

**AWARE'S APPEAL TO
BETHLEHEM ZONING BOARD
OF ADJUSTMENT (ZBA) RE:
SELECTMEN'S FAILURE TO
ACT ON A COMPLAINT
REGARDING CONSUMAT
LANDFILL**

*Rec'd from Richard Pollock
1/6/93*

*Presented to ZBA on Dec. 29, 1992
Continued to January 14, 1993*

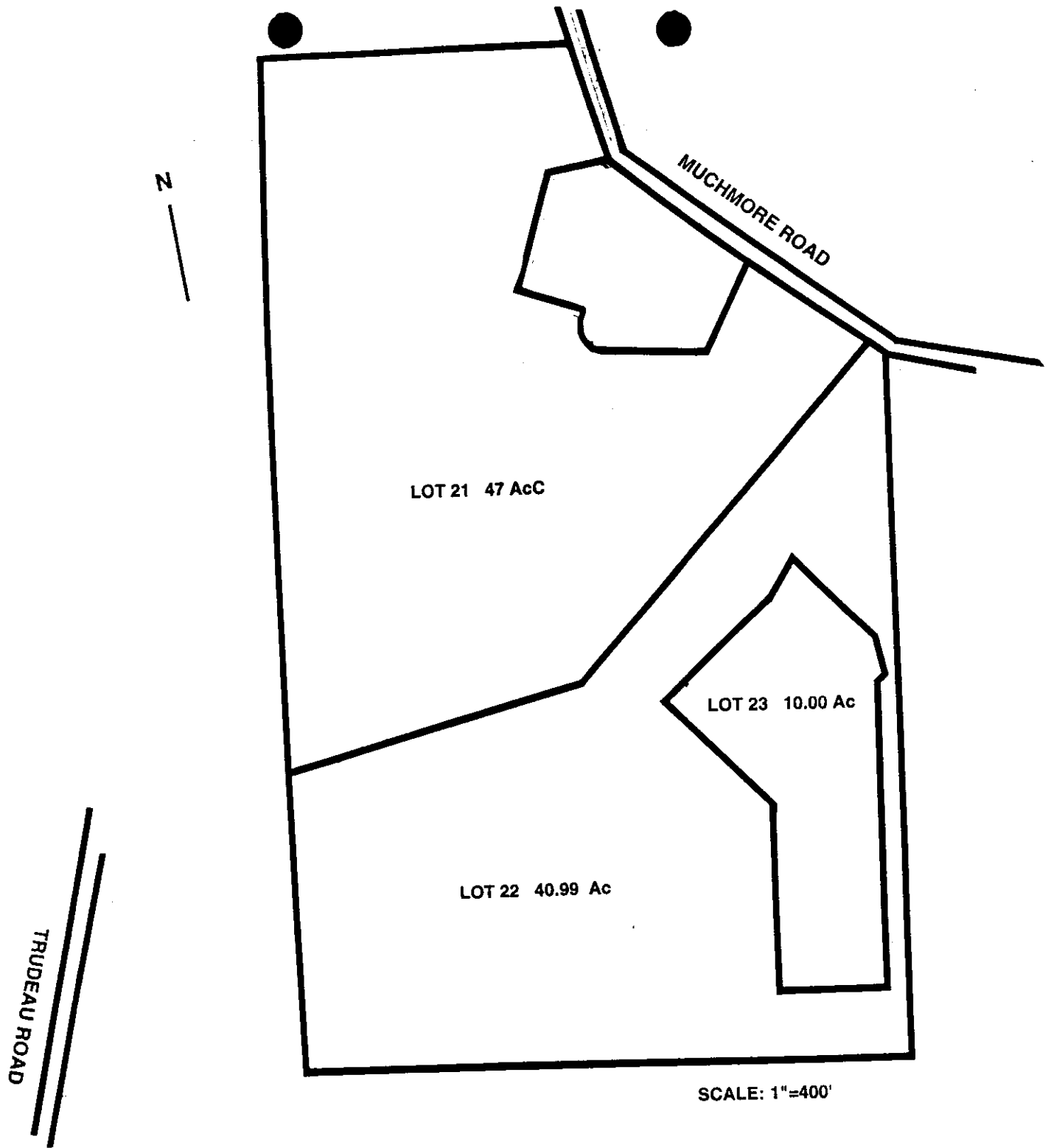
QUESTION:

**WHAT SITES ON BROWN / SANCO
PROPERTY HAVE BEEN
AUTHORIZED BY THE BETHLEHEM
ZBA FOR LANDFILL OPERATION?**

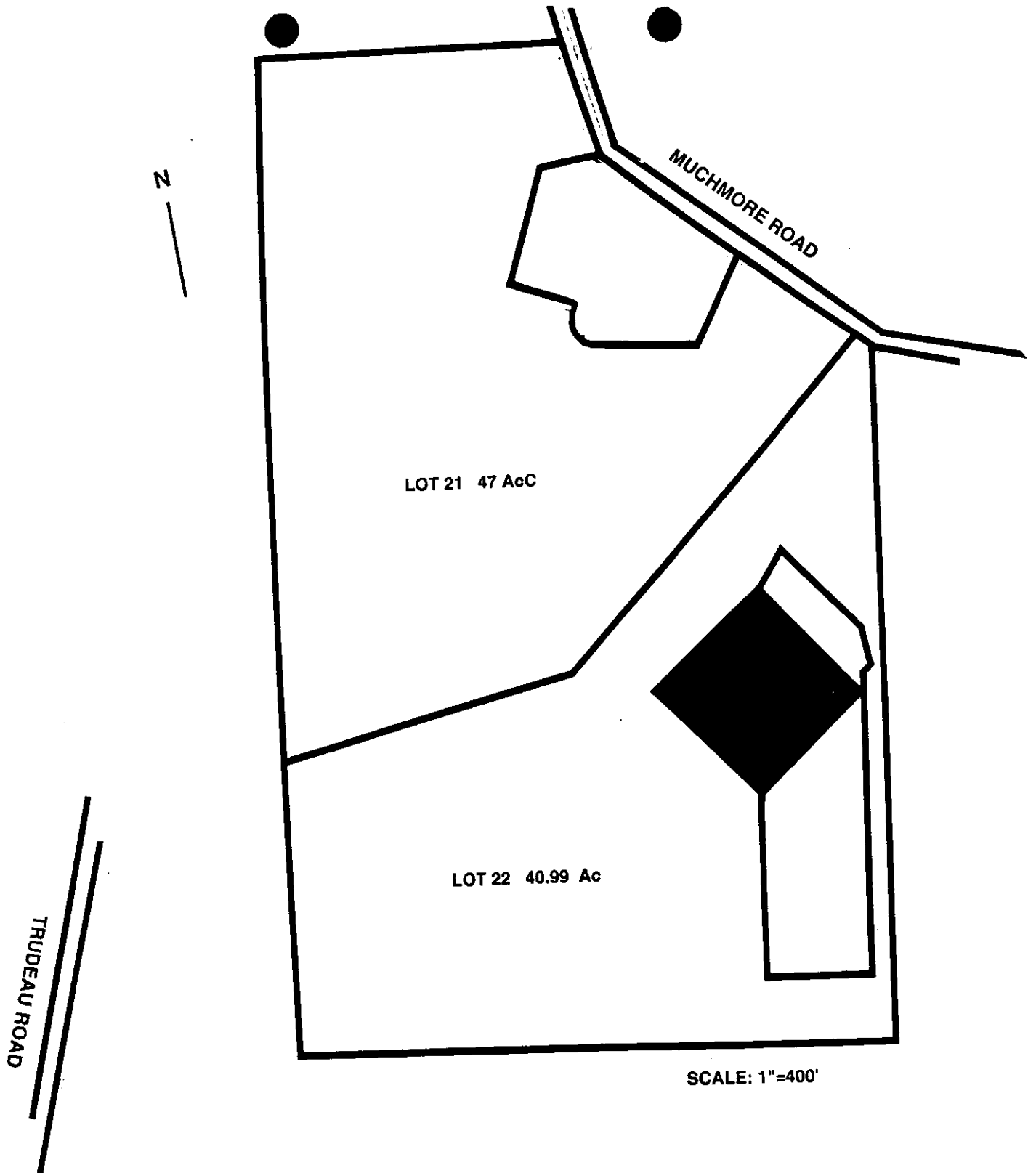
ANSWER:

- 1. A 400' X 400' PARCEL
(PERMIT: JULY 13, 1976)**
- 2. A 14 ACRE PARCEL
(PERMIT: Jan. 15, 1986)**

**A SERIES OF MAPS AND DOCUMENTS
SHOWING THE DEVELOPMENT OF
THE HAROLD BROWN PROPERTY
OFF MUCHMORE RD., FROM 1976 TO
THE PRESENT**



**MAP NO.1
RAW MAP OF HAROLD BROWN PROPERTY FROM
TOWN OF BETHLEHEM MAP NO.419**



**MAP NO.2 JULY 13, 1976
PROPERTY OF HAROLD BROWN SHOWING
PROPOSED 400' X 400' LANDFILL DUMP**

Harold Brown's application to construct a land fill dump on Muchmore Road was approved after considerable discussion. The following points were made: The public will be unable to use the dump. It will be under the supervision of the State, and it has to be run according to state specifications. There should be no odor and dump must be filled in every day with six inches of dirt. There will be a private road which has to be locked at all times. Luigi Castello, Esq. had no objection to the land fill dump provided it involves only an area 400' x 400' and definitely is laid out with set distances from the Castello and McDonoll property.

**MINUTES OF ZBA MEETING ON JULY 13, 1976:
BROWN'S APPLICATION FOR A 400' X 400' VARIANCE**

TOWN OF BETHLEHEM
BETHLEHEM, NEW HAMPSHIRE
03574

TEL. 869-3351

ZONING BOARD OF ADJUSTMENT

July 13, 1976

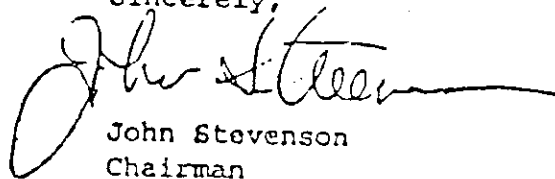
Mr. Harold Brown
Hillary Lane
Bethlehem, NH 03574

Dear Harold:

Thank you for your appearance before the Zoning Board of Adjustment on this evening.

Your application to us for a variance to construct a land fill dump on your property on the Muchmore Road, Bethlehem, is hereby granted and approved, subject to complete state approval and subsequent supervision.

