

**DOVER PLANNING BOARD
MINUTES OF MEETING
JUNE 14, 2005**

MEMBERS PRESENT: Donald Andolina, Anthony McManus, Beth Thompson, Frank Torr, Dennis Ciotti Pete Lavoie, Ronald Cole, Bryan Cahoon, Otis Perry

MEMBERS ABSENT: Eric Tooke, John Swartzendruber, Mindy Anderson

STAFF PRESENT: Bruce Woodruff, City Planner; Thomas Clark, Building Official and Jacqueline Freeman, Recording Secretary

Chairman Cole brought the meeting to order at 7:03 PM.

ITEM #1: Citizens' Forum

Tom Fargo, Conservation Commission Chair, extended an invitation to the Stormwater Management Evaluation & Verification program at UNH that will be held on July 6th. He would make the reservations if anyone was interested. He explained how this would give the Board a good understanding of stormwater management.

ITEM #2: Approval of minutes.

Beth Thompson made the motion to approve the minutes.
Dennis Ciotti seconded.

VOTE U/A

Abstained – Otis Perry

ITEM #3: Consideration and acceptance of a Conditional Use Application for Frank & Beth Arroyo, Assessor's Map 20, Lot 114-8, zoned R-12, located at 13 Cobble Hill Dr.*(P05-34)

Frank Arroyo, 13 Cobblehill Dr., stated that he was petitioning the Board to level his backyard. He explained that the soil in his back yard was a lot higher than the front of his property. He said that where he wants to move the soil that falls within 50' of a wetland.

Beth Thompson made the motion to accept the application.
Dennis Ciotti seconded.

VOTE U/A

The public hearing was opened.
There were no comments.
The public hearing was closed.

Frank Torr made the motion to approve with the following conditions:

1. The applicant shall provide the Planning Department with proof that the existing disturbed soil has been stabilized.
2. The applicant shall provide the Planning Department with a soil erosion and sedimentation control plan to avoid erosion.

Dennis Ciotti seconded.

VOTE U/A

ITEM #4: Consideration and acceptance of minor subdivision and lot line adjustment of land and Conditional Use Application for Rene & Elizabeth Dubois, Assessor's Map M, Lot 102-6, zoned R-40, located on Back Road.* (1 lot) (P05-35)

Bob Stowell, Trittech Engineering, explained that they are taking 2 acres from Lot 105 and adding it to Lot 106 and then subdividing Lot 106-2 into two lots. One lot would contain the existing residence and the other will be a new building lot. They received a favorable recommendation from the Conservation Commission on May 16, 2005.

Beth Thompson made the motion to accept the application.

Frank Torr **seconded.**

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Donald Andolina made the motion to approve with the following conditions:

1. Add both of the owners' signatures to the plat.
2. Provide the Planning Department with a digital version of the plat.
3. Add the surveyors' seal and signature to the plat.
4. Revise the plat by labeling the proposed property lines as "New boundary lines".
5. Provide the Planning Department with a copy of the NH Department of Environmental Services Subdivision Permit and add the permit number to the plat.
6. Provide the Planning Department with a copy of the NH Department of Environmental Services Wetlands Permit and add the permit number to the plat.
7. Approval includes the granting of a Conditional Use Permit for the driveway to access the buildable portion of the lot and encroachment into the 50 foot buffer.

Brian Cahoon seconded.

VOTE 7 – 1

Opposed – Tony McManus

ITEM #5: Old Business

- a. Discussion and possible vote on an OSS subdivision, Tolend Road Properties, LLC, located on Tolend Rd. (76 units) (P03-36)**

Beth Thompson made the motion to take this item off the table.

Frank Torr seconded.

