

RUMNEY PLANNING BOARD

WORK MEETING

August 14, 2012

The meeting was called to order at 7:00 by Tom Grabiek, Chairman.

Present were Tom Grabiek, Mark Andrew, John Bagley, Rob Arey and Jerry Thibodeau, alternate. Joining at 8:05 was David Coursey.

The meeting opened at 7 pm with a continuation of the Central NH Aggregates gravel pit application hearing. Representing Central NH Aggregates were Sue Wood, Mike Latulippe and Atty. Bruce Marshall. Public present were as follows: Doug and Gail Sanborn, Atty. Omer Ahearn, Rob Hester, Greg and Phoebe Sanborn, David and Elise Saad, Philip Cook, Anita and Lloyd French.

The chair invited the representatives of Central NH Aggregates to approach the Board. Atty. Marshall spoke on their behalf. He stated he was surprised to learn the town had no zoning, which means we must rely on the Fire Department and Police Department locally for blasting enforcement. He further stated Mike Latulippe had a letter from the prior owner transferring "grandfathered" status to this pit. In speaking with Mary Pinkham, she stated that no date on the "Intent to Excavate" indicated the necessary report to remain grandfathered was ever filed. They were approaching this application for a permit without prejudice on the grandfather status.

Atty. Marshall had acquired an MSHA report that stated "fly rock" must be matted. The blaster needs to provide proof of insurance to the town authorities prior to blasting. This blaster did not blow a whistle or evacuate the area, nor did he notify the fire or police departments. MSHA further stated the blaster was unaware of what was in the ground prior to this shot. Regarding Polar Caves, he stated a seismograph should be placed at that location for all blasts.

Atty. Marshall stated the gravel pit is grandfathered. It meets all of the conditions, they keep up with Alteration of Terrain permits, and keeps up with all necessary information.

Tom G. stated we have two concepts – 1. how Mike Latulippe will work with the town to satisfy our safety concerns. 2. The need for this pit to be permitted. We have researched the legal and technical information to require a pit owner to have a permit – our findings were the same as provided by Mary Pinkham-Langer and the town attorney. We can look at this in a friendly and relaxed way to see how Mike will work with the town. Tom then reviewed a timeline on the pit (copy attached) and all our information indicates we have the proper authority to permit quarrying.

Greg Sanborn stated all pit owners signed a form when the town regulations were adopted and were legally grandfathered.

Atty. Marshall disagrees with our findings. The Intent to Excavate shows all the necessary information. A recent Supreme Court case (Arthur Whitcomb case) states “rock” is earth. It falls under sand and gravel.

Tom G. stated the pit started as “sand and gravel”. Quarrying and crushing are totally different issues.

Atty. Marshall stated the inferences we are drawing from are not true. Court cases reveal they do not want towns to stop gravel pits (zoning concerns) as this material is needed in road building. Our regulations would not stand up in court and there are other mechanisms for our town to use for control. He further stated the Mary Pinkham-Langer is basically a fee collector and has no real impact or authority concerning the issues addressed at public hearings.

T. Grabiek stated we will revisit the permitting process and requirements for blasting.

Greg Sanborn reported that Mary Pinkham-Langer, the Planning Board and the state completed a questionnaire which was filled out and signed that declared the “grandfathered” pits in town. Greg had signed it and also worked on the regulations. The bi-annuals had also been signed.

Tom G. stated copies could not be found of the original declaration.

Greg S. further stated the town excavation regulations need to be revised.

Mark A. stated that Mike wants to work with the town. Tom said Mike would not like to be permitted. Atty. Marshall said “correct – he is grandfathered”. The way the town is trying to go about this is illegal within the courts. Tom inquired if Atty. Marshall could offer suggestions on how the town can have control.

Gerry T. viewed a copy of the MSHA report. He further requested Mike L. put in writing a list of safety requirements. He further questioned Atty. Marshall if he had visited the damaged property. Atty. Marshall stated no as it is the blasters responsibility and a civil situation. The home owner does have the necessary information including insurance information.

Atty. Ahearn questioned why no local excavation regulations. To which Tom G. stated we have them, but they apparently do not apply to grandfathered pits. Atty. Ahearn stated the issue of safety is being skirted by Atty. Marshall. They have a plot plan made by Doug Sanborn showing where the rocks have fallen – three times. This is a safety violation. Why is council skirting this issue and should the owner of the pit not be held liable?

Tom G. said existing operations must not affect the safety of the area. We must come to a reasonable standard of operation – 1. a safe plan 2. permit would ask for a safety plan.

Atty. Marshall said it is ridiculous to say I am “skirting safety – I take exception to this”. The blasting regulations are state or thru a zoning ordinance within a town. In NH negligence or intentional trespass must be proven. MSHA required Mike L. to submit a safety plan and we need the Fire Department and Police Department to control blasting.

Tom G. stated previous issues of safety caused concern and aggravation – Mike L. has stated “a new blaster” for each damaging blast and he needs to take responsibility and work toward an operating standard with safety requirements for the town to enforce.

Atty. Marshall said Mike had to meet MSHA requirements and air safety control. If someone new applied for an excavation permit we would view a site plan and have a say. Mike L. is grandfathered for the pit and blasting.

Greg S. questioned who in town had the expertise to oversee blasting – the fire chief of police chief? Are they willing to take responsibility?

Tom G. Who enforces? Who controls? Atty. Marshall stated the blaster must get a permit from the fire department for every blast. If there is a problem, they do not issue any further permits to that blaster. The fire department can require proof of insurance, a warning signal prior to a blast or call the town administrator prior to a blast.

Jerry T. – The representative from Capital Rock and Blasting stated he would not cover a blast.

