

## PLANNING BOARD

Monday, July 14, 2008  
Belmont Corner Meeting House  
Belmont, New Hampshire

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

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

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

C. Daigle stated that the Board is in the process of reviewing regulations and tonight they are presenting the proposed Earth Excavation regulations.

She explained as part of the process of updating the Earth Excavation Regulations staff reviewed the Master Plan. Belmont's Master Plan Construction Materials mission statement is to identify known sources of earth construction materials, including existing operations, which are available for future construction materials needs. To develop guidelines for compatible development, usage and closure of excavation sites.

Belmont Master Plan Construction Materials finding is that Belmont sits atop an abundant supply of earth construction materials that are readily accessible using conventional excavation equipment and methods.

The Master Plan Goals are to determine the present state of extraction operations in the town. Ensure appropriate closure of obsolete or depleted sites. There is a 2003 spreadsheet on the web. The State has changed the taxation method and now there is a financial incentive to close unused sites. The goal is to ensure that the construction material extraction operations are compatible with planned land uses, applicable regulations, community values and transportation infrastructure.

Belmont has 20 excavation lots owned by 13 owners and 13 excavation sites. 12 of those sites are located entirely or partially within the Aquifer Zone. The total lot size is 1,122 acres which is not the size of the gravel pits but the entire sites. By volume there are 3 large sites removing more than 100k, 2 medium sites removing more than 10k but less than 100k and 8 small sites less than 10k. 7 of the sites

access State Highways and 6 access Town Highways.

NH RSA 155-E regulates excavation. The Planning Board is the local regulator and may adopt local regulations which can be equal to or more stringent than State standards. The exception is that they may not supersede applicability of express standards. Belmont adopted and amended these local regulations in 1974, 1976, 1981 and 1982. Other related regulations include Belmont's Zoning, Wetlands, Aquifer Protection and Site Plan. OSHA/MSHA, NH DOT and Belmont PWD for access. NH RSA 158, Rule SAF-C 1600- Blasting, NH DES for air quality, Alteration of Terrain, wetlands and fueling, and NH Taxation Administrative Rules REV500.

C. Daigle explained that the purpose of this draft earth excavation regulation is a general rewrite of the 1982 regulations because the RSAs have changed since 1982. It was recommended by the 2002 Master Plan to begin in 2003 and was initially begun by J. Marden. The purpose of the regulation is to develop a purpose statement and consolidate local excavation regulations to make it easier for applicants. It will reduce the three regulations totaling 124 pages to one regulation with 63 pages. It will clarify the process and standards and improve protection for municipal infrastructure primarily roads, but also water, sewer and drainage. It will establish site monitoring, security and repermitting procedure and assist in the repermitting of existing sites.

The revised regulations were developed by reviewing the current State Statute and current local regulations and ordinances. They reviewed NH OEP, NH DES, NH DRA and NHMA documents and have had contact with Planners, Counsel, List Serve, contractors, excavators and engineers. Other municipal excavation regulation samples were also reviewed.

The purpose and authority of the proposed regulations is to provide reasonable opportunities for excavation; minimize safety hazards and offsites impacts; ensure that the public health and welfare will be safeguarded; protect both quality and quantity of existing and potential groundwater supply areas; protect natural resources and the environment; ensure that the depleted, reclaimed site is appropriately designed to facilitate uses permitted in that zone; maintain the aesthetic features of the Town; preserve significant wildlife habitat and habitat links and buffers; and preserve existing recreational trail corridors. The regulations define excavation vs site plan.

The applicability section of the regulations is driven by State statutes and will include permits and outline which ones are required, excepted, or exempt. It also will include projects that are abandoned, prohibited or expanded. Permits are all statutory. Exempt are ones that commenced prior to 1979 (with report); or stationary manufacturing plant; or construction of public highway. Excepted are related to development, agriculture, landscaping, minor topo alteration, dimension stone, eminent domain. Abandoned sites can require reclamation. Projects prohibited are those within 50' of disapproving abutters or 10' of an approving abutter; or removal of visual barriers; or hazardous or injurious (noise, traffic, dust, fumes, danger); or damage aquifer; or unable to get all related permits or not permitted by zoning; or can't comply with Express Operational/Reclamation standards. Expansions are either grandfathered or not permitted by zoning.

