





Planning Board were that the Earth Removal Agent, Bill Murray from Places Associates Inc., will do an initial report and complete a final inspection and that the Mass. Dept. of Environmental Protection will do a final sign off.

### **Discussion of Stonewall Alterations on a Scenic Road at 25 Old Westminster Road**

Rick Green, owner of that property, spoke of his plans to remove portions of a stone wall in order to gain access to his hay fields across the street. He has applied for 3 driveway permits from the Highway Dept., two permanent driveways and one temporary driveway.

A motion was presented by the Planning Board to give permission to remove portions of a stonewall on a scenic road at 25 Old Westminster Road, in order to install two permanent driveways and one temporary driveway, per presented plans and in accordance with the Highway Dept. driveway regulations.

**Motion: Tom Bratko**

**Second: Tom Robinson**

**All in favor.**

### **Master Plan Discussion**

Chairman, Vin Ritchie, stated that there have been no volunteers from the public to take on the large task of updating and rewriting the town's Master Plan from 1988. The Planning Board did receive a quote from Dick Heaton, a partner of H & H Associates, LLC, for the creation of the Master Plan for \$9,500. He would work with key groups in the town, to address specific goals of the town, to create a Master Plan consistent with Mass. General Laws, Chapter 41, Section 81D. Tom Robinson suggested that the town could do parts of the Master Plan by themselves by doing a survey of the townspeople and including their feedback, and by having public hearings. It could take up to 3 years by an appointed committee. Tom Bratko stated that the Montachusett Regional Planning Committee could do it for a minimum of \$100,000, based on the current Open Space Plan and current Housing Plan. The MRPC could attend a future Planning Board meeting to discuss this further. Tom Bratko will go before the Selectboard, to get a reading on the Planning Board's current proposal for the town meeting to appropriate funding of \$10,000 for the rewriting of the Master Plan, and discuss the current options on the table.

### **Discussion of the Status of Norman Brown's Gravel Pit on Pitcherville Road**

A report on the earth removal inspection done on Pitcherville Sand & Gravel was presented by Tom Bratko, Planning Board Appointed Clerk. It read, as follows;

May 4, 2016

Hubbardston Planning Board (HPB) Earth Removal Inspection  
Pitcherville Sand and Gravel (PSG) Assessors Map  
3 Lot 35, part of lot 40  
Hubbardston, Ma 01452

Attending Meeting: Thomas Bratko, HPB, Tom Robinson, Vincent Ritchie, HPB, Officer Amann, Hubbardston Police Dept.  
5:30pm

As part of the HPB's annual review of all the town earth removal operations, PSG was invited to do a site inspection with the board. PSG declined our invitation and, through their attorney, warned the Planning Board that if we went on the property we would be trespassing. We did our inspection from the town pit. Hubbardston Officer Amann can confirm that we did not go onto PSG property. From the town pit we were able to view about 75% of the property and were able to take photos.

Town records indicate that earth removal operations have taken place since 1995 or earlier. The latest permit that was issued to PSG was dated 10/1/1998 and expired on 9/1/2001 (page 3M). Chapter XIX, Section 5 of the general bylaw dated 2010 says "Existing operations without permits. Within thirty (30) days of the effective date of this bylaw, each existing operation without a permit shall meet with the planning board to discuss a process for development of a transition plan to bring the site into compliance." There is no record that PSG has contacted the planning board or filed a plan. In a meeting with the planning board in January 2016 PSG said that there has been no earth removal operation at the site since 2004.

In a letter from the Hubbardston Board of Selectmen dated 5/13/2009 to PSG answering a request from them that the town return the \$10,800 deposit they gave to the town as a bond for the 1998 Earth Removal Permit, the Selectboard stated that they had no record of receiving a deposit and asked the PSG for proof of the deposit. The 1998 Earth Removal Permit has a requirement for a \$5000 bond not \$10,800. The letter also stated "Please forward any information on closing the site to the planning board who now handles earth removal operations for the Town". The planning board does not have any records of the owner contacting them nor is there any evidence that PSG gave the town a deposit.

The intent of the site inspection was to see if PSG has fulfilled the conditions of their 10/1/98 permit and the 2010 Earth Removal Bylaw. The following are the observations of the site that we were able to see from the top of sand piles on Town of Hubbardston property and the plans given to the Selectboard by PSG Fieldstone Land Consultants, PLLC dated

1/29/16 : *Note: all references to pages are from the 1998 Earth Removal permit signed by PSG.*

1) Page 2A-"All loam or other materials may not be removed from the site without written approval from the Selectboard." There were no visible piles of loam. Because we were denied access to the property and we could not see any loam, we assume PSG may be in violation of this section of their Earth Removal Permit.