Sincerely,



John Stevenson
Chairman

JS:cw

**VARIANCE GRANTED TO HAROLD BROWN ON
JULY 13, 1976 FOR SITE 400' X 400'**

**DATES OF DEED: TRANSFERS OF BROWN
PROPERTY TO ROY SANBORN / SANCO INC. WITH
SUBDIVISION APPROVAL**

**1. LOT NO. 23
10 ACRES
APRIL 24, 1984**

**2. LOT NO. 22
40.99 ACRES
APRIL 4, 1985**

**3. LOT NO. 21
47 ACRES
OPTION SEPTEMBER 18, 1986**

**OPTION EXERCIZED JANUARY 5, 1987
ONE DAY BEFORE SANCO SUED ZBA
AND AWARE IN SUPERIOR COURT**

**CHRONOLOGY: HISTORY OF SANCO
INC. APPLICATIONS TO TOWN OF
BETHLEHEM FOR A "SPECIAL
EXCEPTION" FOR A 14 ACRE LANDFILL
ON MUCHMORE ROAD PROPERTY.**

- 1. APPLICATION: JULY 22, 1985**

- 2. FIRST ZONING BOARD OF
ADJUSTMENT (ZBA) HEARING ON
AUGUST 13, 1985. CONTINUED TO
AUGUST 20, 1985. CONTINUED TO
SEPTEMBER 3, 1985**

- 3. FIRST ZBA DECISION OF DENIAL
SEPTEMBER 3. 1985**

- 4. MOTION FOR REHEARING DATE
FILED BY SANCO SEPTEMBER 13, 1985**

- 5. SECOND ZBA HEARING OCTOBER 10,
1985**

- 6. SECOND ZBA DECISION NOVEMBER
7, 1985**

- 7. JANUARY 15, 1986 DECISION TO
GRANT A SPECIAL EXCEPTION**

- 8. STATE APPROVAL**

II. Physical Description

A. Remote Location

1. 2 1/2 miles from village
2. Away from population center
3. Buffering zone of trees to be provided

B. General Layout of Facility

1. Phased development over facility site life
2. Total area of expansion is approximately 14 acres
3. Old landfill to be closed as operations move into new secured landfill area
4. New area will be integrated with existing and not constructed as a totally separate facility

**PROPOSAL OF SANCO FACILITY PRESENTED BY
SANCO INC. AT ZBA HEARING AUGUST 14, 1985
(DOCKET NO. 86-E-044 p.27)**

Malcolm
Chase: It was 400 by 400 feet.

George
Manupelli: That was the original?

Steve
Poggi: Which is approximately 3-1/2 acres....

George
Manupelli: Three-and-one-half acres. The new is? Total?

Steve
Poggi: The total new acreage is about 13-1/2 acres.

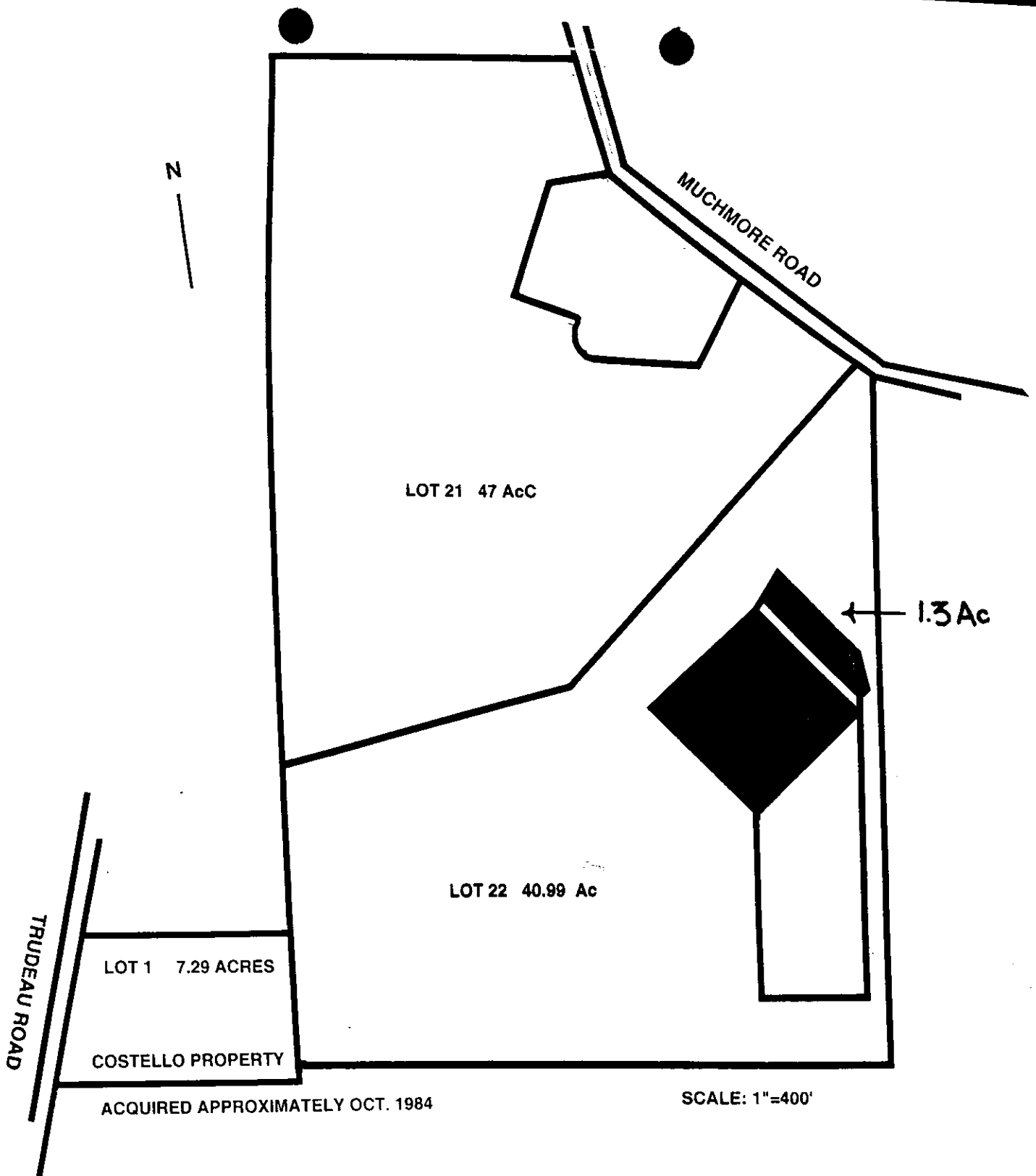
Donna
Kiernan: Forty-eight acres, according to your

Steve
Poggi: No, if I can correct you, miss, the 48 acres is the entire Sanco property. We're not proposing to landfill the entire area. We're only utilizing--it's kind of an odd shape, and it's done that for a reason. I'm sure Sanco would like to see the whole area landfilled and use as much of it as they can, but from an engineering standpoint, it doesn't make sense, O.K. We can limit it to this area because it's the most appropriate way to place the landfill, and that's all 13-1/2 acres. This will not be landfilled. That will be left trees as is up there right now.

Richard
Pollack: You say it's not going to be landfilled. Where are you getting your cover from?

Steve
Poggi: O.K. During the construction of the landfill, O.K., there's going to be soil that's going to have to be moved and moved around like any construction project. That soil will be stockpiled from this area here. And will be used during operations daily as well as cover material. They'll be selectively stockpiled--I know that the Soil Conservation Service said it's a really permeable material. There is some of that out there. But there's also some tight material. We've done some doesn't have that information. It was done by a company site soils for a liner as well as a capping system. There's some tight materials out there as well. They'll be used--stockpiled--for We will not be going out here or to adjacent property anywhere to get that material. here. This here depicts the old, the existing landfill here, and the expansion area. The existing landfill--you can see the difference here--this area here will be lined as well as covered. The existing landfill cannot be

**TESTIMONY BY STEVE POGGI,
EMPLOYEE OF SANCO INC. CONTRACTOR**



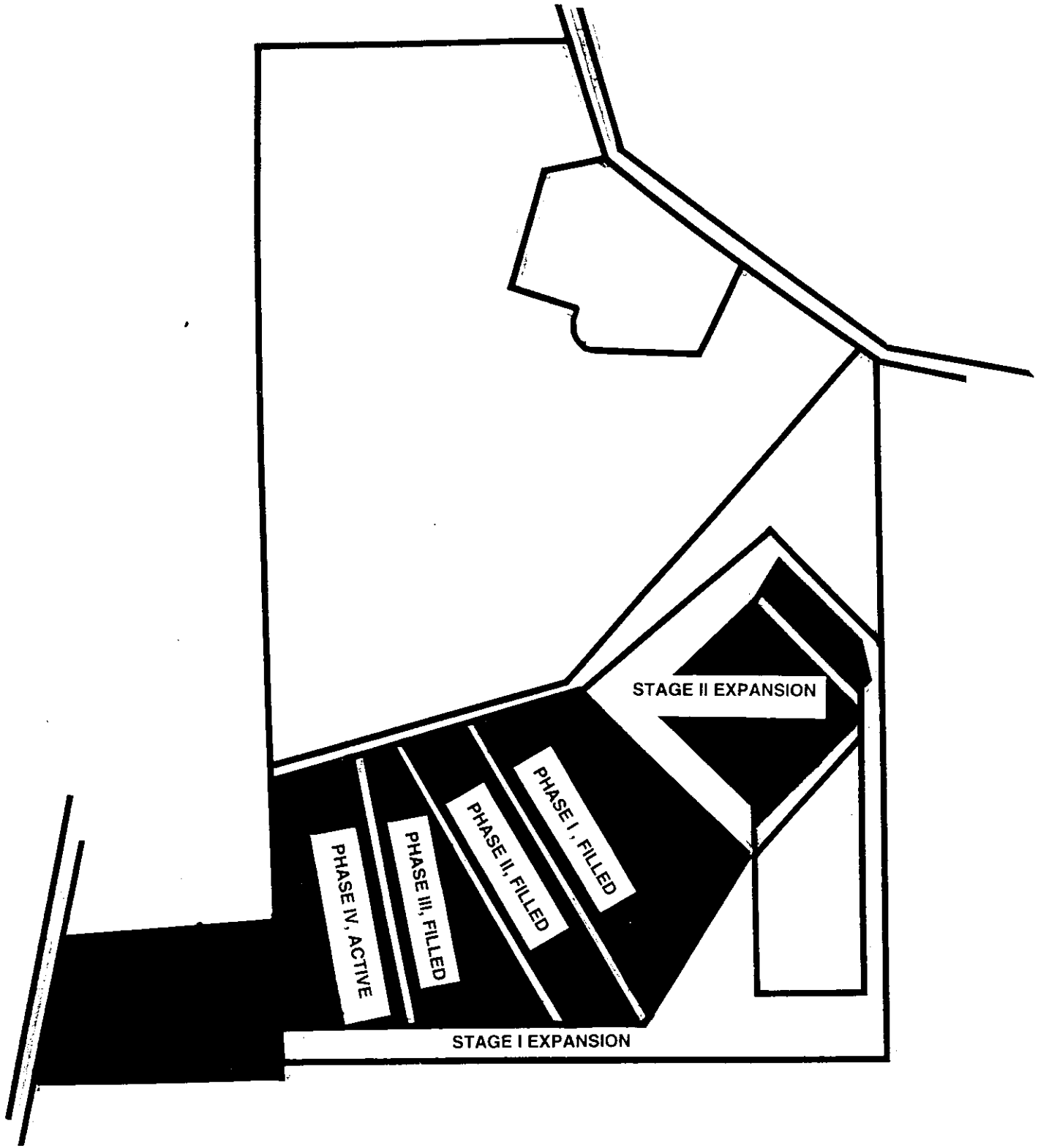
MAP NO.3 OCTOBER 17, 1986

**1.3 ACRE INTERIM EXTENSION GRANTED BY STATE
TO SANCO, CONTINGENT ON LOCAL APPROVAL**

NO LOCAL APPROVAL WAS OBTAINED

DATE: DECEMBER 29, 1992

CONSUMAT SANCO, INC.
BETHLEHEM LANDFILL



**CONSUMAT SANCO PROPERTY MAP
WITH 14 ACRE LANDFILL AND PROPOSED STAGE
TWO EXPANSION**

Permit No.

