

CITY OF OLD TOWN PLANNING BOARD
Solid Waste Facilities Permit Application
Decision

I. Introduction

Applicant(s): NEWSME Landfill Operations, LLC (“NEWSME”) and State of Maine, Bureau of General Services (“BGS”).

Name of Solid Waste Facility: Juniper Ridge Landfill (“JRL”), (the “Solid Waste Facility” or the “Facility”).

Address of Solid Waste Facility: 2828 Bennoch Hill Road, Old Town.

Date of Application: June 8, 2017.

Date Application found complete for processing by Code Enforcement Officer (“CEO”): June 21, 2017.

Date of Planning Board meetings on Application:

Preliminary Meeting: July 11, 2017.

Site Visit: July 20, 2017.

Workshop(s): August 8, 2017.

Public Hearing(s): September 12, 2017.

Deliberations: October 10, 2017, November 14, 2017.

Date Maine Dept. of Environmental Protection License (the “MDEP License”) for Expansion of Solid Waste Facility issued: June 1, 2017.

Notice of Planning Board meetings:

Notice of the July 11, 2017 Preliminary Meeting of the Planning Board to review the Application was published on June 29, 2017 in the *Bangor Daily News* and on June 29, 2017 in the *Penobscot Times*, and was mailed on June 23, 2017 to the City Manager, Board of Selectmen, Town of Alton, Penobscot Indian Nation, Joint Citizen Advisory Committee, Solid Waste Review Committee, and the Abutters listed in Appendix A.

Notice of all other meetings of the Planning Board to review the Application was published on July 27, 2017 in the *Bangor Daily News* and on July 27, August 31, October 5 and November 2, 2017 in the *Penobscot Times*, was posted in the City Hall at least five days prior to

each meeting, and was mailed on August 31, September 7, October 5 and November 2, 2017 to the City Manager, Board of Selectmen, Town of Alton, Penobscot Indian Nation, Joint Citizen Advisory Committee, Solid Waste Review Committee, and the Abutters listed in Appendix A.

Documents submitted to the Planning Board:

Application of NEWSME and BGS, June 1, 2017;

Board of Environmental Protection Solid Waste License, Natural Resources Protection Act, and Water Quality Certification, New License #S-020700-WD-BI-N and #L-19015-TG-D-N, June 1, 2017;

Memorandum from James N. Katsiaficas to Planning Board, June 19, 2017;

Letter from David Russell to Planning Board, June 21 2017 (completeness determination);

Letter from Michael Booth to David Russell, August 2, 2017 re BGS Disclosure Statement;

Letter from Toni King to Kathy Tarbuck, August 11, 2017 re financial assurance;

Letter from Ed Spencer to Planning Board, August 11, 2017 with Questions;

Memorandum from James N. Katsiaficas to Planning Board, August 22, 2017;

Letter from Ed Spencer to David Russell, August 25, 2017 re Major Opponent status;

Letter from Thomas R. Doyle, Esq. to David Russell, August 28, 2017 re Major Proponent status;

Copy of Spencer Prefiled Testimony to DEP, July 29, 2016 (submitted August 29, 2017);

Edward Spencer “Concerns for Old Town Planning Board” (submitted August 29, 2017);

Email from Thomas R. Doyle, Esq. to David Russell, September 7, 2017 re BGS Disclosure;

Letter from Thomas R. Doyle, Esq. to David Russell, September 12, 2017 re Request to Strike;

Email from Ed Spencer to David Russell, September 12, 2017 re Request to Strike;

Email from Jeremy Labbe to David Russell, September 13, 2017 re Wastewater Treatment Plant Permit; and

Email from Ed Spencer to David Russell, September 26, 2017 re Wastewater Treatment Plant Permit.

Definitions. Except as defined in this Permit, capitalized terms used in this Permit have the meanings given them in Chapter 24 of the City of Old Town (“City”) Code of Ordinances (“Chapter 24” or the “Ordinance”) or in State statute, rules or regulation.

II. Findings of Fact and Conclusions of Law

The Applicants have submitted an application (the “Application”) under the Ordinance for a 9.35 million cubic yard addition to the Solid Waste Facility (the “Expansion”). The existing Solid Waste Facility is located on a 780-acre parcel in Old Town and has a solid waste footprint of 68 acres; the proposed Expansion would increase the solid waste footprint by approximately 54 acres. With access roads, stormwater detention ponds, landfill perimeter dikes and relocated scales and administrative building, the Expansion will have a total developed area of 74 acres.

