

Town of Farmington
Planning Board Meeting Minutes
Tuesday, December 1, 2020

Board Members Present:

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

Board Members Absent:

Stephen Henry, excused
Jeremy Squires, excused

Others Present:

Kyle Pimental, Interim Planner

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

November 3, 2020 – No errors or omissions

Motion: (Titus, second Fisher) to accept the minutes as written passed 4-0-2(Bridges, Pelkey abstained).

Consideration & Potential Vote on Incidental to Construction Exemption for Excavation

Activities:

Mr. Pimental said RSA 155: E is a law that regulates excavation activities and requires a permit and there are standards and criteria that people must meet in order to obtain the permit. He said in this case there is a property located at Tax Map R14, Lot 1, 291 Route 11 in the Commercial Business district that had a single family home on it and that home has been taken down. He said applicant wants to level the site and sell the property for a commercial use. In order to do that and make it commercially viable some earth materials need to be taken off site and some leveling is needed to bring it down to a grade closer to that of Route 11.

Mr. Pimental said the applicant estimates that about 20,000 cubic yards of material could be removed from the site some of which could be used on site for grading activities. He said the applicant is requesting an exemption allowed under state law for what is considered a construction incidental use. He will still have to file a Notice of Intent to Excavate with the NH Dept. of Revenue Administration and if the board decides he doesn't need a permit they can still apply the minimum and express reclamation standards as listed in his memo he said.

Mr. Pimental said those standards include plantings, best management practices, elimination of

standing water, etc. that could be part of the board's decision and they could make the applicant do that without him having to have the RSA 155: E permit with the Town.

He said the board received copies of an old survey plan and the Assessing Clerk said that since this was done the owner has merged Lots 1, 2 and 3 together.

Mr. King said Mr. Pimental has been referring to the landowner as an applicant and asked what he is applying for. He asked if there's no proposed development and they are just redesigning the site to make it more saleable how that would apply as being incidental to construction when there's no plan before the board. He said they want to take up 20,000 yards of saleable materials and restructure the lot with no proposed plan or construction and asked if this is an end run around the excavation regulations when there's no proposed construction on the site. Mr. Pimental said that is a good point but from the applicant's description he didn't think they were trying to use it as a loop hole to sell off the materials, make money and then leave it and that their intent is to sell the property to be developed as a commercial use.

He said the third paragraph in his memo says their intent is not to excavate but until they do they can't make use of the property therefore the excavation could be considered incidental to the planned future commercial use and is in unison with the guidance in RSA 155: E. This is about whether you want to put all of the requirements in RSA 155: E in exceedance of the minimum and expressed standards that are there he said.

Mr. Pelkey agreed with Mr. King that this seems to be an "end run" and that he looked at RSA 155: E and it specifically says that it is incidental to the construction or alteration of a building or structure or the construction or alteration of a parking lot and he does not see any plans to do either one of those things in front of the board.

Mr. King said he was also concerned that the property is near the Cocheco River, the existence of 2 buffer zones and depending on what the excavation is the potential slope of the land. He said the landowner makes the argument that to sell the property he has to make a commercially viable site and cannot move forward until it is changed and that he didn't agree with that argument. He said this property has changed hands in the last few years because it had a building on it that was condemned and then it was torn down and that person bought it under those conditions and now he's stating he can't sell it unless he does work and that he doesn't feel he needs to meet the excavation regulations.

Mr. Pelkey asked what they are trying to avoid by asking for this exemption. He said if they came before him and he said they could do this he would put all of the reclamation requirements in place that they would have to meet to get a permit. They really wouldn't avoid anything by not getting a permit he said.

Mr. Pimental said if the board decided to give them the exemption they would just be required to do the minimum and express reclamation standards I-V and there are much more than that as part of the RSA 155: E requirements.

Mr. Pelkey asked if they have to apply to the state in accordance with RSA 155: E to do this.

Mr. Pimental said they still have to apply to the NH DRA with a Notice of Intent to Excavate regardless of what the board decides. He said this is whether or not the board wants to require the minimum and express reclamation standards, require none or require them to get a full RSA 155: E permit and put additional restrictions with that.

He said typically you would see a lot of restrictions where it would be a gravel excavation operation for years to come and this is intended to be a short term operation but that without seeing the plans they could do this and the site could sit like that for a long period of time.