The undersigned hereby applies for a permit for the following use, to be issued on the basis of the representations contained herein.

1. Name of Land Owner Harold Brown

2. Location of Property
Street or highway name and number Muchmore Road

3. Proposed Construction to be used for (Please check)
residence commercial group service other and in accordance with the Town of Bethlehem Zoning Ordinance of 1971.

4. Permission is requested to: build new remodel relocate make an addition to replace place sign other (specify) house with family garage barn shed factory commercial building mobile home cabin trailer park land fill dump

5. Dimensions of lot:
frontage on street or highway 2000 ft.; depth 1900 ft.; area sq. ft.

6. Dimensions of proposed building, addition or sign:
frontage width 2000 ft.; depth 1900 ft.; height ft. setback from street line ft.; setback from nearest property line ft.; first floor area (residence, cabin, mobile home) ft.; percent of lot covered by proposed building (and any existing buildings) %

7. Sanitation.
Does sanitation meet State of N. H. requirements for new construction? Yes No

8. Construction of building or facility.
Expected starting date A.S.A.P. expected completion date AUG. 1, 1976
Construction material for foundation siding roof
Approximate cost Name of builder H. BROWN
Have arrangements been made for access to property? water service? sewage disposal?

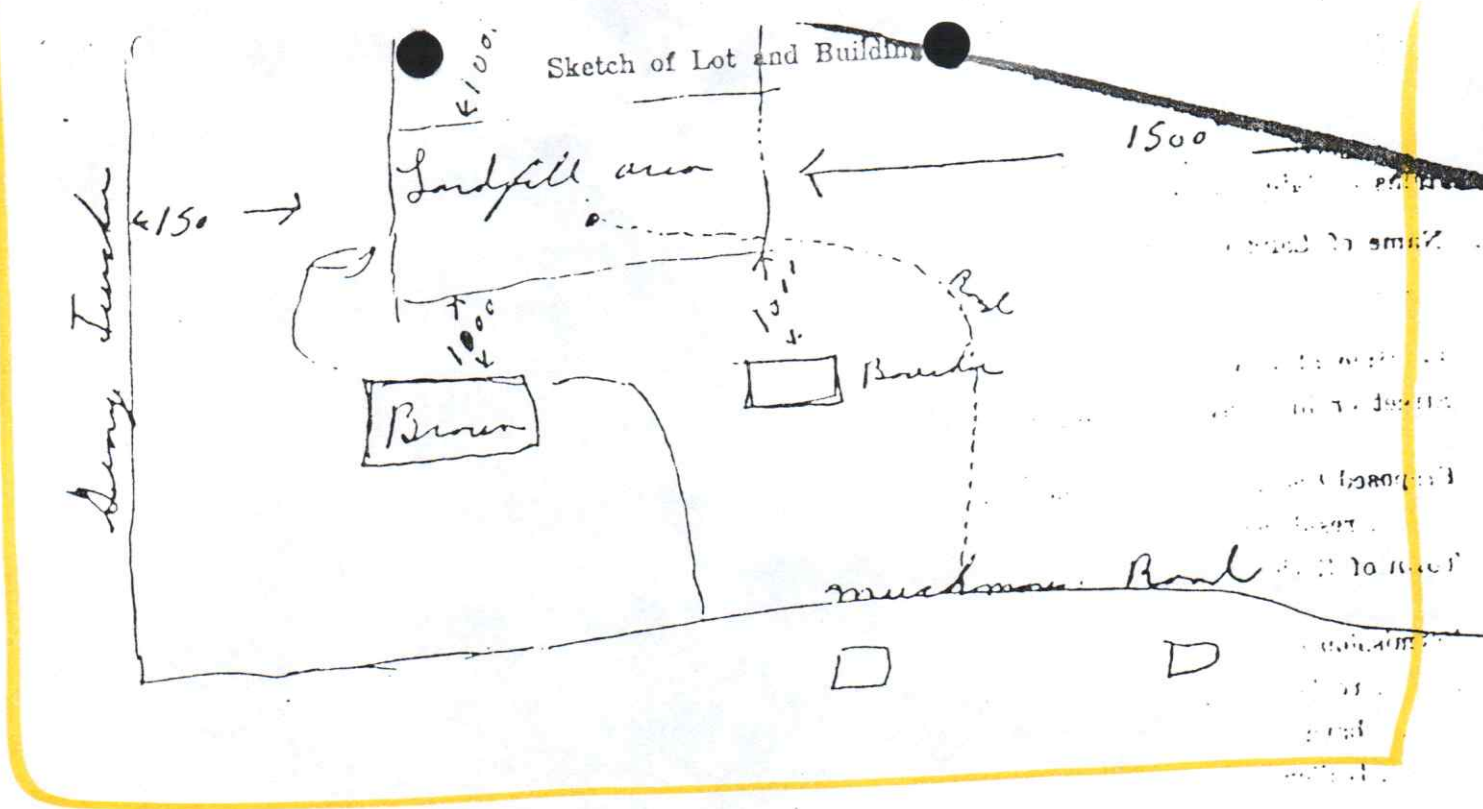
9. On reverse side please sketch a plan with dimensions of the land and location of proposed construction; giving also the names of the adjoining property owners.

10. The undersigned hereby agrees that the proposed work shall be done in accordance with the foregoing statement and in accordance with the Town of Bethlehem Zoning Regulations and any applicable state or sub-division requirements.

Signature of Applicant Harold M. Brown

Date filed with Selectmen 6-7-76

(over)



DECISION OF BOARD OF SELECTMEN

Upon the basis of the representations contained in this application, it is hereby (found) (not found) to meet the provisions of the Town of Bethlehem Zoning Regulations, and is hereby (approved) (not approved)*

Date.....

.....

Board of Selectmen

*Application is not approved for the following reasons:

Referred to Young Board of Ady. 6/7/76

RECEIVED
LAW OFFICE OF LAWRENCE F. GARDNER

CLARK, COOK & MOLAN, P. A.
ATTORNEYS AT LAW

ROBERT T. CLARK
RONALD E. COOK
RICHARD E. MOLAN

143 NORTH MAIN STREET
P. O. BOX 1464
CONCORD, NEW HAMPSHIRE 03301
603-225-3323

January 30, 1987

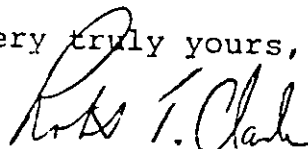
Mr. Paul Gruber
Grafton County Superior Court
Court House
North Haverhill, NH 03774

Re: Tucker, et al v.
Bethlehem Zoning Board of Adjustment, et al

Dear Mr. Gruber:

Enclosed please find a Motion to Amend Answer in reference to the above captioned matter. Also enclosed is our check in the amount of \$5.00 to cover the filing fee.

Very truly yours,



Robert T. Clark

RTC/kt

cc: Lawrence F. Gardner, Esquire
Stephen V. Samaha, Esquire
Anton Moehrke, Esquire
Barry Hager
Roy Sanborn
Barton Mayer, Esquire

16. On April 24, 1984, Sanco acquired a portion of the Brown land [approximately 10 acres], and on April 4, 1985, Sanco acquired an additional portion of the Brown land [approximately 40.99 acres]. On September 18, 1986, Sanco acquired an option on the balance of the Brown land [approximately 43.6 acres], which option has been exercised *on Jan 5, 1987*

17. By decision dated October 17, 1986 the New Hampshire Office of Waste Management approved an approximate one (1) acre extension in area of said land-fill without further local consideration or approval.

18. Said decision was upheld on appeal by the New Hampshire Solid Waste Management Board on November 26, 1986 and Plaintiff's Motion for Rehearing by said Board was denied on December 19, 1986.

19. Each and every claim raised by the Plaintiffs in the instant litigation arises out of the action of the defendant Zoning Board of Adjustment granting a special exception to Sanco on January 15, 1986 to expand the landfill operated on its land, formerly the Brown land, and to construct a transfer station on its land, formerly land of Castello and McDonnel.

20. Since the entire Brown tract was granted a variance in 1976 to construct a land fill dump "subject to complete state approval and subsequent supervision", such use is a permitted use with respect to the Brown tract and neither the application for

TOWN OF BETHLEHEM

Permit No.

The undersigned hereby applies for a permit for the following use, to be issued on the basis of the representations contained herein.

1. Name of Land Owner Sanco, Inc., Bethlehem, NH
Box 550

2. Location of Property
Street or highway name and number Trudeau Road

3. Proposed Construction to be used for (Please Check)
residence commercial group service other

4. Permission is requested to: (a.) Build new remodel relocate make an addition to demolish replace or place a sign other (specify)
(b.) residence garage barn shed factory commercial building mobile home cabin trailer park other (specify) solid waste transfer station and landfill
(c.) operate business or other (specify) operate new solid waste transfer station & expand existing solid waste landfill.

5. Dimensions of Lot:
Frontage on street or highway 355 ft.; depth 2473 ft.; area 2,103,100 sq. ft.

6. Dimensions of proposed building, addition, or sign:
frontage width 50 ft.; depth 50 ft.; height 20 ft. setback from street line 350 ft.; setback from nearest property line 100 ft.; first floor area ~~(XXXXXX)~~ 2500 sq. ft.; percent of lot covered by proposed building (and any existing buildings) 0.1 %

7. Sanitation.
Does sanitation meet State of New Hampshire requirements for new construction? Yes No
Applied for State approval for sanitation will be obtained prior to final State permitting and construction. See Attachment.

8. Construction of building or facility: Transfer Station: See Attachment
Expected starting date See Attachment expected completion date Landfill Expansion: to be phased over 15 year period
Construction material for foundation concrete siding metal roof metal
Approximate cost See Attachment Name of Builder Sanco, Inc., Bethlehem, NH
Have arrangements been made for access to property? Yes water service? No sewage disposal? No

9. On reverse side please sketch a plan with dimensions of land and location of roads and proposed construction; giving also the names of the adjoining property owners.

10. The undersigned hereby agrees that the proposed work shall be done in accordance with the foregoing statement and in accordance with the Town of Bethlehem Zoning Regulations and any applicable State or sub-division requirements. A building permit shall become void if (a) operations are not begun within six months from date of issuance of the permit; and (b) if at the termination of two years from date of the permit the exterior of the building remains in an uncompleted condition.

* See Attachment

Signature Ray Sanborn

Date filed with Selectmen 7-22-75

Sketch of Lot and Buildings

SEE ATTACHMENT

DECISION OF BOARD OF SELECTMEN

Upon the basis of the representations contained in this application, it is hereby (~~found~~) (~~not found~~) to meet the provisions of the Town of Bethlehem Zoning Regulations, and is hereby (approved) (not approved) *

Date 7/22/85

Bruce W. Kelly
William E. Good

Donald J. Davis
Board of Selectmen

*Application is not approved for the following reasons:

industrial use for zoning approval

ZONING BOARD OF ADJUSTMENT

August 13, 1985 at 7:30 p.m.
Meeting in rooms of 8-13 on I sides A & B and T on II sides A & B

Members present:

Joe Cabaub
George Ennis
Elly Stephenson
Skip Davidson
Bill Russell
Donna Kiernan, Alternate

A public hearing was held on a request from Harry Dixon to allow a special exception as provided under Article B, Section IV of the town ordinance to place a temporary mobile home on a 7 acre plot on Hason Road. The party buying the land from Mr. Dixon wishes to place a trailer on the land until they build a house. After some discussion Bill Russell made the motion to grant a temporary permit for a trailer with a 24-month time limit from date of septic approval from the State, and with the stipulation that the trailer not be inhabited until an approved septic system is in place, and if found to be in violation refer to penalty clause on Pg. 11 of 1985 ordinances. (Harry Dixon guaranteed septic approval within 30 days.) The motion was seconded by George Ennis and passed by a majority vote.

