

TOWN OF GOSHEN
PLANNING BOARD
PUBLIC HEARING
MOUNTAIN REACH
GUILDHALL SAND AND GRAVEL
APPROVED MINUTES
AUGUST 26, 2008

MEMBERS PRESENT: Chairman Allen Howe, Jonathan Purick, Rich Moen, Selectman Jim Carrick, Select Board Representative Melanie Bell, and Sue Peacock, Secretary.

OTHERS PRESENT: Mark Loehr, Mountain Reach Development, Doug Windsor, Chairman, The Lodges, Attorney Britain, Shaun Carroll, Jr., Kathy Carroll.

AGENDA ITEM # 1: Continuation Hearing for the Modification Proposal to the Mountain Reach Development.

Mr. Carrick served as the Select Board Representative for this Hearing.

Mr. Howe summarized all the changes that were in the recent set of plan sheets.

1. The first change reflected the added triangle in the open space, which is shown on page L6. The well area is now in the open space and there is one angular line that was changed to make it a more easily defined open space. The open space is now 67%, an increase of 16,297 feet from the January 8, 2008 development plan.
2. The phasing plan was changed to pick up work on the Brook Road intersection, the notation was added to the sheet.
3. The garage plan; pages A5-A9, which was something that Mr. Moen had asked for at the previous hearing, which shows the different views of the garages.
4. The amendments for the subdivision permit and alteration of terrain permit are still pending. There are a few changes required by DES to the plans, and some of them are changes in the flow rates.
5. Revisions were made to various associated documents such as the condominium document, the conservation easement. Attorney Waugh had reviewed the documents and stated that he did not see any legal problems.

Mr. Howe wanted to clarify the subject to the view sheds. There will be five view sheds, one for each building, which is similar to the previous plan where there were 26 view sheds. All of the documents, where it is appropriate, have been modified to use the consistent language of “five view sheds”, one for each building. There will also be “as built” for each of the view sheds. As each “as built” is prepared, the Board has to approve that “as built” before the occupancy permit for the last unit in the building may be issued.

There was also a letter received from Peter Dzewaltowski, UVLSRPC, dated August 26, 2008, summarizing his approval of final construction plans for the development for consistency of plans with the Notice of Decision.

Mr. Purick read the Draft Notice of Decision - Amendment to Decision of December 27, 2007.

There were only minor edits to the Draft Notice of Decision.

Mr. Howe made a motion that the Board approved the Mountain Reach development proposal as modified by the conditions presented in the Draft Document. Mr. Moen seconded, all were in favor.

Mr. Howe will re-type the document with the edits made, and he will send copies to Mr. Loehr and Attorney Uchida.

Mr. Howe will also post this document on the Town Web Site.

This hearing was concluded at 8:15 P.M.

AGENDA ITEM # 2: GUILDHALL SAND AND GRAVEL PUBLIC HEARING

Ms. Bell served as the Select Board Representative for this Hearing.

Mr. Howe handed out documents: Excavation permit with edits/Reasoning document, Excavation Permit, and Attorney Britain correspondence.

Mr. Howe wanted to first start out by going over the changes that are stated in the reasoning document, which are highlighted in “red”. There were a couple of additions to the reasoning document, which was the 2004 Excavation Permit and a letter from Carol Ogilvie, Senior Planner from the Southwest Region Planning Commission, regarding the bond amount and how that came to be.

Mr. Howe referred to another change which was on page 4, which is in regard to the prior condition as part of the Davis Site permit, in regards to the number of truckloads which was 110 truckloads, not more than 77 carrying excavated material from the Davis Site. On line 36, there is statement added “to be reviewed and altered or reaffirmed by the Board annually”.

Mr. Howe then referred to the correspondence from Attorney Britain providing comments concerning the Request of Guildhall Sand & Gravel for an Excavation permit.

Mr. Howe then referred to page 2 of the document, regarding Section I, paragraph 3, which states that Attorney Britain and Mr. Carroll disagree with Attorney Waugh's opinion concerning the Board's regulatory authority concerning the use of the Haul Road on the Davis Site for the transportation of materials excavated from the "Bridge Site". Attorney Britain believes that this is an independent legal right that is not subject to the regulation by the Town of Goshen.

Attorney Britain wanted to let the Board know that this letter is not intended to disrupt the cooperative relationship that he believes they have had throughout these proceedings. The letter is their attempt to put on the record what they think needs to be on the record. Attorney Britain does not want it to be taken as if they are angry with the Board or anything of that nature. Mr. Carroll stated that some of the wording in the documents can look like Mr. Carroll has not been cooperative, as if the Board ever changes sometime down the road.