Mr. Pelkey said there is no guarantee that this lot will be sold so they have to make sure that if something happens there that it will be in a condition where it doesn't devalue the entire area and doesn't create a hazard on the land.

Mr. King said there also shouldn't be any erosion concerns where they are adjacent to the Cocheco River.

Mr. Pimental said he looked at the map and that Pike Industries owns the property behind them that goes out to the river and it could be within the 250' protection zone but there's a pretty big gap from this property line to where Pike's property goes out to the river.

Mr. Bridges asked if this property is within the aquifer protection zone.

Mr. Pimental said it could be within the aquifer district.

Mr. Pelkey asked if they apply for an excavation permit and they grant it if there is some reporting they have to do to the Town for tax purposes.

Mr. Pimental said the DRA will handle that and whatever materials they say are going to come off the property they have to file and pay taxes on.

Mr. King said 4 years ago he was building a driveway on his property and he asked the Building Inspector how much gravel he could excavate without a permit and he said he could excavate up to 1,000 yards as an incidental use. He said in this case there is no plan and he didn't put up a garage or have any intended incidental use where it had to be removed and we're going to let him take out 20,000 yards without any excavation permits because he's making a claim that it's not viable to sell unless we allow him to do it.

Mr. Pimental repeated that the board can still require the minimum and express standards.

Mr. Pelkey said he was not in favor of doing this because they don't have a proposal to do any kind of work on this site that would give them the exemption that they want. The exemption said that it's going to be incidental to construction and I don't see anything that tells us what construction they are doing and I don't understand why anybody that wants to build wouldn't want to take advantage of the fact that there is some material there that they can sell as part of the deal. I'm against doing it without some sort of development plan so I can say that it is incidental to the actual plan he said.

Mr. King said the next applicant could be someone with a lot with a hog back of material that may not even be saleable and he wants to re-sculpt the lot without any permits because I can't sell it the way it is.

Mr. Pelkey said he didn't like the precedence they would be setting.

Mr. Fisher said he didn't want to see what happened with the land across from The Ridge in Rochester happen in Farmington and if they knew for sure a business was coming in and this was incidental to the construction he would look at it more favorably but to say he wants to clear off the land just in case he can sell it in the future it could be years before it is developed.

Mr. King said somebody could make the same argument where they're going to mine all the materials because they are going to develop it in the future so I don't want to be confined to the current excavation regulations.

Mr. Pelkey said he didn't have a problem with this if they come forward with an excavation permit.

Mr. King said that is a process currently in place for when somebody wants to do excavation of materials with no development in the foreseeable future.

Motion: (King, second Pelkey) not to grant this exemption based upon the fact that it is not incidental to any construction that is before the Town passed 6-0.

Mr. Pimental said that their option now is to get a permit or to have a signed agreement with a developer with a site plan and asked if the board would then reconsider this action.

Mr. King said it would have to be a site plan that is before the board and the exemption could be granted during that application. He asked if it has been done differently in other towns.

Mr. Pimental said it depends and usually you want to have some form of commitment whether it's a full site plan or not.

Mr. King said removal of 20,000 yards of material would take over 1,000 tri-axle trucks coming off of their site without any permitting, engineering or any assurances for reclamation.

Mr. Bridges said he was concerned that they don't know where the water run-off would go especially being right on the aquifer.

Mr. Pelkey said the exemption would be allowable if they had a full site plan for review.

Mr. King said they want to make sure this doesn't cause any issues and they don't have enough information to even consider it.

Mr. Pimental said he would relay this information to the applicant.

Consideration & Potential Vote on Site Closure for Reclaimed Gravel Pit (Tax Map R35, Lot 7):

Mr. Pimental said the Planning Dept. received a letter from Pike Industries dated Nov. 16, 2020 requesting that the Town issue a formal letter acknowledging the closure of this site (off Paulson Road). He said they also included the Dept. of Environmental Services (DES) Alteration of Terrain (AOT) Closure letter that was approved by the state in April 20, 2020 and it contained documentation that the site has been reclaimed and all of the runoff was contained on site. He said the photos provided show that the reclamation of the site has been done and that the state has signed off on it as part of the AOT closure.