After meetings, workshops, public hearings, and deliberations on the Application, on the basis of information, documents and testimony provided to the Planning Board in this matter, the Planning Board issues the following findings of fact and conclusions of law on each of the Criteria for Approving a Solid Waste Facility Permit or Amendment as found in the Ordinance, and for the reasons stated herein, decides as follows:

1. Criteria for Approving a Solid Waste Facility Permit or Permit Amendment (§24-12).

The Planning Board shall issue a Solid Waste Facility Permit if it determines that the Applicants meet each of the standards of this Section; provided, however, that with regard to proposed Expansion of the Juniper Ridge Landfill (formerly known as the West Old Town Landfill), the standards of this Section shall apply to both the Solid Waste Landfill in existence at the time of application and the proposed Expansion, except that the standards in *G. Waste Characteristics* (except for types of solid waste not listed in Exhibit 2), *K. Impact on Existing Uses and Scenic Character*, *L. Water Quality* and *N. Environmental Monitoring Program* shall apply only to the proposed Expansion. The Planning Board determines that the Applicant has demonstrated compliance with each of the standards of (§24-12 of the Ordinance):

A. Financial and Technical Capacity. The Applicants have demonstrated financial and technical capacity to design, construct, operate and close the Solid Waste Facility and Expansion in accordance with the requirements of this Chapter and the MDEP license.

Findings: The Planning Board finds from the Application (pp. 21, 52-53), supporting materials and testimony that the Applicants’ ongoing operations are generating tipping fee revenue to finance improvements at JRL, that Casella has presented in Appendix F-1 a letter from Bank of America N.A. that demonstrates the availability of a credit facility for the Expansion, and that Casella has presented evidence of a financial assurance for closure and post-closure care of the Facility at Appendix F-2 and in the August 11, 2017 letter from Toni King to Kathy Tarbuck regarding financial assurance; thus, the Planning Board concludes that the Applicants have demonstrated financial capacity as required by §24-12 A.

The Planning Board finds from the Application (pp. 21-24, 52-53, Appendix C-2 with key personnel resumes), from testimony, and from experience meeting with NEWSME at the Facility that the Applicants have a trained staff and knowledgeable consultants, which together with Casella's operation of landfills generally, NEWSME's operation of JRL since 2004, and NEWSME's proposed use in the Expansion of a double liner system, convince the Planning Board that the Applicants have demonstrated technical capacity as required by §24-12A.

Motion: _____

Second: _____

Vote: _____

B. Traffic. The Applicants have made adequate provision for safe and uncongested traffic movement of all types into, out of and within the proposed Solid Waste Facility and Expansion.

1. The haul routes within the City will safely accommodate the number, weight and types of vehicles transporting waste to and from the Facility and Expansion.
2. The Applicants have developed a plan meeting the requirements of §24-8.D of the Ordinance regarding overweight vehicles and has agreed to implement that plan. Vehicles transporting solid waste also will be licensed by the City in accordance with its requirements, when enacted, for licensing solid waste haulers.
3. The entrance and exit design for the Solid Waste Facility and Expansion will provide safe sight distances in all directions and provides for safe turning.
4. Necessary improvements to roads or intersections will be completed prior to initial operation of the Facility and Expansion or beginning operations pursuant to a Permit, Permit Amendment or Permit Renewal, unless an alternative schedule is approved by the City.
5. Major Facility and Expansion roadways will allow continuous and uninterrupted traffic movement without causing traffic to back up onto City streets posing a danger to pedestrians or other vehicles and will provide safe access for City public safety personnel and vehicles.
6. The Applicants have developed a plan to minimize litter and nuisance odor from trucks and vehicles used to transport solid waste to, or leachate from, the Facility and Expansion, and has agreed to implement that plan.

Findings: The Planning Board finds from the Application (pp. 25-29, 53-54), supporting materials, and testimony that: 1) the Applicants' primary haul route for the expansion will remain the same -- I-95 to Route 16 west to the JRL access road, that Gorrill-Palmer's (Appendix D-4) traffic study shows that there will be an increase of three AM hour, three PM hour and 20 daily trip ends which these roads, in the opinion of traffic engineer Tom Gorrill, can safely accommodate, and MDOT's State Traffic Engineer stated that he saw no negative traffic impacts with the Expansion (Appendix D-4 B); 2) NEWSME has a policy to discourage

overweight vehicles (Appendix D-4 C) and implements that policy; 3) the Gorrill-Palmer traffic study (Appendix D-4) establishes a minimum sight distance of 540 feet for significant truck travel and demonstrates that sight distances to the east and west exceed 1,000 feet, both the road and the Truck Transporter Policy (Appendix D-4 C) provide for safe turning, and there have been no accidents to date at the Facility entrance/exit; 4) MDOT has added preservation paving and highway rehabilitation work to its 2018 work plan to improve the northern portion of Bennoch Road; 5) the existing roadway will provide access to the Facility for the existing landfill and the Expansion and will allow for continuous and uninterrupted traffic movement on streets that can accommodate that traffic according to the Gorrill-Palmer traffic study (Appendix D-4); and 6) NEWSME's Truck Transporter Policy includes a plan to reduce litter escaping from trucks and to minimize odor from trucks and vehicles by properly washing and cleaning residue and deodorization. Therefore, the Planning Board concludes that Applicants have made adequate provision for safe and uncongested traffic movement of all types into, out of and within the proposed Facility and have satisfied the requirements of § 24-12 B.

