



**** DRAFT ****

Hill ZBA

Meeting/Hearings Minutes

August 12, 2021

In-Person regularly scheduled Meeting / Public Hearing(s) RE: Appeal of Administrative Decision.

Meeting was brought to order by Stephen Thomson, Chairman, at 7:00 p.m.

Attendance: Stephen Thomson, Charlie Estes. Frank Marsh - The Board welcomes a new appointee, Member Frank Razzaboni. After a brief discussion - Mr. Razzaboni graciously recuses himself from the GAW Excavation Application processes until such time as the matter is concluded.

Public Audience – The agenda includes two public hears for appeal of administrative decision which has been properly noticed related to the Planning Board’s finding of the site suitability for the proposed Excavation permit submitted by Green Acres Woodlands. Approx. 27 residents were in attendance, whose names were obtained, are on file with the ZBA Secretary.

Old Business –

Minutes of Previous Special Meeting from July 26th were presented electronically. A motion was made by Stephen Thomson and seconded by Frank Marsh to accept the July minutes as presented. Motion passed unanimously.

Stephen made a Motion to Table New Business and deliberations until the conclusion of both public hearings on tonight’s agenda. Motion Seconded by Charles Estes. Motion passed unanimously.

The Secretary, Charles Estes provided a synopsis of the process and procedures required for public meeting opposed to a public hearing. He advised the attendees the meeting portion of the ZBA’s regularly scheduled meeting was underway. It was made clear that the board had received two independent appeals of administrative decision that the board was required to hear separately and that would both be heard tonight. The process was that the first hearing would be called to order. At the conclusion, the hearing would be closed and nothing further would be allowed on the Taylor appeal. The second hearing would then be called to order. All things Munson Coalition Et al, related would be heard. Upon conclusion of the second hearing nothing further would be allowed while the board deliberated. The board would take a brief recess after the hearings and then resume the regular meeting at which time the board would proceed with deliberations and these matters would remain on the agenda until a decision had been reached.

NEW BUSINESS -

The first public hearing was opened at 7:10 pm.

Applicant Presentation -

The Hearing for the Appeal of Administrative Decision # AAD21001 submitted by Steven Taylor of 282 Currier Rd, Hill NH was called to Order. Mr. Taylor is appealing the decision of the planning board’s July 15th public hearing regarding the approval of the site as appropriate or suitable for the proposed Sand and Gravel Pit on Poverty Pond Rd. Map 13 Lot 28.

The board had previously reviewed Mr. Taylor's application for completeness including standing pursuant to NH RSA 676:5 and finding the application complete and upon finding that Mr. Taylor represents that he is an aggrieved resident and taxpayer, Mr. Taylor proceeded with his statements. (Mr. Taylor's statements mirrored previously submitted written statements which the ZBA retains on file with the Secretary.) Mr. Taylor noted 4 elements of concern being the following: Road Maintenance and deterioration of already strained road conditions, Safety Hazards, Nuisance due to dust, noise, tailgate's slamming and back up indicators etc., Property devaluation/diminution and deterioration of Neighborhood character and conditions such of peace, quiet, tranquility and the beauty of the surroundings. Mr. Taylor's statements and letters suggest the Planning Board failed to find properly when not talking these conditions into account when finding the sight appropriate.

Residence speaking in favor of Mr. Taylor's appeal include the following: Roberta Laliberte, Lucy Natkiel, Judy Pescinski, Mike Munson, Paul Bradshaw, Peggy Razzazboni, Lee Herterich, Susan Koberski, Anne Gagney, Carl Passaro, Jeff Laliberte, Tracie Elder, Bert Verity and Heidi (last name?).

In support of the appeal the factors raised were many surrounding much of the concerns that will be addressed at the time of Site Plan Review.

- Safety from the undeniable INCREASE in trucking and heavy equipment traffic traveling on narrow roads of poor conditions, hills, no shoulder and steep slopes, Class VI sections of ingress and egress, pedestrian traffic, domestic animals and wildlife safety, dust, noise, property diminution and property value deterioration, loss and hazardous conditions for recreational use of the existing trails/roads (atv,) the inevitable loss of the peaceful and quiet tranquil conditions currently associated with the area and surrounding neighborhood. Statements further included the expectation of increased taxation due to deteriorating of already strained road conditions and depreciation of home values associated with noise, dust, and the general nuisance factor of loud loaded trucks for transportation of materials. The Town currently extends via recommendation of the assessor a 10% property tax reduction related to other excavations in the Town of Hill as a result of the noise and dust nuisance factor. There were concerns expressed over bike traffic, the "Beep, Beep, Beep" of back up indicators, fuel storage at the site and the need to supply fuels for the operations. There was concern expressed for the crossing of a culvert under a class VI road that was not designed for the weight or frequency of materials being transported. Anne Gagne listed a lost list of Site Plan Review conditions that need to be considered at the appropriate time and expressed concerns about deviation from the Planning Board Code of Conduct and procedures by the Planning Board Chairman.

