

Planning Board Meeting
May 9, 2017
7PM

In attendance: David Studer, Mitch Garnett, Bob Temple, Steve Ocean, Jim Bowers, Jesse Casas, David Williams, Hank Aho. Public: Tom Johnston, David Martucci, Berkley Linscott, Deborah Bocko, Peter Drum

Mitch Garnett called the meeting to order at 7:00PM. This meeting, the Board is working with the Selectmen, Mining Ordinance Committee and Peter Drum, the town attorney, going over future changes/corrections for the Mining Ordinance.

David Williams moved to accept the 4/11/17 summary, Jesse Casas seconded, all in favor.

Mitch Garnett turned the meeting over to Peter Drum with an open forum as things are discussed.

Peter Drum asked the Board if Bob Temple sent everyone his discussion for the Linscott's. Peter asked if anyone had any questions. Jim Bowers asked, as a Planning Board (PB), are they supposed to come up with what a road survey looks like. Peter explained the standards that have to be met are in the ordinance. The issue is what does it take for the PB to affirmatively find that the road is 'up to snuff' for the project. Bob Temple has made a check list to make THIS clearer. The question is how do want to get there and what sort of means are there to do that. The first one is the applicant can submit their own study which should be signed off by an engineer certifying that everything has been met along with a short narrative how it was met. Peter discussed an example. The other way to meet the standard of getting a road survey is for the PB to commission the study itself. If the PB commissions the study, they basically pick the engineering firm and the firm is only beholden to the PB. The problem is if there is a standard that the engineer missed the complaint is not with the applicant it's with the engineer. These are competing issues. It is more common when you have large projects for the PB to hire experts, however, the ordinance allows the PB to hire experts for every case. Peter stated that if he had been advising the PB about one and a half years ago, he would have told the board to hire an expert. Sometimes a lot of delays and problems can be prevented by meeting those issues head on. A great way to do that is with your own expert.

Jesse Casas read Article 2V in the Mining Ordinance 'shall require a road condition survey of the town road or on operations larger than 5 acres the PB shall require an engineering impact study at the expense of the applicant'. Jesse pointed out there is no definition of a road condition survey. Because there is no definition the PB came up with what they believed to be a road condition survey, going through it, discussing it, talking with the Selectmen then having it kicked back to the PB without a definition for what a road condition survey is. Peter Drum stated the ordinance spells out what a road condition survey has to include and the traffic impacts to be considered. The difference between a road condition survey and a road engineering survey, Peter agrees, he's not sure where that line occurs. Peter has spoken to a civil engineer, Steve Reynolds, who said an engineering study would also tend to look at things like how much base there was in the road, methods of the actual road construction instead of just looking at just width

and shoulders it would say how many feet of base there is underneath the pavement, what kind of condition the pavement is in, and would have actual engineering standards that would go into more detail. The Board of Appeals found that the submission of the photos did not meet the standard. As a Board, you need to be confident that the standards are met. Jesse suggested that this would be something for the Mining Ordinance Review Committee to look at.

Peter Drum stated that the PB did an exceptional job with about 90% of the ordinance which he believes is substantially complex. Where there is a standard that actually says these are the things that must be considered, the PB actually lacks the discretion to not consider them. More discussion ensued for explanation. Peter stated, to the PB, if they run into an issue that needs clarification, he can be here in forty minutes or converse over the phone.

Bob Temple called DOT to find out what a road condition survey is; the definitions are all over the place and they couldn't give him what would be applicable. It is important that we define what a road condition survey is going to mean.

Peter Drum clarified 'shall be considered' = need to consider/mandatory; 'may be considered' = discretionary.

The PB is bound by the ordinance to make their findings. The ordinance could be made tighter by simplifying a lot of it. It seeks to be comprehensive but there are places where it's hard to tell if it's a standard or a consideration. As far as violations, it is not the PB authority to enforce, it's the job of CEO, Selectmen, and/or town attorney.