Motion: _____

Second: _____

Vote: _____

C. Utilities. The Applicants have made provisions for utilities to furnish service at the required design usage.

Findings: The Planning Board finds from the Application (pp. 29, 54), supporting materials and testimony, and particularly from Appendix D-10, that the Facility and Expansion will use the existing sanitary wastewater disposal systems; that upon relocation of the scales and office building, these will be served by a well and on-site disposal system to be designed; that existing water sources will supply the Expansion; that leachate generated by the Expansion will be treated at the MFGR, LLC (former Old Town Mill) or City of Brewer wastewater treatment plant (Appendix D-10); and that the Expansion will have sufficient electrical service from an existing line that will be relocated. Therefore, the Planning Board concludes that the Applicants have made sufficient provisions for utility service for the Expansion.

Motion: _____

Second: _____

Vote: _____

D. Fugitive Dust and Nuisance Odors. The Applicants have made adequate provisions for the control of fugitive dust and nuisance odors so that the Solid Waste Facility will not unreasonably adversely affect air quality beyond its property boundary.

Findings: The Planning Board finds from the Application (pp. 29-35, 55-56), supporting materials and testimony that NEWSME is addressing the three possible sources of odor from the Facility and Expansion: 1) incoming wastes, by limiting application to smallest possible areas, by adding daily cover, by spraying trucks with deodorizer, by tarping trucks until wastes are removed, and by using a mobile deodorizing spray; 2) leachate storage and transport, by sealing and cleaning vehicles; and 3) landfill related gases, by collecting and flaring these gases. While

the Planning Board has received evidence that odors from the Facility are a nuisance to neighbors, particularly at Route 16 and West Coiley Road, but not on Route 43, the number of odor complaints has trended downwards during NEWSME's operation of the Facility (Application, Figure 4). Dan Thornton testified that he is on contract with NEWSME to respond to odors and has only been called out three times per year. Applicants have provided a method for detecting, monitoring and measuring odors in the Appendix D-3 Operations Manual; this includes four off-site continuous stationary hydrogen sulfide (H₂S) monitors and a Nasal Ranger olfactometer to measure levels in the field. Applicants also have agreed to incorporate the recommendations of the City's consulting engineer, CES, Inc., to require NEWSME to report in its monthly status report H₂S levels that exceed 15 ppb and to report to the City's Code Enforcement Officer if H₂S levels exceed 30 ppb. In addition, the Applicants have agreed to provide continuous H₂S monitoring data to the City so that it can review long-term H₂S exposure levels. Therefore, the Planning Board concludes that the Applicants have met the § 24-12 D. requirements.

Motion: _____

Second: _____

Vote: _____

E. Litter Control. The Applicants have made adequate provision for control of litter, routine maintenance, and general cleanliness of the entire Facility and Expansion site.

Findings: The Planning Board finds on the basis of the Application (pp. 35, 56), supporting materials and testimony and from its observation of NEWSME's practices for controlling litter at the Facility in its application of daily cover at the end of each workday, its use of litter fences, and its litter patrols for Facility cleanup, and Applicants' statements that they will continue these practices for the Expansion, that they have made adequate provision for control of litter, routine maintenance and general cleanliness of the Facility and Expansion site. Therefore, the Planning Board concludes that the Applicants have met the standards of § 24-12 E.

Motion: _____

Second: _____

Vote: _____

F. Vector and Bird Control. The Applicants have made adequate provision for minimizing disease vectors on the site and has developed an effective bird control plan to protect human health.

Findings: The Planning Board finds from the Application (pp. 35, 57), supporting materials and testimony and particularly Appendix D-3, that the Applicants have controlled vectors by providing for daily cover application, by contracting with Modern Pest Control and have a federal permit for bird control, and so concludes that Applicants have met the requirements of § 24-12 F.

Motion: _____

Second: _____

Vote: _____

G. Waste Characteristics. The Applicants have developed and will implement a Hazardous Waste and Special Waste Handling and Exclusion Plan under the Maine Solid Waste Management Rules to detect, identify, handle, store and transport special and hazardous wastes. The Applicants have demonstrated the ability to comply with MDEP requirements regarding the handling of solid waste and the storage, handling, transportation and disposal of Leachate.

Findings: The Planning Board finds from the Application (pp. 35-38, 57-58), supporting materials and testimony that the Applicants have a Hazardous Waste and Special Waste Handling and Exclusion Plan for the Facility and Expansion in the Operations Manual (Appendix D-3), and in Appendix D-2, an Appendix G Leachate Quality/Waste Characterization plan to identify, store, handle, transport and dispose of hazardous and special wastes and leachate, that the City cannot be more strict than State requirements for this plan, which BEP approved, and therefore concludes that Applicants have met the requirements of § 24-12 G.

