

**Fryeburg Planning Board Meeting
August 28, 2018 – American Legion**

Members in Attendance: Patrick Emery, Ed Price, Barry Woodbrey, Robert Ricks, Edy Kizaki

The meeting was called to order at 6:00 and it was determined that there was a quorum.

Approval of Minutes: Price made a motion to table the June meeting minutes and approve the July meeting minutes as amended. This was seconded by Ricks and passed unanimously.

Public Hearing: Application for Land Use Authorization- Lopez Gravel Pit: George Sawyer was present on behalf of the applicant Mark Lopez. He presented a plan and explained the proposal to establish a gravel/borrow pit. He described the land layout of 5 acres being separated from a large plot owners by Lopez to serve as the pit area with 2.3 acres to be excavated. He explained that the wetland and property line setbacks would be met and that they have created a reclamation plan. They did 4 test pits and found no groundwater, however explained that the proposed depths of excavation would be 5 feet above the bottom of the test pits despite the lack of groundwater. The Town does not have regulations on this but if the pit fell under DEP regulation it would limit excavation to 5 feet above groundwater. This does not fall under DEP jurisdiction since it is under 5 acres in size. Sawyer stated that this will not be a commercial pit but rather a private pit for Lopez's construction projects. It will likely not be operated every day.

Emery asked for public comments. Jeff Leach asked if there would be blasting, crushing, screening and if a certain certification would be needed. Sawyer responded that the pit area is all sand with no ledge or rock so blasting and crushing would not take place. He doubts that screening will take place since this is bank run sand that will be used for fill. Kizaki asked for clarification on what screening is and Sawyer explained that is a process of removing certain sized rocks from the material.

Leach followed up with a questions about water containment onsite. Sawyer said it would be self-contained and will naturally infiltrate due to the elevations of the pit. At Leach's request Sawyer also confirmed the 75 ft. setback between Warren Road and the limits of excavation.

Sawyer reviewed that a wetlands and vernal pool assessment was completed by Mark Hampton Associates. The wetland in the vicinity of the pit is a scrub shrub wetland and is not significant.

Cliff Hall spoke. He is an abutter to the project and his well is within 250 ft. from the excavation. He is concerned about safety concerns of having a pit nearby. Sawyer responds to Hall's concerns by saying that a 75 ft. wooded buffer would be maintained.

Hall stated that the former CEO assured him that there would never be any commercial activities in the area. Hall also noted the purposes section of the Land Use Ordinance and quoted a couple specific sections, such as protecting the public well being and protecting property values. His concerns include dust, spring and wetland impacts, vernal pool impact, and impacts to wildlife, noise issues and property values.

Sawyer explained the wetland delineation determination and provided some description of definitions related to wetlands. Sawyer also responded to one of Hall's comments doubting the depth of the test pits and explained the process of excavating to deeper depths.

Dennis Keaton asked if an environmental impact statement has been completed and Sawyer responded that there was no requirement per the ordinance to do so. Keaton believes that that is concerning.

Attorney John Shumadine spoke on behalf of his client Gretchen Osgood. He recommended that the Board deny the application based on the premise that the proposal does not meet the noise standards. The applicant has provided no evidence that the noise standard will be met. He noted that the backhoes, tractors, and back-up alarms on trucks will exceed the sound level limits of the ordinance. He contradicted the CEO's review memo that stated that this sort excavation is exempt from the sound level limits of the ordinance because it is not part of a construction project. Construction is temporary and this would be a permanent type of use. The applicant must show that the sound does not exceed 60 decibels at the property lines and he does not believe that this can happen and the application should be denied for that reason.

He also believes that the DEP stormwater permit is needed and that the Board should look closer at the water quality protection standard since the equipment's fuel tanks will be filled onsite. DEP has requirements for refueling and recommended that if the Board does approve the application they make a condition with this in mind.

Jessica Knowles-Lane is in the process of buying the abutting property from Lopez and will be about 150 ft. from the pit area. She asked the Board if there could be stipulations in the hours of operation and if crushing or blasting is determined to be needed would it require the applicant to revise the approval. Lane also asked Sawyer if there were plans for additional excavation in Denmark. Sawyer knows of no additional plans.

Hall referenced that the application said that the pit would operate from 6:30 to 8:30, 7 day per week and begs the Board not to approve it. The mountains create an amphitheater which would exacerbate the noise. Sawyer asked for clarification of Halls comments and stated that the application did not say anything about those hours. The CEO guessed that maybe Cliff was referring to the times outlined in the noise standards.

Lane asked about the timeline for excavation and completion of the pit operation. Sawyer has not discussed this with Lopez and cannot answer.