He said the excavation permit application was submitted in 2004 and approved in May 2005 and as part of that decision there were 8 conditions that the board set including hours of

operation, paving, access, a \$13,500 reclamation bond, DES mitigation plan, etc.

Mr. Pimental said the permit applications are on a 5 year cycle and the renewal application was received in July 2011 and approved by the Planning Board in November 2011. He said as part of the Nov. decision the board issued a new set of 13 conditions that included increasing the bond to \$25,000, responsibility for any damage to Paulson Road, length of the permit is 5 years, etc. He said the next 5 year increment would have been in 2016 but the Planning Dept. could not find a 2016 permit renewal application or approval but they did submit the appropriate documentation to the state to remain in compliance with their AOT permit. He said it is unclear if the permit was renewed and asked if the board if they came back for another renewal.

Mr. King said not to his recollection.

Mr. Pimental said they are assuming that the 2011 approval from the board is the last one they have and they don't know if all of the conditions have been met. He said the Town should make sure that the minimum and express standards under RSA 155: E and conditions set by the board in 2011 are met. He said the challenge is that the Town regulations don't designate any administrative official to determine if the excavation has been completed according to the plan.

Mr. Pelkey asked if that falls under the CEO as the person who is supposed to administer this after their discussion regarding that the board is not supposed to be administering this stuff.

Mr. Pelkey said it has been pushed to the CEO but he didn't know if that is the correct person.

Mr. King said it has been handled by staff but he wouldn't say the CEO has handled the majority of it. He said the bond was increased in 2011 and asked if the bond is still retained by the Town.

Mr. Pimental said they have copies of the \$13,500 bond but don't have copies of the \$25,000 bond. He said when they submitted the application in July 2011 they had \$13,500 and the approval was given in Nov. so they may have submitted it after the conditions were set in Nov.

Mr. King said the \$13,500 was a surety bond so the Town has an attachment on an account and asked if the attachment is still in force, if it was increased to \$25,000, if it needs to be released or if it had a time limit on it that has expired.

He said the second condition required Pike to be responsible for any additional damage to Paulson Road up to and including shim and overlay and he didn't know if there was any subsequent damage and if that was done.

Mr. Pelkey said there was a condition requiring Pike to walk the area with someone from the Town to review the road condition on an annual basis and he'd like to know if that happened.

Mr. Fisher recalled that a previous Town Planner walked this land and someone from the state came to the board and talked to them about late requests for permits being filed by Pike.

Mr. King said it came up that they wanted to be done with it and it wasn't reclaimed and since then they went out and reclaimed it. He then read through the list of conditions from Nov. 2011 and noted that most of the conditions are now moot points and that it boils down to 2 things- is there any excessive damage to the roadway and the entrance that needs to be dealt with and if there's no excessive wear and tear at the access point and the board would consider it to be

reclaimed then they would release the bond.

Mr. Pelkey said if they had met condition #13 (annual joint review of the road condition) on an annual basis once they stopped hauling they would know the condition of the roadway at that point because anything from that point forward they protect themselves just as much as they protect the Town by having this annual walk through.

Mr. King said he would bet there is no documentation regarding any annual walk with the Public Works Director and any Pike employee. He said the walk may have happened the first year or two and recalled the site being heavily used initially and then it was used seasonally for a few weeks a year until they decided they were done with it.

Mr. Pimental asked if the board wanted to authorize him to write a letter on behalf of the board acknowledging the closure or if they wanted to request that Pike provide more information on any or all of the conditions from 2011. He said it sounds like Mr. King is saying they need to look into the condition of Paulson Road and he could contact the Public Works Director to see if there were any onsite walks regarding the road condition to get a better sense of the condition of the road and whether that has been met and to find out about the bond.

Mr. King said in the original application because they started hauling out of there the Town asked them to do some paving there because there was no pavement and they put down a fine grade pavement over the existing road. He said his concern was not with the roadway itself but with the lower access point. There's no way to determine if the deterioration of the road is from them at this point and it's really about if the access point that they exclusively used has deteriorated to the point that it needs repair or is it in acceptable condition he said.

