

**TOWN OF LYNDEBOROUGH
PLANNING BOARD MEETING MINUTES
November 17, 2011**

MEMBERS PRESENT: Chairman Bret Mader, Vice Chair Mike Decubellis, Bob Rogers, Larry Larouche, Julie Zebuhr and Selectmen's Representative Arnie Byam

Bret Mader began the meeting at 7:30 p.m.

CONTINUED PUBLIC HEARING:

Review of final draft of Section 1200.00 HOME BUSINESSES in the Town of Lyndeborough's Zoning Ordinances.

No one from the public was present for this continued hearing and after the Board reviewed the final draft without making any further changes, Bob Rogers made a **motion to accept the Home Business Ordinance, as amended.** L. Larouche seconded the motion and B. Mader asked for any discussion. M. Decubellis asked if Tom Christenton, who was absent from the meeting, should be given the opportunity to review the final draft. P. Ball said that everyone was e-mailed a copy prior to the meeting. B. Mader concurred that T. Christenton was satisfied with the final revision. M. Decubellis asked about the need for definitions to be added to the zoning ordinance. B. Rogers responded that the definitions could be put together later. B. Mader asked for a vote. The Vote in favor of acceptance was unanimous. Closing the public hearing, B. Mader said that this amendment to the Home Business Ordinance would be included as a warrant article for the March town meeting.

PUBLIC HEARING:

Granite State Concrete Co. Inc.; Salisbury Road; Map 213 Lot 006; to discuss excavation renewal permit; RL I

Present: Atty. Erik Newman, Craig Cyr, John and Peter MacLellan, Landon Bell

B. Mader explained that this was a hearing to discuss Granite State Concrete's renewal permit which expires on November 21, 2011. Referring to abutter Landon Bell's well, he noted that North American Reserve was given permission to take another test for water quality. He asked Craig Cyr of North American Reserve to explain the report which was submitted to the Board. Mr. Cyr said that the test showed that everything was below the groundwater quality standards except for the present of iron which was high; although normal for the area. M. Decubellis asked if the test would serve as a baseline for the new well on Mr. Bell's property. Mr. Cyr replied yes. Referring to the independent data review submitted by North American Reserve, M. Decubellis said that Weston & Sampson did an analysis and wrote up a report that stated that everything appeared to be okay and they did not have any issues. Atty. Erik Newman said that he had not seen that report.

M. Decubellis said that he would e-mail a copy to Atty. Newman.

B. Rogers asked if there were any other issues to discuss besides water quality.

M. Decubellis responded that a visit to the site should be discussed. The Board agreed and a site walk was scheduled; L. Larouche, B. Rogers and M. Decubellis along with Peter MacLellan agreed to meet on Monday, November 28th at 8:30 a.m. T. Chrisenton and B. Ball would also be notified of that date.

B. Mader asked whether the fees incurred from the Weston & Sampson's independent review have been paid by the applicant. P. Ball replied that the Board has not received that invoice. Atty. Newman responded that the applicant has agreed to pay the expense as soon as an invoice is submitted. M. Decubellis added that the expense should be the amount that was agreed upon through e-mail correspondence between Atty. Newman and Weston & Sampson.

At this time, Atty. Newman asked to discuss the renewal permit, explaining that it was extended to a three year term at the previous hearing in 2008. At the time, the Board was concerned with water elevation data and asked for quarterly monitoring. The applicant has voiced some concern with the expense. They have collected nine years of data since 2002 which shows nothing but seasonal fluctuations consistent with the precipitation data. Atty. Newman said that the excavation operation has had no impact on the elevation levels; therefore, the applicant proposes a modification of the permit conditions to alleviate some of the cost involved in the time it takes for these renewal application preparations and the continued monitoring of data. They feel that the Board has sufficient data to determine a baseline. If there are any future concerns with the operation, the Board could compare it against nine years of data. Atty. Newman asked the Board to consider changing the term of the permit from three years to a ten year term or longer. Under the town's excavation ordinance, the Board could suspend or revoke a permit for failure to comply with the express terms of the permit or any of the conditions of the excavation ordinance or the state statutes. Given the history, he did not see any justification for this considerable expense every couple years. He said that he could propose some specific changes to the conditions.

B. Mader replied that the PB has given only one other permit for five years with the understanding that the applicant would have to come before the Board if they were not in compliance with the conditions of approval. The Board has never given a ten year permit.