Section 3 is Administration and Enforcement. It includes adoption, amendment, numbering, separability, conflict, waivers, joint public hearings, appeals, compliance and enforcement.

The pre-application options include familiarization, land use staff and preliminary reviews including conceptual and design review. The application review process includes the procedure, professional review and site inspections. The submission requirement includes the form, fees and notifications, regional impact determination, plan and report requirements and additional requirements. The additional requirement is where you would find the Quality Assurance Plan. The final plan includes submittal, signing, recording, inspection schedule and permit fee. The permit fee is determined by State statute and is not more than \$50.

Section 8 deals with approval, disapproval, abandonment and revocation. Included in this section are conditional and final approval, disapproval, abandonment and revocation. Post approval procedure includes plan signing, permits, security, amendments and expiration, minor and major changes, inspections, annual excavation report, as-built drawings and certificate of performance.

The design standards address the best use of land, design of reclaimed sites and development character, lighting, traffic, waste management, signage, pollution control, and utilities, Screens, trails, links and buffers, fuel and fluid, structures, road and drive construction, public safety, aquifer protection, stormwater management, seasonal highwater table, and off-site improvements. Off-site improvements relate to roads and the applicant will have his engineer evaluate the roads and note any soft spots in the road prior to excavation and will be reviewed periodically as part of the excavation process.

The operational and reclamation standards include express standards and additional standards that may be required in some instances by local regulations thru permitting. It could include clean trackings each day and maintaining vegetation in peripheral areas.

The definitions will be included in section 13 and will include (Dis)approving abutters, commercial excavation, incidental excavation, links, minor topographical adjustment, normal landscaping and stationary manufacturing and or processing plant.

C. Daigle explained that the next step in the process is to incorporate any changes if necessary. Then schedule additional public hearings if necessary and then adopting the ordinance.

Ms. Donna Cilley stated that this is a large document and she wanted to know if this is what they are looking to adopt for new pit owners or does it include existing pits? C. Daigle explained that it applies to anyone with a pit. The difference is if it is grandfathered and doesn't have to go through the process. The regulations apply to new pits or when existing pits have to be repermited.

Ms. Cilley asked that the Board go through the document and outline the changes so a layman can identify those changes. She understands that they are working off the current Earth Excavation Regulations and the Site Plan and there are some language changes but she wanted to know what the real changes are. P. Harris explained that the proposed Earth Excavation Regulations are based on State standards. The Board used standards that already existed that have been so they wouldn't have to reinvent the wheel but use proven standards. He explained that the draft regulations were sent to pit owners to give them time to review the regulations and the Board would like to get their input tonight.

C. Daigle explained that it is a complete rewrite but she can list the major changes that deal specifically with excavation. Ms. Cilley stated that this document is derived from multiple documents and she wants to know what those changes are that make it into one document.

C. Daigle explained the changes. On page 6-13 the Quality Assurance Program is tailored more specifically to excavation and deals with each case individually. On page 9-2 under permits the excavation permits will be good for a minimum of two years instead of one year. The expiration date shall be specified and permits are not "renewable" but instead require "repermitting". On page 9-5G an annual report is required and will need to include only the section that apply to how you operate on your site. Once the report is created you can use it every year and only make the necessary changes. This is not intended to be time consuming or overwhelming but to keep a record on what is happening on the site. Page 9-6 5b requires that every six years of operation and at the project end an as-built plan with a surveyor's certification is required. Mr. Mark Mooney stated that he doesn't believe that the existing regulations or the State regulations require an as-built plan every six year. He is concerned about how much money it would cost for an engineer to do the as-built survey. They could do the as-built plan after the site has been reclaimed. C. Daigle stated that they are only requiring what the State wants for an Alteration of Terrain plan. Mr. Mooney asked that the character of the land for development on page 10-1 4b be explained. C. Daigle stated that when non-sewer lots are closed they are looking for the minimal area for a septic area. Mr. Mooney stated that to reclaim the site so that it is suitable for reasonable development is outrageous because it may or may not be practical. C. Daigle stated that it is standard procedure. Mr. Mooney stated that you won't know what type of development will happen on the site until it happens. C. Daigle stated that they are following the State statutes. Mr. Mooney stated that the regulations will put us out of business. They are also requiring that pit owners post bonds to reclaim the land. C. Daigle stated that most of the requirements come from State statute. Mr. Mooney stated that the State statute are to protect the pit owners so they can continue to do business and this document is open for dispute. Having to hire outside engineers to walk their property and tell them what to do is outrageous and will put them out of business. He has a pit on Rte 107 and he will close it entirely because he doesn't want to deal with these regulations. The regulations are intrusive and out of control. The Board is using extreme power to put businesses out of business. They are requiring that the pit operator go to a public hearing and then they tell him what he has to do. After that the Board hires an engineer that is being paid by the pit operator. The current regulations are adequate when used with the State regulations. All the pit operators have the State's regulations. These regulations are redundant and are more for the towns in the southern part of the State and large pit operator who can afford to adhere to these regulations. Belmont needs to take care of the small business owners who cannot afford to do a detailed as-built with all the contours. He wants the Board to understand the affects these regulations have on local businesses. They need to meet with the pit owners and see their sites. P. Harris stated that the Board defends the pit owners but land owners do change and that is why regulations need to be in place. Mr. Mooney very vocally voiced his opinion that P. Harris should not chair the Planning Board due to his current enforcement situation.