Allison Leach asked about the difference between a personal use pit and a commercial pit since this pit is likely being used for Lopez's commercial projects. Sawyer said that Lopez will be using the excavated material himself and not selling it. This lead to a discussion about ownership. To serve as an example Price asked how this might be different than commercial harvesting logs off someone's property. Sawyer clarified the term "borrow" being used which is an industry term for natural fill material and not a gravel product.

Hall noted that this area has been laid out for single family homes not a pit and questioned whether his taxes will go down. Ricks asks about projected yield; Sawyer has not yet determined the yield.

The public hearing was closed.

Public Hearing: Application for Land Use Authorization- Summit Alternatives Caregiver Office:

Robin Ferrigno provided an overview of his plan to open a medical marijuana caregiving storefront at the current Four Seasons Horticulture retail space. He explained his history with medical marijuana. Ferrigno stated that they may change their name due to the previously noted similarity to Summit Achievement, unless not allowed. The Board confirmed that a name change would be acceptable. There were no public comments and the public hearing was closed.

Application for Land Use Authorization- Lopez Gravel Pit: The Board reviewed the performance standards of the Land Use Ordinance.

Ricks initiated a discussion with Attorney Shumadine about preliminary injunctions and some of the specifics of litigating an appeal. Shumadine outlined the appeal process and believes that the lack of evidence that the project would meet the noise standard would result in a win for his client. Ricks continued the discussion referencing property owner's right to enjoyment of their property and their mineral rights. Shumadine stated that this is a different issue but that his main position is that the applicant has not proven that the noise standard has been met and therefore the Board should not approve the application.

This led to discussion about Section 16.H of the Land Use Ordinance. Woodbrey agrees that the applicant should show that the standard has been met. Kizaki agreed that this should be proven and not be a condition of approval. There was further discussion about noise standards and Shumadine explained that there are experts who do noise studies and that the applicant should be required to prove that the noise standard will be met.

Kizaki believes that the hours of operation should be specified and asks the CEO, Katie Haley, about Hall's reference to past CEO comments. Haley has no input on what previous CEO's may have said.

Kizaki asks for additional information about Hampton's wetland and vernal pool assessment. Sawyer explains the pool location and process for vernal pool determination. Kizaki states she is uncomfortable with Hampton's report. Sawyer rebuts that Hampton is an experienced expert in the field.

Ricks opened a discussion about the difference between mineral extraction and earthmoving. The CEO pointed out that both are defined in the ordinance and that both need to meet the same ordinance standards regardless of the categorization of use.

Price asked if there is a weight restriction on Wilton Warren Road to which the CEO responded no. Price asked how many trucks would be in and out each day. Sawyer is unsure. Price asked if equipment would be onsite all year. Sawyer did not believe so but that equipment may be there for months at a time. Equipment would likely just be a loader and perhaps an excavator.

Ricks stated his thoughts that the applicant needs to prove compliance with the noise standards.

Price began making a motion to approve. Kizaki interjects that she is not ready to vote. Price continued with his motion to approve the application with the following stipulations:

- A tree buffer needs to remain within the 75 ft. required buffers.
- Fencing needs to be installed along the perimeter of the property being sold. The fencing specified is a 6 ft. high wooden fence.
- A stump disposal plan shall be submitted.
- Hours of operation are limited to 6:30 a.m. to 8 p.m. with no operation allowed on Sundays.
- The 60 decibel sound level limit shall not be exceeded at the property lines.
- The pit entrance shall not result in dust creation and any material tracked onto the town road shall be cleaned up.
- The applicant shall submit a letter of credit for \$25,000 dollars applicable for a period of 5 years or until the reclamation plan is completed.
- If not completed in 5 years the applicant shall come back to the Board for a review of project conditions.
- The CEO shall be notified when reclamation is complete.

- All DEP permits are needed.
- There shall be no blasting, crushing or screening.
- A fuel spill kit shall be available onsite and a refueling area shall be defined.
- If changes to the plans as presented or site conditions are encountered then the applicant must come back to the Planning Board.

Woodbrey asked if Price would amend the motion to say that nothing can be done onsite until a noise survey is completed showing compliance with the noise standards. Price was not in favor of amending the motion. Woodbrey stated that the Board needs to be responsible in its review and try to avoid an appeal process. There was a discussion about the process of the motions made and the conditions presented by Price. The CEO recommends not making the submittal of the sound study a condition of approval because the Board would then not have any review authority over it. The Board should be able to review and vote on the sound report. Shumadine provided information about Roberts Rules of Order and motions made. He again asked the Board to not approve and requests that they ask for a noise study to be complete prior to approval.

Price withdrew his motion.

Kizaki made a motion to continue the review of the application to allow the applicant time to have a noise study completed. Ricks seconded the motion. The motion passed 4-1 with Price voting in opposition.