L. Larouche thought that the Board had extended the permit to a three year term in 2008. Atty. Newman said that he was correct and that prior permits were for two year terms and the independent data review was on a five year term. The 2008 extension brought both the renewal and independent review together in the same year.

M. Decubellis said that he could sympathize with the cost involved, but at earlier hearings in 2002, Tarn Road residents voiced concerns about the water level in the fire pond that was located above the proposed excavation site and the effects that might result if it was approved. This was one of the reasons for installing monitoring wells. He did acknowledge that the data shows no problems, so far. B. Rogers interjected that there's been very little activity in the pit compared to what there could be when the construction industry picks up again.

Atty. Newman stated that an excavation operation has a long life span (decades) and this quarterly obligation could go on for a long time. He said that the level of excavation is not likely to change for some time and what the Board has seen for the last nine years is a good measure of where it should be. The nature of the business will not change over night and if there are changes, the Board has the right to go out, have access to the property for an inspection and suspend or revoke the permit, if necessary. This should alleviate some of the Board's concerns.

M. Decubellis said that without the data, the Board would not have anything to go on. Atty. Newman responded that they would have the baseline data. The monitoring wells were initiated because of the concerns for the water level in the fire pond. If there is a decline because of the excavation operation, the Town is holding a bond as one of the conditions of approval for the permit. So far there hasn't been any measurable impact on that level. A drop in the water level would be rather evident and it could be quantified by the historic data and the Board could exercise the right to the bond. B. Mader asked how many monitoring wells were checked quarterly. Atty. Newman replied that there were seven.

B. Rogers asked whether it would be better to do the monitoring test annually and require a five year permit. Taking into consideration the issue of the fire pond and abutting residents concern, B. Mader thought that a ten year permit would be too long and that a five year independent review would be preferable.

A. Byam summarized that the applicant has been doing quarterly testing for the last nine years and there is a volume of data available. Atty. Newman responded that he was correct and that the tests reflected what usually happens with seasonal fluctuations.

A. Byam thought that quarterly testing was too much, especially in a down market.

L. Larouche agreed that an annual test would be sufficient but he did not think a permit should be issued for a term longer than five years.

B. Rogers made a motion to amend the requirement to an annual monitoring test rather than a quarterly monitoring test. (There wasn't a second, at this time)

J. Zebuhr said that it was important to report to the Board any changes in the monitoring test, especially after a flood event. M. Decubellis questioned whether the applicant was under any obligations to report a drop in water level and how would it be reported.

Atty. Newman said that presently they are required to submit the data with the renewal application; if they move to an annual schedule, it would make sense to submit the data annually to the town. In this way, the Board would know as soon as the applicant knew. He added that the summary submitted would be fairly concise and self explanatory.

M. Decubellis asked if their analyst supplies a statement with conclusions and recommendations, as well as the data. Mr. Cyr said yes. M. Decubellis concluded that if the Board were to receive an annual test report with a statement, they would be better off. The conditions of approval state that the applicant does not have an obligation to notify the Board, at any time, other than at the renewal period.

Atty. Newman addressed the independent review requirement which is on a three year cycle and stated that the applicant feels that this is an unreasonable expense. He felt that if there was a question in the way that they were preparing the data or a conclusion that was out of the ordinary; then the Board could exercise their right for an independent review. He thought again that it was an unreasonable expense to just have someone review the data submitted by GSC and say it is okay. M. Decubellis cautioned that there isn't anyone on the Board who has the expertise to analyze the data.

B. Rogers suggested going to a five year permit and having the data evaluated by the independent consultant (Weston & Sampson) prior to the renewal permit hearing.

M. Decubellis asked Mr. Cyr if North American Reserve was independent from Granite State Concrete and was he certified by the state. Mr. Cyr explained that the company was an independent consultant and the owner was a certified geologist. Mr. Cyr said that he was trained engineer licensed in NH.

At this time, B. Rogers amended his former motion to require an annual monitoring and have an independent expert do the evaluation of the data prior to the permit renewal every five years. *(They wasn't a second for this motion)*

Atty. Newman asked to discuss one more condition concerning Mr. Bell's well. At the last hearing in 2008, because Mr. Bell's well appeared to be compromised, the applicant was required to do water quality testing before each permit renewal hearing. He said that the issue has been resolved because a new well has been installed and it has been confirmed that the water quality is good; therefore the applicant feels that this is an unnecessary condition.

