

Minutes of the Planning Board Meeting

Monday June 21, 2021 6:00pm

Bonnie Ham called the meeting to order at 6:02pm.

Slight technical difficulties in getting Zoom started – Mike Donahue was present on Zoom.

Present in person at 165 Lost River Rd: Bonnie, Pat, Scott, Robert, Hanna, Ben, Margaret
Public Participation: Casey Caulder, Dan Trinkle, Kelly Trinkle, Kyle Caulder, Rex Caulder

Approval of Minutes from May 10, 2021 Meeting

Minutes of the May meeting were reviewed. Scott motioned and Robert seconded to approve the minutes as presented. In discussion, Pat noted that as Ben and Margaret had both received majority write-in votes during Town Elections, they were elected to the Board, not appointed. Minutes were unanimously approved with this correction.

Selectmen's Report – Scott Rice

Discussion currently centers around water rates and water leakage. Rates have not been raised in Woodstock in the past 15 years and even with the proposed increase remain lower than the majority of NH. Both water and sewer departments are currently losing money. The rate adjustment is trying to correct this.

Report on NH Municipal Code Enforcement Webinar – Bonnie Ham

Bonnie attended the May 20th Code Enforcement webinar. It was not just about excavation, but also about gravel pits, junkyards, etc. Code enforcement of all topics. The most useful information gleaned related to earth excavations is that the Planning Board is the enforcement agent for the town, not the Select Board. We could choose to delegate that responsibility to another officer: in some towns this is the building inspector.

Report on/actions indicated as a result of Meeting with Selectmen and Town Attorney relative to Earth Excavation Process

In brief, the Attorney noted that there were two options for litigation in the event of an irreconcilable dispute: 1) Superior Court – which is a broader process delivering injunctive relief. It would be lengthy and expensive. Or 2) District Court – ordering a cease & desist. It would be less costly and time consuming. Neither procedure is ideal. Robert noted that the Board could also be found to be at fault in a court proceeding. The best option is to work it out through discussion.

Rex asked for a copy of this interpretation because his attorney had interpreted the situation differently. Scott noted that the lawyer has confirmed that Rex can use any material already excavated, just not excavate any new material. Bonnie noted that the Board has issued this statement already in an email sent to Rex and it is not new information. Rex confirmed that they already knew this. Scott also noted that the Selectmen did not have the right to give

permission for the blasting that happened last December. Bonnie read into record the response from the attorney (cited below). Three questions were asked and answered.

When last we spoke, I was left with three questions:

1. Can the owner continue to process and sell material which was excavated after the permit expired but with the permission of the selectmen?
2. Can the planning board require the new owner to post a reclamation bond which meets the current requirements, or must it accept a bond in the amount required when the approval was put in place.
3. While the board has no problem with the owner bringing new materials onto the site for storage, it is wondering whether those materials brought to the site may be processed and sold.

Here are my thoughts:

1. Yes, the owner may continue to process and sell the material which was excavated after the permit because neither RSA 155-E nor your excavation ordinance regulate the processing or selling of excavated materials. They only address the actual excavation operation (i.e. the removal of the materials). Processing and sales would normally be governed by a zoning ordinance, but, as we all know, Woodstock has no zoning ordinance. To the extent that processing and selling excavated materials is governed by RSA 155-E and/or your regulations, since the excavation was permitted (albeit by the wrong body), it seems to us that the processing and sale of those excavated materials would also be permitted.
2. No, you can only require the reclamation bond as that would have been required by the original permit, since that is all you could have required from the original owner. Until the new owner comes in for a new permit to do more excavation, you cannot require an increased bond.
3. As for materials being brought onto the site, again, neither RSA 155-E nor your excavation ordinance regulate what may then happen with those materials. Since there is no issue with him bringing the materials to the site, it seems to us that the processing and sale of those materials would also be permitted.

Pat noted that these questions were not specific to Rex but to understand the Planning Board responsibilities and scope of authority. Bonnie paraphrased the response as stating that Rex has permission to process and sell any materials not attached to the ground.

Rex asked, when he applied for the permit he was given a 5 year permit for the East Side and a 4 year permit for the other side and is questioning why. This generated heated discussion and it was found that the actual permits have dates one year apart: One issued to Woodstock Sand & Gravel is dated 6/29/15 expiring 6/29/20. The second one issued to Caulder Construction is

dated 6/13/16 and was marked as expiring 6/13/16, crossed out to correct the expiration to 6/13/21. The issue is moot at this point as both permits are now expired. Rex noted that there is no reason not to move forward with issuing new permits for the two pits.

Rex stated that all required Alteration of Terrain application documentation is in order now. He asked which version of the Excavation Regulation his permits fall under – those extant at the time he began the application process last November or the new regulations drafted by the Board while this process was ongoing. Hanna stated that based on the lawyer's response cited above, we would require the bond amount that was appropriate at the time of the original request.

Scott motioned and Robert seconded to accept the old bond amount for the new permit applications. Board members unanimously agreed.

Bonnie stated that the permit application received was a minimal submission and did not include all required documentation. After some discussion, Rex called Steve LaFrance to verify whether the documents had been delivered. It was confirmed that the Alteration of Terrain documentation had been submitted already and the permit application documentation would be delivered this week.

Robert asked whether the Devine bond on the pit now belonging to Rex had been released. Bonnie confirmed that it has been.

Rex stated that the completion of the Alteration of Terrain process is in the state's hands and they have 50 days to respond. Bonnie noted that in order to give 21 days notice to abutters we have missed the deadline for permit hearing at the July meeting and this would have to be deferred to August. Rex was satisfied with this outcome as he is able to operate in the meantime with previously excavated material.

Board Member Elections

Robert motioned and Pat seconded to elect Ben as Chair and Bonnie as Vice Chair. Pat, Robert, Scott, Ben, Hanna voted yes. Bonnie voted no. Margaret abstained. Motion passed.

Meeting adjourned at 7:28.