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Bethlehem Planners Want Legal Opinion On Landfill Expansion Article

Mass. Landfill Closure & Federal Environmental Lawsuit Against Casella May Impact Bethlehem

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BETHLEHEM — Uncertain about its legality, Bethlehem planners on Wednesday postponed their decision on a petitioned warrant article seeking landfill expansion, saying they first want an opinion by legal counsel.

Their unanimous decision continued the public hearing to 6 p.m. Wednesday at Bethlehem Town Hall.

The petition for an amendment to the town zoning ordinance - that would add 100 acres the current 61-acre landfill district - states the article shall take effect only upon the execution of a new host community agreement (HCA) between selectmen and Casella Waste Systems (CWS), whose Bethlehem subsidiary is North Country Environmental Services (NCES).



“I’ve never seen a zoning change conditional on select board approval,” said planning board member Don Lavoie, the former board chairman.

In 2017, when CWS put forth two articles that went on the town meeting warrant, it was the other way around and the HCA wouldn’t take effect unless the zoning amendment passed, he said.

“I don’t believe the select board has the authority to override or implement a zoning change,” said Lavoie. “We are recommending something that may be unconstitutional or unenforceable.”

The board voted 7-0 to consult legal counsel on whether the conditional provision is constitutionally legal or not.

By law, the petitioned article will have to be placed on the warrant as written, with any recommendations by planners and selectmen noted.

About 100 residents packed into town hall Wednesday, with a solid half supporting expansion and urging planners to recommend the article that evening and the other half urging them to postpone a vote pending a legal opinion and concerns about the lasting impact on the town if the article were to pass in March.

One resident requesting postponement was Julie Seely, who said the article could pass without an HCA being approved or negotiated, which could result in a “gift” of 100 acres to CWS.

“You really need a legal opinion,” she said. “This is new territory.”

Not all agreed, including resident Cliff Crosby, who said the new select board would be asked to negotiate a new HCA with CWS that will either add money to the town (CWS estimates a \$54 million benefit package over 20 years, to include property taxes and host community fees) or not add money.

“I don’t see why this should be stopped by legalities,” said Crosby.

Currently, the existing landfill, which has a footprint of about 47 acres, is slated to close in about 2022, when capacity will be reached.

Supporters say expansion is needed to reduce or stabilize the tax rate, though the tax rate has increased as the CWS landfill has expanded in the last two decades, and CWS representatives in September told selectmen they are considering seeking what could amount to a significant reduction in landfill property taxes.

Opponents say expansion could carry adverse environmental impacts and the town should be looking at other ways to foster economic development and reduce the tax rate.

In 2012, when the current HCA was negotiated that added 10 acres to the then-51-acre landfill district, the select board “promised it would be the end” and the landfill would close after that capacity was reached, said resident Andrea Bryant.

In 2015, however, CWS bought more than 100 acres adjacent to the landfill, even though CWS agreed to a provision in the HCA that it would not purchase additional property to be used for landfill expansion.

Some residents who had opposed expansion for years voted for it in 2012 because they believed the previous select board and assumed it would close, said Bryant.

“Is this really good for our town?” she said.



Selectman Martin Glavac, a proponent of expansion, pointed to what has been a rumor relating to CWS inquiring about buying property in Dalton, calling it “an open secret.”

But expansion should be Bethlehem, which would benefit the town and would be on Trudeau Road and not Main Street, said Glavac.

On Thursday, NCES landfill manager Kevin Roy and CWS spokesman Joe Fusco declined to say if there are ongoing land purchase negotiations in Dalton or elsewhere, and if so, if they are advancing or if it is intended to put pressure on Bethlehem for an affirmative vote.

“Any discussions regarding a potential business transaction will always be held in confidence by NCES,” said Fusco. “We will neither confirm or deny that, or any, rumor.”

With Bethlehem voting last year not to allow expansion, Fusco said, “it would be irresponsible of NCES not to explore other options.”

Noting that the current HCA allows for 10 acres of land-filling for a period of about seven years and the proposed expansion would allow about 70 acres filled in 20 years, Seely said truck traffic in Bethlehem could triple.

Truck traffic doesn't necessarily increase over the life a landfill, said Fusco.

"As the rate of fill remains the same, the truck traffic remains the same," he said. "Our estimates used acceptance rates similar to existing volumes. In addition, none of the traffic to the landfill comes through Bethlehem, but approaches the landfill from the south on Route 3."

Mass. Impact On Bethlehem

It is also unclear if or how the slated closure of the CWS-operated landfill in Southbridge, Mass., as well as a federal environmental lawsuit in Massachusetts, would impact Bethlehem.

Fusco declined to say specifically how much waste that would have gone into the Southbridge facility could come to Bethlehem.

"NCES has a regulatory obligation to operate its landfill for the 'public benefit' of New Hampshire, meaning the vast majority of waste will come from New Hampshire communities," he said.

The lawsuit, filed in June by two nonprofits and 99 individual plaintiffs against CWS and the town of Southbridge, which owns the landfill, alleges violations of the Clean Water Act through the discharge of pollutants into wetlands, waterways, drinking water aquifers, and residential drinking wells.

The litigation asserts 85 wells are contaminated by pollutants discharged from the landfill and others are threatened.

CWS denies the allegations.

According to the Massachusetts petitioners, "the landfill is also polluting surrounding communities with odor and noise. Noxious fumes from the landfill's decomposing waste befoul the air at neighboring properties, while an incessant din of heavy vehicles crashing, banging, and beeping deprives the landfill's neighbors of the quiet enjoyment of their homes."

The same concerns about wetlands and water impacts and noise and odor have been voiced by opponents of expansion in Bethlehem.

In light of the allegations in Massachusetts, Fusco was asked what measures CWS will put in place to ensure that a landfill in Bethlehem, if more than doubled in size, would not carry adverse impacts.

“Every environmental protection that is in place now – and each is very significant - will remain in place,” said Fusco. “In the future, new technologies and techniques, particularly those required by regulation and permit conditions, will be put in place. Landfills are some of the most heavily regulated and inspected infrastructure in New Hampshire, with redundancy built into inspection and technology.”

