

## PLANNING BOARD

Monday, September 8, 2008  
Belmont Corner Meeting House  
Belmont, New Hampshire

Members Present: Chairman P. Harris; W. Peterson, C. Patten, R. Davis and J. Pike Ex-Officio Alt..  
Members Absent: C. Long, G. Flack and R. Caldwell  
Alternates Present: W. Rollins.  
Alternates Absent: W. Otto  
Staff: C. Daigle, R. Ball and E. Murphy.

The chairman opened the meeting at 7 p.m. and appointed W. Rollins as a voting member for tonight's meeting.

### **PUBLIC HEARING – PROPOSED EARTH EXCAVATION REGULATION AMENDMENT:**

The chairman explained that this is the second public hearing on earth excavation. This draft is a result of the last public hearing and input from the public.

C. Daigle explained that she has compiled a list of changes from the original Earth Excavation and this draft. The changes are designed to make the process more efficient and user friendly. The current Earth Excavation, Site Plan, and State RSA have 124 pages combined and this draft has 60 pages. The draft eliminates duplications and unnecessary conditions of site plan requirements that don't apply to Earth Excavation. This draft consolidates three documents into one and is designed to benefit the excavators.

Ms. Karen Feltham stated that she was not at the last meeting but has read the minutes and wants to know why Earth Excavation applicants have to go through Site Plan. C. Daigle stated because it is a non residential use. Ms. Feltham stated that she has reviewed Site Plan and Subdivision Regulations and the Aquifer and Zoning Regulations and most of the Earth Regulations are part of Site Plan review with little reference to it in Subdivision Regulations, Aquifer and Zoning Ordinances. It was confusing and very time consuming to go through the three different regulations but it is easier than the proposed regulations. The current Earth Excavation Regulations mirror the State ordinance and this draft is ten times harder to deal with. Currently when you apply for Earth Excavation approval you are handed a site plan application, a site plan checklist and an earth excavation checklist. They have just gone through the process and it took them four months from start to finish. With the proposed regulations they will have to hire surveyors and engineers and that will be costly. There is a process already in place and this would be extremely onerous for them to do. The key thing now is you have to go for a new permit every two years instead of getting renewed every year. Now you would have to go through the whole process

all over again making it too expensive to operate.

C. Daigle stated that the new regulation is the existing regulations except the ten changes that will be identified. The Board has recently had two excavators go through the process, Merrill and Blue Sky, and Merrill's surveyor found it difficult to take out the parts of the site plans that don't apply. That is why they are incorporating the three documents into one. Ms. Feltham stated that the old regulations had nineteen 19 pages with only one reference to the other documents now this one is sixty-four pages. Most of the Site Plan Regulations don't apply. C. Daigle stated that by having one document it will be easier to use and was based on a recommendation made to them. They combined the regulations instead of rewriting new ones. The new regulations outline how to go through the process and what the future process is. Ms. Feltham stated that if a flow chart is necessary to show the process then it is too complicated.

Mr. Howard Warren stated that he has just gone through the process and he worked well with staff but if he had to go through this process with another planner it might not have worked. The issue is about having to be re-permitted every two years. A business will not invest in running a pit if they have to worry about not getting re-permitted. He is concerned that permitting would be at the discretion of the Board and if the wrong Board or staff is in place they could stop the pit operation. He stated that he is not concerned with this Board or staff but if things change re-permitting may become an issue. C. Daigle agreed the new regulation requires re-permitting. The State statute doesn't recognize permit renewing. There is a re-permitting section in the ordinance. Mr. Warren stated that other planners and Boards could misuse their powers and shut down an operation after a year. C. Daigle explained that this regulation came from guidance from the Department of Revenue, counsel and industry standards. Belmont is lenient as they allow earth excavation in every zone. Operators don't have to worry about being grandfathered because staff or the Board can't change grandfathered rights. RSA 155 E is not an automatic renewal. Mr. Warren stated that this is confusing because Belmont Economic Committee is trying to attract businesses and these regulations will keep businesses from coming to Belmont. The gravel pit industry has been around for a long time so there has to be a balance between the regulations and encouraging more excavators to come to Belmont. C. Daigle explained that the regulations came as a recommendation from Counsel, Department of Revenue, Conservation Commission members and active excavators.

