

Town of Boscawen, NH

Planning Board
Boscawen Municipal Complex

Meeting Minutes - Final
Tuesday, June 7, 2016 at 6:30 PM

Planning Board Members Present: Bruce Crawford - Chairman; Douglas Hartford, Roberta Witham, Jeff Reardon, Bernard Davis, Jr. and Alternate Member, Rhoda Hardy.

Planning Board Members Excused: Matt Lampron, Roger Sanborn, ex-officio Alternative Member

Others present: Alan Hardy, Planning and Community Development Director; Kellee Jo Easler, Planning and Community Development Assistant, Katie Phelps, Recording Secretary

Chairman Crawford called the meeting to order at 6:30pm and named Rhoda Hardy as a voting member tonight.

Approval of Minutes:

Motion made by Douglas Hartford, seconded by Bernard Davis, to approve the minutes of the May 3, 2016 meeting, as presented. Motion passed unanimously.

New Business:

- **Population & Demographics of the Master Plan**

The Population & Demographics Chapter of the Master Plan was presented showing data drawn mostly from the 2010 US Census. This is the most current information available regarding population trends and is meant to show how Boscawen's population has changed in recent years as compared to the 2000 and earlier census information. The information compiled can assist in planning for future development in Boscawen. As an example of how population within the town may change, Alan Hardy discussed a new 6.8 million dollar renovation to the old Merrimack County Jail that will transform the old Boscawen jail into a treatment center for inmates. Jeff Reardon asked if the board should earmark sometime closer to 2020 to update this document. Alan stated that as the Planning Board becomes aware of changes, the document can be amended as needed. Chairman Crawford noted that the difference in information in terms of income from one census to another is notable.

The Chair then opened a public hearing regarding the Population and Demographics of the Master Plan and closed the hearing with no one offering any comments.

Motion: Douglas Hartford moved to adopt the document as printed. Vice Chairwoman Roberta Witham seconded. Motion passed unanimously.

- **Azubah Lot Wetland Review – Matt Adams**

Matt Adams came forward to discuss his property Lot 83/68/1 with concerns that it is not a buildable lot. He states that there are multiple issues with the deeds throughout the subdivision that he has become aware of. Matt states that Landmark Development hired a Certified Wetland Scientist to delineate the wetlands and Landmark took their own plans and stamped over the wetland scientist's delineation. Matt states that he hired his own wetland scientist to delineate the wetlands and confirmed that this is not a buildable lot. He states it doesn't meet the minimum 20,000 sq. ft. of continuous buildable area required and that the buildable area of the lot is only 12,383sq. ft. Matt states it was approved as a buildable lot and there was a stipulation in his contract that it was buildable. Alan stated that there is a planning board tool called Revocation of Recorded Approval under RSA 676:4-a. If the town is concerned, we can make the developer aware that there is a concern and that there will be a hearing that could potentially result in revocation of the subdivision – which would return it to its original state.

Action Plan: Chairman Crawford called to re-open this matter seeing it appears to have some legitimate concerns.

Motion made for consideration for revocation of the recorded approval by Bernard Davis, seconded by Rhoda Hardy. Motion passed unanimously.

- **Public Hearing – Cold Brook Gravel, Inc.**

Chairman Crawford opened the public hearing for the amendment to the Planning Board's Excavation Permit and Notice of Decision dated January 13, 2016. Timothy Bernier, President of T.F. Bernier, Inc. stepped forward representing Cold Brook Gravel. He states when the Notice of Decision came out it included all the conditions that the board made as well as all the previous conditions that existed from the previous permits and approvals. One of the general conditions, condition #9, talked about the 100ft buffer that was in the 1988 Zoning Board of Adjustment approval. He states that it has caused a lot of problems since 1988 because all the people involved were under the impression that it involved a couple lots on Queen Street. In 2015 he sought clarification on the issue from the Zoning Board of Adjustment to better define where the 100ft buffer is and where Cold Brook Gravel would like to propose a 50ft buffer. The buffers were approved by the Zoning Board of Adjustment as shown in the plan drafted by his firm, T. F. Bernier, dated April of 2015. The buffer plan approved by the Planning Board as part of the January 13, 2016 excavation permit was consistent with the one approved by the ZBA on May 26, 2015. The 1988 condition for the 100ft buffer was brought forward as part of this process. Tim went on to say that this isn't a change to anything that was presented to the Planning Board, it's just a paper trail correction so that the approval is consistent with the current ZBA approval.