VOTE

Malcolm McNeill stated that this item has been before the Board in excess of one year. He said that the City Council rezoned a portion of this site to permit residential use. The Council agreed to an exchange of land. The applicant agreed to run a sewer line from Cambridge Tool at his expense. The project is designed to be a very restrictive 55 and older active adult project. The roadway system is private. The sewer system is private. The covenants provide that no one under 21 can live in these units. The protective covenants also are more restrictive than in many communities where all the units have to be occupied by a person 55 or older. The developer has agreed to delete lot 29. This project started as a 76 unit project and has become a 72 unit project. There were concerns about delineating a conservation easement area that was open to the public. They have done that on the plan, showing that 16.19 acres of the site will be in conservation easement open to the public. Within that conservation easement area there could be an active recreation easement area that could be utilized by other Dover residents. They agreed that any industrial users could hook into the sewer line for free. Also any residential projects on Columbus Ave. that came along could hook-in for free. The Engineering staff made it clear that they wanted the ability of people along Tolend Rd. to hook into the sewer line. The approximately 17 lots that abut the project would have to pay at the same rate as anyone of their purchasers in the project to hook into the line. They have agreed that these users would pay a connection fee of \$2,156.00 to tie into the line. They would be required to pay the same maintenance cost as anyone else in the project. The final issue is the impact fee. For single family detached dwellings that fee \$3200.00 per unit. His position is that in a 55 and older project that does not permit children, and is more restrictive than most projects that there should be no impact fee at all. They agreed to pay an impact fee of 20% of the impact fee for this type of use. They do not believe that it is likely that they will create that capital expense at all, but at the same token, frequently a new project and a new concept requires some reasonable discussion and that is what they have done in this case. They also agreed that the fee would be assessed at the time of building permits and rather than locking it in they agreed that it will be 20% when the permit is asked for. They agreed to put up the bond which costs money to insure that the sewer line was built. The reason for that is that certain other developers are relying upon the construction of this sewer line to complete their own projects. The City also required us to guarantee that the sewer line would be built within a time certain. They agreed that the sewer line would be built within 150 days of permitting or any other permitting that would be needed from NHDES. The client expects to start this project immediately. The City's conditions are all acceptable to them. He said that he has had discussions with Gary Bannon as to whether this space will ultimately become active recreation. They are providing for that actuality if that occurs. The areas around the units would be placed in conservation but they would not be open to the public.

Kevin McEaney explained that the 30' wide sewer easement would be taken care of by the homeowners and when it gets off the site that part would be conveyed to the City.

Frank Torr asked what is different with this 55 and older development than the others in the City that a legal would be needed.

Malcolm McNeill stated that he doesn't think that it is materially different. The reason that the City is requesting a review is because these are the most restrictive provisions that the City has seen. The development across from Langdon Place Has no specific age restrictions. All of the living areas are on the first floor and no outside children's activity equipment was permitted. In those 49 homes there are either 3 or 4 children total.

Bruce Woodruff stated that the reason that the legal opinion was asked for was to serve as an underpinning as to whether to ask for an impact fee at all. Compliance of the 55 and older falls to the people who live there. The answer is that 20% is a good percentage to ask for the impact for schools. The reasoning for that is that there are indirect impacts to a development such as this. One is that empty nesters 55 and older have sold their homes, which are larger and can support families to live there, so there is the indirect impact.

Malcolm McNeill stated that the people living there bought in there for a reason so if the City has any doubt about this they had better address them quickly because over the next 3 to 5 years he will surmise that the majority of the projects will be age restricted projects until this demographic bubble changes. He said that because he qualifies for going into this project that a family may move into his house, has nothing to do with the reasonable rational nexus rule. His housing project was taken care of a long time ago. They wish to have this project approved and cease the debate and pay 20%.

Dennis Ciotti asked if the other 55 and older communities have been granted a waiver to the impact fees.

Bruce Woodruff stated that the other development preceded the impact fees.

The public hearing was opened.

Bernie Toomey, 30 Tolend Road, stated that he appreciates the elimination of Lot 29 and that they are going to leave the land the way it is. He asked that the agreements he made with Mr. Sears and Mr. McNeill be in writing before the Board votes on this project.

The public hearing was closed.

David Sears answered it could be added to the conditions of approval that the agreement be signed.

Ron Cole stated that it is a civil matter but he gave his word that he would not sign the plans until Mr. Toomey is satisfied with the document.

Bruce Woodruff stated that he feels that Steve Stancel and Steve Bird deserve kudos for their hard work in negotiating for the City's position. He gave the staff recommended conditions of approval.

