

PLANNING BOARD MINUTES

February 11, 2009

ROLL CALL:

Phil LoChiatto, Chairman – Present	Nancy Prendergast, Vice Chairman – Present
Rick Okerman, Secretary – Present	Walter Kolodziej, Regular Member – Present
Ruth-Ellen Post, Regular Member – Present	Pam Skinner, Regular Member – Present
Louis Hersch, Alternate Member – Excused	Kristi St. Laurent, Alt Member – Not Seated
Sy Wrenn, Alternate Member – Not Seated	Bruce Breton, Selectmen Member – Present
Galen Stearns, Selectmen Alternate – Excused	

STAFF:

Al Turner, Director of Planning and Development – Present

Mr. LoChiatto opened the meeting at 7:00 pm. The Board stood and recited the Pledge of Allegiance.

MINTUES:

- Ms. Skinner motioned to approve the February 4 minutes as amended. Mr. Kolodziej seconded. Passed 6-0-1. Ms. Prendergast abstained.

OLD/NEW BUSINESS:

Board discussion regarding the golf course building on Range Road. Mr. Turner distributed and explained a list of variances that were received by the golf course building applicant, the permit was denied, the applicant appealed the zoning administrator's decision, the appeal was granted by the ZBA, there were no appeals and the building permit was issued, and the demolition was well along before the deadlines. The Board questioned if the deadlines are being met and the Board should speak with the Building Inspector, there is not enough parking for a building of this size, and they circumvented the process and policies. Mr. Turner stated there is not enough parking but the ZBA granted variances for the parking. Board discussion regarding asking Michael McGuire to come before the Board for a schedule of events and also get input from the ZBA, 1 parking space is required for every 200 sq ft, should speak to the applicant, ask the ZBA Chairman to come to a meeting along with the minutes and the notice of decision and the planning department file, never seen this situation before, what can be done to slow the building process down, and Mr. LoChiatto will call Attorney Campbell tomorrow. A member of the ZBA, James Tierney, represented the project before the ZBA. Board discussion regarding the applicant came before the Planning Board, the zoning ordinance was changed last year so that this would not happen again, and we don't know what this building will look like or what the parking will be.

PUBLIC MATTERS:

Ledge Road Business Park – Public Hearing Continued

Ledge Road and Haverhill Roads, lot 11-A-50

Mr. Turner stated that the applicant has asked for an extension for the substantial completion of the project, the project was stopped on several occasions, the applicants are working with NH DES for mitigation, they want to start working on the site again, they're working on an alteration of terrain permit which will soon be issued, an extension would only allow them to start processing materials, could not start blasting as they would need permission of the Selectmen, there is not a bond on this subdivision as per regular procedures, it has gone on longer than most projects, if the Board is considering the extension they should consider a restoration bond in case this site is abandoned so the site could be stabilized, and all state and local permits should be required before they begin work again.

Board discussion with Mr. Turner regarding the status of the alteration of terrain permit, there are other

permits pending such as the air quality permit, the Town's consultant is StoneHill Engineer, Nobis Engineer is the applicants consultant, have the other conditions of approvals been met, there have been problems with dust and air quality, the dredge and fill permit has lapsed, there's a new permit process for dredge and fill permits, blasting permit requirements are being modified in NH, MA, and ME because of what happened in Windham. Mr. Turner reviewed the status of the conditions of approval. Board discussion continued regarding the police would know if there were noise complaints about the site, and why did the permits lapse.

Attorney Bruce Marshall stated they appreciated being continued to this meeting, the engineers will go over the permits, he reviewed the previous meetings, have changed engineers from True Engineering to Nobis Engineering, the amount of excavation was discussed at previous meetings, approval was granted in September 2006, he further discussed the applicant volunteered to stop blasting because of concerns the abutters were having, DES came involved because of nitrates in the water, Meadowcroft has spent ½ million dollars working with DES and hiring experts trying to find out how blasting causes nitrates, he discussed issues regarding the air permit, a dredge and fill permit is not required, an alteration of terrain permit is required, he discussed the issues surrounding renewing the alteration of terrain permit, is seeking a decision for substantial completion from the Board, knew they would need an extension because of the stop in blasting, and he discussed reasons for the delays.