Alan Hardy proposed to use the ZBA approval plan presented and revise condition #9. Bernard Davis asked whether anything going forward is going to affect anyone in the original 100ft

buffer. Tim stated based on their research and discussion it's not entirely clear. The original zoning board decision for the 100ft buffer made it sound like it was for the entire project but when you review the record and go back, the belief was that it was just along a certain area and not all of the abutters. Bernard Davis inquired about the encroachment done by the owner before R. D. Edmunds owned it; has it been reclaimed? Tim stated that it's still being worked out between the lawyers and he asserts that when he visited the area everything is green except the portion on the abutting properties. Chairman Crawford opened the meeting to anyone in the public who would like to discuss this topic to come forward.

Ken Clinton of Meridian Land Services came forward in opposition of the Cold Brook Gravel Amendment. He is here representing Jon Kauffman, a disapproving abutter. Ken states he was there for the previous site plan process and spoke about pit #1 that it was still not reclaimed at the time and there were ongoing discussions about how that might happen. He states Tim was correct in saying that it has since been reclaimed, at least loamed and seeded up to the property line but that doesn't necessarily mean the buffer is intact as it had been. There are no trees on it so there is no buffer. Chairman Crawford interjected, asking whose fault that is at this time. "If they can't get to the other side to do the reclamation – they can't do their side either." It became apparent during discussions that further clarification was needed on the buffer issue. Ken states that he went to inspect the rest of the property line and found that there is a 500ft section that doesn't have an undisturbed buffer right now – not the 100ft that everyone thought it could be, nor the 50ft that some people thought it should be. Ken pointed out a section on the map that he is talking about. He took some photographs and brought copies for the board to see. He states the tree line shown on the map is generous to say that it's extremely young growth. At one point everything was cleared up to the property line. If you were to do a site walk out there you can see the buffer is gone. He went on to say that the operators of this pit have a history of not complying with regulations in the past and the Zoning Board saw fit to give them a special exception to reduce the buffer from 100ft to 50ft. He requested that the buffer be restored – not only with loam and seed but also trees. Buffers are in place to prevent noise, but there is also a visual aspect as well. Alan Hardy stated that anyone who has walked out there knows mistakes have been made. Alan brought up a known encroachment coming in the opposite way as well. Chairman Crawford asked Ken Clinton what his definition of a buffer is. Ken said he would defer to the town's Zoning Board. It's relative to noise, visual aspects, erosion, and storm water runoff.

Tim stated that the assumption between the previous owner and Cold Brook Gravel, Inc. was that this buffer that was established was not for the entire property. They have pursued that for the last 30 years. This area had been flagged and he walked it with Alan Hardy in which they marked the property line and the 50ft set back. When they proposed the new buffers they were aware that prior to January of 2015 there were no buffers and work was being done to the property line in a lot of areas. Cold Brook Gravel was aware that those areas were no longer going to be open for mining and that they were going to be left natural. You can see saplings and that's because there was work done in the past right to the property line. He mentioned that 155-E is a setback and not a buffer. They never made a claim that this was going to be a natural ancient forest. The property has been logged numerous times. What they were saying is that going forward there will be no mining in the 50ft area.

Tim spoke with the owner who recalls speaking with the Tamposi's who said go right to the property line. He thought they had plans to mine the gravel on their side. Tim contacted Mike Tamposi and he had the exact recollection. There have been a lot of accusations that there have been violations and he thinks that's a strong interpretation of what took place. He believes those people understood what their expectations were, they talked to one another neighborly, and they did things they thought were right at the time. To go 30 years later and look at what those people did and say "you violated something" is hard to do. They are trying to go forward and establish buffers where there were none before and trying to do the right thing.