C. Daigle explained the changes to this draft. The Quality Assurance Program already is required as part of site plan and now includes some specific items for earth excavation. The permit is extended from one year to two years and requires an annual report. For the first five annual report only a sketch is required and in the sixth year the annual report is to include the surveyor updating the original plan to make sure that over the years the reports match with what's was really occurring on the site. Mr. Brian Donovan stated that the State does not require Site Specific plans to be stamped. C. Daigle stated the Board can waive that. The intent is to require whatever site specific requires. But the Board always has the right to ask for certification if the plan varies from what is on the ground. Some people can create accurate sketches but some need a surveyor to draw the plan. The closed site has to be left in a shape that would accommodate some permitted use.

The Board requires the initial application to evaluate the existing condition of any town road that accesses the site as well as to bond for any future damage. They added a reference to groundwater and maintaining a 4' separation from the water table but a waiver can be asked for. The Board added an Operational standard to clean up any debris tracked out onto the public road at the access location and to maintain any required screen. There have been a lot of complaints about dust and dirt. The Reclamation Standard includes the type of grasses recommended by NRCS.

C. Daigle explained that there is no change to anyone's grandfathered status. The standard revisions are consistent to the way we reviewed the two pits that have come before the Board and are put in place to protect the tax payers.

C. Daigle reviewed the changes from the first public hearing to this one. When survey work is required it shall be performed by a NH Licensed land surveyor. When engineering work is required it shall be performed by a NH Registered professional engineer as required by NH RSA 310-A:11, name and address of surveyor, engineer, soil scientist or other consultants when used.

C. Daigle outlined the requirements for minor projects. The cumulative square footage of surface area to be disturbed shall not exceed two acres. The maximum depth of excavation shall not exceed 20'. The maximum amount of material excavated annually shall not exceed 10,000 cubic yards and the excavation shall not occur closer than 100' to any property line.

Minor projects shall be exempt from the following requirements of these regulations. Plan based upon a survey to the standards listed in the subdivision regulations. Soils Map and Report with the exception of the identification and location of any public waters, ponds, rivers, brooks, streams or wetlands within and/or within 50' of the excavation area. Topo plan beyond the excavation area, Aquifer Plan and Report for those projects which evidence no adverse impact to groundwater quality i.e. increased minimum separation to seasonal highwater table, no fueling within the excavation area. Minor projects are also exempt from Stormwater Management and Erosion Control Plan and Report for those projects where all drainage is contained within the excavation area. Also submission of an As-Built plan.

The repermitting section explains that excavation permits cease to be valid upon their expiration date. Applications to repermit shall be filed prior to the expiration date of the existing permit. The application process shall be described in the regulations: however in the case of a repermit the application shall include the application form, re-permit application fee, updated noticing list and mailing documents, noticing fee and scheduled annual report. In reviewing a repermit application, the Board shall review the plan for compliance with current regulations. Review the circumstances involving the subject lot and surrounding areas for any significant changes. Confirm that the operational impacts of the project conform to the description and commitment offered during the prior permitting process. Conformance to prior conditions of approval, reevaluate security, evaluate the need for any additional information and adjust conditions of approval as necessary.

C. Daigle explained that the push to review the excavation regulations came from the Master Plan. The permits would be good for two years with a report required every year to make sure the site is in

compliance. The regulations have been reviewed by the Town's attorney, NH Department of Revenue the Conservation Commission and active excavators. Belmont has a lot of pits and they want to be sure that everyone is in compliance. Belmont allows pits in every zone and the Board has to look at the problems that could arise from residences next to a pit. They tried to make as few substances changes as necessary but if the new regulations are not adopted then they will continue to use the three current regulations. It doesn't change the review process and they don't provide waivers for the 4' table. All active pit owners have been sent copies of the draft regulations and were invited to tonight's meeting.