Ms. Bell wanted to state for the record that she has not seen this letter or gotten a chance to read the letter. Ms. Bell thinks that the Board has been very cooperative in trying to incorporate the concerns.

Mr. Carroll stated that he does agree that the Board members do need to read this letter. Mr. Howe stated that there are a number of things in the letter that fall into a particular category that we can resolve. Mr. Carroll stated that if we did get into the permit, and get to the letter on another night, he would be happy to do that, as the time is getting late.

Mr. Howe states he thinks we can move right along with the process, and the Board members do need a chance to skim through the letter. Attorney Britain stated that he thinks a lot of this discussion can take place in the context of finalizing the permit itself.

Ms. Bell asked Chairman Howe if this permit was contingent on addressing these issues, or can we just approve this application as it stands, she was not sure how this process worked. Mr. Howe stated that he has read this letter, and he thinks he can lump the concerns into a couple of areas that have been addressed. Mr. Howe stated that many of the concerns that are voiced in the letter relate to certain provisions that were in the past permit that are being brought forward in this permit. Such as the maximum annual removal, truck sizes, operational times, 77 truckloads per day, all that being moved ahead. Mr. Howe thinks that the Board was unanimous in the concept of the regulations Section III. 6c, that basically says we don't have to or we are not supposed to delve into those conditions from a past permit looking at a renewal or a new application for the same site. Unless, there is a change of material circumstances presented to the Board that warrants reconsideration of that. Mr. Howe thinks that a number of these topics fall into that category. Ms. Bell stated that as far as the nuances and the suggestions that there are parts of the language that do not occur. Mr. Howe stated that there is language and issues of edits that can be made that will not affect anything.

Mr. Howe referred to Attorney Britain's letter regarding Section II, Paragraph 12. Mr. Howe thinks that we have stated in our documents with a particular size vehicle, the 14-wheeler, and the Unity permit that had been provided to us, stated 14 wheelers as well. There was a provision in the Unity permit for potentially larger sized vehicles if you got a particular contract. Mr. Howe also said that when we were discussing that at the last meeting, he believes that Mr. Carroll said that all the material to close out the Unity landfill was going to come from the Davis Pit, and not the Unity Pit. It seemed like we were back to where we should be, regulating what happens in the Davis Pit, that is why I think we have the consistent language that we have here relates to the 14-wheeler truck of a particular size, said Mt. Howe.

Mr. Carroll stated that the difference between the two vehicles is 4,000 pounds, and that is part of the reason why we are thinking that it could conceivably come out of the Bridges Pit, but I'd rather take that material if it was the Unity job, per say. The normal route of travel would probably come out of Lear Hill Road going up Route 10, and going around, whereas you probably wouldn't take a right and go up Lear Hill Road, it would be just too hard on the trucks. Mr. Carroll said that it is possible, but it is one of those "what ifs" if he were to do that. Mr. Carroll said that logically he is looking for what is allowed on New Hampshire roads, and on New Hampshire roads 80,000 pounds is for a trailer dump, and for a tri-axle it is 76,000 pounds that is allowed. Mr. Carroll said that as far as the truck itself, you've got one more axle on the ground.

Mr. Howe stated that was one of the provisions that were carried over from the previous permit, and the Board wanted to follow those regulation guidelines to not address those changes to the previous conditions. Attorney Britain said that he was not so sure if push came to shove how that would play out. It seems to Attorney Britain that this Board needs to take into context the present realities and not just perpetuate old conditions based upon a provision that was put into your excavation regulations. Attorney Britain stated that all Mr. Carroll is asking for is let us run trucks that are legally allowed on New Hampshire roads. Attorney Britain said also that we are just asking to upgrade that one truck to 80,000 pounds, for the truck that Corey Patten has, because that is what he has now, he doesn't have a 14-wheeler anymore.

Mr. Howe said that the concern was not necessarily the impact for the road, but these conditions were put in place due to the impact to the residents in the Town. Mr. Howe stated that the regulations do allow you to come in and demonstrate that those impacts are different now. For example, if you had a letter signed by all the residents are along the road affected by the traffic, and they stated that they didn't mind, that you could haul as much as you want with big trucks if you want. That would be a change that would demonstrate some need to reconsider, but Mr. Howe thinks that those conditions are not there just because we are perpetuating them. But, we expressed several times that we were open to listening to changes in conditions that would warrant us to reconsider why those provisions were in place in the first place.

