

**Planning Board Working Session  
Tuesday, July 15, 2014**

Called to order -

Present: Selectmen's Representative MacIsaac, Members Deschenes, Despres, Kresge, Merrell, Economic Development Director/Town Planner Joanne Carr and Selectmen's Representative Alternate Rothermel.

Absent: Member Bergeron, Moore, McKenzie

- Mary Pinkham-Langer (DES) Gravel Regulations

Mary Pinkham-Langer is a gravel tax appraiser from NH DRA. She was present to go over excavation regulations and the duties of the planning board. Document samples were distributed to the board in advance of the meeting.

Chairman Kresge asked about the check list and which form does it go with. Specifically, the operations checklist and reclamation checklist have many requirements that aren't in the body of the regulations. Mary explained that a lot of the regulations take the statute and repeat it. In following 155E the town can't use lower standards but they can be more stringent and it makes no sense in the regulations to repeat statute. Reference would be made to 155E and the checklist would be based on that. What should be addressed in the regulations are those areas that are not addressed in the statute, 155E such as a definition for commercial, incidental excavation, normal landscaping or minor topographical adjustment. 155E does address existing grandfathered excavations, permitted excavations.

Under 155E II A there are exceptions which are to be considered exemptions. The sample regulations mention 1,000 cubic yards. If it's non-commercial, minor topographical adjustment that does not remove more than 1,000 cubic yards then it's an exception. Anything over that would require coming before the planning board to explain what is being done. At that time the board can decide if it's commercial or incidental. (The reason for the 1,000 cubic yards is because by law it has to tie into the excavation tax law 72B.) If it's incidental, 1,000 cy or less, an intent is not required and there is no tax due. If commercial they need the intent whether it's for one yard or 100,000 yards. All of this ties in with 72B, 155E and 485A17 which is the AOT through DES. Additionally there are regulations beyond what the town has for excavations such as the EPA Storm water Protection plan and EMSHA (mining safety).

155E is statutory; it is not an option. You have to regulate. 155E takes precedent over the alteration of terrain (AOT). You can get the AOT but it does not trump local "regulation". Member Deschenes asked if the reclamation plan approved with the AOT is the final plan and the town would want to be sure their plan agrees. Mary agreed.

The intent form asks if the applicant is permitted under 155E and asks if they are grandfathered under 155E. There is also a spot for the AOT number. If these are blank there may be a problem. The town cannot grant a permit until all other permits are in place and typically an applicant will apply for both (155E and AOT) at the same time. The board could conditionally approve the 155E until they get through DES. Permits issued by DES do not have an expiration date; that is why they require updates

every five years. This is something that should be addressed in the town regulations; the town wants to be sure they have the updates that were supplied to DES. This is a potential way to tie in the expiration date. When the 155E expires the applicant goes through the entire process again; there is no renewal. Options are a five year expiration could be in place with yearly inspections to ensure everything is in-check or a permit could be granted for the intended life of the project, fifteen or twenty years, with updates every five years as they submit to DES and yearly inspections. The town can hire an Engineer to perform the annual inspections at the applicant's expense. The board was made aware that DES has someone making their way from north to south visiting all gravel operations with the hope of bringing them into compliance. Member Deschenes noted that all of the Town's gravel operations are out of date.

If a pit is grandfathered under 155E, meaning it's been in existence since prior to 1977, they may note on the intent that they are grandfathered for sixty acres. That means they are intending to excavate sixty acres. They may think they are exempt from everything but they are not. If they are intending to disturb more than 100,000 square feet of area and they indicate that they will be excavating sixty acres they need an alteration of terrain permit. The only grandfathering under the AOT was what was existing as of May of 1981. If they had four acres open/disturbed in May of 1981 they could go an additional 100,000 square feet; they could go up to 6.3 acres total before they are required to have an AOT.

**Gravel permit** is the planning board's permit; 155E. A sample permit was supplied in the handouts. AOT is required over 100,000 square feet.

**Surface Water Protection / EPA (SWP)** usually the AOT and SWP go hand in hand. If they have an AOT it typically meets the EPA's requirements.

**MSHA** is mining safety for pits of all sizes. Permits are not issued however all operations should have signs displayed outlining proper safety attire required for the site.

**Intent to excavate** form is a tax document and not a permit but must be filed with the Town by April 1 of every year. It is signed by the Selectmen and the State receives a copy along with the \$100 filing fee if it is over 1,000 cy. The State will issue a permit which must be posted in addition to the board's 155E permit and the AOT. The amount of earth excavated is reported to the Town on the Report of Excavated Material which is due by March 31. A tax bill is issued at \$.02 per yard of excavated material as per 72B.