Berkley Linscott stated Cliff Goodall said not to worry about the road. Peter Drum asked if Cliff had read the ordinance. Berkley didn't know. Peter said if he had gotten the permit you would not have to worry about the road but clearly the standard in the ordinance says you have to meet the standards before you receive the permit. When the PB is looking at an issue, whatever it is, they need to review the permit not the applicant. Does the permit meet the ordinance? Jesse Casas read, from the Mining Ordinance, the Planning Board shall consider the financial capacity, technical ability, and prior performance of the applicant to complete all proposed activities. Does this mean prior performance should not be in there? Peter stated it cannot be denied on prior performance; prior performance allows you to make a judgement about whether or not to do a performance bond which is also allowed by discretion.

Steve Ocean asked if the PB is supposed to review what the Appeals Board sent back tonight. Dave Studer stated we'd need an engineer to make a statement about the road. Once we do that we can make a decision. Jesse Casas stated nothing has come back to the PB. Peter Drum stated the PB could ask the Linscott's to come back and the PB could hire an engineer, is a way to proceed. David Williams asked if the ball is in their court. Peter Drum stated it is. Tom Johnston said shouldn't it be, in any case, for the applicant to come to the PB and ask what they need to present to them. Berkley Linscott asked if they were putting a load limit on that road, is that what we're fighting about. Berkley asked if they were making an example of him because Deb Bocko has been hauling wood off her lot. Deb stated that is was not done when the road was posted. Jim Bowers stated the idea is that it's increasing the number of loads of gravel that would be hauled on that road and that's the reason. Peter Drum stated there is nothing the PB can do to restrict the use of the road. The PB is restricting the use of the property if it impacts a

town road. The Mining Ordinance, voted on by the town, says we are going to restrict the activity on the lot if it impacts the road but it is not stopping use of the road.

Steve Ocean clarified that procedurally speaking, in this case, it's been remanded back to the PB. Is it our responsibility to then tell the Linscott's what we need for a road survey or do we wait for them to come to the PB? Peter Drum stated to wait for them to come to the PB with their application based on what has been sent to them and he and Patrick Mellor also need to separately handle another matter. The basic issue is, for the Planning Board's responsibility, the applicant is the one driving the process and they have to come back to have that discussion about a road engineer. Mitch Garnett stated that the PB would have specific requirements for the road engineer to answer.

Berkley Linscott said, "Let's back up. As far as I'm concerned, I'm stopped, I'm all done, I've spent all the money I'm going to spend out there. The only thing I want to have this group right here tell me, right now I don't need a permit to take 1000 yards out of there for my own personal use." Bob Temple stated there is a provision, in the ordinance, that talks about how much you can take for your personal needs without having a permit. Peter Drum stated, without looking at an ordinance, he cannot give him an answer because he doesn't want to bind the town. Whatever the Mineral Extraction Ordinance says he knows there is an exemption in there of some sort. Berkley stated, right now he's interested in doing some work on the road on his property, it won't be 1000 yards or with a big truck. Mitch Garnett stated that Bob Temple will work on this issue. Bob read aloud Article 2A from the ordinance. Tom Johnston stated that if it becomes an issue between the landowner and the CEO then we'll come back and ask for a legal opinion.

Mitch Garnett asked Peter Drum if he is working with the Mining Review Committee. Peter Drum stated he hasn't but would be happy to. Through the process there were some things that identified which he'll mention to them.

Bob Temple stated the items he feels strongly about is the reclamation for the older pits, they keep a stock pile of top soil which they are supposed to do but there is no plan that talks about what that reclamation should be. He thinks it might not be a bad idea if we amend the ordinance to have everybody submit an updated reclamation plan for the pit and that it be revised every five years.

Peter Drum stated that may be one way to deal with it.

Tom Johnston said once a pit has expanded beyond its size when the ordinance went into effect now it becomes no longer grandfathered and if the footprint changes they could be required to come before the PB for a permit to expand. Peter Drum said that is correct. It is stated in the ordinance that all variances must go to the Appeals Board as well as to the State. Peter Drum explained "grandfathered" = pre-existing pit.

David Williams stated the PB had asked all pit operators to fill out a Certificate of Legal Operation.

