencing on the top of that berm. The Applicants also propose to install fencing for noise barrier along the Southeasterly property line, at which a large ditch exists (abutting the property at 175 Lowland Street), to install a wall at the trailer on the Property to mitigate noise to the Southwest. Materials processing would take place with machinery on the lower floor of the site and delivery and dumping of incoming material will continue with a proposed reduction in the time that trucks loaded with the materials to be recycled and having recycled materials will be reduced.

As discussed in the Application, parking needs at the Property are limited, and parking areas for limited number of employees and visitors are proposed to be located at the prospective garage building and the existing trailer.

Most traffic at the Property will be from construction trucks entering and leaving the facility, with loaded trucks entering the site being directed to climb the dumping ramp on the South side of the Property and will leave through the 'yard area' (denoted on the plan submitted with the Application). Trucks picking up material will be loaded in the yard area.

The proposed garage building will have doors on each side. Trucks typically will enter from the southeast and exit on the opposite side. Outdoor storage of equipment will be northwest of the garage, at the processing location (crushers, loaders etc.) and at various work locations on the Property.

Standards Required to Be Considered in Granting Special Permit

Section 5 of Article VI-E of the Bylaw require the Board, before granting a Special Permit, to consider the proposed use in relation to the site as well as the adjacent uses and structures and shall find that there will be no significant adverse effects to the neighborhood or the town, considering the following criteria:

- (a) The degree to which the proposed use complies with the dimensional requirements of the bylaw, is in an appropriate location and does not significantly alter the character of the neighborhood; the project is compatible with existing uses and other uses allowed by-right in the district and is designed to be compatible with the character and the scale of neighboring properties.
- (b) To the extent feasible, the proposal has been integrated into the existing terrain and surrounding landscape, minimizing the impacts to the aquifer and/or recharge area, wetlands, steep slopes, and floodplains.
- (c) Adequate and appropriate facilities shall be provided for the proper operation of the proposed use, including screening and provisions for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and properties.
- (d) The proposed project shall not create any significant emission of noise, dust, fumes, noxious gases, or any other adverse environmental impact including stormwater, erosion, and sedimentation.
- (e) There shall be no unreasonable glare from lighting, whether direct or reflected, onto ways, the night sky or onto adjacent properties.

The Applicants refer the Board to the discussion of the above criteria and the bases for satisfaction thereof as set forth at pages 2 through 9 of the Site Plan Narrative attached to the Application.

Responses to Questions Raised by Holliston Board of Health

Finally, the Applicants wish to respond to those issues and questions raised by the Health Department for the Town in its memorandum issued on or about May 31, 2022, by reciting below those questions/issues raised by the BOH therein and the responses of the Applications:

1. Dept Comment: The Health Department is in receipt of the Septic Design Plan and should have reviewed and approved shortly.

Applicants' Response: The Applicants look forward to the Department's comment on the septic design plan.

2. Dept Comment: What is the proposed height of the fence atop the new berm? This proposed fence should be engineered and have some noise deadening characteristics.

Would some angles in this wall assist with noise echoing?

Should there be plantings incorporated atop the berm and along the wall?

Applicants' Response: We have shown the fence to be eight feet high and with angles on the revised plan.

We have specified a noise reducing element on the revised plan. The existing berm is at about elevation 180 + with a pit floor at 159 +/-, the extension berm will be at 170 with an 8-foot fence taking it to about 178.

The applicant does not object to some additional plantings on the berm. However, the wall cannot support plantings with the absence of soils.

3. Dept Comment: The proposed 8' fence along the top of the wall at entrance may also need to have some noise deadening characteristics.

Applicants' Response: See responses to Item 2 above.

4. Dept Comment: A Stormwater Pollution Plan should be considered, including: inspection of the stormwater containment berm, quarterly and after major storm events.

When first flush storm events occur, greater than 2" (two inches), where flow may enter Bogastow Brook, a sample should be taken and evaluated for potential contaminants.

Old Sedimentation Pond should be sampled and evaluated after major storm events.

Applicants' Response: The Applicants do not object support the testing proposed by the Health Department.

5. Dept Comment: Inspection of the 100' Riverfront Buffer and property perimeter should be inspected at a minimum annually. Inspecting fences, walls, vegetation, etc. Maintaining as needed.

Applicants' Response: The Applicants agree with the Department's proposal for inspection.

6. Dept Comment: Consider infiltration of roof drainage, if possible.

Applicants' Response: The Applicants have added roof drainage to the site plan and design.

7. Dept Comment: An owner weekly litter patrol is recommended in front of property and entrance.

Applicants' Response: Applicants will promptly remove any of their or visitors' litter.

