

Town of Farmington
Planning Board Meeting Minutes
Wednesday, May 4, 2022
Selectmen's Chambers
356 Main Street-Farmington, NH

Board Members Present:

Rick Pelkey, Chairman
Bill Fisher, Vice Chairman
Charlie King, Selectmen's Rep.
Stephen Henry
Roger Mains, alternate
Mike Day

Others Present:

Scott Lawler, PE, Norway Plains Assoc.

Board Members Absent:

Jeremy Squires, excused
Bruce Bridges, excused

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman Pelkey called the meeting to order at 6 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Chairman Pelkey seated alternate member Roger Mains and said that Mr. Squires' and Mr. Bridges' absences were excused.

Review of Minutes:

April 20, 2022- No errors or omissions

Motion: (Henry, second Fisher) to approve the minutes as written passed 6-0.

Public Comment:

No members of the public were present at the meeting.

Mr. King said they have to revamp the Tax Increment Financing District Advisory Board and that he volunteered to try to revitalize the committee and they are currently looking for members including 3 members that live in the district or own businesses or property in the TIF District and a Planning Board rep. He said the committee may only meet 1 or 2 times a year in the next year or two until they get rolling on the financing aspect to put in the (water/sewer) infrastructure to Rt. 11.

He said the Board of Selectmen is ready to get underway with the Master Plan Leadership Committee and he also volunteered to be the Selectmen's rep on this committee and they are

looking for one Planning Board member and other community members and that he wanted to mention these two committees to see if anybody was interested in either of the committees. He said anyone interested in the TIF committee can see him and he will provide the technical information or they could put it on the agenda for the next meeting.

Mr. Day asked Mr. King to send him the information.

Mr. Pelkey asked for the TIF District boundaries in case anyone watching wanted to know.

Mr. King said it starts from the golf course all the way to Rt. 11 south for a certain distance and to the north up to Cameron's Garden Center. He said the TIF is designed to partially fund the infrastructure through grant funding and TIF funding to put water and sewer out to that intersection and the estimated cost for that at the time was \$3.2 million.

He said the revenue from the TIF is now \$40,000 per year and there is a total of about \$160,000 in the fund and as the improvements grow in that area that money will increase but there were also grants targeted to do the infrastructure. When the funds get high enough and they can seek the grant funding that would be the position to bond the infrastructure to be put in without having a tax impact he said.

Mr. Henry said he understood the revenue coming into the TIF should support the debt service.

Mr. King said that is correct and right now it can't support that amount of debt but with also getting some grants that's where they're trying to match that. He said in the next year or so the project will have to be re-priced because it's probably more than the \$3.2 million estimate that was done in 2015.

Mr. Pelkey said they would have this on the agenda for discussion next week. He said the new members weren't here for the work that was done on the Master Plan over the last year or so and they're looking for people for implementation of the plan. He said it's a Planning Board document so they have some interest in it for sure.

Mr. King said this committee would have 5-9 members and they are looking to work with town, state or federal organizations to try to implement some of the goals.

Mr. Pelkey said there was a lot of input from the town about what should be in there and some of those ideas are moving forward.

PUBLIC HEARINGS:

NEW CASES:

Public Hearing and Possible Vote on Earth Removal Application for Lounes Yacoub Revocable Trust (Tax Map R-14, Lot 1). The applicant is proposing to remove approximately 12,980 cubic yards of material to assist with site grading. The proposal includes earth removal as well as a storm water system to treat and attenuate the storm water generated from the site changes. Upon completion, all exposed slopes and finish grades will be re-vegetated with loam and seed. The proposed project is located at 291 NH Route 11 and is within the Commercial Business District. The project was reviewed by the Conservation Commission at their meeting on April

13, 2022. The Planning Board voted to accept the application as complete and set the public hearing date at their meeting on April 20, 2022.

Mr. Pelkey asked Mr. Fisher if it would be correct to say that the Conservation Commission endorsed this proposed project.

Mr. Fisher said yes and they didn't have any comments other than putting in silt fencing to protect Rt. 11 in case of any washouts or anything like that.

Scott Lawler from Norway Plains said he was representing Lounes Yacoub on his gravel extraction application. He said he would like to present some updated plans showing changes to C-1 plan and there are no changes to the E-1 plan.