Motion: _____

Second: _____

Vote: _____

H. Noise. The Solid Waste Facility and Expansion will not generate excessive noise at the property boundary and/or at any Protected Location, as demonstrated by compliance with the following:

1. Sound Level Limits. The hourly sound levels from routine operation of a Solid Waste Facility will be less than or equal to:
 - (a) 75 dBA for daytime and nighttime hours at the Facility property boundary;
 - (b) 60 dBA for daytime hours and 50 dBA for nighttime hours at any Protected Location in an area for which the zoning, or the existing uses are not predominantly commercial or industrial; or
 - (c) 70 dBA for daytime hours and 60 dBA for nighttime hours in an area for which the zoning or existing uses are predominantly commercial or industrial.
2. Alternative levels. If the Applicants choose to demonstrate by measurement that the daytime or nighttime pre-development ambient sound environment at any protected location exceeds the daytime or nighttime limits above, by at least 5 dBA, then the daytime or nighttime limits are 5 dBA more than the measured daytime or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
3. Existing Facilities. For any Protected Location near an existing Solid Waste Facility, the hourly sound level limit for routine operation of the existing Facility

and all future expansions of that facility is the hourly sound level written above, or at the Applicants' election, the existing hourly sound level from routine operation of the Facility before any expansions plus 3 dBA.

4. Equipment used during construction and maintenance activities at the Solid Waste Facility and Expansion will comply with applicable state and federal noise regulations and include environmental noise control devices in proper working condition and maintained as originally provided with the equipment by its manufacturer.
5. Sounds associated with the following are exempt from the sound level limits of this section:
 - (a) Routine engine sounds, from registered and inspected motor vehicles, with a properly installed and maintained muffler system as required by 29-A M.R.S.A. § 1912:
 - (1) While operating on public ways, or
 - (2) While entering the facility to make a delivery or pickup and that are moving, starting or stopping, but not when they are parked with the engine running in the Facility.
 - (b) The unamplified human voice and other sounds of natural origin.
 - (c) Emergency maintenance and repairs.
 - (d) Facility and vehicle warning signals and alarms so long as used in appropriate circumstances.
 - (e) Safety and protective devices installed in accordance with the devices' installation instructions.
 - (f) Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
 - (g) Major concrete pours that must extend after 7:00 P.M., when started before 3:00 P.M.
 - (h) Snow removal, landscaping and street sweeping activities.
 - (i) Sound from a regulated development received at a Protected Location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.

Findings: The Planning Board finds from the Application (pp. 39-43, 58-59) supporting materials and testimony that Applicants have provided a Sound Level Assessment Report by Epsilon Associates (Appendix D-7) that modeled existing Facility sound levels, measured noise sources at the Facility and used computer modeling to predict future sound and noise levels associated with the Expansion, and using the most conservative assumptions (that most of the equipment is running at full power simultaneously), the Expansion would meet the noise standards and sound level limits of § 24-12 H, with the restriction that the operation of equipment during nighttime hours (from 7:00 p.m. to 7:00 a.m.), within 60 feet of the solid waste boundary along western sides of the Expansion, in Cells 14, 15 and 16 operating equipment must be limited to equipment with a combined sound pressure level of 77 dBA, or less, at 50 feet. Therefore, the Planning Board concludes that with this condition of approval, the Applicants have met the requirements of § 24-12 H.

Motion: _____

Second: _____

Vote: _____

I. Air Quality. The Applicants have made adequate provision to avoid unreasonable adverse impacts on air quality, including unreasonable adverse impacts from Landfill Gases, and for monitoring Landfill Gases and reporting any management activities undertaken. The Applicants have developed adequate methods and/or systems to handle, place and address nuisance odor producing materials and processes, including enclosure of nuisance odor-producing materials and processes, and the use of technology to control, reduce or eliminate odors from the Facility and Expansion.

Findings: The Planning Board finds from the Application (pp. 43-44, 59), supporting materials and testimony that Applicants propose to continue in the Expansion the same methods they have been using to avoid unreasonable impacts on air quality by collecting and flaring landfill gas under a DEP Air Emission License (Appendix D-8) and by addressing nuisance-odor causing processes, and therefore concludes that Applicants have met the requirements of §24-12 I.

Motion: _____

Second: _____

Vote: _____

J. Liability Insurance. The Applicants, except if the Applicant is a public entity, have demonstrated that they have adequate liability insurance for construction, operation, closure and post-closure monitoring and maintenance at the Facility and Expansion by complying with MDEP License requirements, the requirements of this Chapter and the following:

1. All liability insurance policies contain the required endorsements.
2. Policies provide that the bankruptcy or insolvency of the insured does not relieve the Insurer of its obligations under the policy.

