

**BETHLEHEM PLANNING BOARD
MEETING MINUTES
January 27, 2016
BETHLEHEM TOWN HALL MEETING ROOM**

Present: Mike Bruno, Chris McGrath, Don Lavoie, Andrea Bryant, Dave Wiley, Steve Gorman, Sandy Laleme, Marie Stevenson and Jeanne Robillard.

Beech Crest Club Lot Line Adjustment:

Mike Bruno opens the public hearing for the lot line adjustment between Beech Crest Club and Albert Maganelli and reads the public hearing notice. Gardner Kellogg presents the plan to the board, explaining that Mr. Maganelli is purchasing acreage from Beech Crest Club. Mike reviews the checklist.

Motion made by Andrea Bryant, seconded by Chris McGrath, to accept the application as complete. All members vote in favor.

Motion made by Andrea Bryant, seconded by Dave Wiley to approve the lot line adjustment between Beech Crest Club and Albert Maganelli. All members vote in favor.

Gardner presents mylar for signatures.

The board reviews the minutes from 12/9/2015.

Motion made by Chris McGrath, seconded by Dave Wiley, to approve the minutes from 12/9/2015 as presented. Mike, Chris, Andrea, and Dave vote in favor. Sandy, Marie, and Steve abstain due to absence. Minutes from 12-9/2015 are approved.

NCES Conceptual Discussion:

Attorney Phil Hastings and Engineer Bob Grillo are before the board to discuss future plans for the former Tucker property.

Mr. Hasting has asked that Andrea Bryant and Jeanne Robillard recuse themselves from tonight's meeting. Mike Bruno acknowledges the receipt of a letter from Attorney Hastings that formally requests the recusals. Andrea responds that she does not feel she needs to recuse herself because this is regarding the newly acquired gravel pit, and not the landfill. Jeanne weighs in by stating that the applicant has not stated any statutory reason for the recusals. She

also points out that both she and Andrea sat on the board during the stipulation process and they were not asked to recuse themselves then, and therefore they should be asked to do so now.

Attorney Hastings begins by presenting the site map for NCES's newly acquired properties. The purchase included 3 lots on town tax map 419. NCES also has an agreement with the Tuckers to purchase a fourth lot on town tax map 209. Mr. Hastings goes on to state that NCES has purchased these lots for gravel purposes; mainly to help offset the amount of materials NCES must bring in from other locations. These new properties provide the materials needed for the landfill. Materials for landfill operations will now be trucked in internally, eliminating the need for offsite materials. None of the excavated materials will be for sale. NCES is before the board tonight to discuss whether or not a gravel pit permit will be required. There are no formal records of a previous gravel pit permit, and so the question is, is this gravel pit grandfathered. Engineer Grillo explains the plan for the pit, which is to use the existing pit, with a five year plan to expand the current 4 acres of excavation area to 8 acres. He stated they will monitor ground water and excavation will only take place 6 feet above ground water. Mr. Grillo informs the board that currently the vertical cuts are not in compliance, but NCEs would rectify that. The assumption is the State will require an AoT permit. All access will be on site, with the use of perimeter roads to move materials from the gravel pit to the landfill, alleviating the truck traffic in town.

Mike Bruno references an email from NH Municipal Association in which the question was asked about the grandfather status transferring with new ownership. The response states:

RSA 115-E:2 expressly protects the rights of owners of excavation operations in existence as of August 24, 1979. A vested statutory right to maintain a pre-existing excavation operation is part of the bundle of rights the owner of the property can use and enjoy and convey to another person. The right to maintain a statutorily vested excavation operation can be conveyed to new owners of the property, subject to the limitations and obligations of RSA Chapter 155-E. The grandfathered status transfers to the new owner.

A discussion ensues regarding the grandfather status. Dave's understanding of the RSA clearly determines this pit is grandfathered and he doesn't feel the Planning Board should put any restrictions in place. He asks what NCES is conceptually asking. Attorney Hastings is just looking for guidance from the Board, do they think NCES need any level of permitting? Mike asks if NCES would consider annual inspections in the event the pit is grandfathered. Don interjects that the Planning Board cannot require inspections. Andrea asks if NCES has any objections to obtaining a permit, even if it is not required. Attorney Hastings states that NCES prefers not to go through with the permitting process if it is not required. The discussion moves towards reclamation. Chris does not feel the town can ask for a

reclamation plan. Mike interprets RSA 155-e:5-a to say that a reclamation plan will be submitted upon completion of any excavation.

Mike opens the meeting for public comment.

Rita Farrell would like to know how many acres are involved in the transfer and wonders if the property extends down to the river. The three lots total 123.55 acres, and yes, the property extends down to the river

Seth Goldstein urges the town to be careful. He feels NCES has not been trustworthy in the past. He points out that a small gravel pit operation by the Tucker family is very different than a big corporation like NCES. He would like to see the town ask the right questions so that Bethlehem doesn't find a 300 acres landfill down the road. He is concerned it is a scheme and doesn't want to see the trend continue.