He said this application is for Tax Map R-14, Lot 1 located at 291 NH Rt. 11 and is a 1.1 acre lot located in the Commercial Business District. He said this property had a residential home that was torn down several years ago and the current owner is wishing to remove gravel such that he can make the lot more desirable for future commercial development. He feels in its current condition it's harder for the sale to go through because people aren't seeing it as a good lot as it is and there is some advantage to them to remove some of the earth materials he said.

Mr. Lawler said the reason he is presenting updated plans is something that came to light towards the end of last week and is noted in the Planner's comments and that has to do with the requirement under RSA 155-E which is the state law for gravel extractions and it's mimicked in the Town excavation regulations which requires a 50 foot setback to property lines for the gravel extraction unless there is no objection from the abutting property owners to which point you can reduce that to 10 feet. He said Norway Plains and the previous agent for the applicant has sent out letters to all the abutters informing them of what the intent was which was to excavate within 10 ft. of the property line and they respectively requested that if they had any questions to call them and if not to sign a letter indicating they have no objections.

He said they received authorization letters from 2 out of the 3 direct abutters but they did not hear from the third abutter which is Pike Industries and they are located at the rear of the property as well as a little bit on the south edge of the property. He said they took that absence of any direct impact as their concession that they were okay with the project and had no objection. Unfortunately for Mr. Yacoub late last week they received a letter from Pike Industries which indicated that they were going to object to the excavation within 10 ft. to the 10 ft. setback and they respectively requested that they adhere to the 50 ft. setback he said.

Mr. Lawler said they have revised the grading plans for the gravel extraction to reflect a 50 ft. buffer or setback to the Pike Industries' property. He said that would result in the reduction in the total amount of gravel extracted to approx. 8,000 cubic yards from the previous 13,000 cubic yards that was the objective.

He said they fully understand that this board may wish to take this under further advisement although the Planner reviewed the changes in front of the board and this doesn't change the content of the application being complete and it is still a complete application and asked the

board to indulge the applicant who wishes to continue moving forward based on these revised plans.

Mr. Pelkey asked the board if anyone objected to that and said that he didn't think this changes the intent of this at all.

Mr. Henry said that originally there was a request to excavate incidental to development but there was no development and asked for the trigger amount where anything over that it becomes a gravel pit.

Consensus of the board was there was no issue with the completeness of application.

Mr. Lawler said the plan has been revised based upon the comments and conditions that came forth from the acceptance and they provided a letter outlining the suggested estimate of the performance guarantee. He said because the limit of earth work has changed as a result of the project being downsized he had a revised cost estimate for the performance bond if the Chair would accept it that drops the overall bond suggested for the performance guarantee down to \$10,010 and that is based on the sq. footage and associated loam, seed and temporary erosion control measures that would be installed as part of the performance guarantee.

Mr. Pelkey said it makes sense if they're going to take out that much less they will have that much less to recover.

Mr. Lawler said the rest of the conditions that were discussed were noted on the plan with regards to the need for additional test pits once they get to a certain elevation so they can prove that they adhere to the 6 ft. separation from the seasonal high water table and they accommodated all of the other comments that came out of meeting for the application acceptance. He then said he would answer any questions the board has.

Mr. Henry asked if this reduced size still requires it to be permitted as a gravel pit. He asked what the trigger was that made them say that's too much it has to be a gravel pit.

Mr. Lawler said he didn't know the threshold for the amount that deems any gravel extraction as requiring an excavation permit from the Town of Farmington. He said he thought what triggered the need to go this route was the fact that Mr. Yacoub doesn't have a site plan or something he's planning on constructing and had he had a vision of what he wanted to do and went through all the site plan regulations and approvals then he could excavate. We've brought this to Pike's attention that he could work right up to within 10 ft. of the property line as part of the construction of a site development and Pike seemed to understand that but as a gravel pit they are objecting to the 10 ft. and requiring the 50 ft. buffer he said.

Mr. Fisher said in accordance with our land use earth removal regulations on page 4, paragraph C the following projects are not exempt from a permit and are subject to regulation by the board: excavation that is exclusively incidental to the lawful construction or alteration of a building, structure, parking lot or way including a driveway portion or premises when total earth removal quantity is more than 500 yards. He said there were a couple of different ones talking about 500 yards so when you start moving ground around more than 500 yards you

need a dig permit. He said the 50 ft. boundary line requirements could be found on page 5 under Section 7.