Frank Torr made the motion to approve with the following conditions

1. Add the owner's signature to the plat.
2. The applicant shall provide the Planning Department with a digital version of the plat.
3. The applicant shall provide the Planning Department with a copy of the DES Wetlands Permit and add the permit number to the plat.
4. The applicant shall provide the Planning Department with a copy of the DES Site Specific Permit and add the permit number to the plat.
5. The applicant shall provide the Planning Department with a copy of the DES Subdivision Permit for Lot #76 off Columbus Avenue and add the permit number to the plat.
6. The applicant shall provide the Planning Department with proof that the Environmental Protection Agency's Notice of Intent Permit has been filed.
7. The approval includes the granting of a waiver to allow the pavement width to be reduced to 24 feet.
8. The approval includes the granting of a Conditional Use Permit, with the exception of the proposed wetland setback encroachment for the driveway access to Lot # 29. Said lot shall be moved from the plat.
9. The applicant agrees that the open space lot will be owned by a Homeowners Association and that a 16.19 acre portion will be placed under a conservation easement to be held by the City of Dover. The entire easement area shall allow for public access for walking trails and the northern half of the easement area shall allow for active recreation uses such as playing fields and associated parking. The conservation easement document and plan shall be submitted to the Planning Department for review and approval prior to execution of the easement and prior to the issuance of the first certificate of occupancy.
10. The applicant shall provide a copy of the proposed homeowners' association documents to the Planning Department for review and approval prior to the signing of the plat. The documents shall address preservation and stewardship of common open space, and address proposed age limitations. These covenants shall be reviewed by an attorney selected by the City to ensure that the restrictions are legal. The cost of this review shall be paid by the applicant prior to the signing of the plat.
11. The approval includes the lot line adjustment plat and lot consolidation plat, including the City parcel (Map G, Lot 19D) and the lot on Tolend Road (Map G, Lot 24K-3).
12. Revise the plat to incorporate the items listed in the 6/10/05 memo from Dave White, Assistant City Engineer.
 - a. Upon reviewing the revised cross country sewer pages 37, 38, 39 and 40, we find there is a cover issue at one of the wetland crossings. This can be improved by maintaining a minimum slope on the pipe from SMH B to SMH ALT 6. This will increase the cover over the pipe in the wetland crossing but not to the minimum 4 ft. of cover, so this pipe (at sta 19+75) will also need to be insulated.

- b. Address, via an agreement, how the abutters could reasonably tie into this development's sewer.
 - c. The proposed guardrail on the east side of the entrance should blend into the existing guardrail on Tolend Rd. with a smooth curve.
 - d. There are still many conflicts between light pole locations and underground utilities. These should be addressed on the plan set not in the filed.
13. Revise the plat to add road names approved by the Building Inspector.
 14. Revise the plat by changing the configuration of lots # 52 & 53 to remove them from the 40-foot buffer.
 15. The applicant is willing to and has agreed to donate the 14.22 acre industrial parcel (Map G, Lot 19B) to the City, and the City has agreed to accept the donation of the parcel prior to the final approval of the plat.
 16. The City has agreed to convey the 2.68 acre parcel (Map G, Lot 19D) to the applicant prior to the final approval of the plat.
 17. The applicant agrees to provide a bond or other acceptable form of security to the City for the full cost of the sewer construction, prior to the signing of the plat. The applicant also agrees to complete the sewer construction within 150 days of obtaining all necessary permits.
 18. The applicant agrees to allow the 17 existing homeowners on Tolend Road to tie into the sewer line for a tie-in fee of \$2,156 per lot. The homeowners that elect to take advantage of this option would be responsible for the construction costs to tie into the Tolend Road Properties sewer and would pay the same maintenance costs as the unit owners in the proposed subdivision.
 19. The Planning Department recommends that the Planning Board agree to reduce the school impact fee of \$3,195 per unit due to this being a 55 and over development. Since federal law permits up to 20 percent of the units to be excluded from the 55 and over requirement, the applicant has agreed to pay a school impact fee equal to 20 percent of the single family (detached) fee per unit that is in place, at the time of the building permit application.

Tony McManus seconded.

