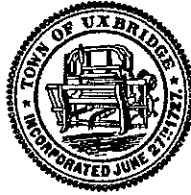


James Smith, Chair
 Barry Desruisseaux, Vice Chair
 Peter Pavao, Clerk
 Joseph Leonardo, Member
 Justin Piccirillo, Member



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PLANNING BOARD MEETING MINUTES WEDNESDAY, February 15, 2017

Minutes of the Uxbridge Planning Board regularly scheduled meeting on **Wednesday, February 15, 2017, at 6:00 P.M.** in the **Board of Selectmen Meeting Room, Uxbridge Town Hall, 21 South Main Street, Uxbridge, MA.**

Present: Chair James Smith, Vice Chair Barry Desruisseaux, Member Joe Leonardo; Member Justin Piccirillo; Also present, Administrative Assistant Lynn Marchand.

Absent: Clerk Peter Pavao

I. CALL TO ORDER

It being approximately 6:00 p.m., the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chairman, who led the Pledge of Allegiance.

II. PUBLIC HEARINGS

No public hearings were scheduled.

III. BUSINESS

1. Permit Violations:

a. 175 South Street –conditions of permit

Mr. Leonardo asked why 175 South Street was added to the agenda. Mr. Piccirillo stated that the issue arose due to conditions that were applied to the permit and there having been a no trespassing order for town officials by the owner of the property. Mr. Leonardo stated this condition was discussed at length at a previous meeting before granting the permit and the Board had specifically said that access to the property would be needed during regular business hours and that Attorney Lane was present during that meeting as well as the meeting when the permit was granted.

Mr. Piccirillo stated that a town employee went to the site and was refused entry to the site and that's why this item was added to the agenda. Mr. Leonardo stated it was obvious in this particular case; pull the permit since the Board can't do their job if access is denied and further stated that the applicant's attorney was present (at this meeting).

Mr. Piccirillo stated there was also an issue as there was a bond in place. Mr. Leonardo stated that it was the same as any other permit that the Bond is held until it is resolved. He stated the owner would need to fix the land or the Town would have to use the bond to fix it.

MOTION I: to cancel the permit for 175 South Street to Richardson-North Corporation/Elias Richardson III for gravel removal for violation of conditions of the permit made by Mr. Piccirillo.

Mr. Leonardo asked the Board if anyone wanted to discuss anything before taking a vote. Members stated they had nothing to discuss. Mr. Desruisseaux stated there was a Motion made. Mr. Leonardo stated they needed to hear Attorney Picard before voting.

Attorney Shayne Picard stated he was there on behalf of Richardson-North Corporation and worked with Attorney Henry Lane at Lane & Hamer in Whitinsville. He stated he had filed a civil complaint in the Superior Court. He stated the nature of the complaint was essentially challenging the second condition on the permit as being overbroad and unconstitutional as it states authorization for any town official to enter the property.



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Mr. Smith asked why that was not brought up by Attorney Lane when they granted the permit or when the Board had Attorney Lane review the conditions to make sure he was okay with them first before granting the permit. Mr. Smith asked why it was not brought up if there was an issue with the conditions as the Board would gladly have discussed it then.

Attorney Shayne stated he did not know.

Mr. Desruisseaux stated the permit was picked up. It was not a surprise. It was something that was done in a public hearing, it was done in the open, it was done on tape. Mr. Smith stated the condition was added because he (Mr. Richardson) already had, had a no trespassing order that was submitted to the Town. Mr. Smith stated that the way the Bylaw was written for gravel removal, officials have a right to go onto the property to do inspections during normal business hours. He stated that the Board brought it up as a condition because there was a no trespass order and that if that order had not been put in place, that condition would not have been added to the gravel permit. He stated that the Board had said there cannot be a no trespass order if an applicant wants this (gravel/excavation) permit and that's why the condition was added.

Mr. Smith further stated that the permit was granted and the applicant not only denied the town official access, but was also is suing the town official for trespassing and going after the Planning Board for the way the permit was written even though the Board had the applicant's attorney read the permit and conditions prior to it being issued to make sure he was in agreement with it.

