

RUMNEY PLANNING BOARD MEETING
September 18, 2012
Work meeting

The meeting was called to order at 7:05 pm by Tom Grabiek, Chairman.

Present were Kathy Wallace, Tom Grabiek, John Bagley and Jerry Thibodeau, alternate sitting in place of Rob Arey. Absent were Brian Flynn, Mark Andrew, Rob Arey and Dave Coursey.

1. The clerk provided copies of Ken Knowlton's report on his last visit to the Racine property. As it was lengthy, John B. suggested they review it at home and discuss this at the next meeting.

2. Central NH Aggregates – present were Atty. Bruce Marshall, Sue Wood and Mike Latulippe with Doug and Gail Sanborn joining at 7:25. Atty. Omer Ahern joined at 7:35. The clerk stated she had located the initial “grandfathering” statement in the town's files which was completed by Stanley Jackson in 1991. The Chair questioned if Atty. Marshall had supplied documents as requested and he stated he had supplied case law he had referenced as well the blasting regulations for the Town of Bow and for NH DOT. He further said where our town has no zoning, any blasting regulations put in place had to be enforced by the Selectmen – not the Planning Board. The Planning Board could prepare then and make suggestions to the Selectmen. He recommends a permit system as in RSA 158:31 for explosives utilizing the fire department or police department. Either department would do an initial investigation of any problems, if they could not determine a cause they would call in State Police. The Chair called this a bogus requirement. Atty. Marshall referred to case law requiring any time there was a blasting issue, the Police Department must go and try to determine the cause. The Fire Chief issues and revokes blasting permits. The safety issue is beyond the Planning Board authority. Jerry T. asked what prerequisites were in place prior to blasting. Atty. Marshall said there are vague regulations in place, but fly rock must be covered by mats or earth. Jerry T. – it is the determination of the blaster whether he needs mats or not? Atty. Marshall – they must mat high bottom which shoots up and the blaster knows when he is doing this.

Tom G. stated we are not looking at future regs – we want current regs to protect the area, protect the town as completely and legally as we can. He requested an operational safety concept from Mike L. Doug S. questioned if there was a licensed blaster present. He has spoken with three different blasting companies and they tell him they cannot guarantee a shot! Atty. Marshall said they can guarantee the size of the blast. We cannot tell them to mat every shot – case law has prevented that. There would have to be an engineer and geologist present at every blast to analyze the rock. The regulations do state what type of shot must be covered and local regulations do make the blaster be more careful. The clerk questioned if smaller shots can be requested – yes! He further explained how air vibration (similar to a plane breaking the sound barrier) can be as damaging as ground vibration – such as causing pictures to fall off walls.

Tom G. – there is not a lot a town can do, we are not experts nor do we have an unlimited budget. We will draft regulations and review them with the town attorney. Mike needs to move forward and so does the town. He needs an operational safety plan/best practice to require of his blasters. Jerry T.- mats used? Atty. Marshall – fly rock needs mats and no fly rock can leave the site as stated in both the federal and state regulations. That is the reason for hearings. Tom G. – a hearing provides a 30 day limit on blasting for the owner/operator but no legal responsibility for damage. We are looking to bridge the gap between laws and safe operations within the town. If Mike requires mats and the blaster ups the price - \$5000 - \$10,000 – what happens then? We want a realistic cooperative spirit from Mike L. which we are asking for but cannot force. Jerry T. – How much more for mats?? Atty.

Marshall – a production shot or quarry shot should go up straight and drop right down. Tom G. –how do they blast on highways? Atty. Marshall – facial shots need to be matted or covered with dirt. The property owner cannot tell a blaster how to blast.

Doug S. – They won't stop flyrock – the recourse is to sue for damages. Tom G. said the lack of control over grandfathered pits, no zoning and lack of funds are the problems we face.

Sue W. – What kind of safety do we want? Tom G. – suggest a mat requirement and have blasters Contract abutters 72 hours in advance. Take the minimum requirements and enhance them. Atty. Marshall – have the blaster provide his safety plan. Tom G. – what is Polar Caves has a cave in? Control the size of the charge and notify the town prior to the blast. At this point Sue W., Mike L. And Atty. Marshall left.

Doug S. – What is it happens again?? Atty. Ahern referred to blasting standards in RSA 816:61 which states safety and performance should never be compromised. Atty. Marshall places all the responsibility on the blaster – the owner is the agent of the blaster. Having Mike L. agree to a safety plan forces the Sanborn's to file a lawsuit to recover damages. Can we not required the land owner to post a bond listing the Sanborn's as a recipient. Can they have a say in when a blast is going to take place, require seismographs and safety officer on site? Three times we have had flyrock. John Bagley requested Atty. Ahern submit their requirements in writing so the Board can review them. Tom G. – Neither the town or the Planning Board may give him permission – he does not need our permission.

Atty. Ahern stated the issue of safety is paramount and he is putting the town on notice of this safety situation. It is the Boards obligation to enforce safety and we should have control over other things going on in the pit. Does the town have a Master Plan and does it address this? Tom G. said we do have a Master Plan and no it does not address excavating. John B. requested the attorney put his veil threats in writing. Kathy W. said the discussion tonight was to work toward safety. Doug S. questioned if we were representing the people?

Atty. Ahern questioned the procedure from this time forward – Mike L. will present a safety plan; the Board will present a plan; Atty. Ahern will present his requests and they will be reviewed by the Board and a legal plan of action will be put in place. If the town attorney filed a cease and desist, would a judge honor it? Atty. Ahern questioned if our town attorney was working with us. Tom G. questioned why the Sanborns did not file a claim against the property owner. Doug and Gail Sanborn left at this time.

3. Proposed blasting regulations were presented to the Board by the Chair for review. John B. questioned if there were any in place at this time. Kathy W. questioned the basis these were written on and told from MSHA regulations as well as other town's regulations. Considerable discussion was held on each regulation as presented. These will be further reviewed and revised.

The meeting adjourned at 9:40 pm

Respectfully submitted

Diana Kindell
Clerk