3. If a liability insurance policy is written as a “claims made” policy, an endorsement provides for a discovery period of at least twelve (12) months beyond the date of expiration or cancellation of the policy. The endorsement also provides that the underwriter will notify the public according to the requirements below:
 - (a) At least sixty (60) days prior to the date upon which the policy will expire or be cancelled, written notification shall be given to all Abutters and to the CEO that insurance for the Solid Waste Facility will expire or be cancelled. The notification shall include the date of expiration or cancellation, the fact that claims against the insured must be filed within twelve (12) months from the date of expiration or cancellation, and shall specify where and how to file claims;
 - (b) During the first, third, sixth and ninth month subsequent to the date of expiration or cancellation, the underwriter shall place in the Bangor Daily News and the Penobscot Times an advertisement designed to attract notice and containing the information specified in Paragraph 3(a), above.

Findings: The Planning Board finds from the Application (pp. 44-45, 59-60), supporting materials and testimony that NEWSME has demonstrated it has adequate liability insurance for the Facility (Appendix G) and has posted a surety bond for closure and post-closure monitoring and maintenance costs. As a State-owned facility, the Facility is exempt from DEP liability insurance regulations. The underwriter will provide written notice to the City, but because the underwriter can not provide written notice to abutters and published notice to the public, NEWSME requests a waiver to allow NEWSME to do so. Therefore, subject to the grant of the requested waiver, the Planning Board concludes that the Applicants have met the requirements of §24-12 J.

Motion: _____

Second: _____

Vote: _____

K. Existing Uses and Scenic Character. The Applicants have made adequate provision for fitting the Solid Waste Facility or Expansion into the existing natural environment and the Solid Waste Facility or Expansion will not unreasonably adversely affect existing uses of surrounding and neighboring properties, scenic character or other natural resources. Specifically, the Facility or Expansion may not:

- (a) Present a bird hazard to aircraft;
- (b) Have an unreasonable adverse effect on the preservation of historical sites;
- (c) Unreasonably interfere with views from established Public Viewing Areas;

- (d) Generate excessive noise at the property boundary or at any Protected Location;
or
- (e) Unreasonably adversely affect existing uses of property neighboring the proposed Solid Waste Facility or Expansion.

In determining whether the proposed Solid Waste Facility or Expansion will have an unreasonable adverse effect on the scenic character of the surrounding area, the Planning Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) The design of the proposed Solid Waste Facility or Expansion takes into account the scenic character of the surrounding area.
- (2) A Solid Waste Facility or Expansion which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.
- (3) Structures will be designed and landscaped to minimize their visual impact on the surrounding area.

Findings: The Planning Board finds from the Application (pp. 45-48, 61-62), supporting materials and testimony, and on the basis of the Visual Assessment conducted by SMRT Architects and Engineers (Appendix D-6), that there are no Public Viewing Areas within 2,000 feet of the Property boundary of the Facility, that the Facility and Expansion may be visible from roads, such as Route 16 (intermittently), I-95 southbound (screened by roadside vegetation and distance) and Route 43 (screened by trees previously planted by NEWSME as a visual buffer), and Appendix E-3 (Site Surroundings Map), Appendix D-5 (Agency Correspondence re Natural Resources and Stantec’s Rare, Threatened and Endangered Species Report), and Appendix D-7 (Sound Level Assessment Report), and therefore concludes that the Expansion will not have an unreasonable adverse effect on the scenic character of the surrounding area and that the Applicants have met the requirements of §24-12 K.

Motion: _____

Second: _____

Vote: _____

L. Water Quality. The Solid Waste Facility or Expansion will not cause an unreasonable adverse effect on surface water quality and will pose no unreasonable risk that a discharge to a significant groundwater aquifer will occur. The Applicants have demonstrated that they will comply with State and Federal permit requirements governing groundwater and surface water quality.

Findings: The Planning Board finds from the Application (pp. 49-50, 63) supporting materials and testimony that the Applicants’ proposed double-liner design for the Expansion will collect water that comes in contact with landfill waste, that collected leachate will be transported to a licensed wastewater treatment plant for treatment, that engineers from Sevee and Mahar have

testified that the Expansion will not pose an unreasonable risk of discharge to groundwater or surface water, that no significant groundwater aquifer is under the site (as shown by Maine Geological Survey maps), that the MFGR, LLC (former Old Town Mill) WWTP DEP license demonstrates that no dangerous compounds are discharged to the Penobscot River in treated water, and that the level of organic compounds detected in monitoring wells at the Facility is very low; therefore, the Planning Board concludes that Applicants have met the requirements of § 24-12 L.