Joe Cabaub suggested that in the future it should be determined what penalties the Town can use and such penalties should be clearly spelled out.

A public hearing was held to see whether a special exception would be allowed to place a mobile home on the Blake property on Lewis Hill Rd. Gayle Bean proposes to buy the property if such an exception is granted. Joe Cabaub read letters from abutters unable to attend. Two of the letters were opposed to the permit, and one unopposed. Gayle Bean provided explanation as to the type of housing, stating that it was "manufactured housing", and some discussion followed as to whether that is the same as mobile home. Gayle Bean stressed that although it does come with an excel, for transport, the housing is removed and placed on a concrete slab. It has siding and a pitched roof, and is 14' x 70'.

There was also a lengthy discussion of the water line, a subject of interest to several members of the public, but legally irrelevant to the ZBA's decision.

After considerable discussion involving townspeople, abutters and Board members, the chairman called for a vote. George Ennis made a motion not to except for the reason that neighbors object, and the proposed housing does not conform to the area. Skip Davidson seconded, and it was voted unanimously not to allow the exception.

A public hearing was held to consider an application from Sanco, Inc. They are proposing to build a new landfill and transfer station, and to expand existing landfill operation on Trudeau Rd. The application was reviewed by the Board and read to the public, along with letters from objecting abutters.

Roy Sauborn and Barry Hagan, co-owners of Sanco, presented their proposal through Kimball-Chase Co. There was some discussion as to whether a special exception can be allowed, or a variance requested. Attorney's for Sanco believe this is a special exception case, but Town Counsel must be consulted before the Board proceeds.

Steve Fogal, a civil engineer in the local waste field, gave an explanation of the proposed expansion, which is to be done on an as-needed basis, not clear-cut. Materials to be used as liners are explained, as well as monitoring processes. Access to the proposed landfill, for tonnage, would not require residents to enter the landfill itself. Truck storage and offices would also be at the site. After Sanco's presentation, townspeople were given an opportunity to voice opinions. Discussion included how much traffic would be involved, how much tonnage handled. Rita Farrell of Bethlehem Jct. raised several questions, responded to by Sanco and Kimball-Chase, as follows:

Depth of ground water?	18' to 42' below surface
Volume of daily waste?	100 ton max per day
Present volume?	1500 ton per year
Truck traffic?	6 per hour
Operating hours?	7 a.m. to 3:30 p.m.
Have other sites been considered?	No

Winifred Jordan of Turleau Rd. expressed concern as to water pollution, and monitoring processes. With only 3 state inspectors, she feels the monitoring would not be adequate.

John Considine raised the question of aquifers in that area. David Hill, hydrogeologist with Caswell, Eichman and Hill, stated that the area is not an aquifer.

Roger Hines raised several points indicating that the Sanco operation is causing pollution in test wells, reducing property values, destroying forest, and causing road damage.

Richard Pollak stated his belief that the area is an aquifer, according to geological reports, that it is not a suitable site for a landfill operation, and that it cannot be allowed under present zoning regulations.

Joe Cabaub, Chairman, called a halt to public response at 10:30 p.m., and called for a continuation of the hearing in one week, on Aug. 20, 1985, at 7:30 p.m.

Sanco invited the ZBA and other interested persons to an on-site inspection of the facility on Sat. August 17, at 10 a.m.

Town Counsel will be approached to determine whether zoning laws need to be changed. The meeting was adjourned at 10:45 p.m.

Frances Lavoie
Secretary

Bethlehem Zoning Board of Adjustment Hearing
August 13, 1985
Summary of Proposed Sanco Facility

I. Project Overview

- A. Zoning Variance
Sanco is seeking an exception under the Towns Zoning Ordinance as a similar use to:
1. Public utility
 2. Construction yard or junk yard, and is;
 3. Similar in general character which does not cause harm or detriment.
- B. Ongoing and Continued Operation
1. Proposed as an expansion and not a new facility
 2. Previously approved by the Town in 1976, including the Zoning Board of Adjustment and;
 3. Is required to remain of service to Bethlehem and local area.
- C. Attributes of Proposed Facility
The proposed facility expansion will provide:
1. Environmentally safe waste disposal for Bethlehem
 2. Significant tax base to the Town
 3. Contribution of a solid waste transfer station outside of the village area To be privately operated at no additional cost to the Town.
 4. Promote development in Bethlehem by having a state of the art waste management facility with all State approvals.
- D. Extensive Review and Permitting Process
1. In addition to local approvals, Sanco must obtain numerous State approvals prior to final design, construction and operation
 2. Permits include a rigorous review of all technical aspects of facility
 3. Ongoing compliance and long term closure issues are addressed in initial approval process.

II. Physical Description

- A. Remote Location
1. 2 1/2 miles from village
 2. Away from population center
 3. Buffering zone of trees to be provided
- B. General Layout of Facility
1. Phased development over facility site life
 2. Total area of expansion is approximately 14 acres
 3. Old landfill to be closed as operations move into new secured landfill area
 4. New area will be integrated with existing and not constructed as a totally separate facility

5. Highest standards available, with selection of materials exceeding State standards.

C. Technical Requirements

1. Containment System

- a. Old landfill to be capped as soon as possible
- b. New expansion to be lined with impermeable material as well as capped
- c. High Density Polyethelene (HDPE) base liner
- d. Proven technology installed over tens of thousands of acres all over the world.

2. Leachate Management

- a. Managed through up-grading on-site operations
- b. Leachate collection pipes and on-site holding tanks provided to collect any leachate that may be produced
- c. Prior to construction, a contingency plan will be prepared for leachate disposal at a public waste water treatment plant. This plan is to be coordinated with local municipalities and State regulatory agencies.

3. Expanded Goundwater Monitoring System

- a. To monitor condition of old site
- b. Provide assurance of expansion's performance
- c. Fully coordinated with State.

4. Site Drainage and Storm Water Management Plan

- a. Control site erosion and sediment
- b. Minimize surface water runoff.

5. Capping and Closure

- a. Synthetic impermeable capping material
- b. Loamed and seeded - pasture, meadow, recreation area
- c. Post closure monitoring
 - ground water monitoring wells
 - final cap integrity and minimal erosion

D. Transfer Station

1. Integral part of facility
2. Owned and operated at Sanco's expense
3. Residence will not have to go to landfill
4. Allows Town to discontinue use of existing transfer station on Prospect Street.

III. Summary of State Permitting Procedure and On-going Coordination

- A. Two Separate State Agencies
 - 1. N.H. Bureau of Solid Waste Management (NHBSWM)
 - 2. N.H. Water Supply and Pollution Control Commission (NHWSPPC)

- B. Four Major State Permits
 - 1. NHBSWM Operating Permit - comprehensive permit covering all aspects of facility design and operation.
 - 2. NHWSPPC Groundwater Discharge Permit - extensive review of proposed leachate management and groundwater monitoring systems.
 - 3. NHWSPPC Site Specific Permit - control and management of all surface and storm water.
 - 4. NHWSPPC Contingency Leachate Disposal - disposal at public wastewater treatment plant completely reviewed.

- C. Public Hearings to be held in Bethlehem during State review and permitting procedure.

- D. All permits will include compliance provisions
 - 1. Periodic groundwater monitoring and State inspections of construction and operation.
 - 2. All information is accessible to Town administrative staff and general public.

ZRR meeting 8/20/85 (cont'd)

Traffic Pollution to land, unsatisfactory monitoring of test wells, questionable effectiveness of the proposed liner material.

The question of whether the Sanco site is an aquifer was raised again, and David Hill, hydrogeologist employed by Sanco, reiterated his statement that it is not an aquifer.

Fitz Farrell cited information showing the site could be filled to capacity within 7 years if Sanco handles its projected land capacity, while it would take "100 years for Bethlehem to fill the site". She stated that County is negotiating with Remedial Resources, Inc., and will need Bethlehem's waste to make that economically viable.

Howard Keach stated that Sanborn and Hagan came in with their proposal at a time when the State was calling for the close of the dump, and the Selectment were happy to accept them.

Larry Gardner spoke again, reminding the Board of its decision not to allow a special exception to place a mobile home on Lewis Hill because of the detrimental effect on adjoining properties, and that therefore the Sanco expansion should not be allowed.

John Rolli spoke in support of Roy Sanborn.

Roger Hines raised the concern that the proposed liner will not withstand the acids inherent in a landfill operation.

Steve Poggi of Kimball-Chase spoke in response to the points raised in general discussion. Some points: new landfill is necessary to development of the town; Sanco is considering improving the road to allow for rerouting from Rt. 3; future land use might include grassy fields; Sanborn inherited the problems and is trying to correct them.

Evelyn Hagan raised the point that integrity of Sanborn not an issue, since he could sell the operation and the town would have no control over the situation.

Further discussion followed. It was decided to continue the hearing Sept. 3, with comments from the public being heard from 7:30 to 8:30, and with the hope that legal counsel could be obtained before that time.

The meeting adjourned at 10:30 p.m.

9/3/85 Bethlehem Zoning Board - Sanco Public Hearing continued
from 8/20/85.

The chairman called the meeting to order at 7:35 p.m. and read 7 letters received, concerning the land fill as follows:

1. Ruth & Theron Miller expressing favor for the expansion of the land fill.
2. Bruce Swanson opposed to the expansion.
3. Evelyn Hagen opposed to the expansion.
4. Frank Hagen opposed to the expansion.
5. Mr. Schultz, attorney representing several clients opposing the expansion.
6. David B. Hill of Caswell, Eichler & Hill, Inc. to Sanco, covering a reviewed and updated report of the hydrogeological analysis.
7. Letter from Laurence Gardner representing George & Daniel Tucker opposing expansion.

The reading of the letters was finished at 8:20 p.m. and 1 hour was allotted (to 9:20) for discussion from the public.

Town attorney, Stephen Samaha, clarified the difference between a special exception and a variance, and how each definition affects the sanitary land fill and the spirit in which an ordinance was written.

Town attorney advised the Board of their ability to go into executive session to deliberate on the above issue, but a decision would have to be made in public.

Sanco's attorney asked to give a summary of information presented.

Richard Pollack stated the difficulty of getting information quickly from W.S. & P.C.C. and his concern for future pollution from the land fill, if indeed there is an aquifer in the immediate or surrounding area.

Bernard Cohn asked to see the wording of the original landfill permit. The chairman read the minutes of the meeting.

Dick Trembley asked if monies could be set aside to cover costs of closing the land fill if Sanco should default.

Skip Davidson read a report prepared by Sanco, Inc. on traffic predictions between Rte 3 and 302.

Richard Polonski requested a month adjournment for the town to make a study such as Sanco has had the opportunity to do.

Sanco's attorney recapped the request for the expansion and closure system.

At this point, the meeting was closed for public testimony.

