

11.5.14 Shaftsbury DRB meeting

The meeting was called to order at 7 pm.

Present were board members Huncharek, Biddy, and Ponessi. Alternate board members Day and Palmer joined the hearing.

Conflicts of interest: Mr. Ponessi stated a conflict of interest for agenda items 5 (# 14-9515, Mr. Freeman BLA) and 6 (# 14-9518, Mr. and Mrs. Paul Earth Extraction).

Mr. Huncharek asked members of the public to sign in on the sign-in sheet, which was passed around.

At Mr. Huncharek's request, the board postponed review of previous meeting minutes to a later point on the agenda.

Item 5: Permit application # 14-9515: Boundary Line Adjustment parcel #15-20-59, applicant William Freeman. Mr. Ponessi recused himself. Mr. Freeman joined the hearing.

Mr. Ponessi described the application: for 2 existing lots on Glastenbury View Drive, both with WWT permits, a request to expand Lot 2 to approximately 4.5 acres and to reduce Lot 1 to approximately 3.52 acres through a boundary line adjustment. All zoning setbacks will continue to be met, and a 100 foot buffer required by an earlier permit condition will be maintained.

Mr. Huncharek asked: did Mr. Freeman's engineer, David Mance, sign the application for him? Mr. Freeman answered "yes." Mr. Huncharek asked Mr. Freeman to provide the board with a statement signed by him and by Mr. Mance that Mr. Freeman had permitted this signing on his behalf.

Mr. Palmer asked if the abutters had been notified. Mr. Huncharek passed around a statement re abutter notification prepared by Mr. Mance.

Mr. Rosso, a member of the public and an abutter, asked for clarification of lots 1 and 2.

Mr. Densmore, a member of the public and an abutter, reviewed the map but had no questions.

The members of the board reviewed the application in the context of Section 5.04 of the Town Subdivision Regulations. Mr. Huncharek requested a copy of the plans submitted as part of the WWT permit application for filing.

Mr. Day moved and Mr. Palmer seconded a motion to close the hearing. The motion passed 4-0-0.

Mr. Day moved and Mr. Palmer seconded a motion that the BLA application be approved on the condition that the applicant submit the WWT permit plans referenced above. The motion passed 4-0-0.

Item 6: Permit application #14-9518: Request for Permit for Extraction of Earth Resources, parcel # 18-02-29, applicants Jeffery and Stephanie Paul. Mr. Ponessi recused himself; while not at present under contract to Mr. Paul, he had provided him engineering advice in the past.

After Mr. Paul signed the Interested Persons form, he described his application: after purchasing the lot located at 246 Spur Road in February 2014, he became aware of an abandoned gravel extraction

operation on the property, appearing today as a hill that had been partially excavated to grade, leaving steep side slopes. Wishing to re-grade the site to provide space for a sugar house and a grassy meadow for livestock, he arranged with a friend, Joshua Kurtz, to give Mr. Kurtz the gravel in exchange for its removal off-site. Mr. Paul distributed photos of the extraction site taken 11/5/14.

When asked the dimension of the site, Mr. Paul said an expired Act 250 permit for extraction from the site made reference to a 2-acre extraction area. Mr. Paul said approximately 600 c.y. of gravel had been removed from the property between July and late September 2014, when the operation ceased upon notification by the Town that a permit might be required. One truck was used to move the materials. Mr. Kurtz, on questioning, said the material was used on his jobs, so it would have been bid. Mr. Paul said he had considered using some of the material to maintain Spur Rd., which he and his wife own.

Mr. Paul elaborated upon his intentions for the site: it is his wish that a total of 4,000-5,500 c.y. of material be taken off site to enable him to create a meadow and site for a sugar house. He guessed an additional 500-1,000 c.y. of material might be used on the property. He expected extraction to take place over a period of about two years, depending on Mr. Kurtz's need for the material on his jobs.

Mr. Ponessi pointed out that no curb cut permit was required as Spur Rd. is a private road, and that the Act 250 permit predated the Town's zoning bylaw.

