

Town of Farmington
Planning Board Meeting Minutes
Tuesday, August 1, 2017

Board Members Present:

David Kestner, Chairman
Martin Laferte, Vice Chairman
Bill Fisher
Stephen Henry
Sylvia Arcouette
Matt Stormann, Alternate

Board Members Absent:

Brandy Sanger, Alternate, excused
Lisa Capone, Alternate
Jim Horgan, Selectmen's Rep.
Richard Pelkey

Others Present:

Dan DeSantis, Town Planner
Kelly Heon, Assessing Clerk
Karen Clark, Planning/Codes Dept. Secretary
Mary Pinkham-Langer, NH Dept. of Revenue Administration, Municipal and Property Division,
Gravel Tax Appraiser

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Alternate Seated:

Chairman Kestner asked Alternate Matt Stormann to be seated in Mr. Pelkey's absence.

Review of Minutes:

July 18, 2017 – No errors or omissions

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

Memos from Assessing Clerk (continued from June 20, 2017) regarding:

Mr. Kestner said Ms. Heon sent the board a memo regarding the Pike Industries property (Tax Map R20, Lot 008) and the abutting McBride/Currier property (Tax Map R15, Lot 013) concerning a potential encroachment by Pike onto the McBride lot.

Mr. DeSantis said the board previously requested that Mrs. McBride be sent a letter of notice of the potential encroachment of her property and that the letter has been sent.

Unrecorded Plans- Planning/Codes Dept. Secretary Karen Clark asked if the board could discuss the unrecorded plans issues first as the excavation issue is related to reason Ms. Pinkham-Langer is attending the meeting. She said Ms. Heon was looking for guidance from the

board as to what to do with unrecorded plans as she finds them. They discussed drafting an intake form that would contain identifying information and any other general information known about the plans/parcel. Ms. Heon would then send the form to the Planning Dept. for research and to determine what the next logical step would be. Ms. Clark said it would also create a paper trail for handling of the issue and if approved by the board she would send them a draft copy of the form as soon as it is developed.

Mr. Kestner said that the form is a good way to handle the matter and no one spoke in opposition to the idea.

Discussion of Excavation/Earth Removal projects and issues with Mary Pinkham-Langer, CNHA, Gravel Tax Appraiser, Municipal & Property Division, NH Dept. of Revenue Administration:

1). Excavation intents/non-compliance procedures- Ms. Pinkham-Langer said she was aware of some of the issues in Town and said that the Notice of Intent to Excavate is informational for the Board of Selectmen and for the Town. The forms used are tax documents, not permits and RSA 72-B (excavation tax) needs to be read in compliance with RSA 155-E (excavation regulations). She said that before you can file the tax documents you have to have a 155-e permit or be considered a grandfathered site that is exempt from the permit requirements. The Notice of Intent to Excavate contains questions about how many acres will be excavated, if the site is grandfathered and if the owner has an Alteration of Terrain (AOT) permit which will help Selectmen and the Planning Board to determine if the site is in compliance or if there are any compliance issues.

Mr. Kestner said that a review of all of the gravel pits was conducted a few years ago by Town Planner Kathy Menici.

Ms. Pinkham-Langer said a pit has to meet specific criteria to be considered grandfathered. If they are not grandfathered then they need to have a permit and the permit has to have an expiration date. Once that permit expires there is no renewal process and the applicant has to start from the beginning with a new hearing before the Planning Board she said.

Ms. Heon said she was looking for direction from the board as she has no way of knowing if the gravel pits are in compliance. She said she receives the Intent to Excavate Notices which must be approved or denied by Selectmen. If the intent is to be denied the Town has 30 days to notify the pit owner of the denial. The procedure is to forward the Notices to the Selectmen and if there any questions she does not have the ability to answer them. She said she was looking for a procedure that would inform her if the gravel pits are in compliance before the April 1 deadline to file the Intents to Excavate so that she would know whether to forward them to Selectmen. She added that she assumed if a pit was out of compliance they would have time to become compliant so that they could continue with their excavation operations.

Mr. Kestner said the only way for the board to know if they are in compliance would be based on their date trail for the 155-e permits which should be on file with the Town.

Ms. Heon said when the pits were brought into compliance in 2011 they were either grandfathered or issued new permits and all of the permits had conditions of approval. She said

she doesn't have any way of knowing if those conditions were met.

Mr. Kestner asked Mr. DeSantis who would be the "keeper of the compliance issues".