8. Dept Comment: Entrance shall be kept swept for dust control. Any Town requested sweeping should include Lowland Street area, from Jeffrey to 100' past driveway.

Applicants' Response: Applicants agree with such proposal as needed from day-to-day operations.

9. Dept Comment: An emergency spill kit for equipment should be kept on site and certified annually that it is complete and stocked. Annual staff training for spills and safety recommended. T

Applicants' Response: Applicants agree with such proposal; the Massachusetts Department of Environmental Protection imposes this requirement as well.

10. Dept Comment: Lighting around the proposed Building and Utility poles on-site with lights should be reviewed and downward facing for glare.

Applicants' Response: As noted on the Application and the plan set submitted therewith, "goose neck" fixtures are proposed. It is also a consideration the berm(s) shield lighting on this site.

11. Dept Comment: Local truck traffic is a concern by the public at large. No staging on side streets.

Applicants' Response: Applicants agree with such proposal.

Dept Comment: What is Middlesex Asphalt Services' fleet size?

Applicants' Response: 10 Triaxle, 5 1 ton, and ten paving equipment (rollers/pavers).

Dept Comment: Will they be storing large road grinding equipment on site?

Applicants' Response: No.

Dept Comment: How much equipment will be stored on site?

Applicants' Response: See above equipment count.

12. Dept Comment: No off-site snow storage shall be brought onto the site.

Applicants' Response: Applicants agree with such proposal.

13. Dept Comment: Prior to the installation of the future scale, the entrance should be reviewed for queuing, etc. Scale details should be submitted.

Applicants' Response: Applicants agree with such proposal.

14. Dept Comment: Staying compliant with all other State and Local Permits.

Applicants' Response: Applicants agree with such proposal.

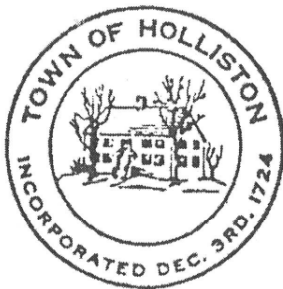


EXHIBIT "A"

TOWN OF HOLLISTON
PLANNING BOARD

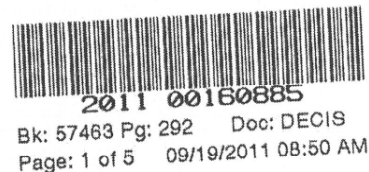
TOWN HALL

HOLLISTON, MASSACHUSETTS 01746

2011 AUG 17 PM 2:07
OFFICE OF THE
TOWN CLERK
HOLLISTON, MASS.
Elizabeth J. Smead

CERTIFICATE OF ACTION
SPECIAL PERMIT AND SITE PLAN REVIEW - MICHAEL BRUMBER

Decision Date: August 11, 2011
Applicant: Michael Brumber
Address: 157 Lowland Street, Holliston, MA
Owner: BA Simeone c/o Aggregate Industries, 400 Green Street,
Wrentham, MA 02093
Site Location: 157 Lowland Street
Assessors' Reference: Map 12, Block 4, Lot 34
Zoning District: Industrial (I)



It is hereby certified by the Planning Board of the Town of Holliston, Massachusetts, in accordance with the Rules and Regulations of the Holliston Planning Board, Article VII, Site Plan Review, a duly called and properly posted public hearing of said Planning Board was held on July 28, 2011 and continued to August 11, 2011. At a duly posted meeting on August 11, 2011, it was voted to **approve** a Special Permit and site plan application based on a plan entitled "Site Plan of Land in Holliston, MA" prepared for Michael Brumber of 815 Highland Street, Holliston on a motion made and duly seconded. The plan set was prepared and stamped by Bruce E. Wilson, Jr., PLS of GW Site Solutions Inc. of Franklin, MA. The application was filed with the Planning Board Office on July 7, 2011 and concerns a 7.07-acre property on Lowland Street in the Lowland Industrial Park identified as Map 12, Block 4, Lot 34.

Hearing notice under the requirements of the By-Law and MGL, c. 40A included the following:

1. Publication of a hearing notice in the Metrowest Daily News on July 13 and 20th,
2. Posting of the public hearing notice with the Town Clerk on July 7th, and
3. Abutter notification (including surrounding towns) by mail on July 12th.

The Applicant filed with the Planning Board the following, which are contained in the records at the Planning Board office and are incorporated into this Decision by reference:

1. Application and narrative for Site Plan Review filed with the Planning Board and Town Clerk on July 7, 2011 signed by the Applicant and Owner's Representative.
2. Plans entitled "Site Plan of Land in Holliston, MA", consisting of two sheets, dated July 7, 2011 (revised through August 11, 2011) prepared and stamped by Bruce Wilson, Jr. PLS.