David Martucci explained that it was to make sure we had the pits on the books and knew how big they were on that day. Peter Drum said he'll look at that specifically to make sure there is nothing that would prevent the PB to request the information.

Jesse Casas read, from the ordinance, 'any operation that did not obtain a Certificate of Legal Operation or a permit from the Planning Board after March 23, 2002 must obtain a permit from the Planning Board based on a review of the provisions of this ordinance and the Town of

Washington Land Use Ordinance as adopted and amended to date. All other unpermitted operations shall apply as required in this ordinance.’ Jesse stated it seems clear to him that the ordinance says that all these old pits were either supposed to get the Certificate of Legal Operation or come in for a permit.

Peter Drum asked how long they had to come in after the ordinance was enacted. Jesse stated that was in 2002 and they had 90 days. Peter Drum said that could be an enforcement issue that the town may want to consider.

Mitch Garnett and David Martucci stated that a number of pit owners did come in to register. Do we have any information from fifteen years ago?

Jim Bowers has all the minutes from the Planning Board from 1991 – 1995 to hand over to Bob Temple who will scan them onto CD’s. He has a list of all the gravel pits that existed from 1980 town maps.

David Studer stated, the fact that nothing has been done for fifteen years doesn’t mean we couldn’t or shouldn’t.

Deb Bocko stated the Mining Review Committee has not met for quite some time. As we are reviewing as things come up is there a way that that could be updated? In the process of reviewing these things have come to our attention.

Peter Drum stated that could be done; amend the ordinance to say ‘everybody shall come forward by July 1, 2018. Basically there is an issue with the time scale. There is case law that basically says if the town fails to enforce for long enough they lose the ability to enforce. He thinks, once the town gives a permit and then fails to enforce for ten years – no question they lost the right to enforce. The question is if there was no permit ever given does the town still become stopped by not enforcing after a long enough period of time? Peter gave an example. In general, Peter does not feel great about bringing an enforcement action on a fifteen year old problem.

Tom Johnston stated that you could ask them to fill out a new registry as long as you are not imposing new rules on them. Peter agreed. Once you amend, you have enacted a new ordinance that would allow you to restart the clock on enforcement.

Jesse Casas stated that what bought this whole issue up was property transfer of a gravel pit and the new property owner wanted a permit that goes with the land. There is no permit because it is an old operation. How do we handle this without getting the town all ‘jammed’ up and being fair to the property owner?

Bob Temple stated he believes we should require a reclamation plan from everybody, at this point, we would be able to keep track of things a lot better, which would include the boundaries, active area, where the stock pile areas are and get it updated every five years.

Dave Williams asked if we can legislate on an operation that we didn’t give a permit to but has a state permit and they were not required to do that can we say now you have to have all that top soil. Peter Drum said yes based on the fact it is an ongoing operation that’s forever expanding, where they are continuing to draw material out on a day by day basis. If that is not specifically prohibited by state law he believes you can do it.

Tom Johnston stated that the Planning Board should put together the changes they’d like in a clear, concise statement, present it to the Selectmen at a regular meeting to have it on the agenda/record and make the determination to do something to bring all the pits in line.

Peter Drum asked if the big pits are on state roads, they are.

David Martucci suggested the Mining Review Ordinance Committee get together, be reconstituted and take suggestions, proposals, ideas from the Board of Selectmen on how to proceed. Peter Drum suggested, to the Planning Board and Mining Committee, to have a brainstorming session to see what you would like to see happen to deal with certain issues or discuss issued that you've had. When you do this, you are balancing neighbor interests with private property rights which can be a touching thing to do.

Mitch Garnett asked Peter Drum if the ordinance can be simplified. Peter stated that some of the language seems to be unduly complex and if it is streamlined into what the town really wants to see it would be easier for applicants and for boards. There is a lot of ways to streamline ordinances. Peter would like to see the changes wanted before streamlining. All site plans/approvals/mineral extractions need to be recorded at the Registry of Deeds.

David Martucci offered to draft the language for any changes the Planning Board was looking for in the ordinance.

Mitch Garnett moved to adjourn the meeting at 8:58pm.

Respectfully submitted,

Mary Anderson