George Emis made a motion to go into executive session with Town Council. Seconded by Donna Kuruan. Vote unanimous.

The Board agreed at this time to take further questions from the public until 9:20, at which time they went into executive session.

When the Board returned, Donna Kuruan made a motion that Sanco's proposal does not qualify for a special exception under paragraph 13 of the Bethlehem Zoning Ordinance. Seconded by Eleanor Stephenson. Vote all in favor.

At 10:30, George Emis made a motion to adjourn. Seconded by Skip Davidson. Vote Unanimous.

Those members present:

E. Stephenson

G. Davidson

G. Emis

D. Kernan

J. Cabaup

D. Lavoie

Also Town Council, Stephen Samaha

NOTICE OF DECISION

Bethlehem, NH
Zoning Board of Adjustment

You are hereby notified that the request of Sanco, Inc., Bethlehem, N.H. for an exception under the terms of District 2 Section B of the Bethlehem, N.H. Zoning Ordinance has been denied for the reasons given in the following resolution passed by a majority of the appointed members of the Board of Adjustment.

UNANIMOUSLY RESOLVED: The Board finds that Sanco's proposed use does not qualify as a special exception under District 2 Section B.

The Board denied the application for special exceptions permitted in District 2 as set forth in Section B (1) through (3) of the Town Zoning Ordinance. Further, the proposed use is not of the same general character as any of the uses set forth in Section B (1) through (4), as special exception or Section A (5) or any other permitted uses provided for in said zoning ordinance. The Board was not convinced that the proposed use is of the same general character as a public utility as that term is used in said zoning ordinance. Likewise, the Board is not convinced that the proposed use is of the same general character as a junkyard. A junkyard allows for temporary storage of worn out or discarded material, whereas a sanitary landfill provides for permanent disposition of all kinds of refuse and garbage, including organic matter. The proposed use is not at all similar in character to the commercial removal of sand and gravel because a sanitary landfill involves the permanent disposition of wastes. To allow the proposed use as a special exception would violate the spirit as well as the letter of the Town ordinance.

You are hereby notified of your right to apply for a rehearing pursuant to RSA 677:2.

BETHLEHEM, NH ZONING BOARD
OF ADJUSTMENT

Dated: September 3, 1985

By: Joseph J. Cabaup
Joseph J. Cabaup, Chairman

Donna Kieonon
Member

Elvaun B. Steffensen
Member

George C. Ennis
Member

Leslie G. Williams
Member

TOWN OF BETHLEHEM
ZONING BOARD OF ADJUSTMENT

IN RE:
APPLICATION OF SANCO, INC.

MOTION FOR REHEARING

NOW COMES Sanco, Inc., petitioner in the above captioned matter, and moves that the Zoning Board of Adjustment for the Town of Bethlehem grant it a rehearing upon its Application pursuant to R.S.A. 677:2 and says in support thereof as follows:

1. On July 15, 1985, Sanco, Inc. applied for a building permit for a proposed solid waste transfer station and the expansion of its existing sanitary landfill facility in Bethlehem, New Hampshire. The selectmen of the town of Bethlehem refused to grant such a permit and directed Sanco, Inc. to apply to the Zoning Board of Adjustment.

2. The Zoning Board of Adjustment held hearings on the Application on August 13, 1985, August 20, 1985, and September 3, 1985.

3. On September 3, 1985, the Zoning Board of Adjustment announced its decision that the proposed use did not fall within any of the special exceptions allowed in District 2 under the Bethlehem Zoning Ordinance and that therefore Sanco, Inc. must seek a variance.

4. The Zoning Board of Adjustment should reconsider its decision because the proposed use is as a public utility and therefore allowable as a special exception. A public

utility is a business which provides a necessary service to all persons subject to special governmental regulations. Public utilities are virtual monopolies and usually have available to them the power of eminent domain. A sanitary landfill fulfills all five elements of that test. A sanitary landfill is therefore a public utility and is therefore allowable as a special exception.

5. Even if the proposed sanitary landfill is not a public utility it is allowable as a special exception because it is a use of the same general character as several special exceptions and allowed uses and is in conformity with and not detrimental to the area and district.

5.01 The proposed expansion of the sanitary landfill facility is of the same general character as other permitted uses. The proposed expansion is similar to a public utility. The proposed expansion is similar to a junk yard. The proposed expansion is similar in character to the commercial removal of loam, sand, fill or stone. The proposed expansion is therefore of the same general character as permitted uses, the use of which is allowed by special exception within District 2 of the Bethlehem Zoning Ordinance.

5.02 The proposed expansion is in conformity with and not detrimental to the area and district. The proposal is simply an expansion of an existing use. The proposal will not have an adverse effect upon the appearance of the area. The proposal will not generate a significant amount of traffic in the Town. The operation of the landfill will not adversely affect the use of the surrounding property. Thus the proposed expansion of the landfill is in conformity with the existing area and district.

5.03 The proposed expansion will not be detrimental to

the area and district but will be beneficial to the community as a whole. The assurance of a place for the disposal of refuse generated within the Town of Bethlehem will allow development. The operation of a transfer station by the petitioner at the facility will reduce costs to the town. The ability to expand the landfill into a new facility using the latest technology will allow petitioner to close the existing portion of the landfill, cap it, and prevent any future impact upon ground water at the existing facility. The expansion of the sanitary landfill facilities will be beneficial and not detrimental to the area and district.

5.04 The Zoning Board of Adjustment must construe the town ordinance so as to be the least restrictive upon the rights of persons to use their property. The rules of zoning ordinance construction therefore support petitioner's conclusion that the sanitary landfill facility may be allowed as a special exception under the Bethlehem Zoning Ordinance.

5.05 The Zoning Ordinance should be construed to be legal. The Zoning Ordinance may not legally zone out sanitary landfills. In order to avoid a construction of the Bethlehem Zoning Ordinance that would make that ordinance illegal the zoning ordinance must be construed to allow landfills as a special exception use in District 2.

5.06 The zoning ordinance must be construed to be consistent with a plan adopted by the town. Such a plan must provide for the disposal of waste that is necessarily generated by the growth of the town. The Board should construe the zoning ordinance to be consistent with such a plan. The only construction of the zoning ordinance that is consistent with such a plan is one which would allow the

expansion of the existing landfill facility to accommodate additional refuse.

5.07 The Zoning Board of Adjustment should hold a rehearing on this matter to determine whether or not the proposed sanitary landfill is allowable as a special exception pursuant to the Bethlehem Zoning Ordinance as a use of the same general character as allowed uses which are in conformity with and not detrimental to the area and district.

6. The Zoning Board of Adjustment and the Town of Bethlehem lack the power to deny Sanco's Application for a Building Permit. The Zoning Board of Adjustment and the Town may not use the Zoning Ordinance to regulate the disposal of solid waste and the construction and operation of a sanitary landfill facility because that field of law has been pre-empted by the state and federal governments through the enactment of R.S.A. 149-M, the Resources Conservation and Recovery Act of 1976, and related statutes.

WHEREFORE Petitioner herein, Sanco, Inc., respectfully requests that this Zoning Board of Adjustment grant its Motion for a Rehearing in the above captioned matter pursuant to RSA 677:2.

Respectfully submitted,
Sanco, Inc.
By its attorneys,
SHEEHAN, PHINNEY, BASS & GREEN
PROF. ASS'N.

Dated: 9/13/85

BY: Edmond J. Ford
Edmond J. Ford
1000 Elm St.
Manchester, NH 03101
(603) 668-0300

ZBA Meeting - October 20th 1985 - 7:30 PM

Rehearing of Application of Sanco to enlarge the Landfill.

Held at Bethlehem Country Club.

Refer to Tapes I & 2 - sides A&B

Members Present:

Skip Davidson

Donna Keirnan

Joe Cabaup

Elly Stephenson

George Ennis

Atty. Samaha

The meeting was called to order at 7:53 by Chairman Cabaup, who read the notice of the meeting. Mr. Cabaup then stepped down as Chairman, turning the position over to Mr. Davidson.

Atty. Anton Moehrke spoke for Sanco. He explained the plan of the company to enlarge the Landfill, and presented the plan to control the Landfill and operate it by the State's standards. A letter from the selectmen was read stating that the Town and Sanco should agree to a number of conditions controlling the operation of the landfill.

Paul Sanborn spoke in defence of the Landfill operation and of Sanco's reputation. He described Sanco's operation of the landfill as "the best run landfill in the North Country".

After the presentations of Sanco's attorney, the Chairman opened up the meeting for discussion. Many people spoke against the landfill: Richard Pollack, Roger Hines, Bernard Kohn, John Considine, George Epstein, Frank Hagen, Bruce Blaney, Richard Polonsky, and others. All questions were answered and there was much discussion.

The Board was assured that the landfill would be run as carefully as possible and that the latest technology would be in use. The discussion went back and forth between the board, the Townspeople

and the representatives for Sanco. Sanco agreed to the conditions set by the Selectmen and also agreed to work out any other conditions that the ZBA felt necessary.

The ZBA voted to have a decision forthcoming after deliberation and consideration of all the information, and consulting with the Town's attorney.

The meeting was adjourned at 10:42 PM by a motion made by Elly Stephenson, Seconded by Donna Kiernan.

The Rehearing will be reconvened on Thursday, November 7th 1985 at 7:30 PM, at which time the Board will meet in Executive Session.

Judith Blake, Secretary

NOTICE OF DECISION

Bethlehem, New Hampshire
Zoning Board of Adjustment

RE: Application by Sanco, Inc.
For Special Exception

On July 13, 1976 the minutes of the Zoning Board of Adjustment reveal that:

"Harold Brown's application to construct a landfill dump on Richmore Road was approved after considerable discussion. The following points were made: The public will be unable to use the dump. It will be under the supervision of the State, and it has to be run according to State specifications. There should be no odor and dump must be filled in every day with six inches of dirt. There will be a private road which has to be locked up at all times. Luigi Castello, Esq. had no objection to the landfill dump provided it involves only an area 400' by 400' and definitely is laid out with set distances from the Castello and McDonnell property."

There was no indication as to whether or not this approval was for a variance or a special exception. According to Sanco representatives, it was originally a variance.

On July 22, 1985 Sanco filed with the Selectmen an application for a permit to build a new and make an addition to a solid waste transfer station and to operate a new solid waste transfer station and landfill and expand an existing solid waste landfill. The Selectmen determined that the application did not meet the provisions of the Town of Bethlehem's zoning regulations for the following reasons: "Industrial use for zoning approval." The matter was thus referred to the Zoning Board of Adjustment for review.

The first hearing was held on August 13, 1985, at which time the former Chairman, Joseph J. Cabaup, opened by stating to the Sanco representatives that he felt the proposed use required a variance rather than a special exception. Representatives of Sanco disagreed and asked the Board to determine that the proposed use should be allowed as a special exception under District No. 2, subparagraph B.

