

**MINUTES
TOWN OF SEBAGO
PLANNING BOARD MINUTES
7:00 PM
Tuesday, September 10, 2019
TOWN OFFICE BUILDING**

I. Call to Order

Vice-chair Jim Jansz called the meeting to order at 7:00 p.m.

Present: Jim Jansz, Dick Perry, Andrew Plummer, Tina Vanasse, Code Enforcement Officer Brandon Woolley, Recorder Desirae Lyle.

Absent: Paul White

Guests present: June & Donelle Allen, Ann Burns, Deb Howard, Phil Lowe, Marcia Christensen, Dorothy O'Donnell, Grosvenor Newcomb, Edie Harnden, Jeff Cutting, Tom Cutting

II. Correspondence

- a. Desirae Lyle reported that the following correspondence was distributed to the Board in their meeting information packets prior to this meeting

A copy of a letter dated September 3, 2019 from Charlotte & Glenn Dodge regarding the proposed project on tonight's agenda. (Site Plan Review – Property owned by Nathaniel & Adele York – Map 4, Lot 6 & 8A). The original copy of this email will be included in the Planning Board file for this project.

- b. Desirae Lyle reported that the following correspondence was distributed to the Planning Board members at the start of this meeting.

1. A copy of an email dated September 9, 2019 from Gerard Schofield, Attorney for the Cuttings, regarding the proposed project on tonight's agenda. (Site Plan Review – Property owned by Nathaniel & Adele York – Map 4, Lot 6 & 8A). The original copy of this email will be included in the Planning Board file for this project.
2. Desirae Bachelder advised the Board that Tina Vanasse who was absent from the last meeting held on August 13, 2019 has reviewed the minutes from that meeting and listened to or watched the recording of the proceedings. She has completed the "Member's Affidavit Regarding Missed Planning Board Meetings" attesting to this fact and will therefore be allowed to participate in the discussion for tonight's agenda item. The original copy of this affidavit will be filed in the official Planning Board Meeting Minutes file. A copy will also be filed in the Planning Board file for this proposed project.

The Board read through the letters from Mr. & Mrs. Dodge and from Mr. Schofield. Jim Jansz determined that Mr. Schofield's letter was too much for the Board to digest and discuss at tonight's meeting. Jim felt that there were items in the letter that are outside of the Planning Board's authority, and that the Town's attorney may need to become involved. Andrew Plummer commented that the road issue is a civil matter. The Zoning Board of Appeals decision was discussed. Andrew Plummer read aloud the letter from Mr. & Mrs. Dodge.

Brandon Woolley reminded the Board that at this moment there is no application before the Board to discuss. It is ok to discuss some general procedural things, but the Board shouldn't be discussing an application that we don't have yet. Jim Jansz asked if the Board should be discussing the letter from the Cuttings attorney. Brandon stated that the Board can do what they will with the letter, but the engineering plans are not ready. There is an engineer working with Mr. York to complete the plans, but they are not ready as of this time.

Jim Jansz read aloud Lands Use Ordinance Section 7(D)(2): For major projects, applications for site plan approval shall not be submitted until a site inventory and analysis is first submitted to the Code Enforcement Officer and reviewed by the Planning Board.

Brandon Woolley explained that the application is not complete. Jim Jansz commented that the Board wouldn't be looking at the application tonight if it was ready because they need to review a Site Inventory and Analysis first. Jim reread Section 7(D)(2): For major projects, applications for site plan approval shall not be submitted until a site inventory and analysis is first submitted to the Code Enforcement Officer and reviewed by the Planning Board. The Planning Board shall act on the completeness of the site plan inventory and analysis within thirty (30) days of its receipt. Andrew asked Brandon for confirmation that he didn't feel that the application was complete. Brandon replied that no, he did not feel that the application was complete.

III. Open to Public Questions

Deb Howard, 538 Sebago Rd, voiced concerns about updating the Comprehensive Plan, and the hauling of material on Woodland Road, which included three trucks on the day of the Appeals meeting. She also has concerns about the safety of trucks exiting Woodland Road onto Route 114, the effects on the water, groundwater, stormwater runoff, and local wells, and the environmental damage to the property.

Jim Jansz commented that since there is no application before the Board tonight, he is not sure that the Board can take the material that Ms. Howard has presented. Ms. Howard asked why Mr. York is still operating even after the Zoning Board of Appeals (ZBA) meeting. Jim explained that he understands that Mr. York is operating under the original Code Enforcement Officer approval. Jim believes that the action taken by the ZBA applied to the application approved by the Planning Board. Andrew Plummer noted that the ZBA

did not put a cease and desist order in place for Mr. York's project they only denied the Planning Board approval.