Mr. Cal Dunn stated that he is having trouble understanding why it is necessary to have these regulations because the State has had regulations since the late 70s. Belmont's changes don't coincide with other towns and that makes it hard on contractors. The excavators know what they are doing. C. Daigle explained that by State law towns have to permit earth excavation in at least one zone and Belmont allows it in all zones. Mr. Dunn stated that the Master Plan was eight years ago. Why is this being done now? C. Daigle stated that it was six years ago and J. Marden started the process before he past on and now the Board is continuing the process. Mr. Dunn wanted to know if someone has tried to open a pit. Is that why they need to make the changes? This regulation requires a permit to dig be repermittted every two years. No other businesses have to be repermittted every couple of years. The town is fortunate to have gravel pits. They shouldn't be hammered for it. C. Daigle stated that most of the pits are already in place. Mr. Dunn questioned the need to reclaim the pit and bring it in shape for a permitted use because the only way the property would not have a reasonable use is if you dig below the water table and the State doesn't allow that.

Ms. Feltham stated that she doesn't know of any other type of business in Belmont that is regulated like this. Wouldn't it have been easier to bring the town's regulations up to the State regulations? It would be reasonable to adopt the State's regulations.

Mr. Donovan wanted to know if other towns require applicants to go through the site plan process. Most just mirror the State's regulations. The process would be burdensome. It is a lot more than other towns require. C. Daigle stated that she looked at other Earth Excavation Regulation and they seemed to already include Site Plan standards. Our regulation is wordy but what she hears from engineers and surveyors is they don't have to ask questions because they know what to expect. They also allow an excavator to know what the cost will be going into the process. Using this regulation you are no longer subject to site plan. Mr. Donovan stated that he has had experience with other Earth Excavation and Site Plan Regulations and they don't go into the detail as this one. W. Peterson wanted to know if that is good or bad. Mr. Donovan stated that it is not good to have to have a Soil Scientist to verify the type of soil on the property when an excavator can identify them. What value does that have for the Board? C. Daigle stated that the Board has provided a waiver for that. Mr. Donovan stated they don't want to ask for waiver because it allows the Board to make a judgment decision. Excavators know the type of material they have on site and having to ask for a waiver is burdensome to the process. The Board is looking for other information that the excavators won't have until they start the site development.

Mr. Donovan stated that there are some conflicts with 155 E concerning abutters and aggrieving abutters. C. Daigle stated that the definition has come from the Department of Revenue. Mr. Donovan stated that

he is aware of regulations and you have to be careful of labeling everyone a disapproving abutter.

Mrs. Ruth Mooney stated that the regulations have a lot of cumbersome parts for small pit owners. In this economic time it could cause them to go bankrupt. It boils down to the expense and this is not the right time for this and it should be tabled. C. Daigle explained that a lot of what is in this regulation is in the current regulations.

C. Daigle explained that the Board likes to get the input. Mr. Donovan stated that looking to the future is a concern. C. Daigle asked him if he had any specific comments. Mr. Donovan stated that he a few but did not want to go into detail with all of them tonight. W. Peterson stated that is why the excavators were sent a copy of the draft proposals. J. Pike asked if Mr. Donovan would give the Board a copy of his concerns. Mr. Donovan stated that he will submit a list to staff. J. Pike stated that they have listened to everyone and this is part of the 2002 Master Plan that got put on the back burner and is being brought forth now. He is speaking for the other two selectmen and this is the time to go forward with rewriting the regulations. There is a good base but it needs some adjusting and everyone needs to work together.