Mr. Howe stated that he thought the Board ought to move onto the excavation permit itself, and go through it.

Attorney Britain stated that there was another thing he wanted to go over Section II, Paragraph 12 in the August 26, 2008 copy of the Excavation Permit. He believes that this section perpetuates old provisions in respect to the Unity permit, as he indicated in his correspondence. Attorney Britain stated that all he and Mr. Carroll would like is consistency between the Unity situation and the Goshen situation. Attorney Britain stated he would like there to be a provision for allowing a larger vehicle if a larger vehicle is allowed in connection with the Unity permit.

Ms. Bell wanted to ask if Attorney Britain if he has made notice that this is potentially a project that will impact the UVLSRPC, and if they have any input? Attorney Britain stated that Unity Planning Board did have some input, but he was not involved in those proceedings.

Mr. Carroll said that when his company was down at the Witham Pit, it worked out for us to be down there for a couple of years, and we did not have time because of the way the season ran. Mr. Carroll also said he did not have any time to get to the Bridges Pit. At that time, Mr. Corey Patten had gotten rid one of his trucks, which was a tri-axle, and then he ended up getting a trailer dump. It just made sense at the time for his business, so we allowed him to do that in our pit. Mr. Carroll also said that up here we didn't have restrictions on the 14-wheeler. Mr. Howe asked Mr. Carroll if the Bridges Permit still has the 14-wheeler restriction. Attorney Britain and Mr. Carroll both stated that yes it does have the restriction. Mr. Howe asked if Mr. Carroll's company was using that truck from there in violation of the permit. Mr. Carroll stated that yes; we were up until today, as we had read the permit wrong. Mr. Carroll said "we thought that it read we were allowed to use it". Mr. Carroll said that "Dick Fraser called Sue today and she said that it does not read that way, it reads the other way, so we stopped using him today (14-wheeler).

Mr. Howe said that according to Attorney Britain's facts, our paragraph 12 had said that there would be a limit of 80,000 cubic yards of material excavated from the Bridge site, and that in Attorney Britain's letter it states that there is no annual limit on the amount of material, so Mr. Howe needs to make an adjustment there to make that correction. Mr. Howe will make a note to in his margin to reflect the change since we last dealt with this.

Attorney Britain stated that he wanted to make a point to allow the provision for the larger vehicle in the same context that Unity would allow the larger vehicle in respect to the Unity landfill. Attorney Britain was just trying to make it consistent that if Mr. Carroll got the contract for the Unity landfill, that there would be an opportunity to use a larger vehicle just the way the present Unity permit provides for that. Mr. Howe stated that he could not comprehend why, if the material for the Unity landfill close out will come from the Davis pit, why Unity's permit would have a provision to close out the landfill and use the bigger trucks.

Attorney Britain stated that from what he can understand from Mr. Carroll is that it is not absolutely clear whether or not they will get the Unity contract for the landfill, and if they do get

the contract it's not completely clear at this point and time where that material will come from. Attorney Britain stated that Mr. Carroll had thought that a large portion might come from the Davis pit, but there still is a possibility that some might come from that Bridge site. Mr. Carroll stated that he thought that Unity thought process was larger trucks, fewer trips. Mr. Howe had thought that at our last meeting Mr. Carroll had said that the Unity Pit doesn't have the kind of material necessary to close out the landfill, you needed the quality of sand from the Davis pit. Mr. Carroll stated that he did not say that, but what he did say was the Davis pit right now has the spec that they asked for. Mr. Carroll said that he had sent the sand from the Davis pit 2 years ago, so they have the specs from that pit. The Bridge pit wasn't even open at that point. So if the bid does come up again, he could take a sample from the Bridge pit, and give it to them and it is possible for it to pass.

Mr. Howe suggested going through the Excavation Permit and going through the changes to be made.

Attorney Britain referred to page 1, line 7, which the date should be changed to August 26, 2008.

The next point to be made is in Section 4 - Scope of Operations 4 C. There is a form attached to Attorney Britain's correspondence. Mr. Howe stated that there was more information on this form that what is needed, and there was other information requested. Attorney Britain stated that this is the form that is used for the data, and he would like this form to be used. Ms. Bell stated that if the language in the permit is clear, then we all should agree to this form. The Board agreed that the specific form was not an issue, as long as all the required information was reported.

Section 4D-the date that was agreed on for the trial period end on was December 31, 2009.

Section 4E, this provision will be deleted.

