

March 14, 2016

Minutes

HUBBARDSTON PLANNING BOARD
Slade Building



Meeting called to order at 6:35 pm by Tom Robinson, Acting Chair
Other members present: MaryAnn DiPinto, Thomas Bratko, Kendall Daly
Staff: Janet Baczewski

Minutes: No meeting minutes were reviewed and there were no motions to accept.

Motion:

Second:

Tom Robinson, Acting Chair, opened up a discussion among the Planning Board, concerning Norman Brown's project. The Planning Board reviewed plans and a letter of transmittal from Mr. Brown's legal counsel. This was not their full submittal. Full submittal of the Hubbardston Reclamation, LLC proposal is expected to be presented to the Selectboard next week. Rob Pelzcarski spoke on Mr. Brown's behalf, stating that they feel that their soil importation plan is being rejected by the Planning Board before it is even submitted. It is the Planning Board's opinion that any soil importation or reclamation project should be under their jurisdiction, not the Selectboard's, and a public hearing should be held.

The Planning Board reviewed the plans, compiled by Fieldstone Land Consultants for Hubbardston Reclamation LLC, which were partial engineering site management plans. These plans were submitted to the Department of Environmental Protection prior to the Selectboard. The DEP cannot approve the plans until the town approves them. The Soils Management Plan will go to a Licensed Site Professional, once hired by the Board of Selectman. Tom Robinson requested a copy of that from Mr. Brown's representative when it goes to the named LSP. He agreed that would be provided to the Planning Board.

Counsel for the Planning Board

Tom Robinson quoted the Hubbardston General By Laws, Chapter VII-Board of Selectmen, Section 5 "The Selectmen shall be the licensing authority for the Town and shall issue all permits and licenses except as otherwise provided by General Laws or these by laws."

He also referenced Chapter VIII-Town Counsel, Section 2 "Town Counsel or Special Counsel appointed by the Board of Selectmen shall approve contracts, give legal advice and furnish written opinion when so requested in writing by a Town Officer, the chairperson of a Town board or committee or person delegated by the chairperson regarding any legal questions or matters relating to the duties of such officer, board or committee, and no officer, board or committee, shall, at the expense or in behalf of the Town, employ or be represented by any other than the Town Counsel or appointed Special Counsel."

Tom Bratko noted that he contacted the state Attorney General's office on the matter of the Planning Board requesting the use of outside legal counsel, and their opinion may differ. Tom Robinson noted that the Planning Board could request permission to use a special legal counsel from the Selectboard.

A motion was presented for the Planning Board to ask the Selectboard to approve appointment of a special legal counsel to render an opinion as to which board has jurisdiction in the matter of a land reclamation project.

Motion: Tom Bratko

Second: Kendall Daly

All In Favor.

Tom Robinson quoted a sentence from the Implementation section of the Mass. Dept. of Environmental Protection literature titled "Interim Policy of the Re-Use of Soil for Large Reclamation Projects, Policy #COMM-15-01, dated August 28, 2015"; "MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments from such local officials on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the project proponent."

Tom Robinson also distributed an email response he received from Mark Baldi, Acting Deputy Regional Director of the Mass. Dept. of Environmental Protection, Central Region, regarding general questions he had about the possibility of a large reclamation project coming into Hubbardston. The email read, as follows;

"MassDEP's "Interim Policy on the Re-Use of Soil for Large Reclamation Projects" (Policy #COMM-15-01) provides the following guidance regarding local approvals and letters of supports:

MassDEP will review documentation submitted by project proponents to demonstrate that the appropriate local officials are aware of the project and have been afforded the opportunity for meaningful input. Examples of such documentation may include:

- a copy of any local permit or other approval specific to the use of large volumes of fill material that may be required (municipal approval of an up-to-date reclamation plan for the receiving location, and/or a municipal permit under an "earth filling" ordinance, and/or any other approval required by a municipality for activities that involve the transportation of soil onto the receiving site); or

- where such local approvals are not required:

- o a copy of any notification to the public in the area surrounding the fill project and the Chief Municipal Officer (CMO) and the Chair of the Board of Health (BOH) of the city or town in which the fill project is located of the proposal to use the excavated soil (including a description of the soil and/or hazardous materials that it contains) and

- o a summary of the steps taken to solicit meaningful input from those local officials, copies of comments received, and a description of the ways in which these comments have been (or will be) addressed.

MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments from such local officials on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the project proponent.

To get further clarification, I contacted Paul Locke, Assistant Commissioner for MassDEP's Bureau of Waste Site Cleanup. Mr. Locke clarified that if there is a local permitting authority specifically for "earth filling" projects, not "earth removal" permitting, then the documentation for local support (permit or approval) would be required from the earth filling permitting authority. Otherwise, the alternative documentation including the notification to the public, Chief Municipal Officer, and Board of Health is required from the proponent with a description of how comments from the CMO and BOH will be addressed."

The Planning Board noted that Pitcherville Sand and Gravel, owned by Norman Brown, has been in violation of the earth removal by-law from 2006 and that their pit slopes are not in compliance pertaining to elevations. The Planning Board would like to understand the extent of any reclamation that has already been done. A motion was made to have Bill Murray, of Places Associates, Inc, the town's engineer, review the plans and delineate what still needs to be reclaimed and what has already been reclaimed at the Pitcherville Road site.

Motion: MaryAnn DiPinto

Second: Tom Bratko

All In Favor.

Tom Bratko suggested that the Planning Board go on written record with the MassDEP that there have been discussions within the Planning Board and there are some concerns with the Hubbardston Reclamation LLC project being brought forward. The concerns are as follows;

- 1) The Planning Board needs to complete their investigation of the Pitcherville Sand and Gravel pit for possible non-conformance of the current earth removal by-law. Pitcherville Sand and Gravel is on the same site as the project being presented by Hubbardston Reclamation, LLC.
- 2) The project is very controversial in the town of Hubbardston, with two citizen petitions being presented on the town warrant for the town election in June. One prohibiting the importation of material and one regulating the importation of material into the town of Hubbardston. The Planning Board recommends that the DEP table the Hubbardston Reclamation, LLC project until after the town election on June 7, 2016.
- 3) There are questions on the jurisdiction of this project, whether the Hubbardston Planning Board or Board of Selectmen should be the governing authority.
- 4) The prior large scale earth removal permit that Mr. Brown was using does not apply now, under the General By Laws, Chapter XIX-Earth Removal. Any proposal for the importation of material presented by Hubbardston Reclamation, LLC would be a new use under the current Hubbardston Zoning By Laws. Under Section 4.8-Prohibited Uses, it states, "Any use not specifically listed in these zoning by laws shall be deemed to be prohibited."

The Planning Board decided to hold the writing of the letter to DEP until after the Selectboard meeting on March 21st.

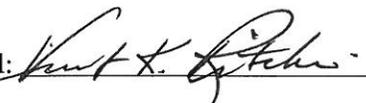
At 8:55pm, Motion to adjourn was presented.

Motion: Tom Bratko

Second: MaryAnn DiPinto

All in favor.

Approved: _____



Date: _____

5/31/16