

July 11, 2020

Planning Board
Town of Topsham
100 Main Street
Topsham, ME 04086

Re: Crooker Construction Rezoning Proposal

I am writing to express my deep concern and opposition to Crooker Construction's latest rezoning proposal of May 1, 2020, which I believe strongly contradicts the letter and the spirit of Topsham's Comprehensive Plan Update of 2019.

Here are my reasons:

1. Circular Argument

- Crooker's proposal bases their case for rezoning on the idea that their business is "rural and local," according to the wording of the Comprehensive Plan. If they can establish this connection it will be easier for them to argue that it is therefore consistent with the Comprehensive Plan.
- Crooker's proposal would require creating a special industrial zone for property in the River Road, Ivanhoe, Birch Ridge, and Pejepscot neighborhoods.
- This approach is a clear example of illogical circular reasoning:
 - a) we claim to be "rural and local" and therefore our growth should be supported by the town;
 - b) we need a new type of industrial zone just for us, in these rural and local neighborhoods;
 - a+b) in other words, we need a special industrial zone because our business is rural and local.

Question: If Crooker's business is in fact rural and local, why do they need a special industrial zone in the first place?

Answer: There is no possible zoning category that could render Crooker's proposal consistent with the Comprehensive Plan Update.

2. Crooker is not a small or local business

- Crooker Corporation is the eighth largest construction company in Maine. Their annual revenue is \$47,256,000, according to [2020 Zoom Company Profiles](#). They do not disclose this information; it took considerable digging to find it.
- Crooker's owners and investors (whom they claim without proof to be local) are undisclosed, as is their annual profit and the total value of the corporation.
- Crooker owns and operates gravel pits located in Topsham, Whitefield, Bath, Sabattus, Windsor and Durham, along with rock quarries located in Topsham and Alna. They are not local to Topsham.

Conclusion: Crooker Construction LLC is a large, privately held corporation that does not want people to know where they operate, who are their owners and investors, how big they are, or how much money they make.

3. Unethical behavior and fines

- Crooker Corporation’s website lists its ethical values: “We are committed to the highest ethical standards in the industry. We achieve this through honesty, trust, and respect. Our word is our bond and our actions are the basis for our relationships.”
- Directly contradicting this statement, Crooker was caught and cited in 2014 by the state for violations that occurred at a gravel pit owned by the company along Ben Bailey Road in Whitefield. State DEP inspectors found Crooker crews to be excavating within 100 feet of the road, which is against state regulations. The company was fined \$21,567 and ordered to rebuild the lost "natural buffer strip," and cease operations there. But four days later the inspectors found that Crooker was still excavating sand and gravel at the same location ((c)2019 The Bangor Daily News).

Conclusion: We are dealing with a large corporation, committed only to profit, and more than willing to break the law and disrespect local residents. They cannot be trusted.

4. Dishonest tactic

- Crooker wants the Planning Board to agree in writing that it will “work with the developer to create a new zoning district in the Topsham ordinance” prior to the full review process.
- This is an inappropriate request, designed to make their plan seem like a “done deal” before it even reaches the public review stage.

Conclusion: The Planning Board MUST NOT sign this “resolution.”

5. Not an “undeveloped site”

- Crooker wants to move their batch plant to an “undeveloped” site near the intersection of Rt. 196 and White Crossing Rd.
- The site is not “undeveloped.” It is a fully developed residential and natural area, rich with waterways, vernal pools, forests and trails, and long-established farms.
- Dozens of residents call these neighborhoods home and have done so for many decades. The idea of displacing homeowners for some sort of “compensation” so that Crooker can take over and degrade these precious properties is a complete nonstarter.

Conclusion: The site only appears “undeveloped” to a company whose sole purpose is to make money by paving over neighborhoods and natural areas. To the rest of us, the site is perfectly developed exactly as it is.

6. What part of “no”...

- Crooker’s proposal has already been defeated three times.
- Nothing has changed in the town’s Comprehensive Plan Update in the interim.
- Therefore, there is no reason whatsoever for the Planning Board to even allow consideration of a fourth proposal.

Conclusion: The Board should turn Crooker away, now, before allowing any process whatsoever to begin.

