

Town of Boscawen, NH

PLANNING BOARD

Boscawen Municipal Complex

MEETING MINUTES

Tuesday, September 8, 2015 at 7:00 PM

Planning Board Members present: Bruce Crawford, Chair; Rhoda Hardy; Karen Mackenzie; Roberta Witham; Doug Hartford; Bernard Davis, Ex-Officio; Matt Lampron, Alternate.

Planning Board Members absent: Paul Strieby, Vice Chair

Planning Board Alternate absent: Jeff Reardon

Planning Board Ex-Officio Member absent: Roger Sanborn

Others present: Sid McDonald and Stephen Marro representing Merrimack County; Tim Bernier, President, T.F. Bernier, Inc. and Richard Edmunds for Earth Excavation; Eric Munro, Caretaker, and Jed Cullen, Attorney, for Jon Kaufman. Alan Hardy, Planning & Community Development Director, and Kellee Jo Easler, Planning & Community Development Assistant.

The meeting was called to order by Chairman Crawford at 7:02 p.m. Matt Lampron to serve as voting member.

Sid McDonald, Director of the Merrimack County Nursing Home, rose to introduce the new Merrimack County Administrator, Stephen Marro, ran a number of counties in Florida. Both expressed a desire to forge stronger relations with Merrimack County communities, and "Boscawen is getting larger all the time". There was discussion on the use of the McCloud Building. Mr. Marro also stated that he had met with a solar farm company and will keep the Board informed on developments in that area. In addition, he is looking in helping communities develop pre-disaster mitigation plans. Chairman Crawford thanked Mr. McDonald and Administrator Marro for coming in.

Approval of Minutes

Doug Hartford moved, second by Rhoda Hardy, to postpone action on the August 11, 2015 meeting minutes until Vice Chair, Paul Strieby, is in attendance. Motion passed unanimously.

Old Business

- **Continued - Cold Brook Gravel/Earth Excavation Application**

In accord with NH RSA 676:4, I (d), (1), Chairman Crawford continued the public hearing on the subject application.

Tim Bernier came forward to provide an update on Earth Excavation's application for the expansion of an existing excavation operation at 267 Queen Street by Cold Brook Gravel. An Alteration of Terrain (AoT) permit from the New Hampshire Department of Environmental Services (NHDES) is pending and is expected within the next 30 to 45 days.

Mr. Bernier distributed copies of the overall lot plan comprising of seven sheets. The purpose of sheets 1 and 2 are to show a general overview of the site conditions and proposed limits of mining expansion. Sheets 3, 4, and 5 show proposed excavation limits, final grading and reclamation. Sheet 6 includes an interim Pit Area 1 reclamation plan. Mr. Bernier stated that two offers have been made to abutter, Jon Kaufman. Both offers have been denied. Sheet 7 shows a detailed plan.

Mr. Bernier referenced a letter sent to the Planning Board dated September 3rd that responds to concerns raised by the Central New Hampshire Regional Planning Commission (CNHRPC), the Boscawen Conservation Commission, and Kenneth Clinton, President of Meridian Land Services who represents Mr. Jon Kaufman. The letter included a number of attachments: the NHDES AoT Permit Application and Stormwater Management Report, the 2009 AoT Permit, the 2005 Wetlands Permit, the Groundwater Monitoring Plan, the Blasting Best Management Practices and Blasting Notes, and the Town of Boscawen's Certificate of Zoning Compliance dated June 4, 2009.

