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AB Minutes May 9, 2013

Town of Washington Board of Appeals

PO 408, Washington, ME 04574

May 9, 2013

The meeting opened at 7:05 pm.

Present were: Chairman: Norman Casas; Vice-chair/Secretary: Henry Chapman; Members: Dorothy Sainio; Lowell Freiman and Jim Kearney ; CEO Bob Temple. Absent: Alternate Chris Vigue Attendees: Henry Sainio and potential alternate Tom Potter.

Mr. Casas declared a quorum present. The minutes of February 14, 2013 were accepted as written with all in favor.

Old Business: Mr. Casas noted that JC Stone had not yet submitted an application for a variance. They can only have a public hearing after a prehearing and while they had had a pre-application hearing, no prehearing had taken place. Mr. Temple informed the Board that because there had been a lot of discussion among Planning Board members regarding who should be hearing the variance request, he had asked the Maine Municipal Association (MMA) for a legal opinion. They had said only the Board of Appeals could hear a variance. They could remand such an application to the Planning Board if they chose, but only they could hear it initially.

Mr. Temple said because this Board had not previously looked at a variance request under the Mining Ordinance, he had contacted the Department of Environmental Protection (DEP) and asked them for a copy of their approval of JC Stone's application. He said the DEP had granted approval and issued a verdict, but had not yet given JC Stone a written response to back it up. He had asked for that copy as he felt it would help this Board to know how the DEP had approached the issue. He said the requirement for the public hearing was included in the Mining Ordinance protocol was to ensure that there would be information open to the local public rather than in some place where the local public did not have access to it. The Board renders its decision in public, but the DEP does not. Mr. Casas noted that initially the DEP wanted to have the public hearings at the same time to save money, but our Board wanted JC Stone to obtain the DEP permit first. Mr. Temple said they did have the permit. but it had not yet been issued in writing.

New Business: Mr. Casas stated that the Select Board had decided to make Mr. Kearney a full Board member and ask Mr. Carlezon to be an alternate. He noted that they had not actually made a request to Mr. Carlezon. Mr. Casas said the Selectmen had not discussed any of this with him. Apparently Mr. Carlezon was currently under the impression that Mr. Potter was being appointed a full Board member. Mr. Chapman noted that that was not correct. Mr. Casas replied that this discussion was informational so people could know what the Selectmen had done. Mr. Kearney said he had not known until last week. Some confusion had arisen over the length of the term. It was concluded that the Board all had five year staggered terms with alternates having one-year terms. Mr. Casas asked Mr. Kearney if he would consider reverting to an alternate position. Mr. Freiman asked whether Mr. Carlezon had been put off by all this. Mr. Casas, who had spoken to Mr. Carlezon, said he definitely had. Mr. Kearney stated that, to keep the peace, he would agree to be an alternate as it made no difference to him. Mr. Casas thanked him and said he would speak to the Selectmen about it. He said that Mr. Carlezon had decided not to attend this meeting because of what he understood to be the situation. Mr. Freiman asked whether that was so even if he were an alternate. Mr. Casas said he believed so. Mr. Temple commented that alternate members of this Board functioned as part of the Board even if they were not voting. Mr. Casas said that as far as he knew, at the moment the problem was Mr. Carlezon's feelings.

At this point, he called for election of officers. Mrs. Sainio moved to elect the same slate as last year. Mr. Freiman seconded. Mr. Casas called for discussion. Mrs. Sainio moved to close discussion. Mr. Chapman seconded. All voted in favor of closing the discussion. Then all voted in favor of electing the same slate of officers: Mr. Casas, Chairman, Mr. Chapman, Vice Chair/ Secretary.

Mr. Kearney asked for clarification on a question about the JC Stone request. He had been confused by Mr. Bowers e-mail and Mr. Studer's reply and following statement. Mr. Studer had been upset because he had not seen all the documents, but his objections were moot. Mr. Bowers' e-mail had been terse and incorrect. Mr. Casas commented that people sometimes react emotionally. Mr. Temple noted that the records were both terrible and confusing. Two groups were discussed at the same time. Rather than deal with one application and then the other, the minutes address the Ludwig pit and the Martz pit at the same time. It is hard to tell which one is which. Finally Mr. Temple had spoken to Gerry LaSelle who had explained it all. It seems that one pit was a property now owned by the Town

Clerk, Mrs. Dean. Mr. Temple had not been aware of its existence. Because of all the confusion of past records, Mr. Temple has established a system of filing three copies of minutes for each application so that just using a name such as JC Stone will elicit everything that the Town has on that subject. He is working on that project. He gave an example of the kind of problem he encounters. With no warning, all the permits of 2009 disappeared. Since he had issued them, he was able to retrieve them from his computer. He noted that there was very little room for storage. Triple copies of permits are now issued for the Town and Mr. Temple makes one for himself. One of the copies is placed in the newly established "Clerk File." One copy is placed in the Land Use File and the third is given to the Assessor.

Mr. Temple said the current Recording Secretary keeps good record, but those from the past are sketchy. Mr. Studer had referred to lawsuits in regard to the Ludwig pit, but there are no records. Thus it would be impossible to support an argument about that pit. Mrs. Sainio noted that Mr. Studer had been CEO at that time. Mr. Casas told the Board that he had retained Peter Drum the municipal attorney in Damariscotta to acquaint him with the surroundings of the potential application for a variance. He had given Mr. Drum a copy of whatever records we have. He had discussed some things with Mr. Drum who is now prepared should he be needed for consultation. One thing they had spoken about was the newly passed revision of the Mining Ordinance and the part having to do with grandfathered pits. He had asked Mr. Drum's opinion as to whether the revision was legal since it was not well done. He had asked whether, if it were legal, it would affect JC Stone. Mr. Drum did not think so as JC Stone already had a permit at that time and was not a grandfathered entity. Mrs. Sainio noted that Mr. Ludwig had never had a permit. Mr. Temple said permits were not given at that time, only approvals. The records say the pit had been approved, however there had been legal complications, but the records to back it up have disappeared.. The Selectmen have stated that they would not go after the pit if there was no basis of proof. as they could not win.

Mr. Temple added that the Mining Ordinance when enacted never addressed what happens to all the pits. It talks about a Certificate of Legal Operation (CLO). It does not talk about pits already in existence. Since they all had licenses from the DEP, it did not say that all pits, even past ones, needed a CLO. Mr. Casas said the Ludwig pit has a Town permit too. It would be hard to do anything since we have taken no action in the past. Mr. Freiman pointed out that JC Stone's representative said there was a permit and he had seen it. Mr. Casas noted that the Planning Board Chair had signed it and it was a legal permit. Mrs. Sainio recalled that they were only supposed to remove flat rocks. Mr. Casas said the only legal action of which he was aware was when they (the Ludwig pit) attempted to import material. Mr. Temple recalled that they had said they just wanted to stockpile the rock, but it was illegal and is no longer being done.

The meeting adjourned at 7:27 pm

Respectfully submitted,

Liane Chapman

Recording Secretary.

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