

# Town of Boscawen, NH

## PLANNING BOARD

### Boscawen Municipal Complex

## MEETING MINUTES

**Tuesday, August 11, 2015 at 7:00 PM**

Planning Board Members present: Bruce Crawford, Chair; Paul Strieby, Vice Chair; Rhoda Hardy, Karen Mackenzie, and Roberta Witham.

Planning Board Members absent: Doug Hartford and Ex-Officio member, Bernard Davis, Jr.

Planning Board Alternate present: Matt Lampron

Planning Board Alternate absent: Jeff Reardon

Planning Board Ex-Officio Member absent: Roger Sanborn

Others present: Tim Bernier, President, T.F. Bernier, Inc. and Richard Edmunds for Earth Excavation, Eric Munro, Caretaker, and Kenneth Clinton, President, Meridian Land Services, for Jon Kaufman. Alan Hardy, Planning & Community Development Director, and Kellee Jo Easler, Planning & Community Development Assistant.

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The meeting was called to order by Chairman Crawford at 7:06 p.m. Matt Lampron to serve as a voting member.

### **Approval of Minutes**

**Motion made by Vice Chairman Strieby, second by Rhoda Hardy, to approve the minutes of the July 14, 2015 meeting, as amended [next Planning Board meeting was written as June 9<sup>th</sup> instead of August 11<sup>th</sup>]. Motion was approved by all Board members.**

It was noted that Sid McDonald who was scheduled to be at the meeting to address the Board was not in attendance.

### **New Business**

- **Continued - Cold Brook Gravel/Earth Excavation 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 required. AoT plans are ready to be submitted, pending a Zoning Board of Adjustment decision on a denied appeal. If the Zoning Board overturns the appeal, Mr. Bernier will then file the AoT plans, the cost of which is \$17,000 and non-refundable. Mr. Bernier distributed copies of proposed reclamation plans for Pit Area 1 which

was excavated over ten years ago but has not been closed. In order to restore the area, the plan is to fill the encroached area with similar material, and plant 150 trees that do well in that type of soil. Mr. Bernier said that the pit will be closed and re-vegetated and intends to “make the property whole”. Copies of the revised plans have been sent to abutters and Mr. Bernier is awaiting their response. In the meantime, Mr. Bernier has developed interim grading plans on Cold Brook’s property which are half-way done. Mr. Bernier also stated that the Conservation Commission has noted two areas of concern and he is working on restoration plans.

Chairman Crawford noted that the Zoning Board, in a 4-1 vote, approved a 50 foot buffer which was appealed by an abutter. The ZBA then voted unanimously (5-0) that they had done the right thing. The abutter now has 30 days to appeal to the Superior Court. The appeal deadline is August 21<sup>st</sup>. If no appeal is filed, Mr. Bernier will then submit the AoT permit application and move forward.

Chairman Crawford then referenced two pieces of correspondence that were just received prior to the start of the meeting. Alan Hardy commented that while a hearing is open, all testimony – written or verbal -- must be accepted. A letter was received from Jed Callen representing Jon Kaufman, and a memorandum was received from Kenneth Clinton, President of Meridian Land Services. Copies were provided to Board members.

**At 7:50 p.m. and in accord with NH RSA 676:4, I (d), (1), Chairman Crawford continued the public hearing on the subject application.**

Mr. Bernier stated that restoration plans had not been received by the two correspondents prior to their writing the Board. The applicant is trying to get the boundary issue resolved and feels the infringement is minor. Numerous inspections have been made and a “clean bill of health” has been rendered by the Mine Safety and Health Administration (MSHA).

No comments, in favor or opposed, were made by abutters. Two members of the public, Eric Munro and Kenneth Clinton, representing Mr. Kaufman, came forward to express their concerns with the application as presented.

The concerns raised by Mr. Clinton follow.

1. What is the final design plan status? [A final design plan will be provided in 10 days.]
2. Will a drainage report be submitted with the final plan? [Yes, a drainage report will be submitted with the final plan].
3. Are all of the nine outstanding items noted in the May 12, 2015 Planning Board minutes properly addressed? [Yes, all outstanding items will be addressed prior to approval.]
4. What are all of the outstanding violations with the current operation, and how will they be addressed prior to approval of this application? [Alan Hardy provided a history of the project.]
5. Encroachment onto Map 83/Lot44 needs to be resolved prior to approval of this application.
6. In addition to the pending AoT permit, will a wetlands permit and/or dam permit be required as well? [A wetlands permit will be sought. AoT will decide whether a dam permit is required.]
7. There is far greater than the 5 acres of working exposed area allowed per AoT permitting (15.4+/- Ac). How are those areas going to be closed in order to begin work on the new area?

