



Appeals Office

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May 22, 2006

BOARD OF APPEALS

7:00 P.M. at the Town Office

MINUTES

Members present: Chairman Matthew Schaefer, Elden Lingwood, Lawrence Murch, Michael Higgins, Peter Leavitt, and Mary Picavet.

Staff present: John Cooper, Code Enforcement Officer; Karen Strout, Recording Secretary.

Call to order: Chairman Matthew Schaefer called the meeting to order at 7:05 pm.

Consideration of minutes dated February 27, 2006:

Motion: moved by Elden Lingwood and seconded by Michael Higgins to approve the minutes of February 27, 2006. Vote was unanimous 6/0.

Public Hearing:

Map 76, Lot 63, LRR1

79 Thomas Pond Terrace

John J. Quirk

Side set back reduction from 20' to 10' on the northerly side to build a garage.

The Public Hearing was opened by Chairman Matt Schaefer. The applicant, John J. Quirk stated that his intent was to build a garage which would be free standing. This set back reduction would allow him to stay away from his waterline, and address his concerns of keeping the water away from his building to prevent possible water problems in his basement. He felt a free standing structure to be more pleasing aesthetically as well.

Public Comment:

Chairman Schaefer referenced a letter dated May 17, 2006, from Richard and Jill Horr, abutters on the north side stating that they had no objection to the set back reduction. This letter has been included in the BOA file.

Comments from the Board:

Board member Lawrence Murch disclosed that he was an abutter to the rear of this property. Murch stated that he had no objections to the set back reduction, and felt he could be objective in dealing with the application.

Discussion:

Member Michael Higgins asked Code Enforcement Officer Cooper for his opinion. Cooper responded that he had visited the site and did not have any concerns.

Member Peter Leavitt noted for the Board that the primary structure and the garage would not create a walling in effect because the buildings would be on the opposite side of the road, away from the water.

MOTION: moved by Peter Leavitt and seconded by Chairman Schaefer approve the set back reduction for the northerly side, as requested by the applicant to allow for the building of a garage; this set back reduction would not exceed 10' feet from the 20' zoning requirement. Vote was 5/0/1 abstention (Murch).

**Map 17, Lot 43, R & LRR1
62 Inlet Point Road
Liastasa Management LLC & Meyers Associates
Conditional Use permit for Mineral Extraction**

Chairman Schaefer read the Notices of Action dated January 11, 2006, and May 10, 2006, regarding the Planning Board's approval for a Mineral Extraction Reclamation Plan. Copies are part of these files.

Presentation by applicant's agent:

Pat Cayer of Land Services, Inc. spoke on behalf of the applicant. He also noted that Mike Meyers of Meyers Development & Associates was also present to answer questions. Cayer stated the reason they were before the Board was the Mineral Use of the property which is conditional use in both zones. They are looking for a Conditional Use permit and a requesting a review of the site as it is presently.

Chairman Matt Schaefer asked if the site had any wetlands. Cayer responded that there were some wetland areas and pointed out a pond area and several finger areas on the site map. He further commented that there were no wetlands within the majority of the site.

Schaefer commented for the record that a site walk had been held by the Board in January and because of the open winter and lack of snow were able to see the land clearly.

Cayer continued by reviewing the changes that had been made in the plan since they had last been before the Board. The latest plan showed the temporary Haul Road which would be used to transport materials to the pit owned by Walnut Hill Associates(Grover) in New Gloucester. Cayer stated that the distance to the pit from the Haul Road was about 500'. There would be one brook crossing that would require a DEP permit. There would not be any wet land disturbance for the Haul Road construction. Cayer called the Board's attention to the fact that the details of the operation were in their submission packets. The Inlet Point Road will not be used for heavy equipment, only for passenger vehicles for employee access. Cayer pointed out on the plan the proposed location of an employee parking area and the refueling pad.

Comments from the Board:

2.

Higgins inquired about the length of operation. Cayer responded that it could be operational up to 2 years, but their plan was to be fairly aggressive. Mike Meyers added that they had entered into an agreement that they would be done by February 2008, at the latest. Schaefer asked how many would be employed there. Cayer responded that he was not sure. Cayer commented that they planned to remove 300,000 cubic yards of materials. Higgins asked about blasting. He was told that they were not anticipating any blasting. Leavitt asked if they would be extracting in the shoreland zone. The response was in the affirmative. Leavitt also made inquiries about the length of operation and referenced the Shoreland Zoning Ordinance section M 9. He noted for the Board that the ordinance had language that spelled out and defined when the operation ends. Murch commented that his understanding was that the operation would be as fast as they could do it. Meyers responded they hoped to be done by the winter of '07. Higgins asked Cayer if he wanted to make any additional comments on the zoning requirements. Cayer responded he felt that the application addressed the requirements, and that the Planning Board had given their approval to the plan. The PB had left the operational details up to the BOA. Leavitt commented that he felt the Board should go forward with general conditions of use as well.