Assessments are affected by gravel pits. If any of the property is in current use and being excavated it can be a major problem; it must come out of current use causing a land use change tax. If they are sitting on marketable material that contributes to the value of the land, that land use change tax can include the value of the minerals. So if a five acre area has been stripped off and has 500,000 cy of material that contributes to that value and it will be factored into the land use change tax. It is essential to have accurate excavation plans showing existing topography and final elevation. With that information you will be able to calculate the amount of material being removed.

The sample regulation speaks about processing and back hauling. No processing machinery can be brought in unless it was part of the permitting itself. This would want to be addressed at the time of permitting. A lot of reclamation that happens to the slopes winds up from unsuitable material being brought back in to fill in those areas that have been over excavated or to fill in the slopes. Stumps are also brought in. Chairman Kresge asked what constitutes the stumps being buried in a manner to preclude the development of sink holes. Mary stated that DES has regulations for stump burial but it depends. If the stumps come from the site you can do whatever you want. If the stumps are brought in and it becomes a stump dump then there are different regulations. Backhauling may also bring in unwanted materials such as bricks and concrete without the rebar and it is buried. The Town wants to be specific when permitting whether or not they will allow backhauling. Will there be screeners or

crushers? Will there be blasting? Is there any ledge? Will there be a scale/scale house? If so, it is taxable and should be picked up by the Assessor.

Chairman Kresge stated that at this point everyone is expired. It was suggested that they try to update the regulations prior to initiating a hearing and re-permitting process. Member Deschenes stated that he has spoken to Bruce Coll who operates several of the operations in town giving him a "heads up" on what is going on.

Selectmen's Representative MacIsaac asked about the April 1 deadline. Mary explained that the BOS may decline to sign the Intent to excavate for non-compliance with 155E, 485A 17 and current use if they didn't supply a bond for taxes. If the planning board approached the applicant explaining that they want them to come into compliance and a time line is given in which to come into compliance and they fail the planning board has authority to stop the operation. If a cease and desist is issued then it would be the recommendation to the BOS not to sign the intent. If everyone is working together there is no reason for the BOS to decline to sign the intent. Chairman Kresge asked if any of the pits in town were subject to an AOT. Member Deschenes replied three.

When ready Mary offered to take a look at the updated document and offer any comments or concerns she may have. She is also willing to make another visit to the board if need be. Chairman Kresge felt that would be a good idea. Member Deschenes commented that the board has tossed around the idea of holding a second work session where they would invite the pit operators/land owners to include them in the discussion.

- Chris Stewart and Chris Peahl (79 Hadley Rd.)

Mr. Stewart is part owner in the Hadley Rd. property and it is currently being renovated to house a few different businesses. The question being posed to the board by the Planner, JoAnne Carr and the Building Inspector, Rob Deschenes is does this project require site plan.

Member Deschenes explained that changes are being made to the building to accommodate tenants. In the past the building was used for storage, light manufacturing, retail and office space.

Mr. Stewart distributed a floor plan to the board. What is labelled as Suite Four and Five was previously warehouse. A wall will now divide the area and it will be used for light manufacturing and warehousing. Suite Four already exists and the only change will be to add insulation. Suite Three is also existing and will remain the same. Suite two appears to be the area in question with the potential tenant being Terrapin Glass who will use the space for glass blowing. Renovation for this tenant would involve building a wall between unit one and two about half the distance and closing off a former doorway. Mr. Stewart questions the need for site plan because the front space would be used for displaying their product (limited retail?) and the back portion would be used for housing their equipment and for glass blowing.

Member Deschenes stated that they are looking for clarification on when is site plan triggered. Mr. Stewart's first plan was to put up a wall and make the space more useable for his business. As space was divided up for five tenants and rented out the question became do we need a site plan. It wasn't just Terrapin Glass but more the question of at what point is site plan triggered for the entire property. Also the area in question is greater than the 1,000 square feet allowed to be decided on by the Technical Review Committee. Ms. Carr also asked if it is an amendment to an existing site plan based on prior uses or is it an amendment to an existing site plan because there's a potential change of use. Chairman Kresge feels the trigger is whether there has been a change of use or not. Mr. Stewart stated his uses are very consistent with the previous uses that have been in the building; they are not changing

the exterior of the building or the site. At this point all they are doing is adding a couple of partitions. Mr. Stewart does not understand how this would trigger the site plan review process.

Ms. Carr commented that in the past where there is a question staff would bring the question to the Planning Board because they are the ultimate authority and make the determination. Selectmen's Representative MacIsaac asked what's the latest approved site plan on file? Member Deschenes thought it was when they put in the office space; a date was not recalled but it was believed to be after the 1980's.

