

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, May 19, 2020

**Board Members Present:**

Charlie King, Chairman  
Rick Pelkey, Vice Chairman  
Bill Fisher, Secretary  
Gerry Vachon, Selectmen's Rep.  
Stephen Henry  
Ann Titus

**Others Present:**

Kyle Pimental, Interim Planner

**Board Members Absent:**

Bruce Bridges

**BUSINES BEFORE THE BOARD:**

**Call to Order:**

Chairman King called the meeting to order at 6:05 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Welcome New Members:**

Chairman King welcomed new member Ann Titus and the new Selectmen's Rep. Gerry Vachon to the board.

**Review of Minutes:**

March 17, 2020 – No errors or omissions

**Motion:** (Henry, second Fisher) to accept the minutes as written passed 5-0-1 (Titus abstained).

**Master Plan Update:**

Mr. Pimental said he received a draft of the proposed Master Plan from Arnett Development Group that morning and recommended that a representative from ADG not attend this meeting as the board would not be prepared with any questions/comments having just received the draft. He also gave the board a note from ADG team member Bill Parker that laid out 6 questions he would like the board to think about while reviewing the draft and asked them to come to June meeting prepared for an in depth discussion of the plan with an ADG rep. Mr. Pelkey asked if the comments on this draft should be done by e-mail. Mr. Pimental asked that they send their comments to him by e-mail and he would collect them and include his comments and forward them to ADG. The board would then get a revised draft for the June 16 meeting he said.

### **Excavation Permit:**

Mr. Pimental said he gave the board a memo outlining what they need to do regarding a decision made by the board on April 19, 2011 to approve an excavation permit for Malcolm Bradsher for Tax Map R14, Lot 12. He said after the permit was issued Mr. Bradsher found an excavation report submitted by the previous property owner (Coastal Materials Corp.) and the Town received the report on August 1, 1991. He said that is important because if the report was submitted and signed off, it says the gravel pit operation was in operation prior to August 24, 1979 and therefore should have been grandfathered.

Mr. Pimental said Mr. Bradsher attempted to get his 2011 permit revoked in 2011 and 2018 working with the Planners at that time but it never made it to the Planning Board for a decision. He said Mr. Bradsher has submitted letters to the Town saying he would like to revert back to the grandfather status and Town Counsel has concluded that the board should acknowledge that this operation should have always been a grandfathered operation and to start the process of revoking the April 19, 2011 permit.

He said there is a formal process outlined by the RSA's to do this and the board needs to make 2 motions: one motion that would acknowledge the excavation operation to be grandfathered and exempt from needing permit and a second motion to say the Town has acknowledged receiving the correspondence from Mr. Bradsher using the August 16, 2019 letter as it is the most recent letter received from him requesting the revocation of his permit.

He said after those motions are made they have to give the opportunity for a Public Hearing so the abutters will receive notice to let them know that this process has started. If after 30 days no member of the public requests a Public Hearing the board can take a final vote (to record the revocation) and it will be submitted to the Registry of Deeds and the process will be done.

Mr. Pimental said if between May 20, 2020 and June 16, 2020 they receive a request for a Public Hearing the board will set the Public Hearing date at the June meeting. The board can also schedule a Public Hearing if they choose to he said.

Chairman King then asked the board how they would like to proceed on this matter.

Mr. Henry asked if the board has a Public Hearing and the attendees say the excavating should stop if the board can say he can't excavate because the people don't want him to or if he can say he can continue because he's grandfathered making it a moot point to hold a hearing.

Mr. Pimental said right now Mr. Bradsher can continue to operate under the 2011 permit and the permit would eventually expire where the grandfather status would not expire.

Mr. King said the permit would only expire if Mr. Bradsher didn't renew it and ceased operating for a period of time.

Mr. Henry asked if the lot could grow over, become forested and someone could come back in 100 years and still say it's grandfathered gravel pit.

Mr. Pimental said even if the operation is grandfathered there are state laws that he has to follow and once the pit has reached the end of its useful life there are reclamation plans that

have to be followed. He said he thought if the property was sold and was reopened as a gravel pit that the grandfather status would run with the land.

Mr. Fisher asked if that would be true for any zoning ordinance such as if bicycle repair on Main Street was approved back in the 1970's and the Town now says it can't be done without a variance.

Mr. King said there is case law regarding old gravel pits that supersede Town ordinances and this is one of them.

Mr. Fisher said it seemed to him that the grandfather status of a property would become null and void as soon as the ownership of the property is changed.

Mr. King said if that were the case this matter would not be before the board as this property has changed ownership several times.

Mrs. Titus suggested they wait to see if a member of the public requests a public hearing. She said this will be noticed in the newspaper and publically posted and asked if no one contacts them why should board hold a Public Hearing.

Mr. Fisher asked if they knew of any complaints about the operation over the past 10-15 years.

Mr. Pimental said an abutter signed a letter agreeing to allow excavation within 50' of his boundary line and it has been an issue between family members when the home ownership changed and is being handled as a civil matter between them and Mr. Bradsher. He said he was not aware of any other complaints about the gravel operation.