Mr. Pelkey said the setback requirements mirror the requirements in RSA 155-E. He said the board has recommendations from staff and read the following staff review comments aloud: Section X: Site Reclamation Standards: all site reclamation standards excluding the requirement to replant seedlings in all areas visible from the roadway from which existing trees were removed must be met within 12 months following the expiration of the permit or the completion of the excavation whichever occurs first. This recommendation is based on the short term anticipated outcome for a commercial development to occupy this site and it may not be prudent to require tree seedlings to be planted in areas that may be disturbed by future development.

Mr. Pelkey said that was a topic of discussion at their last meeting and that was the consensus of the board at that time.

Section XII: Performance Guarantee: The Planning Board should consult with the applicant's engineering firm to discuss the recommended amount of \$14,308.40 for a required performance bond to guarantee reclamation of the area. This recommendation shall be forwarded to the Board of Selectmen. The bond shall not be released until the board is satisfied that all conditions of the site reclamation plan have been complied with.

Mr. Pelkey said they have the recommended amount for the reclamation which he thought was a reasonable amount and the applicant's engineer has given them the amount of \$10,010 for silt sock, fence, loam and hydroseed to do the reclamation of the site at the completion of the excavation.

Section XV: Application Submission Items: Excavation Plan: a temporary driveway permit from NHDOT shall be required prior to the issuance of the permit as a condition of approval. One additional form is required-Form PA-38, "Notice of Intent to Excavate" from the NHDRA shall be filed with the Town of Farmington's Assessing Office prior to commencing excavation but does not need to be a condition of approval but shall be stated in the Notice of Decision to help guide the applicant on next steps.

Section XVI: Administration and Enforcement, A. Permits: the permit if granted shall be valid for 2 years starting on the date the permit is signed by the Chair. This decision is based on the estimated completion of extraction.

Section XVI: Administration and Enforcement, C. Inspections: The Planning Board shall require that a qualified engineer, chosen by the Town perform yearly inspections to determine if the excavation activities comply with the regulations and the approved plans. Inspection reports shall be submitted to the Town of Farmington's Planning and Community Development Dept. for review. If it is found that the applicant is not in compliance with the permit the applicant shall have an opportunity to address any deficiencies in a timely manner. The board may wish to define what a timely manner is. Failure to rectify compliance issues shall result in the

revocation of the permit by the Board of Selectmen. The applicant shall be responsible for any fees incurred during the yearly inspections. An escrow account shall be established separate from the performance bond to cover these costs. The Planning Board does not need to set a predetermined amount at this time.

Mr. King asked if this estimate is the installed price for the silt fence, loam and hydroseed.

Mr. Lawler said that is correct.

Mr. Henry said on the time lines they are estimating around 2 years and he would be comfortable giving him a 30 month permit to give them a little extra buffer so they don't have to go through another permit when it's just about done because it could be 18 months or a little more than 2 years. He said he would be comfortable with an inspection every 2 years or so as well but he would want something that would allow us to inspect it sooner if there is a concern from staff. It's a visible location and if staff drives by and then wants to do an inspection they're going to call in the 12 month inspection he said.

Mr. Pelkey said he looked at RSA 155-E the other day and it says the regulators can go and inspect an excavation site whenever they want to. He said it's part of the acceptance of their application and part of the law says the regulators can review the site. He said the excavation committee had some discussion about whether or not they could have somebody look at the property and they can.

Mr. Mains asked if this is where the yellow house was.

Mr. Fisher said this was where they had a red barn on the left and a house on the right.

Mr. Mains asked if Planning Board members are allowed to go and look at a project.

Mr. Pelkey said if they want to go as a board they have to schedule a site walk which is a public meeting and invite the public and take minutes. He said in this case he thought he would be allowed on there as an individual but it would be at the owner's discretion.

Mr. King said he agreed with Mr. Henry's point but he would not go to 30 months as that would be in Nov. and he would want to see if the hydroseed had a chance to take significantly.

Mr. Henry said his 30 months was for the permit the reclamation can happen after the permit expires. I just don't want to put them through the wringer of getting another permit he said.

Mr. Fisher said he had to have his lawn hydroseeded in Nov. after they dug it up to replace his leach field and it looks like it took because grass is coming up now.

Mr. Pelkey said he didn't have an issue with a 30 month permit but he would like to stay with the 1 year inspection because they are trying to get a handle on those right now.

Mr. Henry said it's a 1 acre lot on Rt. 11 and if they can say they can inspect it at any time then why make them put a lot of money into something they probably won't have to do. If anybody has a concern we're going to see it he said.