Mr. Warren stated that the meeting has been positive and it would be helpful if there is one document but there are some fundamental changes concerning the gravel operators getting and keeping their permits. If there is a project in town that a lot of people don't want the Board can put up road blocks so that it becomes too cumbersome to proceed. C. Daigle wanted to know if there is a term for repermitting that would work. Mr. Dunn stated that the process for repermitting is for reclamations. Initially the requirements were just a sketch and in thirty years they have gone from nothing to this. His concern is the gravel pits will not survive. Gravel is a natural resource and if they can't mine it than it can create a crisis. C. Daigle explained the reason the pits have to be repermited is because of drastic changes to landscaping could happen if not monitored. Mr. Warren stated that repermitting is not automatic and there is no guarantee that you will get approval. Ms. Feltham stated that she wants the Board to leave it alone. Mr. Warren stated there are no checks and balances so that the Town doesn't tell you everything that you need to do. If a small business man came in you have the potential to make it economically impossible to do it. Requiring 100' buffer to every property line would create a lot of unused material. You can't compare large operations to a small business. The reclamation needs to be handled differently. There needs to be a provision for the small guy. C. Daigle stated that if the boundary line abuts vacant land you can ask the Board a waiver. Mr. Warren stated that if they get a Board that is anti development or are dictators then the power can sway in the wrong direction. They can take those rules and use them against the operators. C. Daigle stated that there is no guarantee that if the Board changes that couldn't happen but if a different Board wants to change the regulations they can at any time.

C. Daigle wanted to know what a reasonable term for repermitting would be. Mr. Warren stated if the pit is in general compliance with his permit and using Best Management Practice they should leave them alone. What we do now works. Make the regulations so that people following the rules at left alone. C. Daigle stated if they do not come in every year how are they going to know if they are in compliance. Mr. Donovan gave the example of Hooksett where renewal is done through an inspection of the site. They look back and ahead to what have been done since the public hearing. W. Peterson wanted to know what happens when they come in for reclamation and they haven't done anything to site. Mr. Donovan

stated that it is the operator's responsibility to do what they said. J. Pike stated that because of a few it spoiled it for the others. Five years is too long to go between inspections. Mr. Bill Nutter stated that in Sanbornton they go to the Zoning Board and have a survey that is done in phases. They have an inspection twice a year and give the inspection report at the public hearing. Mr. Warren stated that you have to keep an eye on the project when it is close to the end because that is when operators could cut corners. If you keep an eye on them during the different phases of the project and they are doing what they are suppose to do they can't get five years out before you discover any problems.

J. Pike stated the roads are a concern. The back roads get beat up from the trucking and they need to be repaired and cleaned up. Mr. Warren stated that the problem is the money for the bonds. The people don't want to do it. The roads are not in good condition and if there is a pit on that road they attribute the damage to pit operators when the roads are for everyone to use. The Town doesn't pay enough for infrastructure. There needs to be ongoing process to repair roads. If the operators do the damage, like at the entrance or exit of the pit then they need to fix it but they should not be paying for the everyday damage done by everyone. Mr. Dunn stated that the Town does not require bonds for oil, gas or garbage trucks to use the road. If there is damage to the road at the entrance or exit to the pits then the operator is responsible for that but not the entire road. The repermitting process is not to be used to deal with violations. Any approved pits are under regulations and the town has the right to review them and issues can be addressed at that time. Mr. Mark Roberts compared the process to driver's licenses. You have to renew them every three years and you have your vision checked but your road violations are not reviewed. The violations do not affect your getting your license renewed. He agreed that if an operator causes damage to the entrance and exits of the gravel pits then they need to repair that damage but not the damages to the road. The taxes on trucks are higher than cars so they are paying their dues. Mr. Warren stated that he hopes to move away from the road repair issue. C. Daigle stated that the Board has have to look at the condition of the road as it is for non residential use. A recent group of subdivisions all required a road study be done to determine their impact on the existing roads. The Public Works Department reviews the roads to determine if culverts replacement is going to be required prior to the work being done. Mr. Nutter questioned that fact that it has to be done on an annual basis. C. Daigle stated that they all have the right to use the road. It is when the use is unusual in nature and may contribute toward damage in an unusual way that issues arise. There is no industry standard so every road issue is unique and negotiable and is looked at during the annual review. Mr. Warren stated that they need to be fair if the operators are charged for the unusual use then it has to apply to others that have unusual uses. If the road already has heavy traffic using it that has to be considered. C. Daigle stated that if you have a continuing operation on a Class 5 road than it might be more obvious that the damage to the road came from the pit.

