

**Town of Westmoreland
Zoning Board of Adjustment
Draft Minutes May 22, 2013**

These minutes are unapproved until reviewed and accepted by the Board.

The Board convened at 7:00 pm on May 22, 2013 at the Westmoreland Town Hall. Present: Peter Remy, Chairman; Barry Shonbeck, Brian Merry, Russ Huntley, Nancy Ranson.

The Board reviewed the minutes of the April 17, 2013 hearing. Brian Merry made a motion to approve the minutes as read. Chairman Remy asked to amend the minutes to clarify that in addition to the Westmoreland abutters the Town of Walpole was notified because of the potential for regional impact. Barry Shonbeck seconded the amendment and all voted in favor. Mr. Merry made a motion to approve the minutes as amended. Russ Huntley seconded the amendment and all voted in favor.

At 7:30 pm Chairman Remy convened the hearing that had been continued from April 17, 2013 on the application of Tim Graves:

___a request by Graves Trucking, Inc. for a Special Exception concerning Article III, Section 305.1 and Article V, Sections 501.A and 501.D and Tables 502 and 505; and Variances concerning Article IV, Sections 402, 414, and 445 and Article V, Tables 502 and 505 of the Westmoreland Zoning Ordinances. The applicant proposes to establish and operate a quarry to excavate bedrock at the property located off Old Route 12 North, Map 17 Lots 28/29 in the Commercial/Industrial and Rural Residential zones.

Chairman Remy asked the Board members to identify themselves and the attendees to identify themselves. Dick Fraser identified himself from One Source Properties and Permitting representing the owner, Tim and Jen Graves, also in attendance. Also present were Attorney Timothy Britain of Cleveland, Waters, and Bass, PA and Thomas Key, of Key Drilling and Blasting Services.

Three members of the Walpole NH Zoning Board, Ernie Vose, Jan Galloway, and Myra Mansouri, Chairman, attended and near neighbors to the Graves property, Patricia Rodrigues and John Cordaff.

Ernie Perham of Westmoreland was also in attendance.

Brian Merry asked for a definition of quarry as opposed to sand and gravel pit. Mr. Remy said that in light of the ordinances they fall into the same category and are subject to the same rules and restrictions. In this case the proposal is to quarry bedrock.

Chairman Remy made a statement that he had consulted the town attorney, Silas Little, asking him to review the maps and documents prepared by Richard Fraser of One Source Properties and Permitting, LLC. Attorney Little brought to his attention that it is necessary to have a completed application before convening the hearing and there were a few issues that would require more documentation from the applicant. One of these issues was the railroad crossing permits for accessing the property. The property in question has been issued a five year permit which is renewable subject to conditions and a ten year crossing permit issued by the

NH DOT to Mr. George Graves who operates a sand gravel pit on the property abutting the applicant's property. Chairman Remy had two concerns: why are the crossing permits for different lengths of time and why is there only a five year permit for an operation that is designed to last far longer.

Mr. Shonbeck asked if the permits went with the property should it be sold.

Mr. Fraser said that was correct and was stated on page 77 in Section 7. It is a fully executed agreement with the State of NH Department of Transportation (NH DOT).

Mr. Remy said that Attorney Little had a problem with this agreement which was only guaranteed for five years, and renewable for five year terms.

Mr. Fraser asked Attorney Britain to speak to that, explaining that Attorney Britton had been the liaison with the NH DOT. Attorney Britton explained that there are two agreements; one with Mr. George Graves for 10 years and one with Timothy Graves for five years. Both are renewable. Renewable permits are the standard for railroad crossings. The State of NH doesn't issue permanent permits. The renewal is almost automatic as long as there have not been any problems with the arrangement which would necessitate a review of the permit and possible termination. Mr. Lou Barker is the person he dealt with to obtain the permits.

Mr. Remy asked for clarification of why the difference in the length of the permits, five vs. ten years.

Attorney Britain explained that when the railroad was set up many properties became landlocked so each property was issued a crossing permit. The property owned by George Graves had an original crossing but the property of Tim Graves which was part of a larger original piece did not include the original crossing so his property is landlocked by the railroad land and the NH DOT agreed to issue a five year permit subject to renewal.

Mr. Remy asked which crossing would be used. Attorney Britain explained that the state wants the existing cut to be used for both properties and an internal road will give both properties access to that railroad cut.

Chairman Remy said that Attorney Little told the Board that as of now the applicant only has a five year plan for a multi decade operation. The Board will need assurances from the state.

Mr. Fraser suggested that if the Board did grant the Special Exception it could rest on the condition that if the permit were not renewed by the state Mr. Graves would be subject to reclamation of the property. Attorney Britain added that the State says

the permit holder would be given a one year advance notice of a termination if they were not going to renew the permit.