Owner of record: Simeone Corp
BK 11841 Pg 502
BK 14708 Pg 121

Special Permit and Site Plan Certificate of Action
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The Planning Board also received correspondence from the Town of Holliston Fire Chief (dated July 27) and Police Chief (dated August 2) as well as Richard T. Westcott, PE of Westcott Site Services, civil engineering consultant for the Planning Board (dated July 18, 2011). The aforementioned are contained in the Planning Board files and are incorporated into this Decision by reference.

PUBLIC HEARING AND FINDINGS

During the course of the public hearing, the following individuals made appearances on behalf of the Applicant and Owner: Michael Brumber (applicant), Attorney Mark Helwig, Dennis Lydon of Aggregate Industries (owner), Bruce Wilson, PLS of GW Site Solutions, Inc. (surveyor), Russell Waldron of AES Applied Ecological Sciences (wetland ecologist) and J. David Simmons, Esq. of Angle Tree Consulting. No abutter or other party of interest was in attendance.

The Applicant explained that the property, which is the subject matter of several historical Zoning Board of Appeals Special Permits and Variances and this application, is located on Lowland Street within the Lowland Industrial Park. The existing buildings, parking, and outdoor storage areas are all located within the Industrial zoning district. The Applicant will occupy one of the buildings as an office and will store excavating equipment, construction materials and the company's fleet on site.

The Applicant requested a Special Permit under the Holliston Zoning By-Laws, Section III-A Schedule of Use Regulations (#42a "General industrial uses..." and #49 "Outside storage of building or other materials not covered elsewhere in this by-law") for processing and outside storage of building materials and equipment year-round. The exterior material storage areas are not proposed to be individually enclosed but are identified on the site plan with piles labeled as raw and processed materials, and the site perimeter is primarily comprised of concrete barriers and earthen berm. The Applicant is primarily engaged in processing and recycling of asphalt and concrete rubble material to produce "recycled aggregate" materials suitable for construction projects. Such processing requires a Determination of Need (Large Operation) from the Massachusetts Department of Environmental Protection (BWP SW 02). The quantity identified in that permit application totals 125,000 tons per year with a maximum of 1,000 tons received per day (300 tons on average). This aspect of the operation -- receiving unprocessed materials -- is limited to approximately 6 months per year (April -- October). Materials will be acquired from rehabilitation and construction of roadways, parking areas, storage area restoration and construction sites as well as demolition of bridges, buildings and other structures. The Applicant has indicated that a maximum amount of 10,000 tons of materials will be stored while "in process" and 10,000 tons of processed materials will be stored prior to shipment. Approximately 20 tons of non-recyclable residue (primarily rebar and wire mesh) have been identified and will be stored until shipped to another recycler.

Proposed site improvements were described, including truck circulation, screening, parking and security. Manufacturer specifications for a portable track-mounted crusher which will feed a portable screener that will sort and disperse recycled asphalt material into assorted sizes from ¾" to 3" have been provided.

At the public hearing sessions, no abutters offered testimony for or against the proposal. Upon motion made and duly seconded, the public hearing was closed on August 11, 2011.

Special Permit and Site Plan Certificate of Action
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Having reviewed all the plans and reports filed by the Applicant and his representatives and the representatives of the Town, considered the testimony at the Public Hearing and having viewed the site, the Planning Board has determined that the Application for Special Permit and Site Plan Review is consistent with the requirements of Sections III-A and VII of the Zoning By-Law. In connection with the application for Special Permit for Use pursuant to Section III-A, the Board makes the finding that the use is in harmony with the general purpose and intent of the By-Law.

The Site, as noted, is presently vacant within a planned industrial park. The proposed use of the site for outside storage of materials (sand & gravel, recycled asphalt and concrete products, and equipment) is consistent with the uses allowed under the zoning by-law within the Industrial district. The Board finds that the aforesaid uses can be made at the Site in a manner that is not detrimental to the surrounding areas provided that the conditions of this decision and that of the Commonwealth are complied with.

The Board finds that the intended use and associated traffic will not have a negative impact upon safety, as Lowland Street is a planned industrial roadway and that the entry provides for appropriate sight distance for vehicles exiting the site. Finally, the Board finds that the completion of the facility will result in improvement of the Site and will promote business development in the community. The Board also finds that the proposal meets the General Conditions for approval specified in Section VII (2)(a-g) of the Holliston Zoning Bylaw.