In Opposition –

Maria Dolder from Herbert and Dolder, PA - Counsel for Green Acres Woodlands appeared and without waiving any rights to objections, raised several procedural objections. Ms. Dolder objected on the grounds of standing pursuant to NH RSA 676:5 asserting that Steve Taylor has no standing as he is not a direct abutter. Ms. Dolder also objected that appeal is procedurally improper and again without waiver, asserts the ZBA is without jurisdiction to hear an appeal of a special exception finding of the planning board. The board disagrees on the basis that the appeals are not of the special exception process by are the result of the planning board finding the site appropriate for the application to PROCEED TO the ZBA for the special exception process. The board nevertheless made no determination or ruling on the Objections and notes the objections for the record.

Shaun Bresnahan, Selectman and Ex-Officio Member of the Planning Board, asserted that the Planning Board's role was "Advisory" to the ZBA's special exception process in finding the site suitable or appropriate for its intended use.

The Public hearing on Mr. Taylor's Appeal concluded and was called CLOSED at 7:50 PM.

A second Appeal of Administrative Decision was submitted by a group of residents, hereafter referred to as the Munson Coalition Et, al., which consist of Mike and Michele Munson, Lucy Natkiel, Mary Eckert, Michael Brown and Carol Asher - by and through Counsel Orr and Reno, PA - Jeremy D. Eggleton. The group is appealing the decision of the planning board's July 15th public hearing regarding the approval of the site as appropriate or suitable for the proposed Excavation Permit on Poverty Pond Rd. Map 13 Lot 28.

The Public Hearing of the Munson Coalition, Et al., was opened at 7:55 PM.

Applicant Presentation -

Jeremy Eggleton from Orr and Reno, PA appeared as Counsel for the Munson group: Mr. Eggleton began his presentation addressing NH RSA 155:E and without waiving any rights, raised issue with the Non-Residential Zoning finding by the Planning Board asserting the Planning Board wrongfully found the site appropriate without considering key factor including the means of Ingress and Egress through a densely populated area. He asserts the ZBA can grant the appeal finding the Planning Board's decision is improper on the merits. He also asserted the ZBA doesn't discern Zoning. The decision of the ZBA hearing of an appeal encroaches upon zoning and so the process is procedurally improper. Mr. Eggleton further asserts that the Planning Board finding the site suitable without taking into consideration the 40-50 residential dwellings, in route to and from the excavation site, was wrong on the merits. He asserts the Planning Board disregarded the zoning ordinance and provisions of the master plan. He asserts the PB decision was wrong under RSA 155 E, 4, III a, b, c and d. Mr. Eggleton asserts that the PB did not require elements under statute to approve the site, including that the site passes through running water. For these and all the reasons in Counsels prepared appeal on file with the ZBA, Attorney Eggleton asserts the ZBA must find the Planning Board decision improper. Speaking in favor of the Munson Coalition appeal was Carol Asher, Mike and Michele Munson, Lucy Natkiel, Ria Boulay, Tracie Elder and Mary Kay Eckert. Many of the same concerns shared at the Planning Board Public Hearing and at Mr. Taylors public hearing were echoed again. Concerns included - heavy equipment traffic traveling on narrow roads of poor conditions, hills, no shoulder and steep slopes, Class VI sections of ingress and egress, pedestrian traffic, domestic animals and wildlife safety, dust, noise, property diminution and property value deterioration, loss and hazardous conditions for recreational use of the existing trails/roads (atv,) the inevitable loss of the peaceful and quiet tranquil conditions currently associated with the area and surrounding neighborhood. Mike Munson reiterated the Town currently extends via recommendation of the assessor a 10% property tax reduction related to other excavations in the Town of Hill as a result of the noise and dust nuisance factor. Judy Pescinski wants it noted: "Not one single person has spoken in favor of the Excavation permit – accept the Planning Board Chairman;" and she states "the people will have their way or you people (pointing at the board) will be voted out!" Mr. Eggleton requested the Board incorporate the resident's testimony from Steve Taylor's hearing into the Munson group's materials.

In Opposition – Counsel for GAW Maria Dolder asserted again without waiving any rights – an objection to non-abutters speaking as aggrieved. Counsel opposes the procedural argument and any finding on the merits of suitability as not proper for the ZBA to discern. Counsel for GSW also asserts a wildlife assessment was submitted to the ZBA with the application for special exception. (The ZBA note the process for special exception has not been reached prior to the Planning Board hearing and subsequent appeals.) Counsel asserts the Town of Hill has no ordinance of trucking restriction. Ms. Dolder argues the Planning Board overstepped its authority ruling on anything more than suitability of the site as a non-residential site. She asserts that may claiming to be aggrieved refer to the dense wooded area as "RURAL" and not residential in character. Where the Planning Board's hearing was limited in scope, Ms. Dolder argues GAW was not provided opportunity to present evidence to support the non-residential character of the site.

She asserts however that evidence was presented regarding water run off and other elements required. It was noted by the Zoning Board that these materials are required at the time of the Site Plan Review which has not occurred for this applicant.

Rebuttal - Mr. Eggleton argues the site is residential but asserts it is not up to the Planning Board to make decisions that are to be left to the ZBA as well as the opposite being true for the ZBA not making decisions saved for the Planning Board.