CNHRPC Checklist Requirements:

- 1) Checklist Item 1 – CNHRPC did not receive a Determination Letter from Code Enforcement.
 - The determination letter is attached to Mr. Bernier's September 3rd letter (Certificate of Zoning Compliance dated June 4, 2009).
- 2) Checklist Item 7 – The 100' setbacks outlined in the 1986 Special Exception are not fully depicted on the plan.
 - The property line buffers (100' and 50') are shown on sheets 3-5 as approved by the Zoning Board of Adjustment on May 26, 2015.
- 3) Checklist Item 2 – Benchmark from the most current vertical datum and annotated datum used on the plan not depicted.
 - The vertical datum is NAVD88 from GPS observations, as stated in note #5 on sheet 1. A benchmark on this datum is shown at the top of sheet 3 in the bridge abutment adjacent to the paved drive.
- 4) Checklist Item 4 – Wells and water lines to the existing crusher were shown on the 2009 plan but not the current plan.
 - The water lines have been added to the plans.
- 6) RSA 155-E3.V – The highest annual average groundwater table within or next to the proposed excavation was not provided.
 - The highest annual average groundwater table is assumed to be the elevation of the adjacent emergent wetland, 465.0', the outlet elevation of the weirs on sheets 4 and 5.
- 7) RSA 155-E:4-a. VII – A reclamation bond will be needed as a condition of approval.
 - As stated on sheet 9 in Minimal and Express Operational Standards, the excavator shall file a reclamation bond prior to the removal of topsoil.
- 8) RSA 155-E:5.V – Review of the proposal by the Town Engineer will be needed to ensure compliance with this section. Alan Hardy stated that the Town Engineer's review is not required.

- The design plans and hydrological analysis will need to be approved by the NHDES Alteration Bureau as part of the AoT permit application.
- 9) Areas shown beyond the extent of the 2009 permit should be incorporated into the current application for a new permit. Applicant states that existing and proposed contours are depicted.
 - Areas of excavation outside of the 2009 permit are included within the 2015 application. The 2.5 acres remaining to be mined under the 2009 permit are not considered as part of the new application.
- 11) A revised Alteration of Terrain permit from NHDES will be required.
 - The new 2015 Alteration of Terrain permit application and stormwater report are attached, as submitted to NHDES.
- 12) The NHDES Wetlands Permit, number 2005-02390, will need to be updated.
 - The 2005 wetland permit was for driveway crossing. The 2015 excavation application does not propose any wetland impacts.
- 13) In general terms, the plan should demonstrate how each portion of RSA 155E has been met.
 - RSA 155-E, Minimal and Express Operational and Reclamation Standards which must be followed by the operator are listed on sheet 7.
- 14) The project seems to have created a situation with the existing excavation where a significant amount of water has been damned on the westerly side of the haul road. There may be a need for the NH Dam Bureau to issue a permit.
 - The NHDES Alteration of Terrain Bureau will be reviewing the project and will advise if they feel that notification of the dam bureau is necessary.
- 15) The plan may have a portion of the property in Current Use and this area should be delineated.
 - The current use boundary has been added to sheets 1 and 2.
- 16) Several differences exist in the plan associated with the 2009 permit and the existing conditions.
 - The wetlands on the current plans were mapped in 2014, see note #6 on sheet 1. It appears that not all (or perhaps any) of the wetlands on the property were mapped on the 2009 plans. The wetland noted on Map 81, Lot 23 actually drains onto Cold Brook's property.
 - A copy of the 2005 wetland permit is attached.
 - A copy of the 2009 Alteration of Terrain permit is attached. A new Alteration of Terrain application has been submitted to NHDES.
- 17) Test pit data, including distance to groundwater from the bottom of the proposed excavation, was not depicted on the plan. No drainage report provided.
 - The highest annual average groundwater table is assumed to be the elevation of the adjacent emergent wetland, 465.0', the outlet elevation of the weirs on sheets 4 and 5. Copies of the Stormwater Management Report submitted to NHDES Alteration of Terrain Bureau are attached.
- 18) The Town Engineer should review the proposal for drainage and other engineering concerns.
 - As stated by Alan Hardy in Planning Board minutes item #8, the Town Engineer's review will not be necessary. The Stormwater Management Report will be reviewed by NHDES Alteration of Terrain Bureau.
 - The 2005 wetland permit, for driveway wetland crossings is attached (see also 16 above).
 - The topography.
 - A Groundwater Monitoring Plan prepared by North American Reserve, LLC is attached.