Motion: _____
Second: _____
Vote: _____

M. Compliance Record. The Applicants have demonstrated compliance with the requirements of the Maine Solid Waste Management Rules, §12 Criminal or Civil Records, by receipt of an MDEP license for the Facility and compliance with any conditions imposed by the MDEP.

Findings: The Planning Board finds from the Application (pp. 50, 63) supporting materials and testimony that the Applicants have provided civil and criminal disclosure statements and ownership information in Appendix I and the August 2, 2017 letter from Michael Booth (with July 31 BGS disclosure statement) and concludes that the Applicants have met the requirements of §24-12 M.

Motion: _____
Second: _____
Vote: _____

N. Environmental Monitoring Program. The Applicants have demonstrated that the proposed environmental monitoring program for the Solid Waste Facility or Expansion will comply with applicable state and federal permit requirements governing monitoring requirements.

Findings: The Planning Board finds from the Application (pp. 50, 63), supporting materials and testimony, that the Applicants have prepared an Environmental Monitoring Plan (Appendix J) for the Expansion that identifies monitoring locations, methodology and frequency, as required by the Solid Waste License, and have presented monitoring requirements of the Air Emission License (Appendix D-8) and the Multi-Sector General Permit (Appendix D-3); that the Applicants have numerous redundant systems to monitor liner leaks, and ground and surface water impacts; and that Applicants have adopted CES, Inc.'s H₂S reporting recommendations, and therefore, concludes that Applicants have met the requirements of §24-12 N.

Motion: _____
Second: _____
Vote: _____

O. Hours of Operation. The hours of operation of the Solid Waste Facility and Expansion will not unreasonably adversely impact on neighboring properties, especially residential uses.

Findings: The Planning Board finds from the Application (pp. 51, 64), supporting materials and testimony that the Facility’s general hours of operation from 6 a.m. to 6 p.m. Monday through Friday and 7 a.m. to 2:30 p.m. Saturday and Sunday, with 24 hour per day incinerator ash disposal by PERC, are not inconsistent with the residential and other uses of neighboring properties, and so concludes that the Applicants have met the requirements of § 24-12 O.

Motion: _____

Second: _____

Vote: _____

P. Applicable Ordinances. The Solid Waste Facility and Expansion satisfies all the applicable requirements of Chapter 24 and other applicable City ordinances.

Findings: The Planning Board notes the Code Enforcement Officer’s observation that any new buildings, such as the proposed relocation of the gate house and scales, may require Planning Board site plan review and repeats the CEO’s statement that the Expansion exceeds the 300’ setback from the toe of the landfill, and therefore concludes that Applicants have met the requirements of § 24-12 P.

Motion: _____

Second: _____

Vote: _____

As to all Chapter 24, § 24-12 Standards:

As to the Application’s compliance with each of the review standards in § 24-12, Denis St. Peter, P.E., President of CES, Inc., testified that a team of CES engineers and scientists reviewed the Application on behalf of the City, and that it meets all of the review standards of State law and Chapter 24.

Finally, with regard to the Chapter 24 standards applied by the Planning Board, the Planning Board observes that under State law (Resolves 2003, c. 93), the Chapter 24 standards cannot be more strict than those contained in the Site Location of Development Act, Natural Resources Protection Act and Solid Waste Management Act and rules thereunder, and the Maine Board of Environmental Protection, applying those laws and regulations to this Application, determined on June 1, 2017 that the Applicants met those State law standards.

2. Waivers. (§24-10). Applicants have requested the following waivers from specific sections of the Ordinance, which the Planning Board has granted/denied for reasons that follow:

Waiver Request 1: Applicant requests a waiver from Article III § 24-8-F.4 of the Ordinance, which provides that “ASTM E679-91 Standard Practice for Determination of Odor and Taste Thresholds by a Forced Choice Ascending Concentration Series Method of Limits, Current Ed.,

published Oct. 1991, shall be used for guidance on the detection, measurement and control of nuisance odors and is adopted by reference.” Applicant observes that the cited ASTM standard has been updated in 2004 (and now is ASTM E679-04), and requests approval to use the current in-place approaches to detect and measure potential nuisance odors as described in Section D Article III § 24-8-F.4 of the Application. These approaches include the use of four stationary hydrogen sulfide monitor units and/or the hand held portable Nasal Ranger® Field Olfactometer to quantify odor concentrations at the site. Applicants assert that these practices are at least as effective as ASTM E679-91 for guidance on the detection, measurement and control of nuisance odors as the Ordinance requires.

