

PLANNING BOARD

Town of Waterboro

February 10, 2000

Public Hearing &
Special Meeting

Susan Dunlap called the Public Hearing to order at 7:31 p.m. noting the attendance of Dwayne Woodsome, Tim Neill, Roland Denby and Todd Morey. Also present were Charlie Brown of Sebago Technics, Doug Foglio Jr., for Foglio Inc., Patti Berry, Beth & Mark Cyr, Diane & Eric Herrle, Dean & Denise Waterhouse, Mr. & Mrs. Hennessey, Shawn Shoemaker, Mike Hammond. There were approximately 25 members of the public at this hearing.

Sue presented the initial application and requested that Charlie Brown of Sebago Technics and Doug Foglio Jr., present their plan to the public. Sue noted that the public would have an opportunity to voice their comments and/or concerns after the presentation.

Charlie stated that he began working with Foglio, Inc. to draw up plans for the conditional use application and project. The original purchase of the property was made by Shawn Shoemaker who conveyed by sale approximately 64 acres to Doug Foglio Sr. The original parcel is located on Map 11 Lot 44.

The second plan presents the reclamation plan. It notes the existing and proposed grades of the property. The property will be completed with a 3-1 slope with the bottom being graded at a fairly flat slope. The water will be retained within the pit.

The gravel road was in place prior to the purchase by Doug Foglio Sr. All the setbacks have been held. The existing esker will remain in place to be used as a buffer to the Shoemaker's and the wetlands area. The reclamation shows the groundwater contours which was provided by Swett Associates as described in the Hydrogeological survey.

A 500' setback is provided from Meadow Brook.

The third sheet further explains the general notes as derived by the survey. Areas in yellow are wetland boundaries, red notes the mineral excavation area of approximately 11 acres, blue notes the access sites.

The fourth sheet is a sample of what the property may be used for following the excavation of the property an example is six 2-6 acre parcels to be used for single family homes.

The fifth and final sheet is the erosion control plan and the details for gating the site and maintenance.

Public questions:

Mr. Hennessey: Questioned if they had established dates of when the project would begin/end and approximately how many yards were anticipated to be removed.

Doug Foglio Jr.: An anticipation of approximately a couple hundred thousand yards. There is currently no start or ending date on the project.

Gail Hennessey: In September a group of us stood up at the Selectmen's meeting and presented some letters of concerns. Have those been reviewed by the board and if so, we have not received any responses.

Sue referred to the letters and noted that the issues will be addressed towards the end of the public hearing.

Eric Herrle is representing Frank Faith due to his being unable to attend the meeting. Mr. Faith requested that the two packets of questions/comments and concerns be included as an attachment to the final draft of the meeting minutes.

Eric briefly reviewed the information that was forwarded by Mr. Faith and presented photos also taken by Mr. Faith in October 1999 and January 2000. The question of when, what and why was the clearing done as noted by the satellite imagery?

Doug Foglio Jr., stated that the only clearing that was done, which was to remove the knoll in order to place the road to the back of the property, was done by Shawn Shoemaker before selling the rear parcel to Doug Foglio Sr.

In general the information presented by Eric for Mr. Faith further states "We are against the issuance of a Conditional Use Permit for the Chadbourne Pit (Townhouse Road Map 11 Lot 44) based on the particulars as stated below" (refer to item B attached to the minutes).

Eric reviewed the "Particulars" as noted in item B attached and also noted that if the Planning Board were to approve the application that the following was discussed (for a complete description refer to Item B attached:

1. Noise: Establishing of reasonable hours of operation;
2. Road Traffic: Prohibit/Restrict Applicant's truck traffic on Deering Ridge Road;
3. No Defined Site Life or Time Limit: Issue Permit for Extractive Operations only.

As previously noted Eric wanted to reaffirm that he was sole representing the issues as written by Frank Faith.