Board discussion with Attorney Marshall regarding the applicant would like a 1½ year extension after DES allows them to begin again, actions from other Boards have no bearing on this Board, the plan has expired, the extension was requested before the plan expired, Attorney Marshall stated he disagreed and that other Boards do have bearing on the Board, and the Board asked what is the rationale for the extension. Attorney Marshall responded that the ability to achieve the 2-year substantial completion was unattainable because of the delays that were not in the control of the developer, the nitrate issue has never been addressed in NH, they were forced to shut down, the Board was asked about the blasting before it occurred and the Board said yes to the development. Mr. LoChiatto stated that the plan brought before the Board was a very viable plan with a sports center that would augment the sports program at the high school. Attorney Marshall said the selling point was an industrial park, the sports center needed to go to the ZBA, and they are having the minutes transcribed.

Board discussion continued with Attorney Marshall regarding there is a lot of history to this project, would like to hear from the engineers and move on in a constructive manner, \$500,000 in taxes are believed due to the Town for current use, Attorney Marshall will discuss with the assessor, want to know what's going on with the taxes, was it feasible to remove the volume of materials that need to be removed in a 2-year time frame, Attorney Marshall discussed the amount of blasting and things get quicker as the job goes forward, they averaged 2.14 blasts per week and it would be feasible to complete in a 2-year period.

Chris Adams, Nobis Engineering, stated that the original approval was for the removal of 700,000 cubic yards, the sites will come back before the Board when they are designed, over 11 months 150,000 cubic yards of materials was blasted and stockpiled 10,000 cubic yards, and of that 53% is processed materials the remainder is unprocessed. Board discussion with Mr. Adams regarding a volume chart of materials from True Engineering, there is a couple of ways to look at the volume being removed, and the State is given numbers for the sq ft of impact not volume for permits. Mr. Adams stated he did not know what the total volume would be removed from the site.

Discussion continued regarding the Board thought the 700,000 cubic yards to be removed for the original subdivision plan was for the entire site, believe they are there to make a killing as a gravel pit,

don't believe the Board has been told the truth about this project, questions regarding the Stonehill report would be answered by a different engineer, 540,000 cubic yards still to be removed from the site and is it possible to complete in a 1½ years, and that would take 200 trucks a day to remove.

Attorney Marshall stated that there is no money pending owed to the Town for taxes, the engineers stated there would be 700,000 cubic yards coming off the site for the road and more would come off as each site was developed, the staging area was located where it was because of the P&S for the sports building, confident that with 2.14 blasts per week that they can get the road substantially complete, applicant wants 1½ years after permitted to start full production, there were lots of slow down issues during their 11 months of working which have been addressed such as the nitrate issues, and applicant can give the Board other examples of sites where more materials than this have been taken off the site.

Board discussion with Attorney Marshall that they want information about this site, can give a week by week plan for the Board, only 150,000 cubic yards were removed in 11 months and how can the remainder happen in a year and a half, will be back before the Board for the individual lots, the materials went to several different locations, changing the zoning of the neighbors properties so they can sell as this project has ruined these homes, Attorney Marshall disagreed that the neighbors way of life has been destroyed and he has had personal threats from a couple of these abutters, have not had any claims since the nitrate report, a couple of abutters will be suing for a million dollars each, it is the insurance companies call as to whether a claim is paid, want to compare the 2006 and 2008 and 2009 intent to excavate permit, Mr. Breton stated he disagreed and that taxes are due and he will investigate into that, trying to understand the traffic and the volume being moved, what's the difference between a production blast and a smaller blast, there were 16 conditions of approval some of which are not important, would like to review the waivers, the existing plan has expired and the waivers expire also, though the applicant disagrees, condition #19 was to replace abutters structures and wells if damaged, the condition was not for the insurance company, Attorney Marshall explained the difference between the types of blasts, there were 39 production blasts and 80 minor shots, Attorney Marshall will bring blasting and removal plan to the next meeting, the material is measured in cubic yards, the minor blasts were used initially to get a big face established and for the detention ponds and trenches, and the Planning Board was told there would be two production blasts per week.

Tom Bobowski, Nobis Engineering, discussed the status of the permits in regards to the groundwater, DES comments included their site investigation and Stonehill Environmental's comments, proposing to extend the amount of samplings required, expect a groundwater permit in 60 days, recommend sampling 3 times per year, waiting for the alteration of terrain permit before they can blast, did conflicting approaches with DES and will be meeting with them to work through the issues, and information is available on their website and at our library.