Dennis Ciotti asked that the legal opinion be passed along to the Board when it is received.

VOTE U/A

Chairman Cole called a 5 minute recess at 8:00 PM.

Chairman Cole reconvened the meeting at 8:05 PM.

Pete Lavoie left the meeting at 8:05 PM.

Chairman Cole welcomed Bruce Woodruff back from the Mid East.

b. Discussion and possible vote on extraction permits as follows:

Chairman Cole said that they did conduct a site walk on June 9, 2005. Ron Cole spoke about the sub-committee that was formed to deal with the regulations bringing the gravel pit permitting into the 20th Century. He thought that this year everyone was on the same

page and everything would be done in a timely fashion. He personally, as the Chair representing the Planning Board, feels terribly disrespected by some people. He said that from a professional standpoint it is very disheartening that some owners did not comply with the regulations in a timely or complete manner.

Frank Torr made the motion to take all the pits off the table.

Beth Thompson seconded.

VOTE U/A

Bruce Woodruff stated that in the past years, all the excavation permits were approved with a long list of conditions, some of which did not get done from year to year. He said that the pit owners were given a deadline of the 7th of June to comply with the regulations. He said that a lot of things were done in three of the pits and some were done in the fourth pit and it appears that nothing was done in the 5th pit.

1. Request for an extraction permit by Severino Trucking, Assessor's Map H, lot 58, located on Mast Road.

Bruce Woodruff stated that on the site walk it was evident that the applicant was finishing up their excavation along the side slopes of the cell tower and Pease beacon.

Mr. Severino indicated that they will restore the slope in a timely manner. He asked for the recommendations of the Board.

Beth Thompson made the motion to approve with the following conditions:

1. Hours of operation shall be restricted to 7:00 AM to 5:00 PM weekdays and 7:00 AM to 2:00 PM on Saturdays, with gates to the site opening no earlier than 6:30 AM.
2. The property shall not be used for the storage or introduction of any foreign materials unless the pit operator has sought and received advance permission from the City's Environmental Projects Director (Mr. Dean Peschel). A copy of said permission shall be in writing and shall be filed with both the Conservation Commission and the annual excavation permit recorded in the Planning Office.

Otis Perry seconded.

VOTE U/A

3. Request for an extraction permit by Mast road Sand and Gravel, Map H, Lots 53 & 54, located on Mast Road.

Paul Martel said that all that hasn't been done is seeding. Fences have been put on two different slopes and the test pits have been done.

Bruce Woodruff stated that the applicant has supplied the required information with the exception of condition #3, compliance with the Groundwater Protection section in Zoning. If you take a look at the test pit information there is one area of Mr. Martel's pit that doesn't have the required 4' ground cover from the average high water table, so the

applicant will be required to add suitable pervious material as determined by the City within 60 days.

Tony McManus made the motion to approve with the following conditions:

1. The applicant shall be required to add suitable pervious material, as determined by the City prior to placement, to attain the required separation, within 60 days.
2. The reclamation and operational plan documents last submitted in 2002 shall be considered as part of the permit and the hours of operation hours are as follows: 7:00 AM – 5:00 PM on weekdays with the gates opening at 6:30 AM, and 7:00 AM - 2:00 PM on Saturday.
3. Limit excavation at the property lines of disapproving abutters to no closer than 50 ft. The letter from a disapproving abutter is on file.
4. Continue the condition from the lot line adjustment plat that states no excavation shall take place beyond Cold Springs Road (So-called).
5. The property shall not be used for the storage or introduction of any foreign materials unless the pit operator has sought and received advance permission from the City's Environmental Projects Director (Mr. Dean Peschel). A copy of said permission shall be in writing and shall be filed with both the Conservation Commission and the annual excavation permit recorded in the Planning Office.

Don Andolina seconded.

Bruce Woodruff explained how all of the bonds are rollover bonds and the Department makes sure that the date changes every year. He also explained that the new regulation allows for reducing the bonds if incremental restoration/reclamation is completed as determined on a per acre basis by the City Engineer.

VOTE U/A

c. Request for an extraction permit by Brox Industries, Assessor's Map C, Lots 12-A, 13, 14, located on Glen Hill Road.