Doug Foglio Jr. noted that the applicant is submitting a letter to the Planning Board requesting the Board to recommend to the Board of Selectmen to have the Deering Ridge and Webber Roads posted to through traffic. This should address the concerns of the residents of the Deering Ridge Road and the use of the Deering Ridge Road.

In response to the duration of the operation, if we were to concentrate heavily on the extraction of the property the project could be completed soon. Otherwise, if hauling is at a minimum with less of an impact to the area it will be open with a longer time-frame. There will be a topsoil reclamation and no blasting on the site will not be necessary.

Terry McIlveen: If approval is received tonight will there be hauling as soon as tomorrow? Do you have a estimated time frame for the extractive process?

Doug Jr.: I cannot answer to the time-frame question it would be an uneducated guess.

Leo Peterman: What is the connection between Webber and Deering Ridge Road?

Doug Jr.: I do not believe the Planning Board has the authority to post. It is requested that the Board recommended the posting to the Selectmen to post both Webber and Deering Ridge Roads.

Sue Dunlap: I would like to clarify the posting of the Webber and Deering Ridge Road. Doug, when you refer to posting the road you are clearly stating for the use of through traffic, local deliveries will be allowed.

Doug Jr.: The intent is for local deliveries only and not to allow through traffic.

Dwayne Woodsome: The Planning Board do not have any control on the weight limit. A recommendation can be made to the Selectmen and the Road Commissioner to post the roads. Northeast agreed to a recommendation as requested by the Planning Board and the Road Commissioner which was agreed upon.

Doug Jr.: Since the original request was made to the Board we have submitted and received our DEP license with a license # of 378.

Sue addressed the letters dated September 1999:

Rick & Diane Madruga concerns:

- Jake brakes
- covering of loads
- Hours operation
- Sensibility to noise and speed

Tim & Joanne Neill concerns:

- Well problems
- Hours of operation
- Life of operation
- Property value

Roger Teachout concerns:

- Noise & pollution
- Speed
- Peacefulness of Road
- Constant digging and blasting
- Reduction in property values
- Quality of life

Sue noted the following to the main concerns as listed above:

- Blasting: It is already noted that no blasting will be needed on the site.
- Speed and peacefulness of the road: There is some commitment that there will be no through travel on the Deering Ridge Road even without it being posted.

Mrs. Hennessey: What about the contamination of wells?

Sue stated that there is no evidence that an extraction operation has ever contaminated a well.

Doug Jr. also noted that this is the reason the Hydrogeological survey was done and Charlie can further explain the outcome.

Charlie explained that the conclusion of the Hydro study showed no additional ground water is expected.

Roland requested an approximate depth of extraction to the water table.

Charlie stated that the excavation was not to be closer than 5' of the water table.

Diane Herrle wanted to point out the Mr. Faith had also mentioned the opinion of an outside consultant to appraise the property values of the homes in the vicinity of a gravel pit.

Shawn Shoemaker: Noted that he was the previous owner of the property now owned by Doug Foglio Sr. He sold the property to Doug approximately 8 months ago and further noted that he has seen the entire

site and would not have invested his money in building the extravagant home that he built if he thought the property value would decrease due to a gravel pit being placed right behind him. When he considered selling the property he took into consideration a company that would operate the extraction operation in a neighborly manor versus someone out of state that would not care about the neighbors. These trucks will be driving in and out of my drive, I don't hear them and I am not concerned with them coming through daily.

Shawn believes that the plan that was presented today will go through in the future. With the recent construction of his home Shawn had an appraisal done, the appraiser knew that there was going to be a gravel extraction operation behind his home. The appraiser stated that as long as it is reclaimed it will have no effect on the appraisal value of his property. Shawn had taken the appraiser through the site. In the end the appraisal value came back higher than Shawn himself had anticipated.

Doug Jr.: When Shawn built the house there were concerns with Mr. Hanson and the drainage of the ground waters. Foglio Inc., Mr. Hanson and DEP met to discuss the issue. Foglio Inc. agreed to place a catch basin and culvert so that Mr. Hanson's property would not be affected by the road.