Mr. Paul and Mr. Ponessi sketched on a map the approximate locations of watercourses and wetlands, and shared a wetland/soils map. Mr. Ponessi said all disturbances would respect the Town's 50 foot buffer requirement.

Access to the property is via Spur Rd., which many other landowners also use, via Chapel Rd. in Bennington.

Mr. Paul produced a statement that abutters had been notified, with a list of those notified.

Mr. Williams, a member of the public, asked if the applicant applied for a permit prior to beginning work. Mr. Paul answered "no." Mr. Williams asked if he knew a permit was needed. Mr. Paul replied "no." Mr. Williams asked if Mr. Kurtz asked to see a permit. Mr. Paul replied "no." Mr. Williams asked Mr. Paul if he would be making any money on the project. Mr. Paul replied that no exchange of money has taken place, but that he thought the extraction would improve the value of his property.

Mr. Paul said state law (later clarified at VSA 19, Chapter 27, sections 2701 and 2702) required that those using a private road to access their properties should contribute to its maintenance "ratably," which Mr. Paul thought might refer to the length of road used by each property owner.

Mr. and Mrs. Williams signed an Interested Persons form. Mr. Huncharek cautioned that the DRB could only accept facts, not hearsay.

Mr. Williams expressed concern that runoff from the road could affect aquatic habitat in Furnace Brook; that extraction could negatively impact wells and springs; that trucks would create dust and fumes and make passage along the road problematic. Mr. Williams acknowledged that even prior to extraction the road produced significant runoff. Mr. Williams said he'd been told by the District Act 250 coordinator, Warren Foster, that Mr. Paul might need an Act 250 permit.

Mr. Paul said he couldn't afford to pay someone to remove the materials from the site.

Ms. Eleanor Smith, a member of the public, said the road has been in fine shape for the 37 years she has lived on it. Joyce Hall, a member of the public, asked if the operation's purpose was to produce income or improve his property. Mr. Paul said "improve our property."

Mr. Paul said that this summer approximately 1.5 truck loads of material were removed each week.

Mr. Ponessi said the operation could be seen as a reclamation, as required by the expired Act 250 permit; that bringing in log trucks and other heavy equipment is perfectly legal.

Mr. Robson, a member of the public who lives at 63 Spur Rd., said his house has the longest frontage on the road of all the neighbors, and that he observed no untoward traffic on the road during the summer. He acknowledged he often works at night and sleeps during the day.

Mr. Huncharek suggested the hearing be recessed and at its reconvening that Mr. Paul provide the following:

- More accurate and descriptive site map
- A copy of state statute referenced above
- Show the abutters on the map
- Provide a narrative addressing the requirements of bylaw sections 3.5 and 7.5
- Show contours

Mr. Day moved and Mr. Biddy seconded recessing the hearing to December 3. The motion passed 4-0-0. Mr. Huncharek confirmed that the abutters would be notified should the DRB schedule a site visit.

Other business:

Mr. Ponessi recused himself to present a sketch plan for major/minor classification for the proposed Marion Cross 2-lot subdivision on Cider Mill/Hickory Hill Roads. The DRB reviewed the application per the Subdivision Regulations, definitions section. Mr. Palmer moved and Mr. Biddy seconded declaring it a minor subdivision. The motions passed 4-0-0. Mr. Ponessi said he hoped to submit the preliminary plat on December 3, 2014.

The minutes of the October 29 meeting were reviewed. They should be changed to reflect it was an open deliberative session, not a private deliberative session. Mr. Ponessi moved and Mr. Biddy seconded that the minutes be approved with that correction. The motion passed 4-0-0.

The Board agreed that future Findings of Fact should make reference only to a 15 day appeal period, and that any reference to a 30 day period should be deleted.

Mr. Day moved and Mr. Ponessi seconded that the meeting be adjourned at 9:22 p.m. The motion passed 4-0-0.

Minutes transcribed by Shelly Stiles, zoning administrator