Thank you for consideration of these points and for your “no” vote on the Crooker Proposal as soon as possible.

Sincerely Yours,

Terry Porter
6 Collins Circle
Topsham, ME 04086

7/12/2020

Planning Board
Town of Topsham
100 Main Street
Topsham, ME 04086

Re: Crooker Construction, LLC's Rezoning Proposal

Dear Chairman Spann and Planning Board Members:

I reviewed the Planning Board workshop minutes dated June 2, 2020 and I wanted to provide some additional public commentary on the applicant's 6/2/2020 presentation and workshop discussion documented in the minutes. Documentation of the workshops with minutes and recordings is a welcomed change and I hope this approach continues for all future workshops since many important details leading to ordinance changes are discussed in a workshop format.

Zoning Amendment Procedure

I have previously raised questions regarding this rezoning process as it relates to the zoning amendment procedures under Chapter 225 for initiating and developing zoning amendments. This has been a point of confusion for me and others for two years since the first 2018 proposal framework was presented by the applicant. The June workshop suggests to me that the approach proposed by the applicant is a questionable avenue to develop a zoning amendment under the Topsham ordinance.

- The applicant is proposing a hybrid process and partnership with the planning board to develop a rezoning for the benefit of the applicant first and foremost.

The applicant notes the following on the 6/2/2020 presentation slide labeled "Purpose of this meeting":

- "Prepare for a vote on Resolution at a future Planning Board meeting
 - Resolution: The Planning Board agrees to work with the developer to create a new zoning district in the Topsham ordinance that would be consistent with the Comprehensive Plan Update for submission to a future Town Meeting"

This applicant's strategy seems to favor their preferred outcome objectives and appears inconsistent with Topsham's zoning amendment ordinance procedural requirements, which was discussed in 2018 at Planning Board workshops. As I understand from reading all the available documents, the applicant wishes to partner with the planning board to develop a rezoning that

is theoretically consistent with the comprehensive plan through a Planning Board initiated and oversight process.

The onus is on the applicant to develop a detailed zoning amendment proposal for the Planning Board to review and consider within the framework of the Comprehensive Plan and zoning ordinance as outlined to the applicant in the Planning Department Letter dated 9/30/2019.

According to the workshop minutes, "Mr. O'Hara told the Board his team will work with Rod and Andrew and would like to come up with a resolution the Board would accept followed by a Public Hearing." Will a public hearing be required prior to a vote on a resolution of this nature?

The process discussed at the 6/2/2020 workshop seems to blur the lines of the ordinance procedures for initiating and developing a zoning amendment and especially for a rezoning requested by a single property owner of this scale and controversy. In May 2008, Town Meeting eliminated the track for a property owner to request a rezoning of their property (Article 11), leaving the current three methods available in the ordinance for initiating and developing a zoning amendment.

If the applicant wants to seek a rezoning of an area including property they own and don't own, they can start the process by petition as the ordinance permits. With the current approach, the Planning Board working with the applicant under this unauthorized hybrid procedure, develops a pathway for the Planning Board to work with applicant to develop language of a rezoning proposal, and the Planning Board will become invested in helping achieve the applicant's desired result. The rezoning recommendation is more likely to become a preordained result in the applicant's favor instead of an impartial evaluation of the proposal against the Comprehensive Plan and the relevant sections of the Town Code.

Comprehensive Plan Consistency

The applicant argues four main topics in the presentation that they believe makes the rezoning consistent with the newly adopted 2019 comprehensive plan update. However, they then suggest that the rezoning can only be consistent with the Comprehensive Plan with adoption of new Resource Industry District performance standards that they interpreted as expected outcomes envisioned in the 2019 comprehensive plan update. It seems like they are trying to stretch the interpretation of Topic #1 in their presentation where they argue that Crooker's large industrial operation is compatible enough with the Rural-Suburban Limited Growth Sector future land use objectives to justify the idea of a partnership with the Planning Board to develop performance standards and some sort of master plan for a special industrial zone within the Suburban Residential Zone. This implies these performance standards will be non-waivable and acceptable to the neighbors, which remains to be seen. This new preferred approach (as the applicant suggests) goes against the prior approaches proposed by the applicant to expand the existing industrial zone, rural commercial use zone, and a limited industrial rezone of parts of the suburban residential zone on River Road.