There was a rebuttal objection to Lucy Natkiel's testimony being allowed as she is no longer an abutter having sold her property. The Board ascertained that Mrs. Natkiel's property closing was August 2nd, which occurred after the filing of the Appeal.

The Public hearing for Munsun Coalition Et al, appeal concluded and was called CLOSED at 8:50 PM.

The Chairman called for a 10-minute recess before resuming the public meeting for deliberations.

The Meeting reconvened at 9:05 PM. During the recess – it was brought to the Board's attention that the Chairman had spoken with Counsel for the Town of Hill earlier that afternoon. This being the first opportunity to discuss this matter as a board since rejecting the application as incomplete, and being the first time applications were properly before the board for consideration, the Board members discussed the Planning Board minutes from May 05th, 2021. The relevant minutes are incorporated for reference { *The planning board met to decide whether to hold a joint hearing with the ZBA regarding the Green Acres Woodlands special exception. Benefits of a joint hearing were discussed. The ability of the two boards to function together was considered especially in regard to recent ZBA actions. The scope of the gravel pit operation was discussed relevant to Article VIII D:2 of the special exception to determine if separate hearings were appropriate. That the planning board would also need to hold a hearing for the excavation permit was considered and it was decided that the hearing for the special exception criterion could be done just prior to the excavation permit hearing. Mr. Dupuis made a motion that "the planning board will not hold a joint hearing with the ZBA for consideration of the Green Acres Woodlands special exception". Mr. Whitman seconded and the motion passed unanimously. The planning board examined the site plans for the gravel pit. There appeared to be some deficiencies in regard to requirements of the town excavation regulations. Mr. Helmers would perform a more detailed review of the plans and invite the applicant to a preliminary consultation if necessary to resolve any concerns prior to moving onto the hearing stage. }*

Stephen Thomson then referred to the Planning Board minutes from June 17th, which are also incorporated for reference { *As most attendees were present in regards to the special exception for the gravel pit, chair began by informing public that legal counsel was being consulted to resolve procedural concerns related to the special exception. At this point, there was little the board could say until the procedural concerns were resolved. A general discussion followed which indicated considerable confusion over the process. Frequent references were made to site plan review regulations. As gravel pits are not listed in the special exception for rural residential zone, residents questioned how a gravel pit could be allowed. Also, objections were made that the pit would be a commercial operation which is not allowed in the rural residential zone and would also be subject to site plan review. The appropriate order for the two boards to act was also discussed. The board noted that since Hill zoning ordinance does not address earth excavations, a gravel pit would be allowed by special exception in accordance with NH RSA 155E. Mr. Bresnahan read the entirety of RSA 155E:4, III and also showed residents a handbook for excavations regulations (NHOSI) noting availability on internet. Mr. Helmers stated that the ZBA cannot require an applicant to obtain additional permits (ie: Site Plan) before holding a hearing for a special exception. Planning board stated that the applicant must obtain a special exception from the ZBA. If the special exception is approved, then the planning board would hold hearings for the excavation permit and site plan permits. Chair called an end to discussion and most residents left, but likely with a sense of confusion and frustration..... Also noted was the existence of town excavation regulations. Chair noted that the town had the regulations in hard copy form. They had not been converted to digital format. He was not certain if they had ever been approved. Some members of the public expressed concern over inaccessibility of regulations. Mr. Helmers said he would try to find the regulations and determine if they had actually been approved, and make them available to public. He noted that the town earth excavation regulations were basically a re-iteration of RSA 155E. }*

The ZBA then referenced an email received from the Planning Board Chairman dated June 28th, wherein the Chairman of the Planning Board announced that he had scheduled the public hearing to address the application for special exception on July 15th, 2021. It is noted again that on July 15th the Planning Board did not perform a site plan review only finding the site suitable for its intended use pursuant to Hill zoning ordinance article VIII D 2 moving the process forward to the ZBA for receipt of the application as a completed application for Special Exception. After a brief discussion - Chairman Thomson advised the members of a tele-conference earlier that day with Town of Hill legal Counsel. Mr. Thomson asked for legal guidance related to the Town of Hill approved Excavation Regulations from 1981. With surprise at hearing of approved Regulations, counsel advised he was not aware the Town of Hill having approved excavation regulations and advised the ZBA to reject the application for special exception on the grounds that the Town of Hill Excavation Regulations Pre-empt NH RSA 155 E 4 and the ZBA has no jurisdiction in this matter.

The Secretary proposed sharing this newly realized information with legal representative of the parties prior to making an announcement for the public audience. The Board would be taking an immediate recess to consult legal counsel via zoom meeting to allow for the full board to attend. The scope and purpose was discussed with counsel for the parties and then an announcement was made explaining the need for a recess in deliberations to consult legal counsel on behalf of the town. A motion was made by Charles Estes to recess the public meeting in order to reconvene in non-public session with legal counsel at a date and time to be determined. The motion was seconded by Frank Marsh and the motion passed unanimously.

Having no other business - the meeting entered RECESS at 9:50 PM.

Respectfully Submitted,
Charlie Estes, Secretary ZBA