Doug Jr. further stated that provided the application is approved they will pave a minimum of 600' possibly to Town Specs. The paving is intended to be completed by June 15, 2000. The 600' will bring the road beyond Shawn's and Mr. Hanson's home.

Tim Neill: Will there be strictly extraction on the site or will processing also take place?

Doug Jr.: The gravel Road that comes down to the extractive site narrowed and had an esker. Gravel was crushed at that time to make the road. There is a little bit of gravel that may be processed and/or screened. There will be very minimal processing and screening down on the site.

Dwayne noted that in an aerial photo taken in 1991 there was approximately a 1/2 acre pit that had been opened in the '60's or '70's.

Shawn stated that he was very much aware that there had been some extraction done on the site at some point prior to him owning the property.

Mark Cyr questioned on the mention of a "1/2 acre pit" and what information is available to prove that it was in existence.

Dwayne stated that a company in Gorham has all the aerial photographs of Waterboro. He is aware that someone had gone in and reviewed them. The actual photo is slightly bigger than what has been presented. On these maps you will see a white spot which generally states a pit at some time. If you went to Gorham they have all the plans marked for easy reference.

Sue closed the Public Hearing at 8:31 p.m. After a short break the Planning Board will continue with the Special Meeting as advertised.

(A)

TO: Waterboro Planning Board
FROM: Frank Faith
SUBJECT: Public Hearing on Conditional Use Permit Application For Chadbourne Pit
(Townhouse Rd. Map 11, Lot 44)
DATE: February 10, 2000

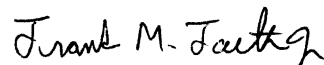
Planning Board Members,

As a result of the rescheduling of this hearing, I am unable to attend due to a prior commitment to my employer from which I am unable to be released.

I hereby authorize Eric Herrle, on my behalf, to submit for the Board's review all written documentation I had gathered to present during this hearing. I wish it to be known that all said documentation was compiled on my own at my own expense. I do not represent any group, organization, or committee nor do I represent the residents of Deering Ridge Rd. All documents, written statements and opinions are strictly representative of myself and my family. That being said, I consider the document outlining my questions to the Code Enforcement Officer along with the supporting satellite imagery and aerial survey photos of Lot 44 to be available to any person at this hearing, including the Applicant, for their review and further questions or discussion. I have provided additional copies of this document for anyone interested. Furthermore, I make this documentation available to anyone viewing this hearing via Public Access TV.

My only request is that all documentation submitted tonight be formally entered into the public record pertaining to the Public Hearing on Conditional use Permit Application For Chadbourne Pit (Townhouse Rd. Map 11, Lot 44).

Respectfully Submitted,



Frank M. Faith Jr.

5

TO: Waterboro Planning Board
FROM: Frank & Lisa Faith
SUBJECT: Conditional Use Permit Application for Chadbourne Pit (Townhouse Rd.
Map 11, Lot 44)
DATE: January 31, 2000

GENERAL STATEMENT

We are against the issuance of a Conditional Use Permit for the Chadbourne Pit (Townhouse Rd. Map 11, Lot 44) based on the particulars as stated below.

REFERENCES

Town of Waterboro Zoning Ordinance

- 1.02 - "promote the health, safety, morals, prosperity, aesthetics, and general welfare of the town of Waterboro."
- 1.03 - "lessen congestion on and promote the safety and efficiency of streets and highways;"
 - "stabilize and protect existing public and private property and the value inherent therein;"
 - "insure the appropriate use of land and the conservation of natural resources;"
 - "preserve and promote the historic character and beauty of the town;"
- 4.02 - "will not result in unreasonable noise levels,"
- 13.02 - "it is the intent of the Town that the provisions of this ordinance be regarded as minimum requirements and that they be liberally construed in favor of the town so that the purposes and intentions (see Sections 1.02 and 1.03) of the ordinance may be achieved.

