

Town of Groton
Select Board Work Session Minutes
September 5, 2017

In attendance: John Rescigno, Kyle Andrews and Sara Smith (Administrative Assistant - AA)

Absent: Christina Goodwin

John called the meeting to order at 5:05pm.

Meeting with Mary Pinkham-Langer for excavation issues

The Select Board requested to meet with Mary Pinkham Langer to see what the next steps should be regarding Ethier and the excavation issues that have been going on for a number of years. Mary had referred the Board to RSA 155E, which the Select Board reviewed but was still confused as to where to go from here.

Mary said she is very aware of the situation with Ethier. Kyle explained that the Board is not sure where to go from here. John mentioned that it seems that everyone treads on water with him but if he is violating something that they would like to move forward and address it.

Mary explained that when it comes to the excavation tax it has to be in conjunction with RSA-155E, which it usually is the local regulation of earth excavation and is usually administered by the Planning Board. It is a statewide statute that pertains to how excavation is going to be regulated. There is a letter in the file, with no date on it, that was sent to Mike Ethier from the Planning Board. The letter mentions that Mike went to the Zoning Board of Adjustment (ZBA) for permitting and they said he was grandfathered from the permit. Under 155E there is grandfathering and there is required permitting and you have to meet certain criteria to be grandfathered. So the letter said he was grandfathered through Zoning but that he would have to go to the Planning Board for a permit. Mary is not sure if he obtained the permit through the Planning Board. This is not clear and there is no record of this. The Select Board is not clear as well. The Planning Board should have record of this if they did.

Mary stated that under 155E:8, it talks about issuance of a permit. If it was issued it would be a paper permit and would have an expiration date and once this is expired it is no longer good. Kyle asked how long the permit is good for and Mary explained it is up to the Planning Board; it could be one year, ten years or twenty-five years, etc.

Mary explained the first question is if Ethier ever got a permit. Whether he was permitted or grandfathered under 155E:2:II it talks about abandoned excavations. If the pit, whether grandfathered or permitted, has gone more than a 2-year period without removing earth material then it would be considered abandoned. If they are abandoned then they should be ceasing operation and reclaiming.

RSA 72:b is the excavation tax and when that was enacted the legislature said that 72:b has to be read in conjunction with 155E; first you have the local registration and then you have taxation. So under 72:b if you are a gravel pit you need to file an intent to excavate, whether you are taking out one yard or a million yards, every year from April 1- March 31, to show that you have been active. This is filed through the Select Board's office. Sara explained that there have not been any intents to excavate at all since she has been here. A lot of the pit owners file it every year just to maintain their grandfathered status.

John asked what they are grandfathered to. Mary explained that you have to have a permit to excavate or you are grandfathered. If you are grandfathered you are only subject to the minimum in express operational

standards in 155-E which are very basic. The Zoning Board said that he was grandfathered from Zoning but not having to have a 155E permit. In order to have been grandfathered from having to have a 155E permit, he would have been in operation as of 8/24/79 in removing earth materials two years prior to that so 8/24/77. In addition to that, between 8/4/89 to 8/4/91 anyone claiming to be grandfathered had to submit a report to the regulator stating when the operation first began, how much area was currently open, how many acres they were grandfathered, and the amount remaining cubic yards of earth. This report would have been had to be turned in to Planning Board to be grandfathered. If he didn't do that than he is operating illegally or he has to obtain a permit.

Mary explained that 155E comes first which is local regulation. Then after local regulation there is also Alteration of terrain permit through the Department of Environmental Services (DES). Anyone who intends to disturb more than 100,000 square feet of area which is 2.3 acres has to have an alteration of terrain permit. Mary said he did disturb a large area so he was required to get an alteration of terrain permit but she believes his permit was not for a gravel pit but more for the subdivision as it is a very confusing file at DES. John asked if the subdivision has to do with excavating. She said it could. She explained he could be excavating to build his roads and if all the earth was being used on the site then he could have been exempt although they do not think he meets the criteria.

In October 2016, Mary went to the site and there was a new area of excavation which appeared he was outside of any permitted area that may have been permitted by DES. She went to DES about this and Jim Gove stated that this new area is located in the 10 acre common area that is owned by Ethier Estates and is not part of the other parcel. The tax maps show that his house and all areas of excavation are on the same parcel and usually the common area is not on someone else's property it is usually a separate lot because it is in common to all the other lots. The engineer is stating that it is not part of the larger parcel where the excavation occurs; it was common area being used on common road ways. Mary tried to go to the registry to view the subdivision plans but was unable to view them. She thought that maybe Gove just took Mike's word for it and didn't research it. It has to be determined if there is common area and if this is part of the common area. The excavation does look like it was used on the road ways but to be exempt from the excavation tax, the area that was being excavated would have to be owned in common with the same name as that roadway, which means the road way would have to be in Mike Ethier's name. We would have to look at who owns the road, is it really common area. Kyle said that he does believe that Mike owns the road. We would have to check the deeds and look at the subdivision plan.