The August 13, 1985 hearing was continued to August 20, 1985, at which time written legal arguments were submitted by Edmond J. Ford, Esq. on behalf of Sanco by Laurence F. Gardner, Esq. on behalf of Daniel and George Tucker, and by William J. Schultz, Esq. on behalf of several other abutters. Attorney Ford

contended that the proposed Sanco facility, is of the same general character as a public utility, is similar to a junkyard, is similar in character to the commercial removal of sand, fill, gravel, stone or loam, and further, that the proposed sanitary landfill is in conformity with the area and district. Attorneys Gardner and Schultz argued that the proposed use of a sanitary landfill is not specifically mentioned in the Bethlehem Zoning Ordinance and thus a variance is required to permit such a use. Further, they argued that the proposed use is not of the same general character as the other special exception uses set forth in paragraph B subparagraphs 1 through 4. Further, they contended that the proposed use does not meet the requirement that it be in conformity with and not detrimental to the area and district. The August 29, 1985 hearing was continued to September 3, 1985. No requests for specific findings of fact were submitted on behalf of Sanco or any abutters at that time.

On September 3, 1985, this Board interpreted the Bethlehem Zoning Ordinance to preclude entirely the operation of sanitary landfills within the Town of Bethlehem, unless authorized either by variance or by subsequent amendment of the zoning ordinance itself.

On September 13, 1985, Sanco filed a motion for rehearing. On September 24, 1985, the Board granted a hearing on Item 5.05 which states:

"The zoning ordinance should be construed to be legal. The zoning ordinance may not legally zone out sanitary landfills. In order to avoid a construction of the Bethlehem zoning ordinance that would make that ordinance illegal, the zoning ordinance must be construed to allow sanitary landfills as a special exception use in District 2."

The Board scheduled a hearing for October 10, 1985 to consider evidence in support of Sanco's motion for rehearing. Prior to that hearing, counsel for the Board, Stephen U. Samaha, Esq., was contacted by Anton T. Hoehrke, Esq. as new counsel for Sanco. He told Mr. Samaha that as a result of listening to the tape recording of the August 18, 1985 hearing, he would challenge the impartiality of Chairman Joseph J. Cabaup.

At the outset of the October 10, 1985 hearing, Chairman Cabaup admitted that he had made an opening statement at the August 13, 1985 hearing to the effect that he felt a variance rather than a special exception would be required for the proposed use. However, he explained that this statement was only for the purpose of framing the issue to be considered and he subsequently did, in fact, consider Sanco's arguments impartially. However, in order to preclude the issue of impartiality from being raised at any subsequent appeal, Mr. Cabaup asked Sanco representatives if they wished him to step

down from the Board. When they answered in the affirmative, Mr. Cabaup stepped down as a member of the Board of Adjustment and the Board then unanimously elected Gerald Davidson Acting Chairman. Since no alternate members to the Board of Adjustment had been appointed by the Board of Selectmen, and since no alternate members were available to fill Mr. Cabaup's vacancy, no designation was made as is allowed by R.S.A. 673:11. Pursuant to R.S.A. 673:10(III), a majority of the Board constitutes a quorum and thus the remaining four members of the Board continued with the hearing. Mr. Moehrke submitted a written argument dated October 10, 1985 on behalf of Sanco. Subsequently, a written legal argument was also submitted by Attorney Gardner.

Sanco contends that the New Hampshire Legislature intended to preclude a town from proposing a landfill such as that proposed by it when it passed R.S.A. Chapter 149-N. We believe that the New Hampshire Legislature did not necessarily preempt the Town's control over the use of land for a sanitary landfill when it enacted R.S.A. Chapter 149-N "Solid Waste Management." However, R.S.A. 149-N:13 does state: "Each town shall either provide or assure access to an approved septage and solid waste facility for its residents." This certainly evidences a statement of policy which cannot be ignored. We must also take into account the fact that this Board did approve a landfill on July 13, 1976 and that Sanco's landfill has been operated as a private landfill since that time. The proposed solid waste transfer station and landfill expansion will be beneficial to the community, because refuse disposal capacity is in increasingly short supply and the facilities will insure a place for the disposal of the Town's refuse. We also recognize that because of the short-fall of refuse disposal capacity throughout the State of New Hampshire, the Town of Bethlehem otherwise faces uncertainty with regard to potential places for refuse disposal and dramatically increased disposal costs. We also find that a special exception for the transfer station and landfill expansion would be in harmony with the general purpose and intent of the zoning ordinance of the Town. Therefore, this Board concludes that as a matter of public policy, the ordinance should be interpreted so as to allow a sanitary landfill as a special exception so long as it meets all applicable provisions of the zoning ordinance and, further, that it meets the specific provisions of Section B(5); (i.e. it must be the same general character of any of the other uses spelled out in Section B(1-4), it must be in conformity with the area and district, and it must not be detrimental to the area and district). Therefore, we must now determine whether Sanco's proposed landfill meets the other requirements as a matter of fact. For the following reasons we believe it does:

1. The landfill has been operated since approximately July 1976. Sanco has operated the landfill since 1982. The landfill appears to have been well run at all times as evidenced by the inspection reports from the Bureau of Solid Waste Management of the State of New Hampshire.

2. There was no credible evidence presented at any of the public hearings which would justify the Board in concluding that the landfill represents a threat to the public health, safety or the environment.

3. The management of Sanco is reliable and credible inasmuch as it has an excellent track record as evidenced by the State inspection reports. Moreover, management of the company includes long-time residents of the Town of Bethlehem who are sensitive to and respectful of community conditions.

4. The landfill is located in an area appropriate for such a use, inasmuch as it is relatively sparsely populated. There are only a few homes in the general area. These homes should not be adversely affected by the landfill which has been there since 1976.

5. The area around the landfill is serviced by a public water supply.

6. There will be no detrimental impact on the neighborhood from sanitary landfill operations.

7. The neighborhood surrounding the landfill will not be adversely affected by vehicles using the facility, particularly when most of the truck traffic is diverted off Route 3 onto Trudeau Road after the culvert there is repaired.

8. Sanco presented evidence from well-qualified experts in civil engineering and geotechnology that the expansion would incorporate state-of-the-art technology including a leachate liner and leachate collection system.

9. The proposed expansion is similar in character to the commercial removal of loam, sand, fill or stone which is a permitted use under the Town zoning ordinance and which is an existing use in the immediate area of the landfill.

An additional policy reason for interpreting the zoning ordinance as stated above is that the ability to expand the landfill into a new facility using state-of-the-art technology will allow Sanco to close the existing portion of the landfill, cap it and prevent any future impact upon ground water at the existing site.

NOW, THEREFORE, in consideration of the findings and conclusions of this Board as set forth above, it is hereby

UNANIMOUSLY

RESOLVED:

To grant a Special Exception to Sanco, Inc. to expand its existing sanitary landfill off

Trudeau Rd. in strict accordance with the Planning Terms and safeguards set forth in an agreement to be negotiated between Sango, Inc. and the Board of Selectmen which agreement shall be reviewed and accepted by this Board as a condition of such Special Exception.

RETHLEEN ZONING BOARD
OF ADJUSTMENT

By

Gerald F. Davidsson
Gerald F. Davidsson
Acting Chairman

George C. Ennis, Jr.
George C. Ennis, Member

Donna Kiernan
Donna Kiernan, Member

Eleanor B. Stephenson
Eleanor B. Stephenson, Member

Dated: November 7, 1985

TOWN OF BETHLEHEM, N.H.
Bethlehem Zoning Board of Adjustment

NOTICE OF DECISION

PERMIT NO. _____

EFFECTIVE DATE November 7, 1985

PROPERTY OWNER Sanco Inc. Trudeau Rd. Bethlehem, NH
Name Address

BUSINESS TO BE OPERATED BY Sanco Inc.
Name Address

PROPERTY LOCATION Trudeau Rd.

NATURE OF BUSINESS Landfill

DISTRICT 2 UNDER ARTICLE SECTION OF THE ZONING ORDINANCE.

GRANTED DENIED by a majority of the appointed members of the Board of Adjustment.

RESOLVED:

" To grant a Special Exception to Sanco, Inc. to expand its existing sanitary landfill off Trudeau Rd. in strict accordance with the limiting terms and safeguards set forth in an agreement to be negotiated between Sanco, Inc. and the Board of Selectmen which agreement shall be reviewed and accepted by this board as a condition of such Special Exception."

SPECIAL CONDITIONS:

Gerald F. Davidson

Acting CHAIRMAN, BOARD OF ADJUSTMENT

NOTE: Application for rehearing on any question of the above determination may be taken within 20 (twenty) days of said determination by any party to the action or person affected thereby according to New Hampshire Revised Statutes Annotated, 1955 Chapter 31: 74-76.



ALDEN H. HOWARD
COMMISSIONER

JOHN A. MINICHELLO
ACTING DIRECTOR

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT DIVISION
6 Hazen Drive, Concord, NH 03301-6509
603-271-2900

SOLID WASTE COUNCIL
G. BRADLEY RICHARDS, Chairman
ROBERT WHEELER, Vice-Chairman
MARILYN ANDREWS
WILLIAM ARNOLD
PAUL BISHOP, Ph.D.
ROBERT BURROWS
RICHARD GROSSMAN
JOHN ISHAM
WILLIAM JENNESS
JOHN LAVALLEE
PHILIP MACALLISTER
FREDERICK MCGARRY
JOHN OSGOOD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 30, 1987

Roy Sanborn, President
Sanco, Inc.
PO Box 550
Bethlehem, N.H. 03574

RE: SANCO, INC. - PERMIT TO CONSTRUCT AND OPERATE A SOLID WASTE LANDFILL,
BETHLEHEM, NEW HAMPSHIRE.

Dear Mr. Sanborn:

The permit application submitted by Sanco, Inc. to the New Hampshire Department of Environmental Services, Waste Management Division (Division) for the construction and operation of a solid waste landfill facility is approved. This facility is located on property designated on Tax Map #419 as Lots #22 & 23 off Trudeau Road in Bethlehem, New Hampshire. This approval is granted pursuant to RSA 149-M:10 and the New Hampshire Department of Environmental Services' Solid Waste Rule He-P 1901.04(g)(4).

However, please note that all permit terms and conditions must be met and the site shall be constructed and operated in accordance with permit application and the New Hampshire Department of Environmental Services' Solid Waste Rules.

If you have any questions, please feel free to contact Thomas L. Sweeney at 271-2925 or me at 271-2906.

Sincerely,

John A. Minichello
Acting Director
Waste Management Division
Department of Environmental Services

JAM:gmt/8420w

Extract ZBA Transcript p 91
8/13/85, Exhibit
Docket # 86-E-044

9

Jordan: What's your name?

Steve
Poggi: Steve Poggi.

Jordan: Well, Steve, would you mind going to that map, and you see where the Amanoosik River is there with Muchmore Road?

Steve
Poggi: Yes.

Jordan: How close are you to the River?

Steve
Poggi: O.K. This is a scale of 1" is 200 feet. O.K.

Joe
Cabaup: O.K. Will--

Steve
Poggi: The property will--excuse me?

Joe
Cabaup: Do you mind answering that question? I don't want to interrupt your presentation.

Steve
Poggi:answer this question and then I'll go into my presentation, O.K.? The property is located--Sanco's property is shown here in the white. O.K.? The white border. The Amanoosik River is shown coursing in this area, O.K. The difference between here is approximately 400 feet or so. The actual landfill operation is in this general area down here, O.K.? And....

NS: That's existing....existing, not new?