Jeanne Robillard is confused on the acreage. How much was transferred, and how much is being used as a gravel pit? Three lots totally 123.55 acres were transferred. The lot on which the gravel pit exists is 94 acres. Currently 4 of the 94 acres is being excavated.

Cheryl Jensen would like to know how much of this land will be excavated. The plan is to use 8 acres total.

The question arises regarding the amount of land purchased. Why so much when in fact NCES only plans to use 8 acres. Attorney Hasting assures the Board that the Tuckers would only sell their entire interest.

Don Lavoie responds to Seth Goldstein by stating the Board has decided there is no jurisdiction. If the owner decided to do something commercial down the road, then at that point the Board could request they come in for Site Plan Review.

Cheryl Jensen asks if the Planning Board has any jurisdiction regarding the expansion to 8 acres. This opens the conversation to questioning if the entire parcel is grandfathered for excavation or just the existing 4 acres that is currently being excavated. Jeanne feels any further use may be required to get a permit.

Seth Goldstein asks how come there is an agreement on another parcel of land if NCES already has more than they need. Again Mr. Hasting reiterates that Mr. Tucker would only sell if NCES purchased all his lots. Seth would like to see a strict legal interpretation of the RSA and requests that the Planning Board get the legal opinion of their attorney. Finally, he asks Mr. Hastings if Casella would be willing to put something in writing that states they would not expand the landfill.

Sandy Laleme interjects that the Select Board has every intention of making sure both parties stick to the settlement agreement.

Julian Czarney would like confirmation on what roads would be used to access the gravel pit. He would also like to know if Dan Tucker retained any rights, or was it a complete transfer. He is assured by Attorney Hastings it was a complete transfer. Julian goes on to question the glacial till process. Bob Grillo informs him that anything greater than six inches gets screened out. He also explains that the boulder pile gets processed into stone for the roads, and there is some other periodic stone processing. Julian wonders if it would make sense to take 5 acres from a different area of the parcel rather than continue to excavate the existing area. Bob Grillo assures him that a stability analysis was completed and there are no concerns with continuing to excavate in that location. Julian would also like to know what the tax status is for the 94 acres. Is any of it in current use and how does the town look at the value of this land. Sandy states she has no idea about the tax status, but can find out from the Assessor. Sandy adds that the town cannot tell people they can't go into current use.

Andrea would like to know if there are any plans to reclaim the existing 4 acres before they proceed. She is concerned there is an existing big hole. Bob Grillo assures the board that the slopes will be addressed, and become less.

Sandy brings the conversation back to the issue of the permit, and asks if NCES needs a permit or not. She would like to know what the next step is.

Steve Gorman asks if there are any plans to sell materials in the future. Bob Grillo assures the board the excavated materials will be used for landfill purposes only.

Rita Farrell would like to know if the terms "restricted covenant" and "grandfathered" are interchangeable. Rita also points out that Mr. Hastings stated that Casella would follow the rules of the settlement agreement, but Rita points out that section 5, Restriction on Development, in the Terms and Conditions section of the Settlement Agreement states:

- a. *NCES shall not expand the landfill or develop or operate any other landfill capacity within the Town's boundaries and outside of District V.*
- b. *NCES shall not acquire any real property within the Town's boundaries for the purpose of developing or operating a landfill on such property.*
- c. *NCES shall not seek or acquire any federal, state, or local permits to develop or operate a landfill within the Town's boundaries and outside of District V.*
- d. *The final closed and capped elevation of the Landfill shall not exceed 1,483 (one thousand, four hundred and eighty-three) feet above the North American Vertical Datum of 1988 (NAVD88) at any location on the NCES's property. NCES shall be entitled to deposit waste within those areas of the Landfill site where subsidence has taken place during ongoing landfiling activities. NCES shall not substantially discontinue ongoing landfiling operations for the purpose of allowing*

subsidence of the waste mass at the Landfill or remove the final cap placed over any landfill cell for the purpose of disposing of waste within airspace created by subsidence of the waste mass. Nothing in this Agreement shall prevent NCES from removing the cap in place at the time of the execution of this Agreement for the purpose of placement of an overliner and construction of airspace for Stage IV Capacity as approved by NHDES by permit modification of August 27, 2010, a copy of which is attached as Attachment 4 to this Agreement.