David Cluff stated that they had 3 problems and they have covered them all.

Bruce Woodruff said that at the June 9th site walk only one remaining item for Brox was to install a fence along the perimeter of the pit, which was done and verified by staff.

Bruce Woodruff stated that the Brox plans have been updated every year in a timely fashion. Our new ordinance calls for two separate plans but gives the latitude to grant a waiver.

Tony McManus made the motion to approve with the following conditions:

1. A one-year waiver of the requirement to prepare and submit separate plans for excavation and reclamation is granted. Applicant indicates that all requirements of both plans are shown adequately on one plan set.

2. The property shall not be used for the storage or introduction of any foreign materials unless the pit operator has sought and received advance permission from the City's Environmental Projects Director (Mr. Dean Peschel). A copy of said permission shall be in writing and shall be filed with both the Conservation Commission and the annual excavation permit recorded in the Planning Office.

Otis Perry asked about the hours of operation.

Dave Cluff stated that the hours were brought up and Steve Stancel investigated it and agreed that they are grandfathered because they have been in operation prior to 1976 which grandfathers them with the State. He said that they do put the hours on the plan but they don't restrict themselves to those hours if they need to be open for a specific job requirement.

Otis Perry seconded.

VOTE

3. Request for an extraction permit by James Griffin & Tyra, Inc., Assessor's Map H, Lot 60 & 62, located off Mast Road.

No one was present to represent the applicant.

Bruce Woodruff stated that this operation didn't respond to the May 18th letter. The owner did stop in to the Planning Office at 3:00 PM today to drop off the Hydrogeological Assessment Groundwater Study which is a collaborative effort between the Griffin and the Pruven Pit. The applicant failed to submit any information with regard to items 3 and 4 of the conditions of the May 18th letter. The report indicates that the separation between the pit bottom and the average seasonal high water table is less than the required 4', and that the reinstallation of the fences or barriers along the pit that exceeded greater 1:1 hadn't been done except in the area where a berm was used to effect that purpose. The berm can be considered a suitable barrier. No submittal of revised plans showing the 400 foot primary well radius was submitted. The side slopes around the perimeter of the property have not been stabilized. Planning staff cannot recommend that the Planning Board renew the annual excavation permit until such time that the following items are resolved.

1. Re-Install a fence or other suitable barricade along the areas of the pit that exceed a grade of 1:1 within 30 days of approval.
2. Add the 400 ft. primary well radius to the plans.
3. Stabilize the vertical side slopes around the perimeter of the property.
4. Complete and submit the final hydrogeological assessment report, which may point up the need to raise the pit bottom elevation.

Ron Cole said that his initial reaction was to shut the pit down and serve them with a Cease and Desist Order first thing in the morning which would shut the pit down. Their customers would be disenfranchised to a certain extent which is a negative form of

punishment. There have been a number of conversations between the Planning Staff regarding the ramifications of shutting the pit down and the time that it would take to get that pit up and running again.

Bruce Woodruff explained that if the Planning Board does not renew the permit this evening several sections in NH RSAs apply. NH RSA 155E section 8, 9, 10 and 11 and RSA 676:6 apply and if a Cease & Desist Order is issued RSA 676:17 A applies. What would happen is that the moment that Tom Clark served a Cease and Desist order on the operation, the operation must cease. From that point, the owner has 10 days to appeal to the ZBA on the non-renewal of the permit. However, they would have up to 20 days to go to District Court on the Cease & Desist. They would have 10 days to appeal to the ZBA. The ZBA then has 10 days to either grant or deny a rehearing. If they grant it, the ZBA has to hear it within 30 days and if they do not, the owner of the pits could go to Superior Court. Legal representation tells us that throughout this time period the operation would have to cease. If the owner of the pit goes to District Court to overturn a Cease & Desist Order under RSA 676 17A, it does open up a second appeal avenue that runs concurrent with the ZBA. That Cease & Desist can be challenged and possibly annulled by the District Court under Section 7 and the City could be ordered to pay any attorney's fees and costs if we were wrong. If we do not renew this permit tonight, the Board may want to send a letter explaining that the permit was not renewed and explain to the owner that they have 10 days from the receipt of the letter to appeal to the ZBA. That way their operation can continue through the approval process. They would go to the ZBA as per State Statute under 676:6, which is the way our excavation regulations were crafted.