Findings: The Planning Board finds that it is appropriate for Applicants to use the improved testing standard for odors and that the Applicants have affirmatively demonstrated that use of the newer standard will comply with the purpose and intent of § 24-10, and so grant the requested waiver related to Facility and Expansion operations

(If applicable, choose one)

- For waivers related to siting standards, facility design or construction, the Applicant has presented clear and convincing evidence that the Solid Waste Facility or Expansion siting, design or operation is distinctive in some way that allows for compliance with the intent of the Ordinance despite the waiver; or*
- For waivers related to operation, the Applicant has affirmatively demonstrated that the Solid Waste Facility or Expansion will not contaminate any waters of the State, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and that the proposed operation will comply with the purpose and intent of this Chapter despite the waiver.*

Motion: _____

Second: _____

Vote: _____

Waiver Request 2: Article IV § 24-12-J.3 of the Ordinance, which requires the liability insurance underwriter to provide notice of termination or expiration to abutters and by publication in the *Bangor Daily News*. Underwriters have told the Applicants that the underwriters lack the capability to provide these notices, but that they will notify the City, since it will be an additional insured on the policies. Applicants request that NEWSME, rather than the underwriters, be named as the entity responsible to provide the abutter and published notices required by Article IV § 24-12-J.3(a) and (b), respectively.

Findings: The Planning Board finds that Applicant NEWSME has shown that its liability underwriter will not provide the abutter and public notice set out in §24-12 J.3 and that the Applicants have affirmatively demonstrated that NEWSME’s proposal to itself provide that notice will comply with the purpose and intent of that Section, and so grant the requested waiver related to Facility and Expansion operation.

(If applicable, choose one)

- For waivers related to siting standards, facility design or construction, the Applicant has presented clear and convincing evidence that the Solid Waste Facility or Expansion siting, design or operation is distinctive in some way that allows for compliance with the intent of the Ordinance; or*
- For waivers related to operation, the Applicant has affirmatively demonstrated that the Solid Waste Facility or Expansion will not contaminate any waters of the State, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and that the proposed operation will comply with the purpose and intent of this Chapter despite the waiver.*

Motion: _____

Second: _____

Vote: _____

3. Terms of a Solid Waste Facility Permit (§24-13). The Planning Board issues this Solid Waste Facility Permit to the Applicants (the “Permit Holder” upon issuance of a permit hereunder) subject to the following terms stated in the Ordinance:

- A. This Solid Waste Facility Permit shall remain in effect unless amended, revoked, or suspended. The Permit Holder shall at all times comply with applicable operating, monitoring, and reporting requirements, including annual reporting requirements and other Permit conditions.
- B. Approval to construct, alter, Expand or close a Solid Waste Facility shall not relieve the Permit Holder of the responsibility to comply fully with applicable provisions of all other parts of Chapter 24, other applicable City ordinances or state or federal law.
- C. The Permit Holder shall have a continuing duty to provide copies of all amended, modified or renewed federal and State solid waste and other pollution control permits, permit amendments, approvals and licenses. The Permit Holder shall have a continuing duty to inform the City promptly in writing of any requested Amendments, Minor Revisions or modifications as well as any notices of actual or threatened suspension or revocation of any federal and State permits, approvals and licenses, and any communication from any federal or State official or agency alleging non-compliance with any ordinance, statute, regulation, permit, approval or license or conditions thereof.

4. Standard Conditions of Approval of a Solid Waste Facility Permit (§24-14). The Planning Board issues this Solid Waste Facility Permit subject to the following Standard Conditions of Approval stated in the Ordinance:

- A. Employees and authorized representatives of the City shall be allowed access to the premises of the Permit Holder during normal business and operating times and at such other times as the City deems necessary to perform such tests and inspections as the City

deems necessary and to examine all records, including monitoring and test results, relating to compliance with the Permit and this Chapter.

- B. Approval to construct a Facility or Expansion thereof shall expire if substantial construction of the first cell of the Facility or Expansion is not commenced within three years after a Solid Waste Facility Permit is issued, or within such period as is specified in the MDEP license for the same, unless a request for an extension is granted. Requests for extensions shall state the reasons why development did not begin within the time specified in the Permit and the reasons why the Permit Holder would be able to begin the activity within three years from the granting of a Permit. If a Permit expires, the Permit Holder may reapply to the Planning Board for a new approval but may not begin construction or operation of the Solid Waste Facility or Expansion without a valid Permit. Re-applications for approval may include by reference information submitted in the initial Application, provided that such information is updated as needed to ensure it remains current. Re-applications shall be subject to any new or revised ordinances adopted or amended by the City.
- C. The granting of a Permit is based upon the reports, specifications, and plans contained in the Application and supporting documents submitted and affirmed to by the Permit Holder during the Application process. Any variation from these plans, reports, specifications, and supporting documents is subject to review and approval as a Permit Amendment prior to implementation.
- D. The Permit Holder shall secure and comply with all applicable federal, State, and local laws, licenses, permits, authorizations, conditions, agreements, and orders prior to and during construction, operation and closure of the Solid Waste Facility or Expansion.
- E. The Permit Holder shall submit all reports and information reasonably requested by the City demonstrating that the Permit Holder has complied or will comply with all terms and conditions of the Solid Waste Facility Permit. The Permit Holder shall demonstrate that preconstruction terms and conditions of the Solid Waste Facility Permit and of Chapter 24 are met before construction may begin.
- F. No Permit Holder shall knowingly hire as an officer, director, or supervisory or key employee, any person having been found guilty of a felony or of a violation of environmental laws or rules or knowingly allow any such person to acquire an equity interest or debt liability interest in the Solid Waste Facility or Expansion without first obtaining written permission from the City.
- G. A copy of the Solid Waste Facility Permit must be included in all contract bid specifications for the Solid Waste Facility or Expansion.
- H. The Permit Holder shall maintain a Complaint Log, which shall identify, at least, the date and time of each complaint; the type and nature of the complaint; the person or persons making the complaint, including that person's address and telephone number; the method by which the complaint was received; wind direction and speed at time of complaint; the