Town of Waterboro Planning Board Workshop, October 11, 1999

PARTICULARS

A. As a Landowner

- 1) Excessive Noise - 4.02 "will not result in unreasonable noise levels,"
Comment - Noise was heard during the initial site clearing/road work. Investigated and determined that noise was in conjunction with house construction (Shoemaker residence) and, therefore, temporary in nature. Was not aware at time that site was being cleared behind residence for eventual gravel operation. Noises heard included backup beepers (which, by design, have a very distinct and penetrating tone), heavy equipment operation, and the sharp slamming sound sometimes made by truck gates when a load has been deposited.

- 2) Excessive Road Traffic - 1.03 “lessen congestion on and promote the safety and efficiency of streets and highways;”

Comment - Deering Ridge Road has many families with small/school age children.

- Extensive road repairs have been done on the Deering Ridge Road. Constant use by the Applicant’s trucks would be detrimental to the quality of the road surface.
- There is currently nothing within the Ordinance which would prevent the Applicant’s trucks from using the Deering Ridge Road on a daily basis.

- 3) No Defined Site Life or Time Limit

Comment - Once the material has been excavated and removed from the site, there is nothing to prevent this specific Operator from importing materials from other locations and processing it at the site. This would allow the Operator to continue to use the site indefinitely.

- 4) Effect on Property Values - 1.03 “stabilize and protect existing public and private property and the value inherent therein;”

Comment - We feel that the operation of a gravel pit in an area zoned Agricultural/Residential will have a negative impact on property values for residents adjacent to and in the immediate vicinity of such an operation. However, as neither the residents nor the Town Planning Board have the required expertise to make a valid assessment of the effect on property valuation, it is felt that this question should be analyzed by an independent, duly qualified property assessor.

B. As a Resident

- 1) Current Ordinance under which Conditional Use Permit is being sought is viewed by both the Planning Board and at least some town citizens as inadequate.

Comment - Minutes from Planning Board workshop dated October 11, 1999. In the second sentence the Planning Board Chairman “feels that this Gravel Extractive Ordinance is not what the Town should have as an ordinance.”. Workshop’s goal is to revise/enhance current ordinance.

- Citizen’s proposed ordinance is on referendum for Town Meeting on March 11, 2000.
- Town Planning Board currently planning to have proposed ordinance on referendum for Town Meeting on March 11, 2000.
- Two civil suits currently underway concerning gravel/quarry operations operating under current ordinance. Both suits have issues involving interpretation/enforcement of current ordinance. This example is used only to illustrate the demonstrated potential for increased conflict for all concerned parties under the current ordinance.

CONCLUSION

- 1) It is strongly felt that the concern raised in Part B cannot be resolved at this time. **Due to the lack of confidence in the ability of the current Ordinance to effectively serve the needs and greater interests of the Town as expressed by both the Planning Board and citizens through their respective actions regarding proposed Ordinances, it is clearly evident that now is not the time to be issuing Conditional Use Permits for any Extractive Operation Applicants.** The Town should first define what it will utilize as its Gravel Extractive Ordinance based on the results of the various proposed Gravel Extractive Ordinances to be voted on at Town Meeting, and then invite this and any other Applicant to re-apply for a Conditional Use Permit for Gravel Extraction.
- 2) If the Planning Board feels compelled to push this Conditional Use Permit through in spite of the current volatile Ordinance environment as well as the valid concerns of the affected citizens, then three of the four issues listed in Part A (Noise, Road Traffic, No Defined Site Life or Time Limit) can and should be dealt with by the Planning Board via Section 4.03 of the Ordinance by means of additional requirements (conditions). The following requirements (conditions) should be included in the Conditional Use Permit to deal with the concerns stated while also permitting the Applicant to operate the gravel pit.
 - 1) Noise – Establish reasonable hours of operation
 - Planning Board has previously done this (see Conditional Use Permit Tax Map 10, Lot 49).
 - Applicant has previously agreed to this (see Conditional Use Permit Tax Map 10, Lot 49).
 - 2) Road Traffic - Prohibit/Restrict Applicant's truck traffic on Deering Ridge Road.
 - Informed by various Planning Board members that such restrictions exist for NE Gravel with regard to the Webber Road (unable to locate NE Gravel Conditional Use Permit to confirm).
 - 3) No Defined Site Life or Time Limit – Issue Permit for Extractive Operations Only
 - Ensure site is for extraction purposes only, not to be utilized indefinitely for processing of imported materials. This would allow for residential site reclamation per Site Plan in a timely manner.