C. Daigle continued outlining the changes. On page 10-2 the operator has to work with the Planning Board to evaluate the condition of the road to identify any areas that need to be shored up or that will need work in the future as a result of the pit operation. D. Cilley wanted to know if this is for new or existing pits. C. Daigle stated that when they come in for repermitting the roads are reviewed and if there

is evidence that the road is failing it is addressed at that time. This is done so the taxpayers don't have to carry the burden of repairs. This conversation about the road occurs at the public meeting.

D. Cilley wanted to know if a pit is sold is the new owner treated the same as the previous owner or is it a new pit. C. Daigle explained that the Planning Board authorizes the transfer and when the permit expires they have to be repermited.

C. Daigle explained the changes to the buffer area on page 10-3. The applicant shall provide adequate buffer and screening around the edge of the property and maintain a link for wildlife to travel through the property. This is a goal of the Master Plan.

Page 10-5M addresses the 4' separation between the lowest excavation and the seasonal high water table as required in the Zoning Ordinance. There is a waiver for this requirement if it can be demonstrated that the proposed excavation will not adversely affect water quality.

Page 11-1 outlines the Express Standards and 11-2 are the additional standards that the Board applies. Page 12-2 contains the additional reclamation standards that the Board requires. Reclaimed areas shall continue to be monitored post-closure to cure any erosion, sedimentation or stabilization problems.

The final major change is the definitions. The current regulations do not comply with Statute because the legal notice requirement is 14 days and the State requirement is 10 days. These regulations are basically already in affect under the State statute or Site Plan.

W. Rollins wanted to clarify that the As-Built plan that Mr. Mooney is concern about having to do every six years is part of the Alteration of Terrain permit. C. Daigle stated that it is and the Town will piggy back their requirement onto that permit requirement so that the applicant just has to provide a copy of what they submit to the State. W. Rollins stated that if it is a small operation then they are not subject to an Alteration of Terrain permit. C. Daigle stated that if the pit owner is not subject to an Alteration Permit then the Planning Board could not require it. This is similar to what the Planning Board does on a regular basis. P. Harris stated that they can be reviewed for major or minor changes. W. Peterson suggested that they do a rewrite of that paragraph so that it states that they are looking for a copy of the Alteration Plan. Mr. Mooney stated that when he operated the pit on the west side of Rte 107 he kept it less than 2 acres and he didn't have to do any As-Built plans as long as the code enforcement officer saw that the land was green. W. Peterson stated that there are not a lot of large pit owners in Belmont.

Mr. Kevin Sturgeon stated that Belmont doesn't get much money from the 2¢ a yard taxes but the pits employ a lot of people who make a living from them. He wanted to know how much the large pit owners pay for taxes. It is a way to make a living even if not desirable. The Aquifer Ordinance has just been completed and he thinks they should leave the Earth Excavation Regulations alone for a couple of years because Belmont is not friendly because of their regulation. Common sense has to come into play. Small pits owners will go out of business with these regulations. Landowners have rights and need a way to pay their taxes.