Tom G. The Planning Board will meet and make up safety operation suggestions.

Clerk-who is responsible for Sanborn’s yard? Tom G. – the yard looks like a stream bed. Doug S. said no one offers help. Greg S. – who is responsible for the slash in my woods? Atty. Ahearn- why should the injured have to pay for legal council? Jerry T. questioned Capital Rock & Blasting’s insurance to which Gail S. stated it has a \$10,000 deductible. Jerry further questioned the court cases Atty. Marshall is referring to and requested a copy of same.

The hearing ended at 8:05. This issue will be revisited by the Board and Mike L. will be notified when that is to happen.

David Saad was present to meet with the Board. Jerry Thibodeau recused himself from this discussion. At 8:10 the Board voted to go into non-public session per RSA 91-A:3, II(e). John B. made the motion and was seconded by Dave Coursey followed by a unanimous vote. Mark A. made a motion to seal the minutes of this meeting due to the litigation pending. Dave Coursey seconded and the Board voted unanimously to seal the minutes. At 8:35 the Board voted to end the non-public session. Jerry T. rejoined the Board.

Driveways – Hawthorne Village has submitted a signed final permit. RDU will inspect prior to signing.

Rumney Ecological – Betty Jo Taffe had contacted the Chair stating all required work had been completed and requested it be inspected. Tom G. had checked and stated it was ok. The other RDU members need to inspect for the final on that driveway.

Blakeman-Allen – A state driveway permit was received for construction of a driveway off Stinson Lake Road.

A notice of a state meeting regarding protection of well heads was reviewed. This primarily deals with zoning regulations so a letter will be sent suggesting testing of community wells be done more frequently.

The meeting adjourned at 8:55 pm

Respectfully submitted,

Diana Kindell
Clerk

NON-PUBLIC SESSION

August 14, 2012

Present for this meeting were John Bagley, Mark Andrew, Tom Grabiek Chairman, Rob Arey, David Coursey and Jerry Thibodeau.

David Saad came before the Board to discuss a written statement he had provided to the Planning Board at the prior meeting. Jerry recused himself from this discussion.

Mark Andrew opened stating the Select Board had reviewed this statement and deemed it was dealing with a civil issue – not a Planning Board issue until a subdivision is presented. This is between Russell School and David Saad.

John Bagley stated that the issue of negligence directed at Jerry T. “should be a non-public session with the potential of a legal issue”. John made a motion to go into non-public session. This was seconded by R. Arey and the motion was approved by a unanimous vote.

Tom G. stated he does not believe the Planning Board is liable. The last two paragraphs do indicate potential legal action. The Rumney Planning Board did investigate a claim – Jerry T. made a statement before us and we had no reason to doubt his word. We investigated by inviting you in to talk with us. We heard both sides – this is a civil matter between the Russell School and David Saad.

David Saad said he felt false statements had been made to the Select Board and the Planning Board and he has a right to refute false statements. He wants the proper records going forward. He has no intent to imply litigation against the town. He wishes to prevent a future law suit involving similar situations. He wants the right to listen and review.

David further stated he had been before the School Board, after which Jerry came to the Planning Board stating David wanted to build a second house on his property. David received a letter requesting his presence at a Planning Board meeting and he came to the Board and discussed Wheeler Lane and his other property. A subdivision discussion dealt with his other property, not the Wheeler Lane property.

Mark questioned accessing more than one piece of property. David stated a subdivision would mean access via a right-of-way to multi lots. David further stated that had Jerry T. never made that statement, he would never have been called to the Planning Board.

John B. stated this is rehashing – there is a civil matter with the School Board.

David S. made a statement to the Planning Board – investigation showed no finding – no further direction – clarified the issue and Jerry never got that information. This lack of communication became a civil matter. He further pointed out “the loop was never closed”.

Tom stated the situation was resolved. Jerry said you were building a second home. David S. said “no”. We believed what was said to be true. We carried it as far as we could – nothing else to do.

David S. This is to point out a historical situation – a road map that could lead to legal matters and costly to the town. The minutes clearly state who said what. This is a reference point- also document repudiation.

Mark said the July 26, 2012 minutes so noted. That ends involvements – noting there are two lots involved within the mentioned minutes.

David Coursey stated even more confusion was created by David S. inquiring about subdividing the “Sabourn” property.

David S. stated – listen to claim – investigate and dispel it. I have no legal action planned.

Tom G. – Thank you for clarifying that.

Jerry T. requested to speak – He had come to the Planning Board at the request of the School Board, not as a private individual. Mr. Saad wanted to improve the right-of-way to his property. He met with Mr. Helgerson, Principal of Russell School, and wanted to move the right-of-way toward the woods. With Jerry T., Peter H., Kathy S. (School Board chair) and David S. laid out a 12’ access. David S. came back to a School Board meeting and said Peter H. was mistaken and he wanted a 20’ right-of-way. He was asked “what happened to 12’ and we will not entertain a 20’ access”. David S. got obnoxious and after a half hour was asked to leave. A comment from the gallery said “David S. plans to put more housing back there”. Jerry T. was asked to come to the Planning Board and inquire if more housing was going in.

David S. This is a civil matter –

Tom G. stated “end of discussion. Thank you both – closed”.

Mark moved the minutes be sealed due to the pending litigation. David Coursey seconded. This was so voted unanimously.

David S. stated this is an illegal non-public session and sealing of the minutes. The right-to-know law – this is totally inappropriate and I will follow up on this.

Tom G. stated this was not because of possible litigation to the Planning Board, but was because of the pending School Board litigation.

Mark moved we come out of non-public session. Rob Arey seconded and was so voted at 8:35 pm.

Respectfully

Diana Kindell
Clerk