Mr. DeSantis said the Code Enforcement Officer (CEO) is the one who has the badge to do that.

Mr. Laferte noted that one of the permits expired in November and asked if the permits are supposed to be renewed on April 1.

Ms. Heon said that is the deadline to file the Excavation Intents and the permits would have varying expiration dates based on the date they were issued.

Ms. Pinkham-Langer said the purpose of the yearly Notice of Intent to Excavate is for tax purposes and is not a permit. The permit that is issued by the Planning Board has an expiration date but there is nothing in state law that tells you how long that is. Some of the towns have made the expiration date the same as the NHDES Alteration of Terrain permit which is required if you disturb more than 100,000 sq. ft. of area. That permit runs for the life of the gravel pit and if the owner plans to expand beyond that area they must apply for an expanded AOT permit. Every 5 years they must supply an update on the status of their operation to NHDES. She said that if the board geared the permit expiration date around the update you would have a whole new set of plans every 5 years. The problem is you are starting the process from scratch and notifying the abutters, etc. which is a bit of an expense for the owners she said.

Mr. Kestner suggested they research the existing excavations' expiration dates, put the information on a computer file and notify the pit owners that they will need to reapply to be brought back into compliance at the end of their existing permit.

Ms. Heon said a permit may be valid for 5 years but there may also be Conditions of Approval that must be met within various time limits.

Mr. Kestner said when Planner Menici conducted the review of the pits there was a Notice of Decision with conditions for each of the pits as each one had some "uniqueness" for compliance issues. He suggested Mr. DeSantis research all of the permits to see where they stand and then start the process of bringing the pits into compliance.

Ms. Pinkham-Langer said she would not recommend that the town let a pit go for 5 years without someone checking that the conditions and the plan that was submitted are being complied with. She said the board can have an engineer review the plans at the owner's expense to determine that the site is in compliance. Some towns have made it part of the permit to require that the site be inspected to make sure it is in compliance with the Conditions of Approval. If a problem was found, the CEO would issue a Cease and Desist order. The Planning Board, Selectmen or the Town Attorney would write the order and the CEO would deliver it. The board should also require whoever is reviewing the pit to provide a report to the board and to the pit owner noting what the problems are and what the owner must do to correct them.

Mr. DeSantis said that he is not qualified to inspect a gravel pit and encouraged the board to hire or allow the Planning Dept to hire an engineer to inspect the pits.

Mr. Kestner said the first step is to conduct an inventory of the pits and determine their expiration dates. He said the next step may be for the CEO to make a brief inspection of the pits and see if the cuts and elevations match the applications in the permitting process. If he finds a

serious conflict then they would notify the pit owner that based on their approved application on file with the town they are going to ask for an engineering review of the site at the owner's expense. He said he believed the town had an engineering firm determine if what was submitted to Planner Menici was accurate to the existing site at that time. Each of the pit owners appeared before the board and conditions were placed on each pit for approval.

Mr. Laferte suggested Mr. DeSantis should create a computer file on the entire gravel pit situation that could also be accessed by the Assessing Clerk.

Ms. Pinkham-Langer said another tool that could be used is aerial photography and said that from this area to the seacoast was photographed in 2016. She said that the older version of Google Earth Pro has a measuring tool that would allow the user to measure the area around a pit and calculate the area of disturbance. They are very high resolution and could be used to compare with the approved plans she said.

Ms. Clark said that users can also go back in time and compare photos of the sites at various times.

Ms. Heon said the Town Office currently has Google Earth installed on their computers.

Ms. Clark said that looking at the maps over time allows you to see if there has been any activity at the site and if there has been no substantial activity for 1 year following granting the permit the permit ceases to exist. She said there are 2 pits with 15-20 year permits but have not submitted any documentation to show the conditions of approval have been met. There is one pit whose permit expired in 2016 and now needs to submit a new application she said.

Mr. Kestner said based on Ms. Clark's findings there is at least one pit owner that needs to come back before the board and the other two should be inspected.

He suggested they notify the pit owners of any issues and that the town will be conducting an inspection of their site as part of their Conditions of Approval.

Ms. Clark suggested that all of the pit owners be sent a general letter stating they are reviewing all of the gravel pits which will be inspected and instruct them to call to set up a time for the inspection. It puts them on notice without putting on the defensive right off the bat she said.