Mr. Pimental said if that is their primary concern before they can close this out and issue a letter to Pike he would like the board to explicitly say they want to ensure that the lower access point that was exclusively used as part of this operation has not deteriorated in a motion. He said he will also follow up with the Public Works Director and Pike to see if there is any documentation of the yearly walk.

Mr. King said he wanted them to see if it has deteriorated so it has been rendered unusable more than the surrounding roadway because if the pavement was put down in 2005 they don't know if anything has been done additionally since then.

Mr. Pelkey asked if they have a copy of the DES acknowledgment that this site is closed because they didn't receive a copy of it in their meeting packets.

Mr. Pimental said they do have it and it was received on April 20, 2020.

Motion: (King, second Titus) to have the Planner request from Pike any information they can supply regarding the following three conditions of approval:

- 1). The current status of reclamation surety bond in the last approval for \$25,000 and provide any information on that
- 2). The pavement and roadway immediately adjacent to the lower access point which was used exclusively by Pike to be reviewed to see if it's in disrepair consistent with the rest of the

roadway and approved by the Public Works Director

3). Provide any records of the annual inspections with the Public Works Director that shows a review of the road condition;

Discussion: Mr. Fisher asked about the closure of the upper entrance and if they should make sure it was closed and gated off to keep people from dumping trash up in there.

Mr. King said the reason for the closure was not to limit the access point to the site but to limit where they were hauling from and the Town staff can check to see if that access is even open.

Mr. Pimental asked if they wanted to make that the fourth condition in the motion.

Friendly Amendment: (by Mr. Fisher) to add: 4). To ensure the upper entrance is closed and stabilized;

Mr. King and Mrs. Titus accepted the amendment to the motion.

Vote: The motion passed 6-0.

Mr. Pimental asked if the board wanted to see this information again before the closure acknowledgment letter is issued.

Mr. King said the board has to motion to acknowledge it and there is some unfinished business in regards to finding out the status of the bond.

Mr. Pimental clarified that the motion is they want the information and then the board will decide on whether the Town staff will send the letter.

Mr. King said that is correct.

Review Zoning Amendment Revisions:

Mr. Pimental said that Amendments 1, 2 and 4 were sent to legal counsel and the document he provided is a reorganization of what is being prepared for Town Meeting and they need to discuss Amendment 3 (Section 2.00 Base Zoning Districts) that it is still being worked through. He said the board asked about agricultural resources and he found some information at the state level that provides some information about how to deal with agricultural and horticultural operations. He said from what he has read and in talking with other communities that have a lot of farming operations the simplest way to go is that instead of trying to figure out what would be exempt or what the thresholds would be is to deal with agricultural operations differently in the site plan regulations. The other communities have lesser design standards that make it much easier for a farming operation to go through the site plan process than with a full engineered site plan typically seen for a built urban environment. The scope of the agricultural operation would come before the board and they could have some standards in the site plan regulations that deal with that instead of trying to deal with it in the zoning ordinance he said. He then turned to Table 2.00 (B) Permitted Land Use Table Codes and said for this year they propose simplifying everything and the PR's (Permitted with Review) would become P's (Permitted) and to deal with the conditional use permits and the definitions of uses next year. He said he also got rid of the Special Exception criteria for each zoning district because it only needs to be in one place because that is repetitive. He asked the board if that seems like a more

reasonable approach to deal with agricultural uses as they come before the board but they will have to make some changes to the site plan regulations to allow for lesser design standards to make it easier for those operations to get through the site plan process. He said Section 3 of the agricultural resources handout "Local Regulation of Agriculture Toolkit" recommends that they allow simpler design standards for site plan review regulations on agricultural businesses limited to seasonal use. He suggested they could make it more inclusive by removing "limited to seasonal use" and replace it with "certain agricultural uses" which the board could define and determine any thresholds.

Mr. King asked if he was suggesting that they change the zoning to say it has to be reviewed and in the site plan regulations they could define the thresholds and say based upon this threshold it doesn't need to be reviewed. He asked how they would delineate between operations that might not need a review such as a seasonal farm stand and other operations that need simpler design standards and where it would say how that is to be handled.

Mr. Pelkey said the only things they need to discuss are the things they do want to regulate because everything they don't list is permitted. He then read aloud that RSA 674:32-a states that when a zoning ordinance is silent agricultural activities are deemed to be permitted either as a principal or accessory use. If we don't address it it's permitted he said.