Chairman Crawford requested that the Board view a plan dated March 31, 2016 that came from T. F. Bernier, Inc. that shows a newly constructed road that appears to come from J. J. Kelly LLC across the Cold Brook Gravel property line. He asked where we are on the issue. A gentleman in the audience stated that on numerous occasions they tried to call T. F. Bernier to try to share information about where plot points and lot lines were but didn't hear back. "It's a skidder trail", he said. It was a pre-existing skidder trail that was just reopened as a new skidder trail. Tim stated that, over time, both Cold Brook Gravel and J. J. Kelly encroached over the lines.

A letter from Horizon Holdings was read and discussed. The letter dated June 1, 2016 from Jon Kaufman, Manager, regarding the Amendment to the Earth Excavation permit states that the applicant has a history of not honoring buffers and that as a landowner and taxpayer in the town he requests that no consideration be given to the applicant's amendment to reduce the current buffer requirement. Chairman Crawford mentioned that this meeting is simply for clarification a zoning decision which on condition #9 there was an error in wording on the paperwork. At this time he closed the public hearing at 7:53 PM. Alan references the map approved by the ZBA in terms of condition #9. Bernard Davis wished to clarify that a buffer is a natural area that can't be encroached. A buffer doesn't necessarily have to have tall trees, it just has to be an area that can't be encroached.

Motion made to amend the Earth Excavation Permit PB01122016-1 by Bernard Davis, seconded by Douglas Hartford. Condition #9 is to be amended to say, "100 feet buffer strip or green area to serve as a screen from the abutters" to be reduced from 100 feet to 50 feet as noted on the Plan dated April 2015, by T.F. Bernier. The requested change is referenced by the orange boundary lines notated on the map, for property located at 267 Queen St, Boscawen NH 03303, Map 81, Lot 24, in an AR zone. Motion passed unanimously.

DES Restoration Plan Approval for 267 Queen Street, Boscawen, NH. Tax map 91, Lot 24.is reviewed. It states that by July 15, 2016, all jurisdictional wetlands shall be restored in accordance with the Restoration Plan and all project descriptive details created by Tim Bernier of T.F. Bernier, Inc. dated December 8, 2015.

Tim Bernier presented a letter regarding a "Petition for Authorization to Transfer Town of Boscawen Earth Excavation Permit in Connection with Company Sale." Alan Hardy states that in order to transfer the permit, the board need to approve any transfer of ownership via a written document in accordance with RSA 155-E:8. That discussion has to take place at a noticed meeting and does not have a public hearing requirement. Tim states that the owners of GMI Acquisition, LLC, are present at the meeting and are interested in buying Cold Brook Gravel. He

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requests that board make a conditional approval to transfer the permit from Cold Brook Gravel, Inc. to GMI Acquisition, LLC, subject to receipt of transfer of the property when the deed is recorded. This gives GMI some assurance to the permit. Chairman Crawford welcomed the two owners of GMI Acquisition to the table. Alan Hardy asked if all mineral rights would be transferred. Tim indicated that the ownership of the mineral rights would be noted in the final documents. Alan also made the board aware that on the DES Restoration Plan Approval #19 that, "Transfer of Ownership of the Property shall require notification to DES and an agreement on transfer of the rights and obligations of this Restoration Plan Approval, if required, prior to such transfer of ownership." Tim and one of the owners of GMI stated that the lawyers have this list to make sure this all gets done in a timely manner. The potential new owner stated that it all goes back to respect. He wouldn't want someone encroaching on his property. He states it's in no one's best interest to disrupt the relationship with the neighbors. Roberta Witham mentioned one way to respect the neighbors is not to "ride the Jake brake" while coming down Queen Street. The owner stated he is open for suggestions and conversations and that the neighbors can have their numbers to call. Tim proposed that the board agree to transfer the permit #PB01122016-1 currently issued to Cold Brook Gravel, Inc. to GMI Acquisition, LLC, in the event that the transfer is finalized. Alan Hardy stated that it would need to be conditional approval subject to the transfer of the real estate. Alan requested that Kellee Jo Easler, Katie Phelps, and Tim Bernier draft a document for the board to review while we are all here. The three folks named, went to the Planning & Community Development Office to draft the motion. Upon their return, Vice Chairwoman Roberta Witham read the drafted document which stated, "The Planning Board conditionally approves and authorizes the proposed transfer of Earth Excavation Permit PB01122016-1 currently issued to Cold Brook Gravel, Inc. to GMI Acquisition, LLC effective as of the closing. Upon receipt of the recorded deed of the property the Board authorizes Alan Hardy to review the documents and if proper, certify that the conditional approval become final and then authorize the Chair to sign the documents outside of a meeting."