Chairman Schaefer said he felt the Board should deal with this application by taking things one step at a time.

The Board began its review by discussing the following from Town of Raymond Land Use Ordinance Article IX, Section E Mineral Extraction standards.

E. Mineral Extraction

1. Top soil, rock, sand, gravel, and similar earth materials may be removed from locations where permitted under the terms of this Ordinance only after a Conditional Use Permit for such operations has been issued by the Board of Appeals in accordance with the provisions of this Ordinance, and provided that plans for the following provisions shall be specifically illustrated in the application for the Conditional Use.

- a. Specific plans are established to avoid hazards from excessive slopes or standing water. Where an embankment must be left upon the completion of operations, it shall be at a slope not steeper than one (1) foot vertical to two (2) feet horizontal.

Discussion:

Cayer stated that the plan was to fairly quickly reclaim the area and did not anticipate any hazards. Cayer reviewed the notes on the reclamation plan which give guidance to the workers. Leavitt added that this a conditional use in this zone, so they are not breaking any new ground in that area.

- b. The operation is shielded from surrounding property with adequate screening and creates no disturbance of a water source.

Discussion:

Cayer referenced the three buildings in the area on Inlet Point Road and noted the naturally provided screening.

- c. No excavation shall be extended below the grade of adjacent streets unless one hundred (100) feet from the street line or unless provision has been made for reconstruction of the street at a different level.

Discussion:

Schaefer inquired whether or not this impacted the street in any way. Cayer responded that it did not.

- d. Sufficient topsoil or loam shall be retained to cover all areas with a three (3) inch layer so that they may be seeded and a vegetative cover may be restored. The applicant shall provide such seeding and restoration.

3.

Discussion:

Cayer informed them that topsoil from the site would be reserved on the site and more imported, if necessary to restore the site.

- e. There is at least seventy-five (75) feet between the edge of the digging or quarrying activities and the property lines.

Discussion:

Cayer responded that there was 75' of property there.

- f. Dust or other air pollutants are kept to a minimum by appropriate landscaping, paving, oiling, or fencing.

Discussion:

Cayer replied that there was a plan to deal with this. Schaefer asked if there would be a pit. Cayer responded that they would be taking of the berms and referenced the elevations on the plan for several areas where the berms were being removed.

Lingwood asked if the end result would be a much larger flat area. Cayer agreed.

- g. Appropriate fencing or landscaping is provided to screen the site of digging operations from any public right-of-way and from any dwelling within two hundred fifty (250) feet of the property lines of the excavation site.

Discussion:

Inlet Point Road is a private way and the Haul Road would be a temporary road.

- 2. A surety bond shall be posted with the Town Clerk by the applicant in an amount found by the Board of Selectmen to be sufficient to guarantee conformity with the provisions of the grant of approval.
- 3. The plan review by the Planning Board and the Board of Appeals shall take into consideration the following items. The Appeals Board may impose such conditions as necessary to safeguard the health, safety, and welfare of the community.
 - a. Fencing, landscaped buffer strips, public safety.
 - b. Advertising signs, lighting.
 - c. Parking space, loading and unloading areas.
 - d. Entrances and exits.
 - e. Time period for operation.
 - f. Hours of operation.
 - g. Methods of operation.
 - h. Weight and loading limit of trucks.
 - i. Sand and gravel spillage upon public streets.
 - j. Rehabilitation proposals.

Chairman Schaefer commented that most of the items A-J had been addressed. Leavitt added that advertising, signs, and lighting probably did not apply. Cayer commented that they had no plans for either lighting or a structure at the site.

Schaefer stated that consistent with their charge they need to address Section IX.A. and that they may need to approve with conditions. The following are the standards and the discussions on each.