Bruce Woodruff explained that at any time, an excavation operator can come before the Planning Board with a new application for a permit with all the requirements complete, and the process would start all over. It could be approved at that time.

Frank Torr said that if you issue a Cease & Desist, nothing can occur on that property, therefore there is no way of accomplishing the standards that you need like the height from the high water mark, etc. He said that in his opinion you are defeating yourself by issuing a Cease & Desist. There needs to be a meeting of the minds, and that should happen in this situation.

Tony McManus said that he understands that the Cease & Desist order would be only in terms in excavating, and would still give them the opportunity to correct the outstanding items. It doesn't stop the activity, but would stop the excavation and sale. He said that he agrees with Atty. Wattendorf's proposal to send them a notice and give them the 10 days in which they can file an appeal to the ZBA, and assuming that no appeal is taken, that the Cease & Desist order goes into effect.

Frank Torr said that the Cease & Desist, in his mind, means that nothing occurs on that site and you can't correct a problem if you can't operate.

Discussion ensued with regard to what is prohibited by the Cease & Desist order.

Chairman Cole stated that he realizes that we don't want to put the pit out of business but he is trying to get compliance. The recommendation is that the Board deny their application for a permit renewal and that we explain to the pit owner the process before them. He said that it would be on the Board's authority to allow that pit to continue while that process was taking place.

Otis Perry stated that if we are going to deny this permit, we would need to give very clear and precisely stated reasons because they would be subject to both Planning Board and court appeal.

Bryan Cahoon felt that there are certain individuals that are here that have done what has been asked of them and we need to take some kind of a stance with individuals that aren't in compliance. Why did the ones that complied go out of their way spending their time and energy and effort in wanting to get it right. They obviously care about what they are doing. This pit operator drops off something late in the day and doesn't even show up at this meeting. In his mind, they don't care. We need to care about the ones that care about what they are doing.

Don Andolina stated that we should deny the permit. He felt that we should follow the recommendation of the Legal Department to send out a letter reporting to the owner that his application has been denied and stating the reasons for that. He said that he doesn't think that we should extend.

Dennis Ciotti said that he echoes Bryan Cahoon and Donald Andolina's sentiments. We laid down the law a year ago. If we back down now, it will prove to the gravel pit operators that our bark is much worse than our bite.

Bruce Woodruff read the letter to Tyra Inc. re extraction permit 2005 extending the existing excavation permit until Jun 14, 2005 subject to the following conditions:

1. The applicant shall dig a test pit that extends to either the seasonal high water table, ledge or a minimum of six feet below the maximum proposed excavation depth, including submittal of location and soils data. The hydrologist, Mr. Jack McKenna has dug test pits the weeks of April 18th, and indicates he will submit the results in a report mid-May.
2. The applicant shall re-install a fence or other suitable barricade along the areas of the pit that exceed a grade of 1:1.
3. The owner shall contact Dover community Services about the plan to relocate the City's water main and the 400 foot primary well radius to the plans.
4. The applicant shall stabilize the vertical side slopes around the perimeter of the property as shown on the previously approved reclamation plan, most notably along the boundary line adjacent to the access road and the City's water main.

Bruce Woodruff said that the separation between the pit bottom and the seasonal high water table is less than the required 4 feet in several places and that is one of the main reasons that we couldn't recommend renewal of this permit.

Tony McManus made the motion to not renew the permit for this property based on the applicant's failure to comply with the conditions spelled out in the Planning Department's letter of May 18th and to meet the requirements of the Ordinance and add that he will be notified by Code Enforcement Officer of the Planning Board's vote.

Dennis Ciotti seconded.