Steve
Poggi: No, existing is down in this area. It's about 1,000 feet from the river, O.K.? With that, I'd like to just start with what I was going to have to say tonight. Like Mal had said, it'sto the village center here. You get approximately 2-1/2 miles from the town center of Bethlehem. The existing operation is off Trudeau Road and the operations today are happening right here, in this general vicinity. It is an old map, and the expansion is proposed to go the west of that and would go in this general area here within Sanco property. And any construction or operation of the landfill that takes place would not, and there would be a buffer zone of trees around the landfill. The trees itself, as the landfill is expanded--it will be done on a phased sequence--will not be clear-cut. Just some trees will be cut as needed, as the landfill is expanded.

Malcolm
Chase: It was 400 by 400 feet.

George
Manupelli: That was the original?

Steve
Poggi: Which is approximately 3-1/2 acres....

George
Manupelli: Three-and-one-half acres. The new is? Total?

Steve
Poggi: The total new acreage is about 13-1/2 acres.

Donna
Kiernan: Forty-eight acres, according to your

Steve
Poggi: No, if I can correct you, miss, the 48 acres is the entire Sanco property. We're not proposing to landfill the entire area. We're only utilizing--it's kind of an odd shape, and it's done that for a reason. I'm sure Sanco would like to see the whole area landfilled and use as much of it as they can, but from an engineering standpoint, it doesn't make sense, O.K. We can limit it to this area because it's the most appropriate way to place the landfill, and that's all 13-1/2 acres. This will not be landfilled. That will be left trees as is up there right now.

Richard
Pollack: You say it's not going to be landfilled. Where are you getting your cover from?

Steve
Poggi: O.K. During the construction of the landfill, O.K., there's going to be soil that's going to have to be moved and moved around like any construction project. That soil will be stockpiled from this area here. And will be used during operations daily as well as cover material. They'll be selectively stockpiled--I know that the Soil Conservation Service said it's a really permeable material. There is some of that out there. But there's also some tight material. We've done some doesn't have that information. It was done by a company site soils for a liner as well as a capping system. There's some tight materials out there as well. They'll be used--stockpiled--for We will not be going out here or to adjacent property anywhere to get that material. here. This here depicts the old, the existing landfill here, and the expansion area. The existing landfill--you can see the difference here--this area here will be lined as well as covered. The existing landfill cannot be

zoning board meeting
October 26, 1987
Members Present:

George Denis
Eleanor Stephenson
Donna Kiernan
Michael Polonsky (Disqualified Interest)
Steve Sanna Council for zoning board (informational capacity only)

Meeting called to order at 7:40PM

continuation sanco: Board reviews letters submitted by Attorney Gardner (MIRE) and Attorney Cook (Senco). Board reads attorney Cook's letter/begins to review, Attorney Sanna points out that it would be best for board to go over and vote on each argument of Attorney Cook's letter. Board reviews letter and hears points taken, Attorney Cook points out that Sanco has used the 1976 variance to obtain State Permits in 1976-77- and 86 and that at each time the state approved on the original variance. Attorney Cooks points out that the board is only required to hear the case of the non action of the Selectman/ weather they should have acted on the November, 86 letter or not. Attorney Cook states that paragraph 7 of his letter does not dispute the ZBA's authority to hear the appeal but that the only thing they should be deciding is whether or not the selectmen in their capacity as building inspectors should have taken action on the November, 86 letter from MIRE. Attorney Cook states that attorney Gardner wants you (the board) to second guess the original 1976 variance. Mr. Denis questions if there is a case at all if they do not go back to the original decision to see if the selectmen were right in there action not to enforce. In paragraph 8 of Attorney Cook's letter clarify/if you decide to hear this case consider (a) only the documents within the case such as the letter to Harold Buxa from Mr. Stephenson of July 76 stating the approval (b) if you look beyond certified record of that file should not consider the other information from the state record it should only be the minutes of the 7/76 meeting the approval (Attorney Sanna states to board that if the information they require is not in the file and that information can be obtained from other sources that the board may refer to it) paragraph 9. The state permits and approvals have no bearing on the local level and should not be taken into account Paragraph 10 (Attorney Sanna again directs board to decide on the preliminary material first to address Attorney Cook's arguments that the appeal was untimely etc...) Attorney Gardner states that the town records are inadequate and that the other information presented is pertinent. The board decides to review attorney Cook's letter and to vote on each point. 1) Was the appeal timely? Letter presented to board by Attorney Gardner dated 10-17-86 concerning/the State's approval of the 86 ordinance requiring further local approval. Attorney Cook states that they went before the Solid Waste Council and argued their case and that there was representation from the Town (Corton Mayor) and that the state decided that the original 1976 Variance was effective. Motion: donna kiernan to reject the first argument as the appeal was timely 2nd Eleanor Stephenson vote: unanimous Attorney Cook states that the state along with Town's council attended meeting and found that the original variance was ok Attorney Cook states that there is a record of that hearing at the solid waste council. Motion: donna kiernan to reject argument #2 as there was no documentation in the record to up hold the argument. 2nd Eleanor Stephenson vote unanimous

①

3&4) That Sence has already been allowed local approval by the original 76
varrance. Discussion ensued. motion: donna kiernan the issue of varrance
has not be resolved motion to reject arguments 3&4 2nd Eleanor Stephenson
Vote: unanimous 5) The state has already ruled that the local approval was there
testamony from Skip Davidson Selectman at the hearing. Attorney Gardner again
stated that the board must decide with the information that they have in front
of them motion; eleanor stephenson to reject #5 as not enough information
presented to give a decision 2nd donna kiernan Vote Unanimous

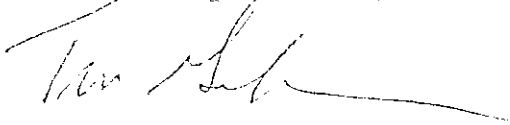
'6&&) Can the selectmen take no action? Gardner states to focus on the 11-86
letter not the 4-87 letter that the letter of 11-25-86 was very specific. Were
the selectmen wrong to refuse to act? Were the selectmen in error or not?
Discussion ensued by board members motion; the selectmen should have taken action
on the november, 1986 letter AWARE the Varrance of 1976 was not broad enough. 2nd
Eleanor Steopehenson Vote Unanimous

Old Business:

Littleton Lumber report submitted by Richard Polonsky (returned to board)
described type and use of 3 chemicals that will be used (copper, chrome and
arsnic) There are no EPA regulations for the way that Littleton Lumber buys
their chemical. they do not buy them premixed buy buy seperated and then mix
themselves, also reported on protective clothing. Discussion on leaving the
clothes and work boots at plant and also installing personnel showers in plant.
Report on testing levels for airborne arsnic the state and EPA only require tes
within first 3 months of plant opening.

motion: richard polonsky to incorporate into approval following 1) to monitor
air quality within the plant (airborne arsnic levels) atleast once per year
all employees be tested once a year, and new employees be tested within one
(1) week of enitial employment and yearly thereafter 2) workers will be issued
protective clothing and work boots which are to be left at the plant. Personnel
showers are to be installed in the work place and all workers encouraged to
use them before leaing work, 2nd Donna Kiernan vote Unanimous

Respectfully Submitted



Tina Greenlaw
Secretary Zoning Board
Town of Bethel



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

M. Mary Mongan
Commissioner

CERTIFIED MAIL

William T. Wallace, Jr., M.D., M.P.H.
Director
Division of Public Health Services

Return Receipt Requested

Health & Welfare Bldg.
6 Hazen Drive
Concord, NH 03301-6527
Tel. (603) 271- 4524

October 24, 1986

Mr. Roy Sanborn
Sanco Incorporated
Route 302
Bethlehem, NH 03574

Dear Mr. Sanborn:

This is a follow-up to the October 17, 1986 letter of approval for continued use of the existing landfill with the construction of a contingency area. This letter details the requirements for construction and operation of the contingency area and the closure of the existing operating area.

The following is the schedule required for operation and closure of the existing operating area and contingency operating area:

Finalize construction and begin refuse disposal in the contingency operating area.	October 20, 1986
Initiate closure of existing operating area.	October 31, 1986
Complete closure of existing operating area.	December 29, 1986
Completion of refuse disposal operation in contingency operating area.	October 20, 1987
Complete final capping and closure construction.	January 20, 1988

The following is a list of conditions that shall be met as part of the closure and post closure of the existing operating area and construction, operation, closure and post-closure of the contingency operating area:

1. Only solid waste as defined in He-P 1901.01 shall be placed in the existing operating area and contingency operating area. No hazardous waste as defined in He-P 1905 shall be accepted.
2. All other State and local approvals shall be obtained before operation of the contingency operating area can commence.
3. The existing operating area shall be closed in accordance with the technical requirements of the approved closure plan for the existing operating area and in compliance with the aforementioned compliance schedule.
4. The contingency operating area shall be constructed in accordance with the plans submitted to the Division of Public Health Services, Office of Waste Management (Division) dated September 18, 1986, and also in accordance with the modified plans dated October 1, 1986, and October 17, 1986. This will require that the contingency operating area be constructed and operated with a 60 mil HDPE synthetic liner and a leachate collection system. In addition, the 60 mil HDPE liner shall be extended along the face of the existing operating area as described in the October 17, 1986, submittal depicted as "Option B". No heavy equipment shall come in direct contact with the liner once it has been installed.
5. Sanco Incorporated shall submit the following information to the Division before placing any refuse in the contingency operating area:
 - a. Test results of liner material to demonstrate compliance with manufacturer's testing specifications shall be performed on representative samples of on-site liner material. The laboratory report shall include the physical property tested, the test method and reference (e.g., ASTM, etc.), the performance required and the test result.
 - b. Test results of in-place liner material shall include, but not be limited to, tensile strength of welded seams and vacuum testing of liner welds.
 - c. Certification by the on-site engineer that the liner, leachate collection system and landfill base have been constructed and prepared in accordance with the approved design criteria and manufacturer's specifications.
6. Sanco Incorporated shall install multi-level monitoring wells at the location of monitoring wells MW-102 and MW-103. This will require the installation of an additional monitoring well at each of those locations. The function of these multi-level wells is to ensure adequate monitoring of vertical and horizontal migration of

October 24, 1986

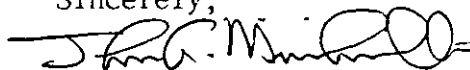
groundwater contamination. Sanco shall, therefore, submit plans to the Division detailing siting rationale and techniques to be used for proper placement, installation, and construction of these wells to accomplish the required monitoring. This plan shall be submitted to the Division within 30 days following receipt of this approval.

7. Within 30 days following receipt of this approval, Sanco Incorporated shall submit to the Division cost estimates for final closure of the existing operating area and contingency operating area and provide documentation of financial assurance for those costs.
8. Within 60 days following receipt of this approval, Sanco Incorporated shall submit to the Division a post-closure maintenance and monitoring plan for the closed landfill. This shall include a schedule for groundwater sampling and testing and a list of analytical parameters.
9. Within 30 days from closure of the existing operating area as-built drawings shall be submitted to the Division depicting detailed closure structures and relationship to the newly constructed contingency operating area.
10. As-built drawings of the contingency operating area shall be submitted to the Division within 60 days of completed construction of the liner base, leachate, and leachate collection systems. As part of this submission, Sanco Incorporated shall designate base elevations and surveyed bench mark to be used to determine final closure elevations.
11. Within 30 days following receipt of this approval, Sanco Incorporated shall indicate an approvable method for handling leachate from the finally closed contingency operating area should leachate be generated.