R. Davis wanted to address the issue of the existing trails remaining open. Mr. Warren stated that when he did his subdivision they were required to have the trails remain open. C. Daigle stated that it is not a requirement of these regulations they just want to make operators aware of any trails. The goal of the Board has never been to require the trails to remain open but encourage the owner to do so. The final decision is up to the property owners. Ms. Gail Hanson wanted to know if the Board is willing to work with the owner to reroute trails. C. Daigle stated that they do.

Mr. Warren stated that having all regulations in one place is good and he applauds the staff. The items discussed tonight need to be addressed. P. Harris agreed that this was a good meeting with good input from the public. The Board is open minded and that is why they sent the drafts out to the pit operators. The Board wants to make it work for everyone before they go forward. He thanked everyone for the large turnout tonight and information and education they provided to the Board.

R. Davis wanted to explain why keeping the snowmobile trails open is important. Snowmobilers bring in 1.2 billion dollars to New Hampshire a year. Snowmobilers bring economic development to the area. Mr. Warren stated that he doesn't have a problem with snowmobiles but 4 wheelers and motorcycles have been damaging his property. He has contacted Fish and Game and they have not been able to help because they can not get to the site before a couple of weeks. In Gilford he has put up metal gates and those have been destroyed. Ms. Hanson gave Mr. Warren her card and told him to contact her if he has any problems because the snowmobile club will help him anyway they can.

Mr. Dunn stated that the pit operators are reasonable businessmen so why is the Board changing the regulations. Is it of fear of what could happen? There is no need for the changes at this time.

Mr. Shawn O'Connor wanted to know if the term grandfathered is going to make his land more valuable. C. Daigle stated that the value will remain the same. If it is grandfathered then they don't have to go through the local permitting process but they have to follow the State statute. Mr. O'Connor wanted to know why they have to notice abutters. C. Daigle stated that it is a State statute for any public hearing.

C. Daigle explained that there have been operators in the past who have walked away from their pits and there have been issues with those pits. The regulations are in place so there is a balance that protects the community and the pit owners. It is also designed to be user friendly and allows the pit operators to continue to operate.

C. Daigle stated that the operators are required to do an Annual report for taxes could they do an inspection at that time and require a written report every three years or require a written report based on the amount of excavation. If staff doesn't go out there every year it is hard to orientate themselves because of changes in the terrain every year for a large operation.

**MOTION:** J. Pike moved to close the public hearing. The motion was seconded by W. Peterson and carried. (6-0)

The Board directed staff to redraft, taking these comments into consideration along with other input that may be offered.

**BOARD'S ACTION-MINUTES:**

**MOTION:** On a motion by C. Patten, seconded by W. Peterson, it was voted to approve the minutes of the August 25, 2008, meeting as submitted. (4-0-1) P. Harris abstained.

**STAFF REPORT:**

**BELMONT LANDING LLC. TAX LOT 101-022:**

The chairman signed the Notice of Decision for the Vineyard Restaurant at Belmont Landing.

**CAPITAL IMPROVEMENT PLAN (CIP):**

C. Daigle explained that there are not a lot of new projects for the CIP this year. This is the first year for SB2 but they want to keep the CIP going because the Town has put in a lot of hours to keep it going, it would be costly to restart up and it is a necessary document. She wanted to know if the Planning Board would consider doing the CIP meeting and having the Town Department Heads attend a meeting to explain their needs instead of using a subcommittee this year. Once the Planning Board approves the CIP then it goes to Board of Selectmen then to the Budget Committee for their use. The Board agreed to have the Department Heads attend their October worksession to review their CIP requests.

**PETER HARRIS TAX LOT 231-006:**

The vice-chairman signed P. Harris building permit for a cement floor in an existing building. The building meets all building requirements and is an existing use.

**ADJOURNMENT:**

**MOTION:** On a motion by C. Patten, seconded by R. Davis, it was voted unanimously to adjourn at 9:12p.m. (5-0)

Respectfully submitted,

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Elaine M Murphy  
Administrative Assistant