VOTE 6 -1

Opposed – Frank Torr

5. Request for an extraction permit by Pruven Aggregates, Assessor's Map H, Lot 61, 59A and 59, located on Mast Road.

Attorney Art Pollock stated they removed 65,000 lbs. of scrap metal, and the berming has been done. The one issue that was not complied with was the report from their hydrologist Jack McKenna. He had done the test pitting but had not had the time to complete his report. They appreciated the extension until June 14th and they received the staff's letter dated May 18th. It was their understanding that the Board was quite satisfied with the progress that had been made on all the issues but for the filing of the hydrologist report. Mr. Proulx did drop off the summary. It was their understanding that the full package was to be submitted and was to come from Tyra. Having said that he thinks it has been a learning process. He doesn't want the Board to be left with disrespect or with the sentiment that things were not handled in a professional matter. The applicant is taking action to come to terms with the requests of the Planning staff. It was their understanding that it was the hydrology report that was the outstanding item. The learning curve has worked in this instance and the operator has made substantial improvements. He said that the operator was not aware of the site visit and the caravan of cars went through the pit without stopping and asking the operator to join them, which made him feel unwelcome. He gave a summary of what has been going on out there in the last few days and had some photos to pass around. He said that the scrap metal pile continues to shrink. The old truck tires were taken to a disposal site in Massachusetts and are now off the property. The area near the Bellamy River was not an excavation to generate product for sale but was a small trench dug to access the water pipe so that the pipe could be repaired. The pipe has periodic and regular need for maintenance. They felt that it would make sense to just leave the hole exposed to have access to the pipe. The well has been added and the radius has been added round the well. The staff has the new plan that has been submitted with apologies. They had ordered it when it was asked for. The last issue is the hydrology report. It has been submitted. The last issue that was raised in the most recent memo is that test pit data was not taken from the actual Pruven Aggregates pit but it was taken from the Tyra pit. The explanation on that is that the distance from well water to the surface on the Pruven property is such that digging a well in that sand can't be maintained to the point that you can get a reading. It will collapse on itself. The flip side is that you can put in a permanent well but a permanent well doesn't do much good in an area where you are going to excavate regularly because

every time you excavate where the well is, you remove the well and it's a continuous cycle. Jack McKenna made the professional decision to take his reading from the adjacent Tyra property where the surface is closer to the groundwater. One of the items that he mentioned is that he is able to extrapolate from the data that you see from the Griffin pit as to the groundwater levels of the Pruven pit. It's not as if we are without data, it's just that the professional extrapolation of the data that was taken is from the adjacent area. The other issue is that the groundwater on this property somewhat artificially fluctuates as a result of the use and non-use of the nearby City well, which drains this aquifer when it is in use, as well as the recharge that is provided by the wash operations that the operator does on his pit. He said that Jack McKenna has recommended in the summary that was received on June 7th, that a full assessment that would take into account those seasonal fluctuations so that they could come up with the natural groundwater level. That requires a series of readings throughout a period of time to generate the data. That study has been commissioned and is on the way. He explained that the pit was grandfathered and they come in as a voluntary complier. They do ask for the waiver on the combination of existing conditions and final contours on the same plan. He said that the State accepts the combined plan for its purposes but if it's the pleasure of the Board to see that go away in a year, he is sure they can live with it.

Tony McManus stated that it is his recollection that Dick Proulx was sitting in the back of the room when the site walk date was made. The requirements are in the ordinance and in the conditions of approval that they received a year ago. When it came before the Board for renewal it was apparent that they had not met the conditions that were given to them the year before. Since they were not able to meet the June 1 deadline, they were given an additional 30 days to comply with the requirements and the letter of May 18th went out stating what we were asking them to do. The other operators have come before us and done it and were not confused about the requirements.

Atty. Pollock said that he doesn't agree he was at the meeting and doesn't recall about the site visits. He's willing to chock that up to a miscommunication. He doesn't mean to imply that they came in noncompliant and assumed that they would skim by. The items that were listed were all underway way before the May 14th hearing. It was only upon the knowledge that the Board was not satisfied with what was done that additional efforts have recently been put forward. He agrees that the hydrology report had not been submitted before the May 14th hearing and he gave his apologies. The report is now completed and it doesn't make them substantially different than the other operators. It is their position that all of the items are now complied with.