- 91 8. The new work area is so expansive that it requires intermediate phasing plans to properly address  
92 stormwater runoff and other design issues.
- 93 9. A hydrological study is imperative to determine the surface and groundwater impacts adjacent to  
94 the nearly 200' deep quarry proposed 50' from Map 83/Lot 44. An expert should weigh in.  
95

96 Alan Hardy had a few questions with regard to the letter received from Attorney Jed Callen. First, whom  
97 would a lawsuit be filed against? Mr. Callen's letter states that "a lawsuit for trespass, nuisance, timber  
98 trespass, and violation of RSA 155-E:4-a will be filed by my client imminently, seeking restoration and  
99 damages." Mr. Clinton stated that he did not believe it was Mr. Callen's intent to sue the town.  
100

101 Second, Mr. Hardy questioned no. 4 of the letter which states "the excavation within 50 feet of the  
102 boundary with my client's land is a violation of RSA 155-E:4-a, I and II...". Mr. Hardy read the relevant  
103 statute and expressed difficulty in making a connection. Also, it is one thing to file a lawsuit today for  
104 something done today; but quite another for something that was done years ago and the responsible party is  
105 now doing all it can to rectify the situation. Chairman Crawford indicated that having visited the site  
106 recently, it seems Mr. Edmunds' staff has gone out of its way to not "encroach". Mr. Clinton will share the  
107 discussion with Attorney Callen.  
108

109 Mr. Bernier stated that in the next week or so, a response letter will address all of the concerns raised  
110 throughout the application process. Mr. Bernier further stated: "we strongly disagree that the 100 foot  
111 buffer was applicable to the entire property in 1988 and that was the understanding of the town as well as  
112 the operator prior to Dick Edmunds." There is substantial evidence to support this belief. Mr. Bernier  
113 disagrees with no. 7. Regarding no. 8, Mr. Bernier stated that a phasing plan was not workable day-to-day.  
114 No. 9 is the Planning Board's decision.  
115

116 Chairman Crawford noted that towns cannot do as they want since NH is governed by RSAs, and that the  
117 current owner, Cold Brook Gravel owned the pit for two years prior in 1998 to the current owner, J.J. Kelly  
118 purchasing their property in 2000, so they cannot say they were unaware of the buffer situation. Vice  
119 Chairman Strieby asked Mr. Clinton which RSA is applicable to his no. 7 regarding the 5 acre threshold.  
120 Mr. Clinton will forward the information to the Board. It was also mentioned that everything sent to AoT  
121 will be sent to the Town. Chairman Crawford stated that this is a hybrid gravel pit in that the granite is not  
122 dimension granite (like Swenson's) but rather gets further processed. Questions were raised referencing  
123 Attorney Callen's letter and the true intent of comments made in the letter. Ken Clinton repeated that he  
124 would ensure Mr. Kaufman receive all information and updated plans.  
125

126 Karen Mackenzie mentioned that the Board of Selectmen had provided authority for Cold Brook to blast  
127 but not use the resulting material. Mr. Bernier indicated that the "blasting" was not done since the material  
128 would be in the way once blasted. He is considering whether or not to go back to the Board of Selectmen  
129 for re-consideration. There is enough construction to use the material. Chairman Crawford suggested that  
130 the Planning Board send a letter to the Selectmen requesting that they allow Cold Brook to use the  
131 resulting material produced from a "shoot". Ms. Mackenzie verified that the 2009 permit violation was  
132 due to bad engineering and an honest mistake.  
133

134 **A motion was made by Vice Chairman Strieby to continue the public hearing to September 8, 2015.**  
135 **Seconded by Rhoda Hardy and passed unanimously.**

Contingent upon the Planning Board acting within its jurisdiction, and pursuant to relevant statutes and regulations, **a motion was made by Matt Lampron that the Planning Board request that the Board of Selectmen re-consider its decision to disallow Cold Brook's use of material after a "shoot". The motion was seconded by Vice Chairman Strieby and passed unanimously.**

**Motion to adjourn was made by Vice Chairman Strieby and was seconded by Karen Mackenzie. All Board members approved and the meeting ended at 9:10 p.m.**

The next regular meeting of the Planning Board will be held on September 8, 2015 at 7:00 p.m.

*Minutes are respectfully submitted by Suzanne Beauchesne*