Mr. Fisher said if there have been no other issues he didn't think it necessary for the board to schedule a Public Hearing.

Mr. Pimental said when they get to that point he will have a list of potential Conditions of Approval so it will be documented that even though he will be grandfathered there are certain things he will need to follow such as not extending the pit into another parcel which is prohibited by the RSA's. He said they can put the guidelines in writing and include the reclamation plan with it and have it all documented.

Mr. Henry asked how the Town could grant grandfather status if it is something you inherently have and how you can put conditions on taking away a permit. Its saying they are back to the old rules which it should have always been he said.

Mr. Pelkey said they would be saying that they concur with that status and here are the rules that come with that status.

Mr. Pimental suggested the wording could be changed to guidance or next steps for applicant instead of Conditions of Approval.

Mr. King suggested it be structured as a notice of legal requirements for the grandfather status.

Mr. Pelkey said the board is being asked to grant grandfathered status based on a letter found by Mr. Bradsher and asked if the Town has a copy of the letter and if Mr. Pimental had actually seen the letter and could attest to the board that it does exist and they are not going to act on something that nobody has actually seen.

Mr. Pimental said he has seen the 1991 letter that was part of the research done by the Land Use Assistant and the Assessing Clerk and he would try to find it in his e-mail.

**Motion:** (Pelkey, second Titus) that the board acknowledges the excavation operation owned and operated by Mr. Malcolm Bradsher on Tax Map R14, Lot 12 to have grandfather status and therefore exempt from needing a permit passed 5-0-1 (King abstained).

**Motion:** (Pelkey, second Henry) that the board acknowledges the Town has received written correspondence from Mr. Malcolm Bradsher dated August 6, 2019 requesting the revocation of his existing excavation permit and will utilize the process set forth in RSA 676:4-a, 1(a) to formally revoke the permit passed 5-0-1 (King abstained).

Mr. Pimental said the next step is to notice the abutters, send out the public notice and wait 30 days for a Public Hearing request. If they don't get a request for a hearing the board can make the final decision at the next meeting and he will have the terms outlined for review.

Mr. Henry asked if grandfathered pits have to be reclaimed.

Mr. Pimental said there are some reclamation standards they have to follow.

Mr. Pelkey said the grandfathered status means whatever requirements were in effect at the time and they should make sure he will hold to what was in effect then.

#### **Next Meeting:**

Mr. King asked if the board would hold 2 meetings in June.

Mr. Pimental said the Planning Dept. received a site plan application and it has to go through the Technical Review Committee before coming to the Planning Board so he didn't think it would be ready for the board to act on by the June 2 meeting. If that is the case there is no business for June 2 and they could hold off meeting until June 16 he said.

He said the application would be on the agenda but the abutters would not get direct notice of a Public Hearing on the plan until the July meeting.

Mr. King said that typically when an application is accepted as complete it is done at a Public Hearing and the abutters are noticed that it is happening and when that hasn't happened it has been considered a conceptual discussion of the proposed plan. If we start with a meeting that hasn't been publically noticed we could be giving the applicant direction without giving the abutters an opportunity to speak he said.

Mr. Henry said he understood Mr. Pimental to be saying he thinks this project may take more than 1 meeting and suggested that they notice for the first hearing and if necessary to continue the hearing.

Mr. Pimental said he was recommending that they not try to go from beginning to end of the process for this project at one meeting. He said he was thinking that the board could iron out some things so it will be more polished when it comes back to the board and the residents would then have the opportunity to comment on a more final plan.

Mr. King said if they tell the applicant they want things in certain locations and he pays an engineer to put everything down on paper and then "John Doe" comes in and says you can't

put that there and here's the reasons why, we have to tell the applicant to forget what they said last time and go back to the engineer and pay to have the plan re-engineered because we didn't have input from the people who live there and had some input we were not aware of.

Mr. Henry said they could continue the hearing as many times as they need to.

Mr. King said it can be continued up to the amount of time allowed by state statute and then they have to ask the applicant if they would like an extension.

Mr. Pimental said the clock starts running from the moment the board says the application is substantially complete and then runs for 60 days.

Mr. Pelkey said they could have a conceptual discussion with the applicant and give him their input on the plan.

Mr. Pimental said the conceptual discussion is very clearly defined by state law and this applicant is way past the conceptual point in the process and the site plan is essentially done.


Mr. King asked Mr. Pimental to find out if the board has not yet accepted the application as substantially complete if they could allow public input if it's a duly noticed meeting and the abutters are notified.

Mr. Pimental said the board can always accept input but a Public Hearing is specifically defined. Consensus of the board was to notice for the site plan review Public Hearing at the June 16 meeting and there will be no meeting on June 2.

**Adjournment:**

**Motion:** (Titus, second Henry) to adjourn the meeting passed 6-0 at 6:42 p.m.

Respectively submitted  
Kathleen Magoon  
Recording Secretary

  
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Charlie King, Chairman