Mary went to where the main excavation is being done and it doesn't look like much was coming out of the property but it does appear that some is being hauled on to the property and then hauled back out which is for different use. The property then becomes a processing facility so it doesn't fall into the definition of excavation.

Mary said there are several avenues that she thinks the Town could go but would definitely recommend getting legal counsel because if he has never obtained permit for 155E, if he is not grandfathered, and has no intent to excavate so he has nothing to show that earth had continued to come out and he hasn't paid taxes on the amount that has come out of there, although it has never been a huge volume that has come out of there.

DES wrote Ethier a letter that the areas he had open would have to be reclaimed and he had until 2015 to finish up his project. Mary had pictures and a map that showed the areas 2a and 2b were to be completed by 2015. Mary said this has not been completed. Also, when she went up there he was excavating an area that was not on the plan. She was concerned that the pond was going to be expanded. Phase 3 is still active as it has completion dates of 2020 and 2021 but hopefully DES will get on him about finishing 2a and 2b. DES does not supersede 155E as this started back in 2000.

Kyle said it seems like it has been going on forever. John asked if there is a reason behind the scenes that makes people turn the eye to what he is doing. She doesn't think they are turning the eye. Mary can't catch him excavating. She is not going to shut him down if the Town doesn't take action. The Town's action should come first. Enforcement is under 155E and once this is done and they can catch him excavating then she can file the cease and desist.

The next steps the Town should take is to first find a permit if there is one and if so see if there is an expiration date. Also, need to find out if he was grandfathered which would be checking with the Planning Board. Once we have this information then the Select Board would have to move forward. Again, she would recommend legal counsel to help move forward with the next step. Mary said once we find out from Planning Board she is happy to come back and talk to the Town about the next steps. We are going to have to look at the subdivision plan and revisions and the deeds.

Kyle said once we find out if he is permitted we can reach out to Ethier to visit the property. Mary said that she would be willing to come with the Select Board if he does. Mary said she can take a trip out there since it has been almost a year and see if he has done any more excavating. John said for her to take another trip down there would be beneficial and we will start with the Planning Board.

Sara will ask Deb Johnson to look into this before the next Planning Board meeting. Sara will also go into the registry and write down all plans and deeds and check this against what we have on file and pull what we don't have.

John motioned to go into non-public session pursuant to RSA 91-A:3 II (a) and (b) at 6:00pm, Kyle 2nd, so voted.

Kyle motioned to return to public session at 6:30pm, John 2nd, so voted.

Meeting with Miles Sinclair - Perambulation

Miles had met with the Orange Select Board regarding the Groton/Orange perambulation. He would like to update the Board and discuss the next steps. Miles stated that he had a good rapport with the Board in Orange beforehand. The meeting went well and he had already established lines of communication.

Miles reports that the Board is fine with participating but they passed a budget with no extra money so they were concerned about cost. Scott Sanborn is a surveyor and wears a lot of hats with Orange and he is willing to donate a day of his time to work with Miles. This will be when they are actually walking the line. The Select Board want to walk the line too. Miles said he is fine with that as long as it is a manageable group that can keep the pace to get the job done. Scott also possessed knowledge about book and page numbers for historical sites on the line. He will be valuable in the process. The Orange Board feels that this will be their contribution. They would like the Town to pay for the paint and provide them a copy of the report. Miles states this should only take a day. The Groton, Orange, Caanan, and Dorchester corner is a short walk from the road itself near Bryant Pond. Miles has already been there and checked it out. Kyle and John are both fine with this.

Sara will email the Orange Select Board and explain that we agree to their terms.

Kyle asked if any other ones are going to get done this year. Miles explained that Dorchester is but we haven't heard back from them yet. Sara has emailed many times without hearing back but she will send a follow up email asking if they have heard back from the Select Board. Sara will keep Miles posted on this.

Coutu Property

The Select Board thinks we should send one more letter to the owner and be more firm before we get the attorney involved. The letter should state that this is our last attempt before we seek legal counsel.

John motioned to go into non-public session pursuant to RSA 91-A:3 II (a) and (b) at 6:45pm, Kyle 2nd, so voted.

Kyle motioned to return to public session at 6:55pm, John 2nd, so voted.

Kyle motioned to seal all of the non-public minutes for September 5th, John 2nd, so voted.

1214 North Groton Road

John drove by 1214 North Groton Road and it has been cleaned up and looks like it is fine according to Groton's standards.

Having no other business to conduct, John motioned to adjourn at 6:58pm, Kyle 2nd, so voted.

Respectfully submitted,

Sara Smith
Administrative Assistant