Motion by Vice Chairwoman Roberta Witham to approve the drafted documents, seconded by Bernard Davis. Motion passed unanimously.

- **Yard Sale Barn Sale – 147 King Street**

Brian Mank came forward regarding the ongoing yard sale at 147 King Street. He and his wife own Christy Goodhue Real Estate. The property holds "yard and barn sales" that are affecting their business. Mail isn't being delivered because of the cones put out. They deal with "time of the essence" contracts and earnest money deposits which can potentially prevent buyers from getting a house if mail isn't delivered on time. He requested that the Board revisit the site plan to make sure what is supposed to be taking place there is actually taking place. Alan Hardy stated that within the calendar year the only thing that can be done is to create a Selectman's level ordinance. The Selectman would then schedule and hold a public hearing and amend or adopt as presented an ordinance regulating yard sales. The Planning Board could then take the issue up and propose to town meeting an ordinance that could become part of the zoning ordinance and be permanent. Brian states that there used to be "No Parking" signs posted on his side of the street that have since fallen off or been removed. He would like them posted again. Alan states that we would have to limit the number of yard sales on any property per calendar year to a certain number approved by the Board. Once that limit had been met, the person holding the yard sales

would apply for a business approval for his/her property. The Board thought 2-3 yard sales maximum per year. Alan states that because the ordinance description refers to “personal property”, then a homeowner can have a yard sale, not an entity. We have a permissive ordinance, if it’s in the table of usage – it’s allowed by right, by special exception or not allowed, (variance).

Old Business:

- **Submission Date Change**

Kellee Jo Easler stated that there will be a bill becoming law in July which will require a 21 day maximum requirement for submission. The Planning Board submission date has always been 20 days, which was 5 days over the statutory specification of 15 days. Alan would like to make the new 21 day maximum applicable to both the Planning Board and the Zoning Board. Kellee Jo will amend the current schedule to reflect the change for the Planning Board; the Zoning Board of Adjustment will have to approve the change for their board.

Motion to go to 21 day advance notice for submission deadline for the Planning Board by Douglas Hartford, seconded by Rhoda Hardy. Motion passed unanimously.

- **Planning Board Roles and Responsibilities**

Kellee Jo stated that Alan attended a conference at the NH Office of Energy and Planning on June 4, 2016 regarding Roles and Responsibilities of the Planning Board. The Board was given a packet to review at their leisure of various topics from the conference.

- **Agritourism – Accessory Dwelling Unit and Legal Review**

Chairman Crawford mentioned that there is going to be a meeting on Thursday to discuss the Senate Bill 146 – Accessory Dwellings. Governor Hassan signed it on March 16, 2016 and the bill is set to go into effect on June 1, 2017. Alan Hardy stated there are a few issues with Accessory Dwelling Units that include whether or not it’s attached or detached but also what the definition of “family” is. How many people can live together who aren’t associated by blood or marriage. Chairman Crawford asserted that this all began with Mother-in-law apartments.

Agritourism was discussed – particularly Forster v. Town of Henniker (2015). The petitioner has used his Christmas Tree Farm to host weddings and other events. The town issued a notice of violation claiming the events were not permitted in the zone. Petitioner appealed the ZBA, however, trial court upheld the ZBA determination. Alan Hardy stated that from the discussion at the seminar, the abutters to the property appear to be filing an appeal based on the case “Fisher v. Dover” which asserts that this issue has already been decided.

The next meeting of the Planning Board will be held on Tuesday, July 5, 2016 at 6:30pm.

Motion to adjourn was made by Douglas Hartford, seconded by Vice Chairwoman Roberta Witham. All in favor. Meeting was adjourned at 8:53 pm.

Minutes respectfully submitted by Katie Phelps