

Foes file Pike blast response

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Pike Industries and opponents of its expansion are awaiting a judge's decision on whether the quarrying company can blast rock while its appeal of a zoning board ruling is contested in court.

Pike was awarded a stay last month, which prohibited blasting, but gave the company the right to continue to crush, excavate and remove rock from its Spring Street quarry before a final ruling is made on whether the company has the right to operate at that site at all.

A week later, Pike filed a motion to amend the stay, asking to blast up to nine times over a two-month period in order to meet contractual obligations. The company said its stockpiles would soon be depleted and it would not be able to fulfill its business deals.

Defendants in the court case – the city of Westbrook, as well as neighboring businesses Idexx Laboratories, Artel and Smiling Hill Farm – argued that Pike is not asking for an amendment to the stay, but rather for the court to reconsider its decision, which is only allowed when presenting information that was unavailable during the original hearing or if the court had made an error.

The additional information provided by Pike in its motion – the details of contractual obligations to Auburn Concrete – was known to the company during the court hearing on the stay last month, defendants said.

Pike responded to the defendants' opposition this week, too, arguing that the court has the right to modify the stay it has granted and is not asking for reconsideration.

“Pike recognizes the many constraints on the court's time and did not take the step filing its motion to amend lightly,” the reply read.

Furthermore, Pike argued, when making its case at the hearing last month, the company believed the court had an all-or-nothing choice regarding the manner in which it could continue to operate on Spring Street. Instead, the court gave Pike the right to operate to a certain degree, allowing everything except for blasting.

“Pike could not have anticipated every possible variation in the limitations that might have been contained in an order granting a stay,” the company said.

The city argued that, even if Pike could prove the court should reconsider or amend the stay, the company is not asking to be able maintain the status quo, as it claims, but instead to blast with increased intensity.

Pike's request was to be able to blast up to nine times over a two-month period to produce a maximum of 150,000 tons of material. In comparison to Pike's applications for blasting permits in years past, that's more material produced with fewer blasts over a shorter time period, the city said.

In 2008, for example, Pike filed an application to blast 10-15 times at Spring Street in order to extract 60,000 tons of stone and to blast up to 10 times at its Main Street quarry to extract a maximum of 50,000 tons of material.

Pike argued that there were no limitations on the frequency or timing of the blasts permitted in previous years, and that, in 2009, the company could have conducted its 25 approved blasts during a period of days or weeks.

But the ruling from the court is only considering what Pike should be allowed to do for the time being. Earlier this year, the city's Zoning Board ruled that the company never obtained the proper permits to operate on Spring Street at all. Pike is in court appealing that decision.

Pike's attorney, Sigmund Schutz of Preti Flaherty, said Wednesday he didn't know when Justice Thomas Humphery would make a decision on the proposed amendment to the stay.