135 19) Conservation Commission comments.

- Addressed below.

137 20) Conservation Commission comments.

- Addressed below.

139 21) A letter from Jon Kaufman, owner of abutting property (lot 44) dated April 15, 2015 outlines
140 several concerns.

- Two proposals for reclamation on Lot 44 have been presented to the owner of Lot 44 and both have been rejected. A reclamation plan is now part of the plan set (sheet 6), showing reclamation of Pit #1 only on Lot 24. The reclamation is underway and will be completed by the end of the year.

145 22) Conservation Commission comments.

- Addressed below.

147 23) 24) 25) A blasting plan should be submitted for review.

- Standard Rock Blasting notes, per NHDES are listed on sheet 7 (detail sheet). A blasting plan would be prepared by the professionals performing the blasting and will be reviewed by the Town.

151 26) It would be useful to assess whether or not there will be an increase in traffic.

- The application is merely for the expansion of mining into new areas, and not an increase in the operation, therefore no increase in traffic is anticipated.

154 27) A noise study for the quarrying activity may be useful in determining the noise impact of the quarry
155 operations on abutters.

- A noise study has been discussed with the Planning Board.

158 In response to the Conservation Commission's meeting notes of April 16, 2015, Mr. Bernier stated the
159 following:

- 1) All wetlands on the property have been delineated by a Certified Wetland Scientist. A note regarding the wetlands, including methodology and vernal pools has been added to sheet 1 and 3.
- 2) Four vernal pools were found on the property. Sheets 2 and 4 have been revised to show vernal pools.
- 3) Sheets 1, 2, and 4 have been revised with updated topography, treeline, and wetland impacts noted on the Conservation Commission site walk. Restoration plans submitted under separate cover will detail these areas.
- 4) Wetland Restoration Plans are being prepared and will be submitted as a separate plan set.
- 5) The sedimentation ponds have been revised to not be shown as wetlands.
- 6) A note has been added to sheet 3 describing sedimentation measures to be placed above the water withdrawal area.
- 7) 100' property line setback – see ZBA Notice of Decision dated May 26, 2015 for portions of the buffer to be 50'. A note regarding this decision has been added to sheet 1.
- 8) The plans must be approved by NHDES Alteration of Terrain Bureau, who will be reviewing runoff discharge to wetlands.

178 The concerns raised by Mr. Clinton were responded to as follows.

- 180 1. What is the final design plan status?
 - 181 • The final design plans are attached, as submitted to NHDES, sheets 1-7.
- 182 2. Will a drainage report be submitted with the final plan?
 - 183 • Copies of the Stormwater Management Report as submitted to NHDES Alteration of Terrain
 - 184 Bureau are attached.
- 185 3. Are all of the nine outstanding items noted in the May 12, 2015 Planning Board minutes properly
- 186 addressed?
 - 187 • Responses provided above.
- 188 4. What are all of the outstanding violations with the current operation, and how will they be
- 189 addressed prior to approval of this application?
 - 190 • An interim reclamation plan for Pit #1 is included in the plan set as sheet 6. This does not
 - 191 include any reclamation off of lot 44 at this time, as the abutter has rejected two proposals for
 - 192 reclamation of Lot 24. Separate Wetland Restoration Plans are being prepared for impacts
 - 193 shown on sheet 4.
- 194 5. Encroachment onto Map 83/Lot44 needs to be resolved prior to approval of this application.
 - 195 • Two proposals for reclamation on Lot 44 have been presented to the owner of Lot 44 and both
 - 196 have been rejected. A reclamation plan is now part of the plan set (sheet 6), showing
 - 197 reclamation of Pit #1 only on Lot 24 – the reclamation is underway and will be completed by
 - 198 the end of the year.
- 199 6. In addition to the pending AoT permit, will a wetlands permit and/or dam permit be required as
- 200 well?
 - 201 • There are no wetland impacts proposed by this excavation expansion.
- 202 7. There is far greater than the 5 acres of working exposed area allowed per AoT permitting (15.4+/-
- 203 Ac). How are those areas going to be closed in order to begin work on the new area?
 - 204 • The NHDES Alteration of Terrain Bureau does not have a 5 acre limit of exposed area during
 - 205 mining operations as long as runoff is directed into the pit face during operations, rather than
 - 206 leaving the site. General Grading Notes #1 on sheet 3 states that this must occur. This note has
 - 207 been copied throughout the proposed grading areas on sheets 4 and 5 to emphasize this point.
- 208 8. The new work area is so expansive that it requires intermediate phasing plans to properly address
- 209 stormwater runoff and other design issues.
 - 210 • As noted above, during mining operations the floor of the excavation shall pitch inward to the
 - 211 cut face to control runoff. The westerly quarry will be creating a bowl which will capture
 - 212 runoff.
- 213 9. A hydrological study is imperative to determine the surface and groundwater impacts adjacent to
- 214 the nearly 200' deep quarry proposed 50' from Map 83/Lot 44. An expert should weigh in.
 - 215 • A Groundwater Monitoring Plan prepared by North American Reserve, LLC is attached.
- 216