NOTE

ARTICLE 4 CONDITIONAL USES

Section 4.01 General Requirements

4th paragraph – **“Planning Board approval or disapproval of an application to commence a conditional use must include a statement of reasons for the approval or disapproval.”**

ARTICLE 1 INTRODUCTION

Section 1.01 Statutory Authority -This ordinance is enacted pursuant to the authority granted in MRSA Tit. 30 Sections 4961-4964 and the Home Rule powers granted in Article VIII-A of the Maine Constitution implemented by legislation contained in MRSA Tit. 30 Chapter 201A- particularly Section 1917. Therefore, the citizens of Waterboro do enact and ordain as follows:

██████████-The purpose of this ordinance is to promote the health, safety, morals, prosperity, aesthetics, and general welfare of the Town of Waterboro.

██████████ It is the intent of this ordinance to regulate and restrict the use of all lands, waters, and structures; regulate and restrict lot coverage, population distribution and density, and the size and locations of all structures so as to: lessen congestion on and promote the safety and efficiency of streets and highways; secure safety from fire, flooding, and other dangers; provide adequate light, air, water supply, sanitation, drainage, and access to roads and waterbodies; avoid undue population concentrations; facilitate the adequate provision at reasonable costs of public facilities and utilities; stabilize and protect existing public and private property and the value inherent therein; insure the appropriate use of land and the conservation of natural resources; preserve and promote the historic character and beauty of the town. It is further intended to provide for the administration and enforcement of this ordinance and to provide penalties for its violation.

Section 1.04 Underlying Assumptions and Premises -Existing natural phenomena within the Town of Waterboro, the geographic size of Waterboro, the present and foreseeable population of Waterboro, and the actions of governmental agencies outside of Waterboro give rise to a series of conditions, assumptions, and premises upon which this ordinance is predicated. They include: existing major roads and highways, which are largely funded and maintained by county and state highway departments, will remain unchanged--major extensions, resurfacing, or widening are not anticipated in the short run (5-10 years); public water supply, which does not now exist, is, because of the prohibitive cost involved, also unlikely in the short run; public sewage collection and storm water drainage systems, which also do not now exist, are, because of the prohibitive cost involved, unlikely even in the long run (20-30 years); public school construction, expansion, and location is not controlled exclusively by the Town of Waterboro but by the State Department of Education and School Administration District 57 which presently includes Waterboro and 5 adjacent municipalities--no major organizational changes in SAD 57 or capital construction projects are anticipated in the short run; higher density residential and mixed use districts must have proximity to essential public facilities and both public and private services (schools, roads, police and fire protection, utilities, shops); districts which permit only lower density development either lack this necessary proximity or have other physical limitations involving soils, slope, drainage, suitability for subsurface waste water disposal etc.

[REDACTED] - In addition to findings that the general and specific requirements for conditional use approval set out in the section permitting a particular conditional use in a particular district (see Sections 3.04-3.08) have been met, and that, where applicable, those substantive requirements for approval imposed by other articles of this ordinance, specifically articles 5, 6, 7, and 8, have also been met, the Planning Board must additionally find before a conditional use is approved that the proposed use in the specific location contemplated: will be in harmony with the Town's Comprehensive Plan and existing subdivision regulations; provides safe and adequate access to the road system of the town; provides safe and adequate means for water supply, waste water disposal, and solid waste disposal; is capable of being reasonable served by schools, public utilities, public safety agencies, and other public agencies and service; provides an adequate and permanent natural buffer or artificial screen between itself and adjacent properties which are being used in alternative ways permitted by this ordinance; will not result in damage to waterbodies, marsh or other natural areas, scenic or historic areas; will be built on soil types which are suitable to the nature of the undertaking; has taken all reasonable steps to fit itself harmoniously into the existing environment and existing (if any) development; will not result in the unnecessary removal of natural vegetation, the permanent scarring of the land, or soil erosion; will not result in unreasonable noise levels, harmful air emissions, or offensive odors; is in possession of or in the process of obtaining (and ultimately does obtain) all required state permits and approvals.