Application for Land Use Authorization- Summit Alternatives Caregiver Office: The Board reviewed the performance standards of the Land Use Ordinance. Ferrigno confirmed that he is a licensed caregiver and explained the tracking system (METRC) that tracks both marijuana products and sales. He expects 5-10 patients per day.

Price asked if the abutters were notified for the public hearing. The CEO confirmed that they were and has copies of the mailing receipts.

Price made a motion to approve the application with the following stipulations: The hours of operation be limited to 10 a.m. to 6 p.m., the security system shall be in place as proposed and per state law, and all Maine laws be followed and licenses be obtained as needed. This was seconded by Woodbrey and passed unanimously.

Application for Land Use Authorization- Nothin' But Fire, LLC Caregiver Office: Adam Martinese was present as the applicant. He stated that he has been a licensed caregiver for 4 years and that his wife Amy Martinese is also a licensed caregiver and that John Tanes works as an employee for them. He has a licensed grow operation set up in Brownfield. He would like to a smoke shop and medical marijuana store at 330 Bridgton Road. He plans to have a nurse practitioner onsite. It was confirmed that he plans to sell medical marijuana only.

Price asked about expected number of patients and people going to the store. Martinese stated that it will fluctuate and he cannot estimate. He does not expect a lot of traffic as a result of this and noted that he currently operates as a caregiver by appointment only.

Kizaki questioned whether there were residential neighbors and whether there was enough parking. Martinese noted that he is in the middle rental unit surrounded by 2 other commercial businesses.

Woodbrey pointed out that there is a residence adjacent to the property and across the street. Martinese explained that there is lots of area for parking.

There was a discussion about hours of operation. Martinese may be in the office earlier or later than the hours that will be open to the public but would plan to close to the public by 7 p.m.

Price made a motion to accept the application as compete which was seconded by Ricks and passed unanimously.

Price made a motion to hold a public hearing which was seconded by Woodbrey and passed unanimously. That hearing will be on September 25th at 6:00 p.m.

Beginning With Habitat discussion: The CEO has arranged, with much assistance from Nels Liljedahl, to have a representative from Beginning with Habitat at the October 23rd Planning Board meeting. Liljedahl has asked that this meeting be referenced as “Natural Ecosystems of Fryeburg”. It was decided that the Board would invite the Selectmen and Conservation Committee. It was confirmed that the public can attend and it was discussed whether the Fryeburg Water District should be invited. Ricks noted that they can attend as the public. Ricks brought up the idea of having someone from Upper Saco Valley Land Trust in attendance as well. The CEO stated that the general intent of this meeting to related to potential changes to the Land Use Ordinance.

There was a discussion about the order of the agenda at that meeting. It was decided, though Board conversation, that this topic will be first on the agenda and held as a workshop.

Public Forum: Judy Redding stated that she could not hear much of the meeting and that the Board members need to talk louder and perhaps consider asking the administration address this issue by looking into a PA system.

CEO Report: The CEO presented a spreadsheet of permits issued and violation notices sent. Kizaki asked about an unsafe building notice sent and Ricks asked about a malfunctioning septic system. The CEO proved additional details about these specific issues. Price made a motion to accept the CEO report which was seconded by Ricks and passed unanimously.

Other Business: The CEO reminded the Board that Emery and Garrett (E&G) will be at the August 30th Selectmen’s meeting to provide a progress review of their work to update the aquifer study. Kizaki asked about her requested spreadsheets of water monitoring and whether that would be presented at the meeting. The CEO said that she does not believe that E&G will be presenting their findings, rather it will be an update on the status of their work. The CEO was not sure of the format of the Selectmen’s meeting and whether questions will be allowed.

Kizaki asked about Planning Board input into the report. The CEO was unsure if that was part of the proposal. There was further discussion about this. Kizaki noted her disappointment that 2 selectmen voted to discontinue the meetings about the water reports with the Planning Board and Water District.

Price brought up a discussion about the medical use of marijuana and began making a motion to ask the Selectmen to hold a Special Town Meeting to vote to enact a moratorium. The CEO stated that the Planning Board should draft the actual moratorium ordinance prior to asking the Selectmen to vote on putting it on a warrant. MMA has created a sample moratorium that the CEO has provided. The Board

reviewed this and made necessary revisions. There was a discussion and debate about how the moratorium would impact the previously approved medical marijuana stores and the one currently under Board review. The Board determined that the approved stores would be allowed to operate, any applications in process and not yet approved would not be acted on until an ordinance was adopted or moratorium expires, and no new applications would be able to be received after adoption of the moratorium.

Price made a motion to request that the Selectmen hold a Special Town Meeting to approve the moratorium as amended, after review of the moratorium by legal counsel. This was seconded by Kizaki and passed unanimously.

Price made a motion to adjourn, which was seconded by Kizaki and passed unanimously. The meeting adjourned at 8:31 p.m.