Board discussion with Mr. Bobowski regarding the application has expired, not obligated to extend anything unless the delay was out of their control, the burden is on the applicant, Stonehill's report focuses on explosive management practices and adequacy of testing, Ms. Post read a portion of the Stonehill letter and asked how bulk emulsion being released is not in the applicant's control, Mr. Bobowski explained the bulk emulsion and the blasting process was done by Precision Blasting and Dyno Nobel, the emulsion has 62% nitrate which was put on the ground rather than into a container and taken off site, the applicant claims it is not responsible for work done by Dyno Nobel. Ms. Post cited Stonehill's report stating that the placement of the monitoring wells was not correct and asked how that was not in the applicant's control. The applicant responded that the well locations work plan was approved by the State, after the fact it appears they're not in the correct place, he explained why they chose where they put the wells, Mr. Bobowski disagreed with Stonehill's report regarding the placement

of the well points. Ms. Post also cited Stonehill's report stating that the water testing was not done for arsenic and other contaminants and how was that testing not in the applicant's control.

Attorney Marshall stated that the well monitoring was done only for nitrates and not for other contaminants, he has spoken with DES regarding this, DES's letter is in response to nitrate, DES did not allege that the blasting released anything other than nitrates, the delay is out of the applicant's control because DES never had a problem with blasting and nitrates, and were at the mercy of DES.

Discussion continued with Mr. Bobowski regarding the site report was because the nitrates were over standards, arsenic is natural occurring throughout the neighborhood and is not because of the blasting, only testing for nitrates and nitrites off site, testing for others on site, the discharge of contaminates was outside of the applicant's control, nitrates from the blasting was discharged to the ground, the whole project falls under the general contractor, and Mr. Bobowski stated that he did not have Stonehill's November 4 report.

Attorney Marshall said the applicant hired Precision Blasting for the blasting and Dyno Nobel for the materials in the hole, the applicant can't control whether Dyno Nobel follows correct procedures, the applicant will take this up with Dyno Nobel,

Board discussion with Mr. Bobowski and Attorney Marshall that the Board is not to decide who is liable, Dyno Nobel says that 99.9% of nitrates combusts during blasting, this occurred because it was spilled on the ground, the Precision blasters have been interviewed to find out how often it occurred, a shot cannot not be left in the ground, Precision blasting is blasting at the exit 5 area using the best management practices, Dyno Nobel has changed their practices, and there has been no issue with nitrates at that site.

Board discussion that the applicant is looking to extend the prior approval for 1½ years then they'll come back to the Board to change the plan to shorten the road.

Public comment from Jared Allen, 2 Meetinghouse Road, stated his home is 700' from the site, the applicant did not provide the information requested, they've only taken 1/5 of the materials off the site, and thinks it is BS.

Jack Hamburger, 57 Haverhill Road, discussed that the general contractor is responsible for everything, he discussed one person's claim for under \$500, glad that it has been acknowledged that this is a quarry site for the Rt 93 project, the stimulus package will speed up the Rt 93 project, trees have been cut that would have been a good noise barrier, the gravel mound should not be removed that could be a noise barrier, there are no plans for remedies for the neighbors, the project should be shut down, he discussed the applicant is a late filer of requirements, and it should be reforested and the project shut down.

Julia Wissill, 55 Haverhill Road, stated that material of fill from the site went to the high school, they are using baseline well information from when homes were bought about 16 years ago, she discussed what the wells were being tested for, they should have had due diligence from the beginning of the project, everyone should have been watching so this didn't happen, nitrates is not the only problem, has 10% arsenic in her blood, haven't complied with anything in the past, heard at least 2-3 blasts a day for 3-4 days each week, she discussed health problems that she's being tested for every 2 months, as of November 2008 the symptoms have disappeared, doesn't think it's a coincidence that she's okay now that the blasting dust has stopped, silica is a problem they need to take care of, don't trust them, doesn't want to sue anyone, they have ruined her life and home and caused undo stress, the Board should not let this

happen, has cost the neighbors more than \$500,000 for these problems, they should be punished for what they've done, and she will email information she has to the Board.

Joanne Vignos, 4 Meetinghouse Road, stated her water has been contaminated and the applicant does not want to take responsibility even though her pre-blast tests show that she did not have these problems, the problems started after the blasting, she has put claims in and has been denied, applicant was required to pay for problems to wells which they have not done as per condition of approval #19, they should not be given an extension, asked if Meadowcroft or Precision witnessed the emulsion, believes they did witness it and did not report it, how many times did it happen, it is irresponsible, will the applicant take responsibility for erosion problem, and asked about the emulsion shots that did not go off.

Attorney Marshall responded that there have been no claims since the expert opinion report came out, the investigation stated that the Dyno Nobel people washed their hoses out and they believe it had emulsion in it which was the primary source of the contaminant, Dyno Nobel also dripped contaminant when they went from hole to hole, he believes that erosion problems have been pretty good, and he discussed claims and the claims to be made after this meeting.

