

**TOWN OF GREAT BARRINGTON
SELECTMEN'S MEETING
MINUTES
MONDAY, JUNE 6, 2011
7:00 P.M. – SPECIAL MEETING – BOARD ROOM**

PRESENT: STEPHEN BANNON
 ANDREW BLECHMAN
 ALANA CHERNILA
 DEB PHILLIPS
 SEAN STANTON
 KEVIN O'DONNELL, TOWN MANAGER

7:00 P.M. – Public Session – Board Room

1. CALL TO ORDER:

Sean Stanton called the meeting to order at 7:00 P.M.

2. Roger's Rd. Situation

a. Possible closed session re: Litigation (Ch 30A, Sec. 21)

Kevin O'Donnell stated that he and Attorney David Doneski have been going through the court orders, regarding this site, from the past years. He said that the property is allowed to be used as a non-residential property. It has been used as a 'quasi' transfer station and the court order allowed it. Kevin stated that the wording of the court order was vague. He said that he is trying to understand what Mr. O'Brien's intentions are and the nature of the operation. Mr. O'Brien has ceased excavation work until a decision is made to what he is doing is permissible.

Sean Stanton replied that it seems to him that the court order relates to Roger Trucking and not the property.

Attorney Doneski said that the successors are those using the property.

Stephen Bannon asked if the court order allows for more than one business to use the property.

Attorney Doneski replied that they have to make a determination as to what previously went on and what will be going on. He added that there has been a site visit and another one coming. He said that he will have a better view by the end of the month regarding what is a permissible activity.

Alana Chernila said that the successor moves with the land and asked how it relates to dumping and storing. She asked if it is in conflict with one another.

Attorney Doneski answered that the language talks to the transfer station but not the exchange of waste material. He said that the transfer of earth is not allowed and has ceased.

Andrew Blechman said that there is clearly more going on at this site and that it appears they feel that they have blanket permission to do whatever they want.

Attorney Doneski replied that there have been reports that activity is taking place on weekends, which is not allowed; exploration is being taken.

Deb Phillips said that in 2010 a plan of agricultural use was submitted and it was determined to be non-compliant with Mass. General Law. She said that activity continued since last fall and asked how both can be true.

Attorney Doneski responded that to establish agricultural use, activity has to go on. (This has stopped)

Deb Phillips said that it was deemed non-compliant in September and in November and there was a cease and desist issued. She asked why now are we trying to figure out if this is acceptable?

Attorney Doneski replied that the agricultural side and landscaping business side overlap.

Sean Stanton said that the zoning officer doesn't agree.

Alana Chernila said that the Building Inspector said that the plan was non-compliant in September. The opinion was issued but not followed and asked why one opinion does not matter and if it holds any weight. Deb Phillips said that there are two issues; one is the issue of use under the court order and the other is the proposal to convert the land for agricultural use. She asked why any work was allowed to continue after the plan was deemed non-compliant in September.

Attorney Doneski said that he attempted to deal with the owner and his counsel to conform activity to what is allowed.

Charles Williamson – 48 Blue Hill Rd – stated that his wife is a Roger and said that in the late 30's, there was a garbage truck, plow truck and each ran on the weekends. He stated that the noise was always there. He said that the Board should not be 'anti-business'; they make noise and they did before.

Nick Arienti- Attorney for Mr. O'Brien. - He spoke to the timeline of events saying that last August a letter was sent to Attorney Doneski about the activities that were going on, the plan for the land and the rights of Mr. O'Brien in what he was doing. In September 2010, a letter was sent from Attorney McCormick to Attorney Doneski that included a timeline of activities for the conversion of part of the land for horticultural use. This timeline of activities, nor the activities, were ever opposed.

Deb Phillips asked who the plan was submitted to.

Attorney Arienti responded that it was submitted to Attorney Doneski.

Deb Phillips asked if this was the protocol for land use.

Kevin O'Donnell replied that it is not unusual to have direct contact with an attorney.

Attorney Arienti continued by saying that a cease and desist order was issued as a result of a noise complaint. He said that there was no response from the Town attorney and no formal denial of the plan of activities.

Deb Phillips asked if the land use for a landscaping site ceased.

Attorney Arienti responded that they never used the site for landscaping.

Deb Phillips asked if there is a landscaping business there.

Attorney Arienti responded no.

Sean Stanton stated that driving in and out with garden equipment is landscaping.

Attorney Arienti continued that in November, 2010, there were conversations between Attorney McCormick and Ed May, the Building Inspector about the cease and desist for moving earth. He said Mr. O'Brien needed to get access to the back of his property and this activity was related to the request from the Town.

Stephen Bannon said that there should have been something in writing from these conversations and conference calls.

Sean Stanton asked when a cease and desist is ordered, is there a process in which it goes away.

Ed May said that they have to present the claim to the ZBA in order to relinquish the cease and desist.

Attorney Arienti said that they were never told by a Town official to do otherwise.

Attorney McCormick said that the cease and desist was ordered, and he then met with Ed May and Kevin O'Donnell to come up with agreements about the changes. He stated that there was no reason to go to the ZBA because Mr. O'Brien stopped doing what was asked.

Andrew Blechman asked if anything was put in writing about the agreement.

Attorney McCormick said that the timeline was presented to Attorney Doneski.

Sean Stanton asked if we are in a situation where the court order transfers over to any other business at that site.

Attorney Doneski replied that the use is for the owner and those on the site with the permission of the owner. It is not a blanket permission.

Alana Chernila said that the other issue is the complaints from neighbors. She said that their quality of life is affected and that is what we need to consider.

Attorney McCormick suggested that they sit down to resolve this with neighbors and the Board of Selectmen to come up with an agreement.

Jonathan Hankin said that this situation has to do with land use and zoning. He said that the by-laws were passed by a 2/3 vote at Town Meeting. He said that the by-laws have a way to deal with this. Stephen Bannon said that he agrees and that is why the Board is discussing this; things were not done in a manner according to by-laws.

Micky Freeman – Rosseter St. – said that the issue of process is critically important. He said that the process needs to be honored and it is important to find out why it wasn't. Deb Phillips said that she agrees 100%.

Sean Stanton said that the ZBA has to determine what happens going forward.

Deb Phillips said that the new plan should go to the ZBA.

Sean Stanton said that if a cease and desist was ordered, they need to appeal it.

Stephen Bannon asked if there was a cease and desist order and the action stopped, is there a need to go to the ZBA.

Ed May responded no; there is a limit of 45 days.

Patricia Ryan – 4 Oak St. – said that she is glad to hear that the Board wants to deal with this type of issue. She asked how they will pursue investigation to ensure that it won't happen again.

Andrew Blechman asked what the amount of the fine is.

Ed May said that the fines are waived if they comply.

David Scribner asked who has the zoning authority of the Town and who has the zoning enforcement.

Sean Stanton said that it is the enforcement of the building inspector.

David Scribner asked if the original cease and desist was vetted by the Town Counsel.

Kevin O'Donnell replied that it was not by his office or the Town Attorney. He said that it does not have to be vetted by them.

3. Adjournment

On a motion by Stephen Bannon, seconded by Deb Phillips, the Board adjourned its meeting at 8:30 p.m.

Respectfully submitted,



Cara Becker
Recording Secretary