CONDITIONS OF APPROVAL

The Board's decision to grant the Application for Site Plan Review is subject to the following conditions:

1. This Special Permit is issued solely to the applicant and is not transferable or assignable. The Special Permit is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s. 11. The copy of the decision to be filed must contain a certification by the Town Clerk that 20 days have elapsed since after the decision was filed and that no appeal has been filed or if such appeal has been filed, that it has been dismissed or denied.
2. **A copy of the recorded decision and revised plan set shall be presented to the Inspector of Buildings.** Unless amended with the approval of the Planning Board, the endorsed plan set shall be the plan of record and operations shall proceed in accordance with the improvements shown on said plan and this Certificate of Action.
3. The Applicant shall not receive or process asphalt and concrete rubble material requiring a Determination of Need (Large Operation) from the Massachusetts Department of Environmental Protection (BWP SW 02) until said "permit" is presented to the Inspector of Buildings.
4. No corrections, additions, substitutions, alterations or any changes shall be made in any plans, proposals, and supporting documents approved and endorsed by the Planning Board without the written approval of the Planning Board. Any requests for modifications shall be made in writing to the Planning Board for review and approval and shall include a description of the proposed modification, reasons the modification is necessary, and any supporting documentation.

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5. A copy of this decision shall be kept on site and shall be made available to all site contractors.
6. Non-security lighting shall be extinguished overnight within 30 minutes after close of operations.
7. Prior to commencement of authorized site activity, the Applicant shall provide to the Planning Board Office the name, address and business phone number of the individual(s) who shall be responsible for all activities on the site. Additionally, the Police and Fire Departments should be provided with an emergency notification sheet.
8. Street numbers (5-6" in height) are to be added to any freestanding sign installed along Lowland Street.
9. Outside storage of materials and equipment not associated with site environmental cleanup is limited to areas designated on the site plan. Pile heights are limited to 25' and safe site circulation must be maintained at all times.
10. The applicant shall install/repair the dust suppression system prior to commencement of processing operations and shall operate that system at all times when the crusher and screener are operating.
11. The applicant shall not cause a nuisance to residents due to dust and/or odors. If, in the opinion of this Board, the above measures do not sufficiently mitigate noise and dust migrating off the property, the Board will notify the Applicant in writing and the Applicant shall supply a corrective action plan within thirty (30) days for the Board's review and approval. The Inspector of Buildings may take additional measures as the Town's Zoning Enforcement Officer.
12. No outside activity, including loading of materials is allowed on-site prior to 7:00 a.m. or after 7:00 p.m. Monday through Saturday with the exception of seasonal snow plowing activity and properly-noticed overnight activity to receive millings. Notification must be given to the Building Department and Police Department a minimum of 24-hours in advance of overnight activities. A maximum of 20 nights for such activities are allowed per calendar year. No processing shall occur after 6 p.m.
13. The Applicant shall take measures to prevent vehicle queuing at the site entrance and along Lowland Street, especially before 7 a.m.
14. The applicant shall also direct his vehicles as well as deliveries to utilize the industrial roads in the area in order to minimize impacts to residential areas. This includes utilization of Jeffrey Avenue and Whitney Street to access Washington Street.
15. The responsibility for the maintenance and operation of the drainage system will be the responsibility of the applicant. The applicant shall maintain the drainage system and shall provide semi-annual inspection of the sedimentation basin to the Planning Board. If necessary, the Applicant shall clean the basin so as to maintain the system in proper working order.
16. The Board reserves the right to impose additional requirements in the event that the drainage system fails and water overflows, creating a safety issue.
17. Prior to the issuance of a Certificate of Occupancy, the Applicant shall submit an as-built plan stamped by a professional engineer certifying that all site improvements are completed in accordance with the approved plan. The Applicant shall submit a statement certifying that all conditions of approval of this decision have been met.
18. Prior to the issuance of a Certificate of Occupancy, the Police and Fire Department shall be provided with keys to any proposed gates and buildings (e.g. Knox box) and an accurate materials list depicting the contents of the storage areas (including MSDS).

Special Permit and Site Plan Certificate of Action
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19. The double-walled aboveground fuel storage tank shown on the site plan shall be inspected and approved by the Holliston Fire Chief.

Planning Board Vote

The Board's vote in favor of granting Special Permit and Site Plan approval for Michael Brumber is as follows on a motion made and duly seconded:

John J. Donovan	Yes
Parashar Patel	Yes
Jonathan Loya	Yes
Geoffrey Zeamer	Yes
Warren Chamberlain	Yes

HOLLISTON PLANNING BOARD
BY:


D.L.

John J. Donovan
Chairman

I hereby certify 20 days have elapsed since after the decision has been filed in my office and that no appeal has been filed or if such appeal has been filed, that it has been dismissed or denied.

 Date: Sept. 16, 2011

Elizabeth Greendale
Town Clerk