ARTICLE IX - MINIMUM STANDARDS

A. Conditional Uses

The Board of Appeals shall approve, deny, or approve with conditions all applications for a conditional use permit. The applicant shall have the burden of proving that his/her application is in compliance with the requirements of this Ordinance. After the submission of

a complete application, the Board of Appeals shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will not depart from the general purpose and intent of the Ordinance, nor from the Town's Comprehensive Plan;
Discussion:
This is an approved use and consistent with the ordinances.
2. Will be compatible with permitted uses within the zone as determined by population; density; design; scale and bulk of any proposed new structures; and intensity of use;
Discussion:
It is compatible with permitted uses.
3. Will not generate noise, vibrations, fumes, odors, dust, or glare which are detectable at the lot boundaries, and all aspects of the conditional use will be carried on within the structure;
Discussion:
The noise issue has been addressed with 75' set back. There will be noise; but that is obvious. There is an increased setback which attempts to address this issue. Cayer added that this is not a permanent situation. This is temporary. It is a standard plan- nothing extraordinary.
4. Will not cause water pollution, sedimentation, erosion, contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result;
Discussion:
Schaefer commented that there are specific requirements for this and DEP will dictate this.
5. Will not adversely impact any deer wintering area or other important plant or wildlife habitat or scenic area such as views of Sebago Lake or mountains from public places;
Discussion:
Cayer stated that there is a wetland area and a vernal pond, but it is not part of the project.
6. Will not deny light and air to surrounding properties;
Discussion:
7. Will not depreciate the economic value of surrounding properties;
Discussion:
Cayer commented that there has been no assessment done. The change in the landscape is that it will be more level.
8. Will have sufficient potable water available for its needs;
Discussion:
9. Will not create a hazard to either pedestrian or vehicular traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and also vehicles, and the visibility afforded to pedestrians and the operators of motor vehicles;
Discussion:
Cayer had no specific answer for the number of employees that would be working. His estimate was possibly 10-15 employees working 6:30 am to 5 pm.
10. Will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
Discussion:
Leavitt commented that this probably did not apply because they would use New Gloucester for services since the pit is there.

Chairman Schaefer continued leading the discussion with the review of Shoreland Zone Ordinance Section IV, M.

Mineral extraction may be permitted under the following conditions:

1. A conditional use permit for mineral extraction in locations where permitted under the terms of the Raymond Land Use Ordinance must be obtained from the Board of Appeals in accordance with the provisions of said Ordinance, and provided that plans for the requested mineral extraction shall be specifically illustrated in the application for the conditional use.

Discussion:

The applicant is addressing this condition with the application.

2. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 4 below.

Discussion:

The applicant has received approval from the Planning Board for the Mineral Extraction Plan.

3. The plan review by the Planning Board and the Board of Appeals shall take into consideration the standards contained in this section and in Article IX, Section E. of the Raymond Land Use Ordinance.

Discussion:

This was covered earlier in this meeting with the review of IX of Land Use Ordinances.

4. Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C, no part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet of the normal high-water line of a great pond or a river flowing to a great pond, and within one hundred (100) feet of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland.

Discussion:

There was considerable discussion about wetlands and wetlands of high value. Cayer commented that they were 100' from Notched Pond. One drainage and control feature would be that the pit would be internally drain the water to the middle. He did not anticipate standing water because of the type of soils.

Cayer added this wetland is a forested wetland which is not considered a high value or significant wetland.

5. Extraction operations shall be at least seventy-five (75) feet between the edge of the digging or quarrying activities and any property line. Extraction operations shall not be permitted within one hundred (100) feet of any property line, without written permission of the owner of such adjacent property.

Discussion:

There is a 100' buffer.

6.

6. The operation shall be shielded from surrounding property with adequate screening and shall create no disturbance of a water source. Appropriate fencing or landscaping shall be provided to screen the site of digging operations from any public right-of-way and from any dwelling within 250 feet of the property lines of the excavation site.

Discussion:

The application addresses this condition.

7. Specific plans shall be established to avoid hazards from excessive slopes or standing water.

Discussion:

The application addresses this condition.

8. Dust or other air pollutants shall be kept to a minimum by appropriate landscaping, paving, oiling, or fencing.

Discussion:

The application addresses this condition.

9. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed inoperative when less than one thousand (1,000) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

- a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
- b. The final graded slope shall be two to one (2:1) slope or flatter.
- c. Sufficient top soil or loam shall be retained to cover all disturbed land areas with a three (3) inch layer, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project. Such seeding and restoration shall be provided by the applicant.

Discussion:

The application addresses this condition.

10. In keeping with the purposes of these ordinance provisions, the Planning Board and Board of Appeals may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

Comments from the Public:

Margaret Carr and John Carr, abutters, of 49 Inlet Point Road distributed a letter to the Board in opposition to the project. This letter dated May 22, 2006, is part of the BOA file. Some of the concerns expressed :

- loss of income on their rental properties
- economic impact on property values in the area
- noise/blasting/dust/fumes/odors/vibrations created by the work
- contamination of water supply/Notched Pond

- hours of operation/time frame for project itself
- impact on wildlife/deer wintering area
- impact on Inlet Point Rd by use by employees etc.