Pursuant to He-P 1901.04(i) of the Solid Waste Rules, any person aggrieved by a decision of the Division may appeal such decision to the Solid Waste Management Board within 30 days following the issuance of such a decision. The Board shall hold a hearing on the appeal promptly and shall issue a decision upholding, modifying or setting aside the office's decision. During the appeal process the Division's decision will be automatically stayed.

Should you have any questions regarding this matter please contact me (271-4524).

Sincerely,



John A. Minichiello
Assistant Director
Division of Public Health Services
Office of Waste Management

Mr. Roy Sanborn

-4-

October 24, 1986

cc: Alden H. Howard
Commissioner, DES

George Mollineaux
Governor's Office

Michael Donahue
Water Supply and Pollution Control Commission

Thomas Sweeney
Bureau of Solid Waste C&E, DPIIS/FILE

Laurence Gardner
Sanco Incorporated

Craig N. Musselman
Kimball Chase

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT
SEPTEMBER TERM
1985

* * * * *
*
GEORGE TUCKER and *
DANIEL TUCKER *
*
vs. *
*
BETHLEHEM ZONING BOARD OF *
ADJUSTMENT and SANCO, INC. *
*
* * * * *

No. 86-E-046

HEARING ON PETITION FOR RELIEF

BEFORE: Honorable Vincent P. Dunn,
Presiding Justice
Grafton County Superior Court
Courtroom No. 2
North Haverhill, New Hampshire

Friday, March 28, 1986
9:30 o'clock a.m.

APPEARANCES:

For the Plaintiffs: Laurence F. Gardner, Esquire

For the Defendant
BETHLEHEM ZBA: Stephen U. Samaha, Esquire
MOULTON, SAMAHA, VAUGHAN &
RANSMEIER, P.A.

For the Defendant
SANCO: Ronald E. Cook, Esquire
CLARK, COOK & MOLAN
and
Francis S. Wright, Esquire
WRIGHT & MOEHRKE, P.C.

Court Stenographer: Anthony W. Perkins, CSR-CM

PENGAD (C) DAYINNE N.J. 03002 FORM 681

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
FRANK HAGAN				
By Mr. Gardner	6			
By Mr. Samaha		12	--	--
BARRY HAGER				
By Mr. Gardner	15	--	--	--
DONNA D. KIERNAN				
By Mr. Samaha	26			
By Mr. Gardner		26		
By Mr. Samaha			68	
By Mr. Cook		72		
By Mr. Gardner				79
By Mr. Samaha (Further)			81	
ROY SANBORN				
By Mr. Cook	83	--	--	--

* * * * *

E X H I B I T SPlaintiffs':

1	--	Copy of Letter dated September 12, 1985 from Attorney Edmond J. Ford enclosing fifteen pages of attached documentation	5
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Defendants':

A	--	Packet of materials in manila envelope	31
B	--	5-page document entitled "Notice of Decision" and ZBA minutes of 1-15-86 meeting	40
C	--	4-page document entitled "Notice of Decision" to deny special exception	69
D	--	5-page document entitled "Notice of Decision" to accept special exception	70

would stipulate that there were at least three members of the Board at his office on December 18, 1985?

MR. SAMAHA: Yes, your Honor, I will.

THE COURT: All right.

MR. GARDNER: I would ask Attorney Samaha if he could consult with Donna Kiernan, a member of the Board, whether or not there was a quorum present at Mr. Davidson's house on December 23rd.

MR. SAMAHA: Your Honor, Miss Kiernan says there were four members at Mr. Davidson's house.

THE COURT: And that's a quorum?

MR. SAMAHA: Yes.

MR. GARDNER: Just one minute, your Honor, please. (Pause).
I call Barry Hager to the stand.

BARRY HAGER, first having been duly sworn by Mr. Gardner, was examined and testified as follows:

DIRECT EXAMINATION (By Mr. Gardner):

Q Would you give your name and your address and spell your last name for the stenographer?

A My name is Barry Hager. Last name is H A G E R. My address is Garrison Road, Dover, New Hampshire.

Q Mr. Hager, are, are you connected with Sanco, Inc., the --

one of the defendants in this case?

A Yes, I am.

Q And in what way?

A I am a stock owner in Sanco.

Q Are you also an officer and director of the corporation?

A Yes, I am.

Q And you are probably an employee of the corporation?

A I am.

Q All right. Mr. Hager, what is the principal business of Sanco, Inc.?

A To do environmentally sound refuse disposal.

Q What land fills are presently operated by Sanco, Inc.?

A The land fill in Bethlehem.

Q And how long has Sanco, Inc., operated the land fill?

A Sanco, Inc., has the land fill, has operated approximately -- I'm not sure, six years.

Q Now, what is the, what is the present status of the existing sanitary land fill with regard to the supervising agencies, the Office of Solid Waste Management and the New Hampshire Water Supply and Pollution Control Commission?

MR. COOK: I object, your Honor. I am not sure it has any relevance whatsoever to the petition for relief under 91-A:7.

THE COURT: I am going to allow the question. Objection is overruled. Go ahead.

A I don't think I understand your question --

Q All right.

A -- sir.

Q Mr. Hager, it's my understanding that Sanco, Inc., has filed with the Office of Solid Waste Management a proposed closure plan of the existing facility, is that correct?

A The State of New Hampshire required us that all sanitary land fills working in the State of New Hampshire have a closure plan. We have done that through our engineering staff and supplied that to the State of New Hampshire. That's correct.

Q All right. But isn't it a fact, Mr. Hager, that only within the last 90 days has the, has Mr. Sweeney at the Office of Solid Waste Management directed Sanco to file the closure plan?

A A closure plan was to be filed prior to that. It has been done in the last 90 days, that's correct.

Q And is there presently a hearing scheduled on that closure plan in -- next month in Bethlehem?

A The State always requires that it be done in that community, correct.

Q Now, Mr. Hager, there was a representation made by one of the attorneys for Sanco to the effect that the existing sanitary land fill will be filled to capacity by midsummer, is that correct?

A That could be so by late fall, yes.

Q Now, in -- has Sanco, Inc., taken steps to file an application or to prepare an application for the proposed expanded sanitary land fill?

A Yes, it has. That is the reason for doing that, to expand that facility. A complete engineering plan has been supplied to the State.

Q All right. Now, how -- what, how large is the area of the existing sanitary land fill?

A Approximately six or seven acres.

Q And the, the request you have for an expanded land fill, how much land will that cover?

A Thirteen acres, I think. It's a small regional facility for servicing the area.

Q Now, if you anticipate the, the existing land fill to be filled to capacity by, as you say, late fall, what are the time requisites so that you can continue to place solid waste at that land fill?

A May I just have -- you said midsummer or late fall and I

Q And the Board then finalized each paragraph and voted on each paragraph, right?

A Yes.

Q Correct?

A Yes.

MR. SAMAHA: Thank you.

THE COURT: Anything else of this witness?

MR. GARDNER: Not on my part.

MR. COOK: No, sir.

THE COURT: You may step down. Thank you.

(Witness stepped down.)

MR. SAMAHA: The defendant, Town of Bethlehem, rests, your Honor.

THE COURT: All right.

MR. COOK: Your Honor, I would like to call Roy Sanborn, if I may.

ROY SANBORN, first having been duly sworn by Mr. Cook, was examined and testified as follows:

DIRECT EXAMINATION (By Mr. Cook):

Q Would you state your name, sir, and spell your last name?

A Roy Sanborn, S A N B O R N.

Q Where do you reside?

A Bethlehem.

Q Are you associated with Sanco, Inc.?

A Yes, I am. I am a stockholder and officer and director.

Q Would you give us a brief overview, if you will, of the nature of the business of Sanco, Inc.?

MR. GARDNER: Your Honor, I would just interpose a modest objection here. I thought Mr. Hager, who was the principal, had touched on it. I am not sure that anything more is relevant. The petition does not in any way question the motives of Sanco or, or their requests for special exceptions or motions for rehearing. And I, I think -- I fail to see the relevancy of this as it would be simply repetition of what Mr. Hager, the other principal in the corporation, testified to.

THE COURT: Well, my recollection is Mr. Hager just said it was something to do with land fill and the environment but didn't go into any detail. I am going to allow the question. Go ahead.

A Very basically we are a land fill operation for municipal solid waste. We handle a number of towns in the North Country providing them with service for a number of years; basically an ongoing operation and changing operation complying with new federal, state regulations.

Q And when you say you provide the services, what do they include?

A Sanco itself is basically land disposal of solid waste.

Q Do you provide the transportation of the wastes?

A Not as Sanco.

Q Sanco is not in that business?

A Sanco is not in the --

Q Sanco is exclusively a solid waste management site?

A That's correct.

Q You've heard at length here this morning all of the testimony about the history of your application, and I think it goes without saying what the purpose of the, the request of the Zoning Board of Adjustment was in terms of the special exception. But if you can tell me from, from the business perspective what was the objective behind the application in terms of how that would affect Sanco if granted?

A The basis for the application was to enable us to service the communities in the North Country and secure in a secure manner for a long period of time, for the next fifteen years or so to continue operations.

Q How many communities do you serve, sir?

A I would say basically eight to ten.

Q And is that on a contract basis?

A Yes, it is.

Q And can you give me some sense, give the Court some sense of the magnitude of the solid waste that we're talking about here?

A You mean volume?

Q Yes, sir.

A On the order of sixty ton a day or so.

Q Tell us briefly what the special exception would have allowed you to do on the site itself.

A Are you talking about if it's approved by the State and so on?

Q Yes, sir.

A It would allow us to basically operate on a new area of about fifteen acres in an environmentally sound, federally approved standard method of operation and to continue operating and serving the towns in the North Country.

Q In your opinion, is there a current need for such a facility?

A Yes, there is.

Q Why?

A The solid waste industry in New Hampshire and in the nation as a whole really is at a crisis stage. Very few new sites are being permitted. This I believe is, actually it would

**Consumat Sanco Inc.**

100 Hall St. • Suite 301C • Box 6 • Concord, NH 03301 • (603) 225-0579 • Fax (603) 225-0967

August 28, 1992

Board of Selectmen
Town Hall
Bethlehem, New Hampshire 03574

Gentlemen:

Consumat Sanco began the relocation of the original landfill after we had reached agreement with the Town of Bethlehem Zoning Board of Adjustment. When the project was shut down for the summer months, 40% of the old landfill had been moved into the double lined area. As I recently discussed with you, we have been recently concerned that the set aside of the ZBA/Sanco agreement would jeopardize our ability to complete the relocation project since it had been begun as a result of the agreement with the ZBA and in accordance with our New Hampshire Department of Environmental Services Stage II permit.

We wanted to let you know that we are currently intending to recommence the relocation project on September 8, 1992. This start-up of the relocation project is occurring with the approval by the Waste Management Division of the New Hampshire Department of Environmental Services and in accordance with the terms and conditions of our Stage II permit.

The set aside of our settlement agreement has created somewhat of a vacuum in which we are proposing to proceed. Our position regarding the 1976 variance remains constant: We have local approval to expand our landfill subject only to state supervision. We shall, therefore, remove the old landfill and proceed to construct our state approved 7.5 acre Stage II expansion area.

We anticipate that we shall be providing you with further updates regarding our progress of the relocation over the fall and winter. Should you have any questions which we might address in the interim, please let me know.

Respectfully,

Leo R. Larochelle P.E.

Director of Technical Services

LRL/hs

cc: Ron Cook
Roy Sanborn