D. Cilley wanted to know why they don't they just adopt the State's Regulations. C. Daigle explained

that it doesn't adequately address the process. D. Cilley stated that it is a minimal part. We have an Economic Development Committee now but how do we entice businesses into the community with this document. It is too complicated and with too many regulations. The average person is challenged to understand it. There has to be a better compromise. This document is huge. The people that are here need to stay here and not be put out of business. Belmont has the resources and the southern tier of the State is running out of the raw material. If the pit owners have to charge more for their material because of the cost of the regulations then that cost gets passed on to the locals who may not be able to afford the price increase. She cautioned the Board that this document effects more than the pit owners besides possibly putting the small operators out of business.

Mr. Brian Watterson, chairman of the Economic Development Committee, explained that the Board of Selectmen has looked into the ease of doing business in Belmont. The larger pit owners have the capacity to live with the regulations but the smaller ones would have issues. The smaller owners need to communicate with the Board to let them know what they can and cannot handle. If they don't communicate with the Board then the Board will not know what they can handle and what they can't. He wanted to know if this document is house cleaning. C. Daigle stated that it is. The 125 pages are half the size of the existing combined regulations. It is not a combination of other towns' regulations but a combination of our regulations. They have tried to include pit owners in the review at the same time as incorporating the State statutes. She explained that when Blue Sky came before the Board they had to review three documents in order to go through the process. It is better for the Town and the excavators to work with one document instead of multiple ones. A lot of it is administrative in nature. It may not be easy for small business to comprehend but the surveyor will need the document to know what they need to have on the plan. Mr. Watterson stated that people with concerns can go to Town Hall and talk to staff on an individual basis and if they do not express their concerns than maybe there are no concerns. W. Peterson explained that the Board mailed a copy of draft Excavation Regulation to every pit owner for their review and they have had the time to talk to the staff.

Mr. Mooney stated that when it comes to repermitting and reclamation they will not be able to get anyone to put up a bond or irrevocable letter of credit because of the economic times with banks closings. C. Daigle stated that the State law requires it and the Planning Board has the ability to set that amount. The security is to reclaim the site when completed. In these economic times if it is not reclaimed then the taxpayers have to absorb the cost of reclaiming it. Mr. Mooney wanted to know how these regulations are going to affect the pits. C. Daigle stated that if they already have Alteration of Terrain permit they already have the information. It is the cost of doing business. If they also have to submit an Alteration of Terrain permit then they can submit that sketch to the town. The annual sketch can be done by the pit owner. The sketch will approximate what is happening on the site. The six year report will be a more substantial report on what changes have occurred. She stated that if the pit runs for 5 years they would not need to submit a sketch for an Alteration Terrain permit that is why the annual report is important. They have to look at a pit for the future and what it will be like in fifty years. If there are multiple owners who operate the pit less than six years they would not have a record of what alterations have taken place to the land over multiple years.

Mr. Mooney stated that the regulations are easy for the big operators but what about the small operators. He suggested having separate categories for the small and large operations. They could simplify the

annual report and the reclamation. There is a vast difference between a large and small pit operation. The small operations are good for the town because they can provide material for half the price of the large operations.

W. Peterson stated that the Board needs more time to review 155-E and suggested that everyone write down their concerns. He stated that he understands that security is a big issue but because of prior issues with not having security and the town was left holding the bag. R. Caldwell stated that the security can be adjusted depending on the size of the project. He stated that the regulations can seem overwhelming but the other three regulations combined have twice as many pages. Mr. Mooney stated that the existing regulations were friendly and this one is not. W. Rollins stated that there has to be a security mechanism in place and it has to be a uniform equal scale. C. Daigle explained what we have now. She stated also that the required NRCS required cost per acre is based on operators choice of how they plan on reclaiming the site. The operators have to have a goal of what will happen with the pit in the future.

P. Harris suggested having another meeting that incorporates the changes discussed tonight. He stated that these regulations are the cost of doing business.

**MOTION:** R. Caldwell moved to close the Public Hearing.

The motion was seconded by W. Rollins and carried. (6-0)

W. Peterson stated that they will work on the revisions at the August meeting and probably will hold another Public Hearing at the September meeting.