Archie Tripp of 85 North Raymond Road also expressed concerns about the hours of operation and the effects on the environment. Other concerns centered on the impact to the Beaver bog, the creek, and the threat an oil spill might create. Tripp commented that he felt the refueling pad for the trucks should be concrete. Tripp asked who would be policing the area. He was told that Code Enforcement and that DEP would be monitoring the project. DEP has designated staff that do only gravel pits.

Leavitt asked if there would be contingencies in place for quick intervention for any spills. Cayer responded that plans would be required by DEP.

Tim Tripp of 97 North Raymond Road had questions about the runoff. Cayer explained how the grading would be done inward to prevent that. He continued to say that they would not be going down to ledge and the area would be reclaimed.

Chairman Schaefer asked if they had drilled test pits and if they had reached ledge. Cayer responded that they had done pits with the depths of 8-17' and there was no ledge.

Gary Bucklin of 51 Inlet Point Road stated that he was not speaking for or against the project but having lived in the area for 12-13 years appreciated the quality of life he had enjoyed in the area. He had concerns about how the 72 acres would be developed. He had questions about the use of Inlet Point Road, which has been privately used and maintained, and the impact business use would have on it. The security of the area was a concern and he asked whether it might be a better idea for the employees to use the Haul Road for their access.

Cayer was asked what the phases would be for the project. He stated that the Haul Road would be built first, but beyond that he did not know what the plan of action would be.

The public session ended at 9:20.

MOTION: moved by Schaefer and seconded by Leavitt to take a short(10 minute) break and reconvene at 9:30. Unanimous. 6/0.

Chairman Schaefer reconvened the meeting at 9:30.

Discussion of the conditions of approval granted by the Planning Board.

Comments from applicant:

Cayer explained that the plan notes had been edited to correct the omissions and typos pointed out by the Planning Board. Cayer went over the plan revisions that Mark Gray had done for the applicant since they last presented to the Board. When questioned about the letter from the Town of Gray requested as a Condition of Approval by the PB, Cayer responded that it had not been requested yet. Cayer did not have any detailed information to share from Grover regarding the timing or phases of operation.

When Schaefer inquired about start time, Meyers responded that was that they would like to start immediately. The operation would not be as aggressive now, as it would have been, had the start up time had been earlier in the Spring. Meyers stated that anticipated that things will accelerate in the Fall and be most aggressive in the Winter months.

Cayer commented that the applicant had filed the intent to comply with the DEP and expected a response soon. He also added that they would be working 5 acres at a time, and since they were only doing 12 acres in total, the project was more of an excavation project. They would be putting the area together as they progressed. Murch suggested that they go with all deliberate speed.

Comments from the Board:

When Cayer was asked what he thought about restricting the employees' use of the Inlet Point Road, Cayer responded that he did not want to restrict the use. Meyers thought something could be worked out for the plowing of Inlet Point Road. Meyers also commented that during the construction phase they might be able to restrict the use, but it might be difficult to limit the use of it later because of the pit operation. When asked about approvals from New Gloucester, Cayer commented that he was not aware of any that were needed as the Grover Pit was an ongoing operation. Cayer explained that Grover is a large operation and their permitting allows so much of the pit to be open. They work within their parameters and within DEP regulations.

Chairman Schaefer polled the Board to see how they wanted to proceed. Consensus of the Board was that they would like to have another meeting to address the conditions of approval, which would allow the applicant to get more information from Grover on a clear time frame and phased plan of operation.

Cayer commented that he would like to wrap this up sooner rather than later. Cayer questioned whether or not the Board could defer to the DEP on operations issues. Schaefer commented that it would be helpful for them to receive the DEP permit and the regulations. Higgins concurred.

Schaefer commented that it was not appropriate for the Board to give an advisory opinion because the Town has an ordinance and it is up to the applicant to comply. He further stated that anything they could bring forward to the next meeting would be great.

Bucklin stated that he would much rather see the work being done October- April, rather than in the summer.

MOTION: moved by Schaefer and seconded by Lingwood to adjourn this meeting and pick this up at a Special Meeting at a time to be determined. Vote was unanimous.

MOTION: moved by Schaefer and seconded by Leavitt to amend the previous motion to continue this meeting to Monday, June 5, 2006, at 7:00 pm at the Town Hall. Vote was unanimous.

MOTION: moved by Leavitt and seconded by Schaefer to adjourn at 10:30 pm. Vote was unanimous.

Karen Strout

Board of Appeals Secretary