Bruce Woodruff stated that the work at that pit has greatly accelerated in the past 2 weeks and they have been moving forward. The hydro geologist says that he shares the responsibility. Bruce Woodruff explained that it is very difficult to tell where the boundary lines are between the pits as the terrain has changed. The applicant submitted an incomplete status summary report on June 9th. The report does not contain any test pits within this pit, however, there is evidence that the applicant is raising the pit floor elevation with appropriate pervious materials and that the applicant is depositing

materials over the top of the City water line in order to establish sufficient top and side cover.

Richard Proulx asked if they would have to come before the Board to get permission if they had a break in the water line before he could excavate.

Bruce Woodruff said if it was an emergency, the answer is no. He added that Tom Fargo needs to speak to the issue of the terrain down by the Bellamy River.

Tom Fargo said that what they observed by the river was that a loader had cleared off some dirt and had actually dumped it over the bank down into the river during the process.

Richard Proulx said that it was done while plowing snow.

Tom Fargo said that the Zoning Ordinance says that anytime there is alteration to the ground surface within 50 feet of a river or stream it requires a Conditional Use Permit from the Planning Board. He thinks that it is important to point out that the Groundwater Protection Ordinance, which is where the separation requirement comes from, says that it should be a 4' separation to seasonal high water, with the City well pumps off. He said that Severino has been operating around four or five monitoring wells on their site without wrecking them and it is possible to continue to provide monitoring wells in areas of operation. He is concerned that it is more than just depicting on the plan the 400 foot radius of the wells. Associated with that is the Groundwater Protection Ordinance requirements that prohibit certain activities within that area and it is important to have that noted on the site plans.

Richard Proulx Sr. stated that the road to their pump house was established in 1954. He said that in the fall and when there is snow and ice he likes to have a berm to stop him in case he starts sliding. He doesn't want to go in the river. He is more than willing to meet with Mr. Fargo to address any confusion. They use the road every day they operate and have for 51 years.

Art Pollock stated that it makes some sense to have some standing agreement with the Conservation Commission as to how access and repairs to that portion of the waterline should be conducted and in the future so that in the event of an emergency appropriate measures can be taken. The concern was not how the road was plowed, but more how that excavation around that pipe was conducted.

Bruce Woodruff stated that that his recommendation is to renew the permit with three conditions:

1. Coordinate the remediation of the altered surface near the Bellamy River with the Building Official, the Conservation Commission and the Environmental Projects Coordinator.

2. To complete and submit the final hydro geological assessment report that includes data from small diameter well points installed within this pit.
3. To set a date specific as to the removal of the remainder of the junk on the Mast Rd. side of the contiguous area.

Mr. Proulx Jr. said that he would like 3 months to remove the junk. He said that some of the metal is dug in and is more labor intensive to remove. The portion behind the staging area is now all clean.

Ron Cole asked if up till the 15th of September is ok.

Otis Perry said that the prohibition about putting material in the pit that has not been approved by Dean Peschel and he thinks that that should added to the conditions the same as was in every other permit that we did tonight. He wondered about Tom's suggestion that we add to the 400' well radius a description of why it is there and the activities that are prohibited within it.

Frank Torr made the motion to approve listed above as amended as follows:

1. Coordinate the remediation of the altered surface near the Bellamy River with the Building Official, the Conservation Commission and the Environmental Projects Coordinator.
2. To complete and submit the final hydro geological assessment report that includes data from small diameter well points installed within this pit.
3. To set a date specific, September 15, as to the removal of the remainder of the junk on the Mast Rd. side of the contiguous area.
4. No materials shall be brought to the pit that has not been approved by Dean Peschel.
5. Added to the 400' well radius description is the reason why it is there and what is prohibited within it.

Otis Perry seconded.

VOTE 5 – 2

OPPOSED – Don Andolina, Dennis Ciotti

ITEM #6: Committee Reports

Beth Thomson stated that the Council is planning a joint workshop with the Planning Board on July 20TH to address the T.I.P.

Chairman Cole stated that he has a request from Mr. Samuel Sawyer to withdraw his waiver.

ITEM #7: Adjournment

Tony McManus made the motion to adjourn.

Beth Thompson seconded.

VOTE