[REDACTED] - If in the contest of reviewing a particular conditional use application it becomes apparent to the Planning Board that the public's health, safety, or general welfare will be threatened, even though all of the required findings are made and all general and specific conditions for approval imposed by this ordinance and supporting regulations are met, the board is authorized to frame and impose additional special requirements (conditions) for approval. In such cases the board in its decision must fully set forth the unforeseen circumstances, the need for and the underlying rationale of the attached special requirements (conditions). Use of the extraordinary power conferred by this section shall be kept to a minimum.

Section 4.04 Special Requirements for Extraction Operation Approval - An applicant for a extraction operation conditional use permit must obtain and submit a restoration/reclamation plan, erosion/sediment control plan, and Hydrogeological Study for review and approval by the Planning Board before conditional use approval of a new extraction operation can be granted. Extraction operations in existence and actual operation on March 11, 1989 cannot be expanded to encompass more than five (5) acres in area unless Planning Board approval of a suitable restoration/reclamation plan, erosion/sediment control plan and Hydrogeological Study is first obtained.

In preparing the plans for the extraction operation approval, the applicant shall use United States Geological Survey (USGS) datum in establishing existing topography and final topography. description of the USGS datum, bench marks height as specified by the USGS shall be displayed on the plans.

ARTICLE 13 LEGAL STATUS

Section 13.01 Abrogation and Greater Restrictions - It is not the intent of this ordinance to abrogate, repeal, annul, impair or interfere with any existing easements, covenants, deed restrictions or agreements; or with state statutes, rules, regulations, or permits; or with other local ordinances or regulations. However, in all of the above situations where this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.

████████████████████ Interpretations of words, phrases, or specific provisions of this ordinance leading to the grant or denial of a necessary permit, the approval or disapproval of any proposal, or any other action or refusal to act by the Code Enforcement Officer, the Planning Board, or the Selectmen of the town may be appealed to the Zoning Board of Appeals by an aggrieved applicant whose request gave rise to the interpretation in question, by any property owner or resident of the town whose property is within one thousand (1000) feet of the lot line of the applicant's project site, or by any of the elected or appointed municipal officials or employees listed above. The Zoning Board of Appeals interpretation of any word, phrase, or provision of this ordinance called in question shall be final subject only to judicial review.

In judicial proceedings arising out of this ordinance and its application by the Town of Waterboro, it is the intent of the Town that the provisions of this ordinance be regarded as minimum requirements and that they be liberally construed in favor of the town so that the purposes and intentions (see Sections 1.02 and 1.03) of the ordinance may be achieved.

All persons interpreting words, phrases, or provisions of this ordinance shall be bound by the definitions set out in Article 14, by the normal and usual meanings of words and phrases in everyday speech and by the meaning to be drawn from the context in which a particular word, phrase, or provision is set. All interpretations must be in harmony with and seek to achieve the overall purpose and intent of the ordinance.

Section 13.03 Severability - If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 13.04 Amendment - Pursuant to the same authorities by which this ordinance is enacted (see Section 1.01) the regulations, restrictions, and boundaries established by this ordinance may be changed, supplemented, or repealed. A proposal for such action except repeal of the entire ordinance, (see Section 13.05) shall be referred to as a proposed amendment. A proposed amendment may be offered by any person who owns land in Waterboro, any resident of the Town, the Code Enforcement Officer, the Planning Board, and the Selectmen.