Attorney Picard stated the anyone in the Town should not be allowed to access private property.

Mr. Desruisseaux stated the applicant wanted a permit but would not allow access for inspections. He stated the applicant wanted the permit but was not willing to follow the bylaw after it was discussed during two meetings and the very first time a town official went to the property they were then denied access and sued for trespassing.

Attorney Shayne stated the bylaw was vague on who could access the property and the applicant's contention was that the condition allowed any town official or their representatives and thus was too broad. Mr. Desruisseaux stated if everything was on the up-and-up, it shouldn't have been an issue and that it was unacceptable that inspections, on the activity the permit was granted for, were not allowed.

Mr. Smith stated if there was a concern about the terminology of the condition it should have been brought up previously. He stated that the Board had a right to add special conditions and that the reason for this condition being added was that there was a no trespassing order and in previous times when they had tried to access the property for inspections they were denied access, despite having a gravel permit, and the applicant even tried to have the officials arrested. He stated the Board's intention was not to have the School Superintendent inspect the gravel permit obviously, that wasn't the Board's intention at all. Mr. Desruisseaux stated he didn't think anyone would do that. Mr. Smith stated it was for Planning, Zoning, BOH, someone that would have something to do with it, DPW.

Attorney Picard stated he had referenced the School Superintendent in jest but that in the language, of the permit as issued, it was broad.

Mr. Desruisseaux stated Attorney Lane should have done his job and questioned the language and brought it up as an issue when it was discussed over the span of two meetings. Mr. Piccirillo stated he had asked Attorney Lane, before the Board voted on the Permit, if there were an issues with the conditions of the Permit, and that Attorney Lane and said, *"well, you know, I don't really necessarily like them but that's your choice"* and then the vote was taken. Mr. Piccirillo stated he didn't know why Attorney Lane had signed for the permit and accepted it and then disagreed with it a month later.



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Discussion ended. Mr. Desruisseaux stated there was a MOTION already made by Mr. Piccirillo. Mr. Piccirillo responded yes. Mr. Leonardo asked if this was to invalidate the permit. Mr. Piccirillo stated, "yes, that's correct".

Motion was seconded by Mr. Leonardo. Motion carried 4-0-0.
Mr. Desruisseaux stated they no longer have a valid permit.

Mr. Leonardo stated the vote was unanimous, 4-0.

MOTION I: to take "General & Zoning Bylaw Review" out of order made by Mr. Desruisseaux.
Motion was seconded by Mr. Piccirillo. Motion carried 4-0-0.

2. Master Planning *discussed after General & Zoning Bylaw Review.

A questionnaire/survey was discussed, to poll residents as to what they feel is a priority and other details related to those priorities. Also, how to give incentives to desired businesses the citizens want in town and infrastructure,

3. General & Zoning Bylaw Review

- a. Discussion re: future warrant article for revised/clarified excavation & importation bylaws

Dr. Tapscott spoke to the Board and stated after the last time the Board had discussed this, he had drafted language that separated the two bylaws, leaving the excavation in tact as it was before and that the importation filling part was taken out of the bylaw (to be separate from excavation) almost word for word as it was approved with minor modifications but was basically the same. He stated he agreed with the Planning Board's wanting them separate and stated that was his preference initially prior to getting involved with the Board of Selectmen during the process.

A copy of the draft was given to the Planning Board prior to the meeting.

Discussion was had regarding the 3rd party licensed professionals. Dr. Tapscott stated the intention was to have a 3rd party working for the Town not the proponent.

Mr. Leonardo stated his concern was the infrequency of testing and the scope of the testing being insufficient to provide sufficient information and that anyone that knows about statistical testing would know that. Mr. Piccirillo stated the Town has received very limited data on the shipments that have come to Uxbridge over the past few years. He stated there had been data of material shipped to Uxbridge and then rejected; sent back to the origination site or elsewhere. Dr. Tapscott asked if they were rejected based on the site of origin analysis. Mr. Piccirillo replied, that that no, they were not but rather just based on olfactory tests or other things done at the receiving site which showed that testing done at the origination site was insufficient and then only screened when it arrived in Uxbridge. Mr. Leonardo offered another explanation stating that it was already examined and determined that it was unsuitable soil and that they gambled and sent it anyway and took a chance it would not be discovered.