MDEP or Facility person receiving the complaint; the date and time a site visit was conducted to confirm the type and nature of complaint; the date and time the Permit Holder responded to the complaint; and a summary of any actions taken to resolve the complaint. The Permit Holder shall submit a copy of the Complaint Log for the preceding calendar quarter to the CEO within 15 days following the end of the quarter.

- I. The Permit Holder shall maintain a Material Inventory Log identifying the generator, transporter, quantity delivered (ton), waste description, Maine manifest number, Maine county and date for all material delivered to the Facility and Expansion. The Permit Holder shall submit a summary of the Material Inventory Log for the preceding calendar quarter to the CEO within 15 days following the end of the quarter.
- J. The Permit Holder shall be jointly and severally responsible for compliance with the Permit terms and all applicable City ordinances.
- K. The Permit Holder shall institute reasonable procedures and employ its best efforts to implement those procedures to require that any person operating a vehicle transporting Solid Waste or Leachate to or from the Facility and Expansion shall have a current and valid Waste Hauler's License from the City when and if such license is required by the City; and that Solid Waste shall be transported to, and Leachate waste transported from, the Facility and Expansion in completely enclosed containers or vehicles to prevent litter or spillage on City streets and the release of nuisance odors during transport.
- L. The Permit Holder shall maintain an Over Weight Truck Log which shall identify by day each overweight vehicle, and set forth at a minimum, Maine manifest number, quantity of waste delivered (ton), truck number, waste description and source, and summarize warnings or other action taken. The Permit Holder shall submit a copy of the Over Weight Truck Log for the preceding calendar quarter to the CEO within 30 days of the end of the quarter.
- M. Failure to comply with the Terms of a Solid Waste Facility Permit, including but not limited to these Standard Conditions and any Special Conditions imposed, shall be considered a violation of the Permit and of this Chapter.
- N. The Permit Holder shall notify the CEO within 24 hours of being informed of or receiving a notice of violation at the Facility and Expansion by the MDEP or a federal agency. The Permit Holder shall take immediate measures to remediate the violation and submit a written response to the CEO within five working days describing in detail the corrective actions taken to mediate the violation or a statement outlining the basis on which the Permit Holder will contest the notice of violation. If the Permit Holder contests the notice of violation, the Permit Holder shall keep the CEO informed of any enforcement proceedings and of the result thereof.

5. Additional Conditions of Approval (as appropriate, § 24-15 C):

The Planning Board attaches the following additional conditions of approval to the Solid Waste Facility Permit:

1. The operation of equipment during nighttime hours (from 7:00 p.m. to 7:00 a.m.), within 60 feet of the solid waste boundary along western sides of the Expansion, in Cells 14, 15 and 16 operating equipment must be limited to equipment with a combined sound pressure level of 77 dBA, or less, at 50 feet.

Motion: _____
Second: _____
Vote: _____

2. _____

Motion:
Second:
Vote:

3. _____

Motion:
Second:
Vote:

4. _____

Motion:
Second:
Vote:

5. _____

Motion: _____
Second: _____
Vote: _____

III. Decision

Based upon the Findings of Fact and Conclusions of Law stated above, the Applicants have demonstrated that the Expansion will not threaten public health, human safety or the environment or create a nuisance and, therefore, the Planning Board hereby (**choose one**):

- Approves** the Application, subject to the waivers, terms, and conditions identified above, as applicable, and issues this Solid Waste Facility Permit;

or

Denies the Application and does not issue this Solid Waste Facility Permit.

Motion by: _____

Seconded by: _____

Vote: _____

Date: _____

By: THE CITY OF OLD TOWN PLANNING BOARD

Theodore W. Shina, Chair

Phil Dunn

Sandra Russell

Russell Sossong

Glenna Washburn

An aggrieved party may appeal the Planning Board's decision to the Maine Superior Court as provided by § 24-26 of the Ordinance.

APPENDIX A

Abutter List

(See attached copy of Appendix C-4 of Application)