Section 5- Dust Control: The first line should be eliminated, and change to just state "the applicant has verbally assured the Board the dust will be controlled,

Section 7A- Truck Traffic and Highway Safety: In Attorney Britain's correspondence he requests that Guildhall have the flexibility to use all vehicles permitted under State law at the Davis site. Mr. Howe stated that we have been consistent in using the 14-wheeler, and 76,000 pounds had been added in there, because the way the loader functions. Mr. Howe said that in an earlier permit that there would not be any of these larger trucks, and so that is the way it is written. Mr. Howe stated that unless someone wants to offer a change, that is the way it stays.

Mr. Carroll said that this is where we would like to change it to where it says "what the State would allow". Mr. Carroll states that this is basically on state roads, town roads, back roads or anything like that. Mr. Carroll said that this is really a condition of changing times. Mr. Carroll states that he really cannot go to Mr. Corey Patten and tell him "he cannot use that truck, and you need to go out and buy another one". Mr. Carroll stated that this has been working so far, and it has no different effect on the public than a regular tri-axle. Mr. Carroll would like to see if this is something that really has to be thrown out. Mr. Carroll states that we primarily

travel on State and Town roads. Attorney Britain suggested that a sentence could be added to state “all vehicles shall comply with State and local road and bridge way limits”, provided that the vehicle does not exceed 80,000 pounds”, or as long as it is in compliance with the State and local road limits.

Mr. Carroll wanted to put some language into the permit stating that allows one 18-wheeler only for this year, and then we could re-negotiate that if we do not have any complaints with the truck. Ms. Bell stated that if someone wanted to amend that, then so be it. Mr. Purick stated that he does not have a problem with the one truck, as long as we can regulate it.

Mr. Howe stated that he could put an exception in the permit stating that one 18 wheeler would be allowed through the end of this year. Attorney Britain asked if the one 18-wheeler could be reviewed after one year also. Mr. Howe would like Mr. Carroll to request an amendment to the permit and provide us with some rationale with wanting to continue with that, rather than just writing that in as something that puts the burden the other way.

Section 7B: Mr. Howe thinks that this should be struck if we maintain section 7A the way it is.

Section 9- Buffers and Visual Impact: Mr. Howe had added a sentence which he read, and asked if this was sufficient. Attorney Britain stated that what he was thinking was this was a 3-year permit, and is there a possibility that Mr. Carroll acquires another parcel of land adjoining the Davis Pit that would have a similar type of situation, where a buffer is not needed. Attorney Britain suggested blending the language he suggested and what Mr. Howe suggested it would work. Mr. Howe said that if we blend the language together so that it is related to removal of the buffer when we are ready to do reclamation.

Section 10- Reclamation: The date should be on or before December 31, 2009, and also the property reference should be “near the Davis garage”.

Section 11: 11b Reporting and Review Procedures: Mr. Howe stated that according to Mr. Wirkkala’s experience, we have not always gotten documents that we are supposed to get. Mr. Howe referred to Section III 10.D of our regulations which specifies any correspondence you have with a governmental agency, we should be copied on. Mr. Howe thinks that it would be good to maintain the language as we have it, as we continue to have Mr. Carroll send us documents.

11C: Mr. Howe does not know what is wrong with the form. Attorney Britain stated that what we were working towards having an agreed upon form. Mr. Howe stated that it was agreed earlier that Mr. Carroll provide us with the information requested in a consistent format.

11D: This aspect should be deleted, this was covered earlier regarding the monthly reports and the format.

11F: This seems like a reasonable request to give Mr. Carroll some feedback on what we see.

Mr. Howe asked if the Board was comfortable with all the language with all the revisions. Mr. Howe and Attorney Britain will work on the language together. Mr. Howe would like to take a

vote unless there are other revisions or amendments.

Mr. Purick asked if Section 4C was a done deal, Mr. Howe stated that previously this was voted on, and the vote was 3-2, that this was the way we were going to go.

Mr. Howe made a motion to issue this permit with the changes discussed tonight, Ms. Bell seconded. Mr. Howe asked if there was any discussion. Mr. Purick stated that in Section 4C he would like it to read 90 truckloads instead of 110. Mr. Howe asked if Mr. Purick would like to make an amendment. Mr. Purick suggested an amendment to state 90 truckloads, not 110. There was not a second to that amendment, so there was no consequent vote.

All were in favor to accept the permit with the changes discussed.

The public hearing adjourned at 9:45 P.M.

Respectfully submitted,

Sue Peacock
Planning Board Secretary