Mr. Pimental said that is correct but it doesn't mean they don't need site plan review. He said they treat agriculture a little differently and if the zoning is silent on it it's allowed.

He said in answer to Mr. King's questions the board would have to make those decisions but it would be easier to do that in the site plan regulations.

Mr. King said he wasn't opposed to doing that but they need reasonable thresholds for the things they don't want to see before the board such as someone selling apples from 15 trees.

Mr. Pimental agreed and that they just have to come up with the language and the criteria for what they want to see for agricultural activities. He said this solves their concerns with changing the PR's to P's and that means there's a site plan and you will look at agriculture a little bit differently.

Mr. Fisher asked if they are talking about what is grown.

Mr. Pelkey said that would be under the site plan review regulations. He said they will take off the PR so the uses will be permitted and they can talk about they want and don't want to see before the board.

Mr. Fisher said a mushroom farm is one of the worst smells and ranks right up there with a paper mill. He recalled a case where a farmer was piling cow manure on his rear property line causing the neighbors to have to have a fly issue and when the Town inspected it he said he wasn't breaking any rules and that is where he is going to pile it and the neighbors have to live with it. I just want to make sure we're not going to move in something or allow something to be grown that is going to drive the neighbors out of the neighborhood he said.

Mr. Pimental said agricultural uses in a commercial setting should be regulated and have to go

through the site plan process and there may some that don't if they're small enough like the apple orchard. That will have to be put in the criteria- nuisance noise, smell, etc. and there are models we can look at to determine if this will have an adverse impact on the abutters and maybe there is additional criteria they will have to meet he said.

Mrs. Titus asked if a farmer selling his cucumbers for 25 cents each will have to come in for a permit or would be left alone.

Mr. Pelkey said they don't want to see Mom and Pop who are selling cucumbers on the roadside.

Mr. Pimental said Amendment 4 could be ready for Dec. 15 without it having a legal review or they can meet next Tuesday (Dec. 8) and the board could motion to send it to legal review, see it on Dec. 15 and set the Public Hearing date for Jan. 5. He said another option would be to push the Public Hearing out one week to Dec. 12.

Consensus of the board was to meet on Dec. 8 at 6 p.m. upstairs to discuss the 4th amendment.

Any Other Business before the Board:

Master Plan Update- Mr. Pimental said progress is being made on the chapter itself and there is some correspondence between the Town and the consultant.

Mr. King asked for the "gist" of the correspondence.

Mr. Pimental said that would have to be discussed in non-public session. He said the goal is to have a revised version of the plan by Dec. 15 and they could discuss it further at that meeting.

2021 Public Hearing and Workshop Meetings Schedule – Mr. Pimental gave copies of the schedule to the board and asked if they wanted to change meetings scheduled for July 6 and Sept. 7 as they are around long weekend holidays and vacations. He said they did not need to decide this tonight and could wait until they get closer to those dates to decide.

Thanks Bruce – Mrs. Titus thanked Mr. Bridges for donating \$2,500 worth of materials related to the drone that was donated by Tim Brown.

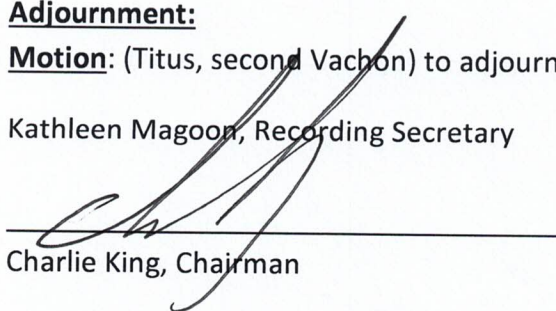
Mr. Bridges said Mr. Brown donated his School Board stipend to the program and he donated the drone so they would have the drone and parts and some extra funds for that class.

Christmas Tree Lighting – Mr. Fisher reminded viewers that the tree lighting will take place on Friday, Dec. 4 at 6 p.m. downtown.

Adjournment:

Motion: (Titus, second Vachon) to adjourn the meeting passed 6-0 at 7:20 p.m.

Kathleen Magoon, Recording Secretary



Charlie King, Chairman