Dr. Tapscott stated the testing was inadequate and that bylaw didn't address what to do about the loads that are received in Uxbridge when one of the sample trucks are rejected. He stated the Planning Board would be in a better place to address that through conditions of a permit.



PLANNING BOARD MEETING MINUTES February 15, 2017 continued

The Chair asked if Dr. Tapscott felt the Board could set whatever requirements were needed by hiring a site professional to determine what requirements would be needed. Dr. Tapscott stated he would have every load tested every few cubic yards but that it would be up to the PB to determine that frequency based on someone who is a professional. Mr. Leonardo stated there were still things that could slip by and that it was not a guarantee that everything was good. Dr. Tapscott acknowledged that there was no way to eliminate the risk completely but that it could be lessened.

Discussion was had regarding adequate sampling prior to leaving the origination site. Mr. Piccirillo stated his main complaint, with the DEP policies, revolved around the decision making process in that it does not involve any detail about the receiving site and without regard to the hydrology or location of the site. He stated the material still goes to those sites, even if those sites are more at risk and that it was not a consideration in DEP's decision making process. Dr. Tapscott acknowledge this was not addressed in the proposed bylaw but that he was considering a citizen's petition regarding an expansion of the groundwater overlay protection bylaw to include it/soil importation, as a prohibited use. He further stated the proposed Importation Bylaw does not address the hydrology, the soil content, and the susceptibility of the receiving site.

Mr. Piccirillo stated they still needed to address the conflicts between the proposed General Bylaw and the existing Zoning Bylaws.

Mr. Leonardo brought up that there were other practical protective measures that could be taken such as preparing the sub-base of the receiving area close to the water area which should be protected as much as possible in case any of the material leaches.

Discussion was had regarding what could be put in place to provide protection such as a specific limit on the size/scope of a project, on a specific number of acres, in a specific zone, and stipulations to protect surrounding people/businesses/resources/wells/drinking water.

Mr. Desruisseaux stated they already had bylaws with those kinds of stipulations (such as solar projects) and wanted to see it for this activity/importation to protect people as there are multiple places within the Town where this activity could occur.

Discussion was had regarding the general and zoning bylaws needing to be done all at once in one clean sweep so there were no conflicts between them.

Surety was discussed, both a bond and insurance paid 20-30 years in advance, up front, by the property owner. Remediation was discussed in terms of cost to remove material that is later found to have contaminated wells/groundwater so the Town was not liable in the future if this contamination was found years later.

Mr. Smith pointed out that to put 4" of loam on an acre would cost \$10,000 and the current bylaw only requires a bond of \$2,000 per acre.

Dr. Tapscott stated the adequacy of sampling was important and that the bylaw does address the ability of the Board to hire someone at the applicant's expense to do site of origin testing.

Dr. Tapscott stated he would work on the revisions.

A citizen commented on origination sites of contaminated soil, lined landfills, and town attorney access.



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IV. MINUTES/MAIL/INVOICES

1. 12/28/16 Meeting Minutes -passed over
2. 01/11/17 Meeting Minutes -passed over
3. 02/08/17 Meeting Minutes -passed over

V. ANY OTHER BUSINESS, which may lawfully come before the Board.

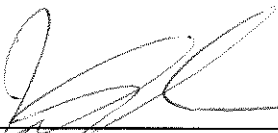
VI. ADJOURNMENT: NEXT PLANNING BOARD MEETING, WEDNESDAY, *February 22, 2017.*

MOTION I: At approximately 9:36 p.m. Mr. Leonardo made a motion to adjourn. The motion was seconded by Mr. Piccirillo. Motion carried 4-0-0.

Respectfully submitted,

Lynn Marchand
Land Use Administrative Assistant


Planning Board Signatures



James Smith, Chairman

Absent

Joseph Leonardo, Member



Barry Desruisseaux, Vice-Chair



Justin Piccirillo, Member

Absent

Peter Pavao, Clerk

12-APR-2017

Date