Mr. King said the caveat to the proposed excavation is they don't know where the water table is so that has not been defined. He said if it was defined he might be more inclined to go with what Mr. Henry is suggesting. The problem is the way the plan reads is they're going to

excavate to a certain level, re-test pit and it may be a good idea to have somebody at the one year point to inspect it and ensure they are in fact at 6 ft. below the water table.

Mr. Day said he wouldn't want to set that precedence now if they started doing that now and to keep going with a year if you say a year. If you start locking yourself into that then you have a basis to go off because everyone is going to say they gave me 15 months or 18 months so I'll see if I can get 20 months he said.

Mr. Fisher said if they looked at it a month ago they may not need an inspection at the 1 year point but having it in there gives them the opportunity so if they should need it they can do it.

Mr. Lawler said he was sure the applicant would be fine with one year inspections.

Mr. Fisher said it standardizes the process and is one of the problems they have now and why they had to form a subcommittee to review the excavation requirements. We're getting one set of rules for this place, another set of rules over here and over here he said.

Mr. Henry said they don't know how much an inspection costs and what kind of burden they would be placing on the applicant for a one acre lot.

Mr. King said if they require an inspection and it's not a burden on the applicant then the taxpayer is going to pay for it.

Mr. Pelkey said they are required to regulate it as the Town.

Mr. Henry said he understood that but asked if it was reasonable to say a small site needs to be inspected after 1 year.

Mr. Pelkey said it would be a small inspection and the cost would be proportional to the size of the lot they're looking at.

Mr. Henry said he didn't know but Mr. King's point about the water table is a valid point.

Mr. Pelkey said along the corridor where a lot of the excavation is taking place is in the former flood plain where the glacier till is, where all of that gravel pit is, the water table is fairly uniform to that area.

Motion: (Pelkey, second Henry) to approve the permit with the following conditions:

- 1). An approved temporary driveway permit from NH DOT will be submitted to the Planning and Community Development Dept.;
- 2). A performance bond in the amount of \$10,010 shall be submitted to the Board of Selectmen;
- 3). An escrow account separate from the performance bond will be established in coordination with input from staff from the Planning and Community Development Dept. to cover costs incurred by a qualified engineer during yearly inspections;
- 4). Prior to commencing excavation, a Notice of Intent to Excavate from the NH Dept. of Revenue Administration shall be filed with the Town of Farmington's Assessing Office;
- 5). This permit will be valid for two years starting on the date the permit is signed by the Chair;
- 6). All site reclamation standards, excluding the standard requiring that the tree seedlings be replanted in all areas visible from the roadway from which existing trees were removed would

need to be met within 12 months following the expiration of the permit per RSA 155-E. The performance bond shall not be released until the Planning Board is satisfied all conditions of the reclamation plan have been complied with.

7). A qualified engineer chosen by the Town is required to perform yearly inspections to determine if the excavation activities comply with the regulations and the approved plans. Inspection reports shall be submitted to the Town of Farmington's Planning and Community Development Dept. for review. If it is found that the applicant is not in compliance with the permit the applicant shall have an opportunity to address any deficiencies. Failure to rectify compliance issues shall result in the revocation of the permit by the Board of Selectmen.

Discussion: Mr. King asked if the lot stakes are clearly marked and visible.

Mr. Lawler said he is not sure but he believes so.

Mr. King asked if someone were to audit this they could find these stakes to audit the setbacks.

Mr. Lawler said yes if they were noted on the plan as being visible during the survey.

Mr. King said if the Town were to have somebody contracted they would be readily able to verify the setbacks on this plan which would behoove the applicant to be as straight forward as possible. He said if the pins aren't set then you need a surveyor to go out there and find them or locate the positions.

Friendly Amendment: by Mr. Henry: that the term be for 30 months not two years;

Mr. Pelkey accepted the amendment.

Friendly Amendment: by Mr. Henry: add the words "or accepted" after "A qualified engineer chosen" (to read "A qualified engineer chosen or accepted by the Town...").

Mr. Henry said if the Town doesn't have an engineer and/or the applicant presents one that the Town is comfortable with they can do the work.

Mr. Pelkey accepted the amendment.

Mr. Fisher asked if he wanted to mention (moving) the 10 ft. setback line.

Mr. Pelkey said he dropped that condition because it's already been accomplished on the plan so it doesn't need to be addressed.

Vote: The motion passed 5-0-1 (King abstained).

Any Other Business before the Board: None

Adjournment:

Motion: (Fisher, second King) to adjourn the meeting passed 6-0 at 6:38 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary


Rick Pelkey, Chairman