**MEMBERSHIP:**

D. Cilley stated that she is not sure the Planning Board is aware of the current junkyard situation the chairman is involved in. She presented the Board with a newspaper article about the situation and vocally stated her opinion is that the chairman needs to recuse himself until this matter is settled. Vice-chairman, W. Peterson stated that the Board is aware of the situation but will not address it because it is not their jurisdiction. W. Rollins stated that the Board is not an enforcement Board; that is the Code Enforcement Officer's job and he is working on the situation. It has not been determined if there is a violation. D. Cilley stated that he is putting the town at risk and is a liability. W. Peterson stated that the statutes are very clear on removing a member. D. Cilley stated that the Board puts people through the process and allowing the chair to sit is a discredit to the Board and the community. W. Rollins stated that the Board votes as a whole it is not just one person voting. W. Peterson stated enforcement is not the Board's job. It is the up to the Code Enforcement Officer and the Board of Selectmen to do enforcement.

**BOARD'S ACTION-MINUTES:**

**MOTION:** On a motion by C. Long, seconded by W. Rollins, it was voted to approve the minutes of the June 9, 2008, meeting as submitted. (3-0-3)W. Peterson, R. Caldwell and C. Patten abstained.

**MOTION:** On a motion by C. Patten, seconded by W. Peterson, it was voted to approve the minutes of

the June 23, 2008, meeting as submitted. (5-0-1) C. Long abstained

**STAFF REPORT:**

**JOHNGIS REALTY TAX LOT 215-007:**

C. Daigle stated that R. Davis has followed up with the owner on gating off the access to the Johngis Realty lot which has been done.

**MALLARDS LANDING TAX LOT 110-002:**

C. Daigle explained that Mallards Landing is doing a lot of redevelopment of sites and many do not meet the setback requirements from the railroad. Those applicants have to go to the Zoning Board of Adjustment for either a Special Exception or Variance. In a recent case the State has voiced their opposition to the infraction even though it is less than the existing infraction. The Railroad and Mallards Landing have had discussions in the past about leasing the railroad property but have not come to any agreement. The State has now taken Mallards to task and has put them on notice that DOT has objections to applications that infringe on their property. C. Daigle has informed Mallards of the State's position so that they are aware of their position.

**BUDGET:**

C. Daigle explained that since SB2 has been adopted the budget has to be prepared earlier this year. There has been no change in payroll except for what will be offered by the Town. There are no capital expenses. Revenue has decreased by 1/3 because of the reduced number of applications. No change in operating accounts. The Board will review at the next meeting.

**NATURAL RESOURCE CHAPTER OF THE MASTER PLAN"**

R. Ball stated that it is a good time to start working on the Natural Resource Chapter of the Master Plan because the Natural Resource Inventory was completed last year and the Wetland study was completed this year. He suggested that the Conservation Commission be part of that committee.

**SUPERIOR FENCE COMPANY TAX LOT 235-029:**

The chairman signed the Notice of Decision for Superior Fence on 22 South Road.

**AQUIFER PROTECTION INSPECTIONS:**

C. Daigle explained that S. Dalton has done 45 Aquifer Protection inspections and has not found any serious violations. He is pleased with the results and cooperation from the business owners. There were 97 letters sent out and they are having difficulties getting the rest of the businesses to send back the forms. S. Dalton has called some of the small businesses and has assisted them filling out the forms. They will be sending out a third letter emphasizing that an inspection is required as part of the Aquifer Ordinance

**HANDOUTS:**

The Board received copies of "*CASES OF MUNIPAL SIGNIFICANCE*".

**MEMBERS:**

C. Patten stated that situation earlier this evening against the chairman was not called for and should not be heard by this Board. This is an enforcement issue between Code Enforcement and the Board of Selectmen. The law specifies that if the chairman steps down than he is ignoring his duties that he was elected to perform. He does not feel that this issue interferes with the chairman performing his duties on the Board.

**ADJOURNMENT:**

**MOTION:** On a motion by C. Patten, seconded by W. Rollins, it was voted unanimously to adjourn at 9:15p.m. (6-0)

Respectfully submitted,

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Elaine M Murphy  
Administrative Assistant