Future Land Development

The applicant has made assumptions as to where the batch plant would be sited on their property as a basis for establishing a conceptualized 1,500 ft. buffer. The assumed batch plant buffer is based on current residential dwelling locations, and it fails to consider the residential buffer distance of all the components of this large industrial operation to residential property lines and dwellings. In addition, there has been no discussion of future residential development opportunities on abutting properties that the applicant doesn't own but includes sub dividable parcel opportunities and would allow residential development well within the assumed 1,500 ft buffer the applicant has presented to the Planning Board. They appear to assume that the residential development that is existing today will be static in the future and new residential development will not encroach toward their property if rezoned industrial to allow asphalt plant operations across from the mall to relocate to the suburban residential zone. I guess this is a possible outcome giving the reduced marketability of residential development in the neighborhood if this project were developed by the applicant.

Applicant Proposed Schedule

I was taken aback that the applicant once again attempted to propose an accelerated schedule for review and development of the current rezoning approach leading to a special Fall Town meeting after the process was halted in August 2018. This would not be feasible even in the absence of the global COVID-19 pandemic, which will likely persist through 2020 and beyond. I'm pleased that the Planning Board reminded them that the Select Board indicated in a letter dated June 28, 2018 that such a request should be presented at a May Town meeting. A zoning change of this magnitude represents a significant change to established neighborhoods and Planning Board should evaluate all details and impacts of the rezoning and industrial development outcomes on the existing neighborhood.

Permitted Land Uses

The Planning Board will need to consider the range of permitted and conditional land uses allowed in the Suburban Residential Zone when considering a zone change for one industrial construction company that will expand high intensity land use impacts to abutters and the surrounding neighborhood. In 2018 and 2019, the Planning Board and Select Board developed ordinance provisions to license marijuana-based business development in Topsham with restricted ordinance provisions. This was an extensive ordinance development process that included the planning department, citizen stakeholders, and the Planning Board. The process resulted in the Planning Board developing and Town Meeting passing an ordinance that does not allow any marijuana-based businesses as defined in Chapter 225 anywhere in the Suburban

Residential Zone including the property the applicant is requesting to be rezoned Industrial for high intensity land use.

More recently, the Planning Board, Planning Department, and a local citizen group developed a new solar energy conversion system ordinance under Chapter 225, which will be presented at Town Meeting at the end of July. This new ordinance limits solar energy conversion system development in the Suburban Residential Zone to small systems defined as less than 40,000 square feet of developed area. Both of these business-based land uses are recent examples of limiting new business land uses in the Suburban Residential Zone that are much less intensive and impactful than the large-scale industrial operation proposed on the applicant's property within the same zone.

I appreciate your time in this matter, as this proposal continues to have several conflicts and impacts to consider for both the applicant and the neighborhood.

Sincerely,



Daniel J. Flaig, Jr
32 Beechwood Drive

cc: Andrew Deci, Topsham Assistant Town Planner

From: [Daniel Flaig](#)
To: [Rod Melanson](#)
Cc: [Andrew Deci](#); donspann@remax.net
Subject: Rezoning
Date: Tuesday, July 14, 2020 8:58:41 PM
Attachments: [draft_resolution_for_Planning_Board_meeting_next_week.pdf](#)

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Hi Rod

I noticed Andrew Sturgeon, Tom Sturgeon's (Crooker President) brother and committee member of TDI appointed by the select board in 2019 as well as Mark Eyerman (Former assistant Topsham Planner's husband and Frank's former business partner) was copied by Frank O Hara (Crooker's current consultant) on this Planning Board resolution email along with Ian Messier and Tom Sturgeon. Is Andrew Sturgeon a consultant to Crooker and a member of TDI?

This seems questionable, and suggests that things may not be on the up and up with respect to the latest rezoning proposal. This resolution idea and text is quite irregular in terms of process.

Dan

https://www.topshammaine.com/vertical/Sites/%7B95A28B10-4485-4BEC-B8FC-5E8BF056A147%7D/uploads/draft_resolution_for_Planning_Board_meeting_next_week.pdf

Sent from my iPhone