Chairman Remy said he is not comfortable with the idea of granting a Special Exception that is conditional. The town attorney wants more assurances that a landlocked property is not created that cannot be reclaimed. Mr. Remy also mentioned that he has received two letters from a near neighbor worried about noise and vibrations. The ordinances state that the noise level cannot be louder than 70 decibels, although it is not clear where this should be measured and there cannot be more than .016 inches of movement from a blast. The Board needs detailed information from experts about how the proposed operation will dovetail with these ordinances.

Attorney Britain said that was why Mr. Key was there, ready to address those issues.

Mr. Remy also inquired about how water would be retained in the circumstance of a 100 year flood. Mr. Fraser said that this was not articulated in the Zoning Ordinances. Mr. Remy said that if it is not in Zoning the Planning board will want to know how it will be handled under 155e.

Mr. Fraser said that the whole concept of this operation is that it will not impact surface waters or ground waters. That is the charge of the DES. The project was reviewed by the department supervisor and he found it to meet the requirements without question. Mr. Fraser has designed for a number of quarries around the state. Mr. Fraser suggested seeing the quarry site in Charlestown operated by St. Pierre which has a similar terrain. The surface is not permeable and it is quarried with a slope toward the site so the water may stand on the surface for a few days but it does not flow off of it.

Mr. Remy reiterated that the one sticking point to a completed application is the issue of the five year permit for a multi-year operation.

Mr. Remy also told the applicants that two other property owners were notified, not as abutters, but as near neighbors, as a courtesy to them. They are Patricia Rodrigues and John Cordaff, of Map R17 lot 18 and Lois Nimke of Map R17, Lot 19.

Mr. Remy said that he needs to have the requested information from the state before proceeding. If Attorney Britain speaks to Attorney Little and they come to some understanding then the hearing can go forward.

Mr. Fraser asked for some guidance as to how much time the Board is looking for. He said that various Boards around the state issue the zoning permits for varying lengths of time. Some ask for a review every three years or five years and others are issued for extended lengths.

Mr. Remy said that he did not really want to get into regular reviews. He would like to feel confident that the project is sound enough not to require them.

Attorney Britain suggested that since the approval of the zoning permit was conditioned on approval by the Planning board, the Planning Board could be the ones to trigger or determine conditions and reviews.

Russ Huntley asked how much reclamation could be done during a one year period if the state decided not to renew the permit.

Mr. Fraser said it would not be a problem because the state views exposed ledge as a non-erodible surface. And most areas surrounding the non-erodible surface are graded and vegetated as the process goes along.

Mr. Fraser asked Attorney Britain if this is really a Zoning Board issue or a Planning Board issue?

Attorney Britain said that it may be a Planning Board issue but Mr. Remy is obviously not comfortable until the issue raised by Attorney Little is resolved. To get off on the right foot he and Attorney Little must have the conversation that Mr. Remy wants them to have and come back to the Zoning Board with what Mr. Remy needs to go forward.

Mr. Fraser asks if Mr. Key of Key Blasting and Drilling could speak since he was there. Mr. Remy said he could as long as it is understood that his remarks are not part of the formal hearing.

Mr. Key asked how the vibration standard of no more than .002 inch displacement was calculated. Mr. Remy did not know. The Ordinances were created by a committee which he was not part of.

Mr. Key said the State's displacement value is one inch per second and he doesn't understand what this ordinance means. His seismographs require a pre-blast survey of anything within 250 feet where the insurance company will cam cord the inside and the outside of the house and they also have a seismograph of the closest building to the blast which gives them a reading of the ground vibration and he is allowed up to 2.0. Above that means he has to back off with the blast. He does quarries all over the place. The process is to start off with a small shot and use the seismograph reading to tell him the vibration effect and whether he needs to adjust the size of the shot.

Mr. Remy asked specifically what does that mean in terms of the ordinance? Mr. Key said that he will try to find the answer to that question for the next hearing.

Mr. Remy said that the Board needs documentation that the nearest neighbor will not hear sounds over 70 decibels and will not experience more than .002 inch of displacement. Mr. Shonbeck said that the ordinances usually start at the edge of the property.

Mr. Shonbeck asked about control of surface water. He is concerned that the dust preventative calcium chloride will contaminated ground water or well.

Mr. Fraser said that calcium chloride hardens on the surface. Many towns use this to control dust on gravel roads. And it is likely that Mr. Graves will only use water to control the dust.

Mr. Remy stated that the hearing would be continued to Wednesday, June 19, 2013 at 7:30pm at the Westmoreland Town Hall.

Attendees, Patricia Rodrigues and John Cordaff, asked whether they would be allowed to speak. Mr. Remy thanked them for attending and explained that the hearing had been continued and they would be given a chance to speak at the June 19th meeting.

Respectfully submitted by Jackie Cleary, Zoning Board clerk