217 The Board discussed whether plans should be reviewed by the Town Engineer. Chairman Crawford felt
218 that DES is the final judge. If, after receipt of the AoT, the plan is found to be flawed, then the Town
219 Engineer might review. Matt Lampron stated that the engineer may feel strongly about RSA 155-E
220 provisions.

221
222 **Karen Mackenzie moved, second by Rhoda Hardy, to get a quote on the cost of having the Town**
223 **Engineer review the AoT documents. Motion passed unanimously.**
224

Chairman Crawford opened the discussion to the public. Jed Callen, attorney for Jon Kaufman, rose to express dissatisfaction with the delay in getting materials from Mr. Bernier on behalf of Cold Brook. Mr. Callen urged the Board to have the plan reviewed by the Town Engineer, or at the least, wait for AoT's report prior to making a decision. Mr. Callen indicated that Cold Brook should not be allowed to take short-cuts, and have ongoing violations of RSA 155-E:4-a, I and II. In addition, Cold Brook is in violation of environmental quality rule 1505.02b. The two restoration plans that Mr. Bernier states he submitted have not been rejected; they were not received timely. Mr. Callen stated that a lawsuit has been filed and summons will be served once they hear back from the court.

Tom Gilmore, a member of Boscawen's Conservation Commission, rose to state that all costs, for engineers or attorneys, should be paid for by the applicant. Also, a policy should be in place where paperwork must be submitted within a designated number of days. Mr. Gilmore said that the Planning Board should not make any decisions until all encroachment and wetlands issues have been addressed. Alan Hardy stated that it is not the amount of money, but rather the contracting of services, that must be passed by the Board of Selectmen. Such costs have always been paid by applicants.

Mr. Bernier stated that Ken Clinton had been communicating directly with him, and asked if he should respond to Attorney Callen directly. Attorney Callen said it was fine for Mr. Bernier to communicate through Ken Clinton. Alan Hardy will be in touch with DES on the "five acre" difference of opinion.

A motion was made by Karen Mackenzie to continue the public hearing to October 13, 2015 at 7:30 p.m. Seconded by Doug Hartford and passed unanimously.

New Business

- **AgCom Master Plan Revisions** – The Board agreed to hold a public hearing on this issue at its next Planning Board meeting on October 13th, 2015. Should be first agenda item.
- **Transportation Section updates to draft emailed on 8-24-15** – Chairman Crawford asked that this item be postponed until he has had a chance to review the material.
- **Cluster Revisited for November** – Should be placed as second item on the agenda for the Planning Board meeting of October 13th.

Motion to adjourn was made by Doug Hartford was seconded by Bernie Davis. All Board members approved and the meeting ended at 9:35 p.m.

The next regular meeting of the Planning Board will be held on October 13, 2015 at 7:00 p.m.

Minutes are respectfully submitted by Suzanne Beauchesne