Ms. Pinkham-Langer said when the Planning Dept. starts its folder review they should look at the plans, the aerial photos, estimate the amount of disturbance and determine if they have gone beyond the limits of their approvals. She said she would be willing to help them with the tasks.

Ms. Pinkham-Langer said the board should be aware of the Mining Safety regulations and advised them not to go wandering around the pits as the operator/owner will be fined thousands of dollars for having people walking around the pit without approval or unaccompanied.

Mr. Kestner advised Ms. Clark that the previous planner had developed a cover letter for this situation which may be found in her computer files.

Ms. Clark said she has found some of Ms. Menici's letters and it is now a matter of pulling out the files and going through them.

Ms. Pinkham-Langer then said that the grandfathered pits also need to be reviewed and that they are not exempt from all excavation regulations. They are required to have an AOT permit, are subject to the minimal and expressed operational and reclamation standards under RSA 155-e

and must apply for a permit if they wish to excavate more acreage than grandfathered for. If there are 5 contiguous acres or more of depleted area the owner is required to conduct incremental reclamation of the area. Grandfathered stationary manufacturing plants are exempt from those requirements but have a different set of standards they have to comply with she said. Ms. Pinkham-Langer said they should check to see if the pits are in compliance with the AOT permit requirement to update their plans every 5 years. If the AOT permit has expired the Planning Board can't issue a permit until all other permits and NH DES requirements have been met.

She also suggested they look at the assessments of the properties to see if the assessment reflects what is going on with the property.

Ms. Heon provided a spreadsheet showing how many cubic yards pit owners intend to excavate from their Intent forms and noted that several of them haven't excavated anything for many years. She suggested this may be another way to keep track of whether the pits are actually active and if they are supposed to be doing any reclamation at this point.

Ms. Pinkham-Langer said they should not assume any pit is inactive or abandoned because they have not reported any excavation of materials as they may have stockpiles of materials or there may be an economy issue and low demand for their product. She explained that the owners must file an Intent to Excavate form in case there was to be a demand for their product or they can't excavate on the property.

Mr. Kestner said if Google Earth Pro is as good as claimed the user should be able to see any additional equipment at the site or activity taking place such as stock piling of materials.

Pike/McBride/Currier- Ms. Heon asked Ms. Pinkham-Langer to discuss the next step regarding the potential encroachment of the McBride property by Pike Industries. She said that in the course of helping someone with a Current Use application, she tried to determine which portion of the owner's property needed to stay out of the Current Use designation due to being an active gravel pit being excavated by Pike Industries. This led her to look at the original plans submitted by Pike and it appears that Pike has encroached onto an abutter's property. There was no permit for this, they did not file an Intent to Excavate for the expansion and the abutter didn't have any knowledge of the apparent encroachment. She said she was turning the matter over to the board for whatever steps the board decides should be taken.

Mr. Kestner said he first asked the Planner to send a letter of notification to the property owner to let them know there may be an encroachment onto their property. He said the Town Attorney and the Town Administrator were present at that meeting and agreed that other than sending the letter to the property owner the issue becomes a civil matter and is not the Town's responsibility. He said that at this time the board may not be able to give Ms. Heon any guidance as to the next steps with the matter.

Ms. Heon said the guidance was not for her but for the property owner who has contacted her and Mr. DeSantis.

Ms. Heon said the boundary line shown on the town map is in its location at the time that the excavation permit was granted. She said she was not sure if a new survey would keep the

boundary lines in their present location.

Ms. Clark said the McBride property has been handed down through the family and there is some question as to its location as the description of the lot is vague. She said that if there is a pit that is outside the scope of what they originally applied for they are out of compliance and a stay or cease and desist could be issued to stop whatever they are doing. It has to be confirmed before anything could be sent to them but that would at least stop the activity. It then becomes a civil issue between the owner and the excavation company she said.

Ms. Clark said she has not completed the research on the matter and noted that the permit application would state the size of the pit and if they are outside the scope of the permit they are out of compliance whether they own the property or not.

Ms. Pinkham-Langer noted that Ms. Heon's April 2015 memo states the Pike site plan filed with the Town in 2011 has a note on it stating that R15, Lot 13 (McBride-Currier) was included as Pike property as "reported by company personnel". She said the individual that prepared the plan was not a surveyor, this is not a surveyed plan and he is going by hearsay in depicting it as part of the company's land. All the town has to go by are the tax maps. She said the Town may be able to put a little pressure on Pike to prove that the McBride lot is their property. She suggested they seek advice from the Town Attorney but something that was recorded by company personnel conflicts with the tax maps so there may be some leverage there.