Grove Newcomb commented about the order of the agenda, and suggested that "Open to Public Questions" should go at the end of the agenda instead of at the beginning. Jim Jansz n that that had been discussed before, and the Board can decide at the next meeting if they want to change that. Mr. Newcomb also asked if Mr. York has a permit to haul materials or not. Jim noted that there are a lot of questions that need to be answered and if the Board had a complete application they would be discussing many of the questions.

Jeff Cutting stated that the Planning Board had made a decision to give Mr. York a permit to do whatever it was that he wanted to do. The ZBA vacated that decision, so he doesn't have a permit.

Phil Lowe commented that there's a big difference between building or improving roads on your own property or leveling the land for farming. The difference Mr. Lowe feels is that once trucks are hauling material it becomes a commercial operation. Mr. Lowe directed the Board to the Land Use Ordinance Section 4 Schedule of Uses. Mr. Lowe also suggested that the Board place a cease and desist order on Mr. York's project. Jim explained that he is not going to try to take a vote now, because there is no application to vote on.

Jeff Cutting spoke again regarding the commercial removal of materials.

Grove Newcomb mentioned that the Board should look back at what previous Boards have done in regards to following the ordinances.

Jeff Cutting mentioned that the Selectmen had been asked about permits, and they were told by the CEO that a permit wasn't needed.

Greg Cutting asked why Mr. York could still be permitted to operate a gravel pit when the ZBA overturned the Planning Board decision. Jim Jansz stated that Mr. York had CEO approval before Planning Board approval for up to two (2) acres of open pit.

Phil Lowe agreed with Mr. Newcomb about the "Open to Public Comments" section being moved on the agenda.

Deb Howard asked how long the hauling of material can continue and what are the next steps for people to make it legal. Jim Jansz feels that the Town Manager, the Selectmen, the CEO and the Planning Board need to discuss the permits and the laws.

Andrew Plummer made a motion to end public questions. It was seconded by Tina Vanasse. Motion carried with all in favor.

Brandon responded to the questions from "Public Questions". "Mr. York bought the property, his intentions were to farm it and harvest some timber. Farming is an agricultural activity it's exempt from Site Plan Review. Land clearing is an agricultural activity; you can clear as much land as you want if you intend to farm the land. You can cut as many trees

as you want if you own the trees, that is your right, that's exempt from Site Plan Review. Timber Harvesting and Agriculture, agriculture includes clearing of land. Mr. York has every right; he has the equipment to fulfill this operation. He has the right to improve roads on his own property, and he has the right to sell some land. Some people would say selling anything is a commercial venture. I have also heard the public say that we should not interpret our ordinances; we should follow the strict meaning of words and intentions in our ordinance. If we deal with just the strict meaning of words in our ordinance and our definition, there's a paragraph in the beginning of our definition section that if the word is not covered in our definition section you look up the ordinary definition in the dictionary. So the question is commercial, if you look up the commercial definition it's for profit, it doesn't mean you can't sell something, it means it has to be profitable. This operation is not profitable this operation is intended to help him pay for his land and to pay for the improvements and pay for the development of his farm land. That is a fact; we have run into this, this isn't the first time we've run into this situation. We ran into this situation, I think there was agricultural operation down on the Northwest River, and that one went all the way to the Superior Court and it became an issue of whether that was agriculture, whether it was commercial or whether it was for his own consumption it was pointed out that he didn't consume all of these animals that were raised down there, it was an allowed use in that particular zone, but they drew the line at commercial. Even the court determined that it wasn't a profitable operation it couldn't be considered commercial. Now you're all sitting there stating that you've observed trucks going in and out, I've looked at load slips and I've looked at where those loads have gone and I know that the day of the Appeal, you're right three (3) trucks went in there in the morning and three (3) trucks left and there have only been four (4) trucks that have gone in and out of there all summer long with loads of loam. Three (3) of them went in there the day of the Appeals meeting, and all three (3) of them were from the Town of Falmouth. They came, they bought three (3) loads of loam and they left, all three (3) arrived at the same time and they all left at the same time. So yes we have beautiful pictures of three (3) trucks going in and out of there, but they were literally the only three (3) trucks that sold loam except for the one (1) other one (1) that have gone in and out of there all summer long. There have been 90 loads in roughly 100 days. That's approximately one (1) to two (2) loads a day on average, I'm sure there have been days when no trucks have gone in there. One (1) or two (2) trucks on average per day does not mean a commercial operation or profitable operation. You might look at other gravel pits and quarries in the near area that are looking at 30 and 40 truckloads a day. This is one (1), one (1) truckload a day it's not commercial. Now if you look at the use table under rural uses, mineral extraction under two (2) acres requires CEO approval, it doesn't say Planning Board it say CEO approval, but if it's a commercial operation, it's for profit then it refers you to number 11 in the commercial uses which requires Planning Board approval in an area of disturbance greater two (2) acres. Now I'm talking about the pit area, not cleared area which is agriculture. If it's greater than two (2) acres you go back to rural uses and mineral extraction, if it's more than two (2) acres it requires Planning Board approval. After the ZBA meeting, he (Mr. York) stopped exploring for any more material, he's continuing to process materials that have already been excavated, he has sorted the materials, he has stock piles, he has roughly a thousand yards of screened material and he's giving it away. So if you see trucks going in and out there they're taking free material. Mr. York has load slips and tax returns, I'm sure if the Planning Board chooses to get into such depths, they could take a look at his tax returns and see whether or not this has been a profitable venture. In my opinion, it's not profitable. In my opinion, it's not commercial and I gave him permission to continue. He's less than