- e. NCES shall not expand the Landfill into the two cross-hatched portions of its property as depicted on Attachment 5 to this Agreement, such areas being comprised of (1) the 7.16-acre of land abutting Trudeau Road and formerly owned by Castello and Vaughn and 2) the approximately 4.33-acre area of land in the northeast corner of the 48.28-acre parcel as shown on a subdivision plan approved by the Town planning board in 1985 and recovered in the Grafton County Registry of Deeds as Plan # 2598 (together, the "Infrastructure- Only Areas"). Within the Infrastructure-Only Areas, NCES shall be permitted to maintain, construct, or replace any infrastructure that is accessory to the land use of landfilling. A metes and bounds description of Infrastructure-Only Areas is set out in Attachment 6 to this Agreement.*

- f. NCES shall grant a conservation easement by deed in the form of Attachment 7 on the approximately thirty-seven acres of NCES property lying generally to the north of District V and described more particularly by metes and bounds within Attachment 7. Within thirty days after the Ratification and Approval Vote the Town shall notify NCES in writing whether the conservation easement is to be granted to the Town or to an entity that is unaffiliated with the Town, is organized, in whole or in part, for the purpose of administering and enforcing conservation easements, and has reasonable experience in the administration and enforcement of such easements. NCES shall, within fourteen days of receiving such written notice from the Town, execute and deliver to the Town a deed in the form of Attachment 7 naming as the grantee either the Town or the entity identify in such notice.*

Rita goes on to point out that these items specifically point out that NCES will not purchase any more land within the Town's boundaries, and notes it was signed by the Selectmen in November of 2011. She also points out that in the *Corporate Guaranty of Performance* states that:

"Casella Waste Systems...as the ultimate parent of North Country Environmental Services, Inc, for the purpose of inducing the Town of Bethlehem to enter into that certain Settlement Agreement and Mutual Release of all Claims, dated as of November 22, 2011, between NCES and the Town and for other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby guaranty the full and complete performance of the obligation of NCES contained in paragraphs 1, 2, 3, 5f, and 8 of the Settlement Agreement. "

Rita interprets this to mean if they want to use this new property they are not abiding by the Agreement. Steve Gorman doesn't feel this is relevant to tonight's conceptual meeting. Sandy agrees that the planning board can't do anything about the Agreement without the select board.

Seth Goldstein disagrees with the Planning Boards interpretation of the RSA and wants to have an attorney who represents the people respond.

Don Lavoie suggests to the board the term "grandfathered" is poorly defined, but feels it is clear that the town has no jurisdiction in this matter. He also feels the response from NH Municipal supports that. He recommends the planning board chair meet with the select board to clarify that the pit is exempt from the regulations, and that the planning board has no authority over the Settlement Agreement. He feels a second legal opinion would be redundant. Jeanne disagrees because the board does not know what the limitations are. Is the entire lot grandfathered, or just the existing section being excavated? Dawn suggests asking NH Municipal the question again, but this time with more clarity. Chris reads the email exchange between Dawn and NH Municipal.

Dawn to NH Municipal: Recently a gravel pit with a grandfathered status was sold. The Planning Board would like to know if the grandfathered status transfers to the new owner, or would they be required to acquire a gravel pit permit?

Steven Buckley's Response: RSA 115-E:2 expressly protects the rights of owners of excavation operations in existence as of August 24, 1979. A vested statutory right to maintain a pre-existing excavation operation is part of the bundle of rights the owner of the property can use and enjoy and convey to another person. The right to maintain a statutorily vested excavation operation can be conveyed to new owners of the property, subject to the limitations and obligations of RSA Chapter 155-E. The grandfathered status transfers to the new owner.

Motion made by Andrea Bryant that the Planning Board contact their attorney, Jae Whitlaw, for a more specific answer regarding what section of the lot is grandfathered, the entire parcel, or just the current section being excavated. There was no second. Motion dies.

Jeanne feels the question to NH Municipal was not clear. Dawn suggests she rephrase the question asking more specifically about the size of what is grandfathered; the entire parcel, or a restricted area that is currently being excavated. Don points out that the grandfathering only states that NCES doesn't have to get a permit and feels the town can't limit the size. Mike Bruno offers that, on principal, if he didn't need a permit than he wasn't going to get a permit. Rita expresses concerns and points out that only an attorney representing the board should be giving legal opinion.

Mike closes the meeting to public input.

Phil Hastings want to clarify, as he understands it, the Planning Board is going to go back to NH Municipal to see what portion of the parcel is grandfathered. He would like to know how NCES will be informed what they need to do as they would like to move forward with the project. Andrea points out

that it is clear the existing 4 acres is grandfathered and suggests they concentrate there until they receive a response from NH Municipal.

Motion by Sandy Laleme, seconded by Steve Gorman, to contact NH Municipal again for clarification; what portion of the parcel is grandfathered, the entire 94 acres or the current excavation site of 3 acres, and to authorize the Chair to share the information with the applicant, unless it differs from the previous response. All members vote in favor.

The board moves on to a brief discussion regarding the letter they will submit requesting intervenor status. Dawn will email the board copies of the Select Board letter, the draft of the Planning Board letter, and a copy of Franconia's Platform. Don thinks the board should request Northern Pass come in for Site Plan Review. Don offers to write something to address the aquifer ordinance. The board will meet on Feb 3rd to finalize their letter.

Chris McGrath would like to board to consider supporting the GIS warrant article. The topic will be brought up at the next meeting.

Motion by Dave Wiley, seconded by Marie Steveson, to adjourn at 9:10. All members if favor, meeting adjourned.

Respectfully submitted,

Dawn Ferringo
Planning and Zoning Board Clerk