Mr. Kestner added that further along in the memo it states that Pike is claiming there was some type of boundary change and there doesn't seem to be any notations about any sort of change to the boundary lines.

Ms. Heon said there was a survey done in 2009 of an abutting parcel and in 2010 the mapper used the information in that survey to adjust the boundaries of the Pike and McBride and correct the Town map. A data entry clerk incorrectly used the term "boundary line adjustment" when the information was recorded on the tax card. There never was a true boundary line adjustment between the Pike and McBride/Currier properties she said.

Ms. Arcouette asked if either of the properties have ever been surveyed.

Ms. Heon said the McBride property has never been surveyed and the current owner has never visited the land locked parcel that she inherited 30 years ago from her parents and pays taxes on. Other surveys have placed it at its location on the tax map and if another survey was done the location might change she said.

Ms. Pinkham-Langer said as they go through the files they may find something on an older plan or on something that was submitted to NHDES that may give a little more "teeth" to the matter of where the parcel actually is located.

Ms. Heon then gave Mr. Kestner a copy of the letter that was sent to Ms. McBride.

New Gravel Pit Proposed-Ms. Clark then told the board that the Town has received a proposal for a new gravel pit by e-mail that stated they were going to do this and claim an agricultural exemption. They described their plans in the e-mail that includes providing aggregate to the Town. She said this would indicate the materials are leaving the property and at that point it is no longer an agricultural use. She said the agricultural use they are proposing is for the reclamation

of the site and not for the actual commercial use of the materials excavated. They must submit an application for a permit and then the board would determine if they meet the criteria for an agricultural exemption she said.

Mr. Kestner said he never heard of an agricultural exemption except for materials excavated that were to stay on the property. That type of excavation is usually for a small amount of material he said.

Ms. Clark said they were sent a letter notifying them that no excavation is allowed until the application is submitted and approved by the board.

Mr. Kestner said this usually happens with clear cutting a forest.

Ms. Clark said the bulk of the timber has already been removed from the site.

Ms. Pinkham-Langer said she did not see any evidence of any active excavation when she drove by the site a few weeks ago but with everything they are advertising on Face Book she advised the board to be very "on it" with them. She advised the board that when someone comes in with a big proposal to excavate 800,000 or 1 million cubic yards of earth for a project, they should ask what is it going to be first and how long will it take to remove the materials. The Town adopted new regulations a few years ago where agricultural excavation was defined and the proposal does not meet the criteria in the definition. The Pound Road parcel is in the Agricultural Residential (AR) zone which does not allow for commercial excavation so they need to go before the ZBA before the Planning Board. They are advertising themselves as being incorporated but they are not registered with the Secretary of State. There are some red flags that say something is not right here she said.

Mr. Kestner asked if the staff was able to download and print the material advertised on Face Book.

Ms. Clark said that has been done and a file has been started for the proposal. She added that excavation is allowed in that zone by Special Exception so they will need to go to the ZBA first.

Ms. Pinkham-Langer said they will also need an AOT permit from NHDES for the proposal.

Mr. Kestner asked if they will also need other NHDES permits for stump removal due to the extensive timber cutting.

Ms. Pinkham-Langer said NHDES doesn't worry so much about the trees being cut but when the stumps are removed that is a different story. She said the owner did file an Intent to Cut and they can look at how many acres they planned to cut and see if aerial photos show evidence of cutting. She said she did not see any evidence of any stump removals.

Mr. Kestner said one or two stumps being removed is not a "world-wide crisis" but there is a potential for water flow and water runoff issues there.

Ms. Pinkham-Langer said there is also a stream on the property.

Mr. Kestner said there may be a need for screening to protect the stream.

Ms. Pinkham-Langer then said she had covered everything that could be covered until they actually start digging into the files.

Mr. Kestner thanked Ms. Pinkham-Langer for attending the meeting and providing the board with a "wealth of information with perfect timing".

Form Based Codes presentation by Alan Manoian, Director of Community & Economic Development, Ayer, MA:

Ms. Clark said Mr. Manoian was unable to attend the meeting and the presentation was postponed until September.

Adjournment:

Motion: (Laferte, second Arcouette) to adjourn the meeting passed unanimously at 7:18 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in cursive script, appearing to read "David Kestner", is written over a horizontal line.

David Kestner, Chairman