B. Rogers replied that the Board would need an independent test report on Mr. Bell's well every five years to make sure that the well is still okay. Atty. Newman agreed and added that the test should be done by the town's independent consultant rather than North American Reserve.

Landon Bell commented that he did not care who did the monitoring as long as someone keeps an eye on it.

L. Larouche asked the Board to clarify when the water elevation would be tested; would it be on the anniversary of the permit each year? Atty. Newman suggested that the applicant submit all the required data by September of the year that the renewal permit hearing is to be scheduled (November). The annual report would be submitted by the anniversary date (November) each year.

Landon Bell asked for some clarification as to when his well would be checked.

B. Mader said that the water elevation level would be checked annually and the water quality will be tested every five years. Mr. Bell was amenable to this requirement.

Again B. Rogers made a **motion to test the water elevation level annually, require an independent review, including a water quality test of Landon Bell's well, every five years prior to the renewal permit expiration date.** L. Larouche seconded the motion and the vote in favor of these requirements was unanimous.

B. Rogers made a **motion to approve the five year renewal permit subject to the amendments mentioned above, a site walk and the payment of any outstanding fees.**

A. Byam seconded the motion and the vote in favor of approval was unanimous.

P. Ball asked about the Letter of Credit which will have to be revised. Atty. Newman said that he would draft another letter to TD Bank so that the Letter of Credit is extended for five years instead of three years.

B. Mader closed the hearing at this time.

OLD BUSINESS:

No old business was discussed

NEW BUSINESS:

Peter Hopkins – introduction of the new Building Inspector and Code Enforcement Officer

Peter Hopkins gave a brief history saying that he lives in Greenfield and has an agricultural background. His job as the new building inspector and code enforcement officer will be to help residents to do what they want to do but do it within the building and safety codes. He has been an inspector for about fifteen years and reasonably successful. Although he tries to center on the major issues of concern, he must enforce electrical, building and gas codes, zoning ordinances and even health codes. One of his reasons for meeting with the Planning Boards of each town he represents is to become familiar with the personalities on those boards. Each one has a different approach on how they want the building inspector to function. He walks a fine line when trying to help a homeowner do what he would like and what is required under town zoning regulations.

Because he works with four other towns, Mr. Hopkins said that he will be able to share his experiences, especially when new town ordinances are being developed. He meets with each Planning Board and reviews his experiences during that year and discusses some of the shortcomings in the codes; this allows the Planning Board to make a decision on whether or not the regulations should be amended. He has been reviewing Lyndeborough's zoning regulations and brought up several areas for discussions; one was the minimum square footage of a structure that will require a permit and whether pre-built sheds could be placed in the setbacks or not. Mr. Hopkins said that the town needs to make sure that these structures are meeting the setback regulations. He also expressed a concern for "membrane structures" which are supposed to be temporary. They are not appraised or taxed by the state because they are not made of wood. He is asking the towns that he represents to look into whether or not these structures should be taxed. M. Decubellis asked whether he would require a structure to be removed if it was of taxable size and placed in the setback. Mr. Hopkins replied that he would issue a stop work order, if the structure was in the process of being constructed and after the fact, he would require its removal. He added that there are times when he will recommend that a resident go before the ZBA for a decision.

Referring to the addition which is to be constructed at the Central School, Mr. Hopkins said that a certified accessibility inspector will be required to look over the building to make sure a certified fire stop has been installed. He also stated that he calls in a state inspector for any public building that is being constructed.

Ending this conversation, Mr. Hopkins said that so far this year, there have been 40 permits issued including 4 new residences.

Piscataquoq Watershed Conservation Plan

M. Decubellis explained that recently the Conservation Commission listened to a presentation from NRPC on the Piscataquoq Watershed conservation plan. They are requesting that the Conservation Commissions in the towns within the watershed consider adopting and utilizing this plan; not necessarily regulating it. They would be satisfied if it is used as a reference in the Master Plan, if the Planning Board was amenable. The plan updates all the new GIS data and co-occurrence maps and provides recommendations for the protection of the watershed. The funding for this project has been supplied through a grant and the NRPC representative requested that a joint meeting be scheduled to discuss whether the plan should be adopted now or wait until the Planning Board updates the Master Plan. The Board did not give any indication that they wanted to pursue this issue, at this time.