Member Merrell recalled that Terrapin Glass had to have special work done to meet fire code when they moved into their current location on Fitzgerald Dr.; there must be something more than putting up a partition. Ms. Carr agreed and added that the owner Jack Bradshaw brought that application forward for site plan review. Member Merrell asked if they have spoken with the Fire Chief. Mr. Stewart stated they have and they have hired a Fire Engineer that said they need to make the wall separating Suite two and three a two hour fire rated wall and the front wall of Suite two a one hour fire rated wall. Member Deschenes stated that there are some interior changes that will have to take place and meet code such as the bathrooms and signage and these are part of the building permit process. Member Merrell noted that this would not impact the usage and any code issues must be approved by the Building Inspector and the Fire Chief.

Selectmen's Representative Alternate Rothermel asked how many spaces are on site. Mr. Stewart replied that he had not counted them but the building is about two hundred and eighty feet long. When divided by the width of a parking space (nine feet) you would have thirty-one parking spaces. Mr. Stewart stated that his trucks will also be parked there.

Member Deschenes asked about hours of operation. In the 1985 site plan minutes they call out the hours of operation to be no earlier than 7:30 a.m. and no later than 5:00 p.m. Hours when Atlas was there were 8:00 a.m. to 5:00 p.m. Chairman Kresge commented that the basket company would have been light assembly, storage and some retail. Mr. Stewart added that the book store would have been retail and Atlas to his knowledge was mainly storage with some office space in the middle. There was also the fire equipment company which was retail and office. Chairman Kresge asked if Terrapin wholesaled product to other outlets or is it sold on site. Mr. Stewart replied that most of their product is sold on-line and they hold classes as well. He expects four or five cars at any given time. Chairman Kresge summarized it to be low impact retail.

With the potential for five tenants Member Deschenes asked for the hours of operation. Mr. Peahl estimates his workers to arrive between 7:00 a.m. and 9:00 a.m. and work until 5:00 p.m. Mr. Stewart expects his operation to be five days a week, 7:30 a.m. to 5:00 p.m. and since Terrapin is not present to represent themselves he would request seven days a week. Member Deschenes was not comfortable with the lack of documentation on the updated hours and who the tenants are. Mr. Stewart stated that he would not have a problem with coming to a planning board meeting and providing the updated hours of operation. The goal at hand is to get Terrapin moved in with equipment running by the first week of August. Ms. Carr added that the board will need to know, going forward, if there are new tenants and is there a change of use.

Selectmen's Representative MacIsaac asked if the board asked for a minor site plan update for this case what would be the tick list that would go along with it. Reviewing the check list Ms. Carr stated that if it came through site plan all of the Existing Data would be waived because nothing has changed. As for the Proposed Plan grades/drainage would be waived, building structures would be waived, we would expect to see any proposed expansion or alteration, we would expect to see parking and loading spaces, we would expect to see an update to the public and private utilities where there is a new water line, screening and landscaping may not change, storm drainage would be the same, auto/pedestrian

circulation (with a number of tenants it may vary based on the use), waive access to the site, waive wireless communications. Ms. Carr does not believe permits for driveway access or town water/sewer will be needed. Written disclaimer for hazardous materials and hazardous waste. Project adherence to ICC family of codes, project conforming to lighting and noise requirements and a statement concerning any unpleasant or noxious emissions.

Selectmen's Representative Alternate Rothermel asked how the shop size compared to where Terrapin is now. Mr. Stewart stated that they currently have around 1,200 sf and the new space will be about 2,000 sf.

Chairman Kresge feels it is a substantially similar use as to what was there previously. Members Despres and Merrell voiced their agreement.

Selectmen's Representative MacIsaac stated that it would be an easier decision for him if Terrapin were where Atlas was because of the fire suppression. Mr. Stewart explained that the area is segregated with two hour fire rated walls and another one hour fire rated wall; it's kept in its own little area. Also the equipment used has a series of three different shut-downs; it is very well controlled. Mr. Stewart stated that "the Fire Engineer that we hired is very familiar with Terrapin Glass and she's the one that wrote the letter and that's obviously what we are following to the letter."

Chairman Kresge asked if an updated plan is needed in the planning board file showing the current tenant arrangement or are the plans on file with the Building Inspector sufficient for the town. Ms. Carr recommended placing a copy of these minutes and an updated copy of the plan presented in the planning board file so as to document who the tenants are and what the use is as of this date.

Chairman Kresge stated that if the board determines that this is not a change of use, which would give the building inspector latitude to issue a building permit, but extended hours of operations would require an amended site plan which would need to have public notice. Ms. Carr suggested that as long as they are conforming to the current site plan they could move in and be operating for the time being. The hours of operation and any other details could be addressed at a subsequent hearing.

On a motion by Merrell seconded by McKenzie the board determined that the site plan as presented to the board does not represent a change of use and is subject to the conditions of the original site plan approval.

(7-0)

Submitted:



Erlene R. Lemire  
Recording Secretary

Attest:



Mark Kresge  
Chairman, Jaffrey Planning Board