two (2) acres, everything else, the clearing of the land, the forestry that's all covered under agriculture and forestry operations, and it's not reviewable, it's exempt from Site Plan Review. The Planning Board gave him permission to exceed two (2) acres, so the ZBA took away the permission to exceed two (2) acres. He is living on the property and he owns the equipment, he has every right to come and go as he pleases on those roads and that is exempt from Site Plan Review. Any contractor, any contractor has the right to come and go as they please to their property to and from. So if you see trucks going in and out of there, he has every right to leave in the morning and he has every right to come back. That's not reviewable and it doesn't require any permission it's completely exempt from Site Plan Review."

Jim Jansz noted that the Board has to go on what he told us in terms of the profit thing, he (Mr. York) said he was going to earn money for his farming. Brandon responded, "Being a farmer myself I know how many years it takes to develop property. I actually put together a business plan, I was the under bidder on a large piece of property that had been completely stripped of all of its organic material. My business plan called for a minimum of three (3) to four (4) years before it could produce any forage on that land. He's actively clearing the land, he has a large parcel of the land that has been graded and cleared the rocks have been removed and it has been seeded to rye. It may take another three (3) years before he sees a harvestable crop or forage on that property, but you can't tell me he's not making an effort, he's made a tremendous effort. There are fruit trees planted on the property, there's fields seeded. Now I know you may disagree, but it's in our ordinance and it's also covered under our Comprehensive Plan. The Comprehensive Plan was the foundation for our Land Use Ordinance. This particular parcel of land was identified during the Comprehensive Plan as a growth area. He meets all of the requirements in the Comprehensive Plan; it doesn't interfere with any sensitive areas, any wetland areas, or any wildlife habitats. The Planning Board went through their review process the first time, sure there's deer on the property, but it's not a sensitive area, it's not a deer yard, those maps were provided to the Board, and it didn't interfere with any wildlife habitats. There is very little slope to the land, there are very few places where you can get any gravel, any marketable amount of gravel. His intent is to level the land and farm the land and any money that he can make, any money that he can generate to help him with his endeavor to farm that land is within his rights. Mr. York isn't even here; we're having a public hearing which is completely inappropriate. There have been references made to the Select Board, this is not a Select Board issue, this is Planning Board issue. The Planning Board has the right to discuss this and open it up for public comment, but it should end. This has already become a public hearing. The applicant isn't here to address any of these concerns and we don't have an application."

IV. Review of Minutes (August 13, 2019)

Dick Perry made a motion to approve the August 13, 2019 meeting minutes as presented. It was seconded by Andrew Plummer. Motion carried with all in favor.

V. Old Business

None

a. CEO Updates

Nothing reported.

b. Goal Setting Items

1. Review of Application Processing Documents

Nothing reported.

VI. New Business

a. Site Plan Review – Requesting Permission to Extract Materials in an Area Greater than 2 Acres – (Property owned by Nathaniel York) – (Land Lot) – Map 4, Lots 6 & 8A

Mr. York was not present at tonight’s meeting. All comments about this agenda item are under “Public Questions”.

VII. Miscellaneous

The Board discussed moving forward with Mr. York’s project. If the Site Inventory and Analysis is available at the next meeting the Board will look through that for completeness before an application will be accepted. Brandon mentioned that the Site Inventory and Analysis and the Site Plan Review application are identical and ask for the same information. Andrew Plummer reminded the Board that they have 60 days to make a decision once an application has been accepted as complete. Dick Perry noted that at the last meeting the Board went through the list quite laboriously and he feels that Mr. York got the message that the application would be in complete order when he came back and that the Board addressed every item that Mr. York needs to include in his application. The burden of proof is on the applicant. Brandon commented that he, on average, visits Mr. York’s property once a week. At this time since the pit area is less than two (2) acres he only needs CEO approval. Mr. York does have a license through the DEP (Department of Environmental Protection). Brandon explained that Mr. York is operating York Earthworks at Grace Valley Farm, so he’s identifying himself a farm. Again there is no application and the applicant isn’t here to explain this information.

VIII. Adjournment

Andrew Plummer made a motion to adjourn at 8:06 p.m. It was seconded by Dick Perry. Motion carried with all in favor.

Respectfully Submitted,



**Desirae Lyle
Administrative Assistant/Deputy Clerk**