Greg Kindrat, 61 Haverhill Road, stated he filed multiple claims but the insurance company denies everything, he discussed how the insurance companies treated the Katrina claims, the original approval was a mistake and has caused very difficult experiences, hope they kill the project and fill the land, depend too much on seismograph readings, the contain inaccuracies, should measure vibrations associated with structures, he discussed a report on vibration regulations, if this goes forwards should have vibration monitors, train the people who live there to measure the opacity, the neighbors have had to call DES regarding enforcement issues, believes it is more the 700,000 cubic yards, it is a very complex situation and is precedent setting, should get technical expertise for air, water, noise, been in his home since May 2000 at that time the water testing showed his was well below the standards, he discussed water quality problems and contaminants in his home, need enough safeguards so this project doesn't damage them anymore, his family has medical issues because of this, the damages are incalculable and disgusting, moved to Windham for the quality of life and it has become a nightmare, other states have had the same problem and this is not a new problem, did not get notified of the original meetings because he is technically not an abutter, the applicant will could make millions of dollars at the expense of the neighbors, and should not grant the permit because of the health and well being of the residents of the Town.

Attorney Art Cunningham, representing the Kindrats and Wissells, stated the what is the remedy, it is a tragedy that they have to hire an attorney to take on this, he discussed the necessity of the air permit because of the crushers, DES inspected because of neighbor complaints and the opacity was at 80%, they ran the equipment without permits for 17 months, he discussed the potential fines which could be \$25,000 per day but they were fined only \$3,000, he discussed the ownership of Precision Blasting and the licensed blasters were there when Dyno Nobel was contaminating the ground, someone should be responsible, the applicant has thumbed its nose the DES, the Town, and the neighbors, they want to blame Dyno Nobel, and looking for a remedy to stop these people from more damage. Mr. Turner clarified the shut downs of the site.

Board discussion continued regarding continuing the meeting, the applicant still needs other permits, is the subdivision still in effect or go back to square one, more information is needed in regards to the sequence of blasting, time line of blasts, how much gets removed over time, how long would that take, reconcile the numbers from the last meeting, and Mr. LoChiatto read the legal ad. Board discussion regarding not amending to grant the extension, could require a restoration bond if granted, if they came

back before the Board the conditions could be tougher, a subdivision road can either be built or bonded, there is no bond for this project, can approve the extension with conditions of approval to have a bond, intend that no further damage to the abutters and surrounding neighborhood, don't want the site to sit as it is as it is a dangerous situation, continue the meeting to the 25th of March, ready to make a motion now, get Town council opinion on what happens without granting the extension, and only discuss the extension of time. Mr. Hamburger asked for information to be given to the abutters well in advance of any meeting to be held.

Board discussion continued regarding the applicant has not been meeting the conditions of approval, can revoke the site plan with another public hearing, have no bond to remedy the site, the Town can put a lien on the site, and if this goes forward the residents will have more damage.

Mr. Breton motioned to deny the amendment to the plan to allow a 2-year extension because: 1) Reports from Stonehill Environmental, among other things, indicate that delays were caused by matters within the applicants control and therefore were preventable; 2) The site so far has caused health and well being concerns to residents in Town; 3) Condition #13 was not met or kept as heard by testimony by the residents: No construction noise before 7:00 am or after 5:00pm and no construction noise on weekends or holiday. Rock crushing done on site shall be done in a cut to minimize noise once the road cut has been established; 4) Conditions #19 was not met: Applicant will replace abutters' wells and structures that are damaged during construction; 5) Condition #17 not met: The road construction shall be substantially complete (1st coat of pavement, site stabilized and all drainage systems working) with 2 years of issuing the road construction permit as required by Section 704.1.3 of the subdivision control regulations; 6) Condition #3 was not met for: All state and federal approvals shall be received prior to the start of construction; 7) Violations include air pollution and groundwater contamination for the surrounding area due and March 2008 DES and Al Turner shut down the site for not having proper permits. Mr. Kolodziej seconded. Board discussion about a plan for remedies, the amount of materials to be taken off the site, get more information, approve the amendment and add more conditions, and there's a better way to solve this. Passed 6-1. Mr. LoChiatto opposed. He stated it was because he wanted the Board to do more fact-finding and find solutions.

CORRESPONDENCE:

Letters from Attorney Campbell and Attorney Bronstein regarding the Spruce Pond development agreement. Board discussion this at the March 4 meeting, Attorney Bronstein to be invited, and the members need to read the document before the next meeting.

Mr. Kolodziej motioned to adjourn. Ms. Skinner seconded. Passed 7-0. Meeting adjourned at 10:40 pm.

Respectfully submitted, Nancy Charland