2) Page 2B-<sup>11</sup>"NO more than (4) acres may be stripped at any one time." There is a provision in the permit that more than 4 acres can be worked at one time. We were denied access to the property and therefore have to assume those provisions were not put in place. The attached photo shows there is well over 4 acres of stripped land. We would estimate about 20-30 acres. PSG may be in violation of this section of their Earth Removal Permit.

3) Page 2C-"No excavation will take place within (10) feet of any abutting property". A letter dated 10/28/2004 to the BOS, from Attorney Stanton who was retained by the Marinelli family that abuts PSG property, states that PSG is in violation of their Earth Removal Permit issued by the BOS. In that letter Attorney Stanton refers to a report dated 10/13/2004 by Whitman and Bingham Engineering with reference to these violations, "The slope of the Pit extends to within 5ft of the property line". The opinion of Whitman and Bingham appears to be confirmed by the owner's drawing provided to the BOS from PSG by Fieldstone Land Consultants, PLLC dated 1/29/16. We have been denied access to the property so we assume that the most current drawings and the letter from Attorney Stanton are correct. PSG is in violation of this section of their Earth Removal Permit.

4) Page 2D "All side slopes shall be graded at a three-to-one (3:1) slope at final grading". As you can see from the photo there are large areas that are near vertical. On PSG plan by Fieldstone Land Consultants, dated 1/29/16 it clearly shows near vertical slopes. In Attorney Stanton's letter the engineer confirms the slopes are very steep. Based on this information we have concluded that PSG is in violation of this section of their Earth Removal Permit and Chapter XIX of the general bylaw. PSG has left this site in an extremely dangerous condition.

5) Page 3 N "Excavation shall not be within four (4) feet of seasonal high ground water table." We were denied access to the property so this could not be determined.

6) Page 3 P This condition requires PSG to reclaim the land after they have completed operation. It states the conditions for the restoration. On the west side of the property we were able to see a section that had been graded to the correct slope and there appeared to be plantings as per the conditions. We were not given access to the property so we can only estimate that about 20% of the pit had been reclaimed. We could see that large areas of the pit had not been reclaimed. It does, however, confirm that PSG was aware of their responsibility to reclaim the pit under their 1998 Earth Removal Permit. Based on our visual inspection from town property PSG is in violation of this section of their Earth Removal Permit.

It is apparent to the planning board that there are many violations by PSG. We did reach out to PSG to review the site and hoped we could start a process to close out the pit as the planning board has done with 5 other gravel pit operators. In 2/7/2008 Larry Brandt, who was the enforcement agent for the town, sent PSG a letter with a copy of the new earth removal bylaw and an application for reclamation. On review of the files in the building inspector's office no application or any information was found. PSG has been in violation of his contract with the town for 12 years.

The new earth removal general bylaw was passed in 2010. As part of that PSG was required to submit a plan to the planning board. PSG has not done this. PSG attended a planning board meeting on January 6, 2016 to discuss a potential infill project for the site. PSG told the planning board that if he was not given approval for this new use he would not reclaim the pit.

At the planning board meeting on May 4, 2016 the planning board discussed PSG's inspection and the need to bring PSG into conformance of Section XIX and fulfill their obligation to the contract they signed with the town. As PSG has refused to meet with the planning board or allow us on the property for an inspection, the planning board was left with no other alternative but to place a cease and desist order on the property and register that order at the Worcester County Registry of Deeds. The planning board has used this process with two other earth removal operations. Both of the companies have complied with the bylaw or are in the process of developing a plan.

The plan forward is to have PSG allow the planning board access to the property, have the town's consulting engineer make a determination of the existing conditions, any existing violations, and enter into an agreement to have any violations corrected. If we do not hear from PSG before our next meeting the planning board will discuss enforcement per General Bylaw section XIX.13 Penalties-Criminal Disposition.

Submitted By

Thomas Bratko

Planning Board, Clerk

Tom Bratko stated, in conclusion, that Pitcherville Sand & Gravel has a lot more reclamation of their gravel pit to do and that the pit has not been restored properly. In his opinion, the earth removal permit has not been closed out, and Pitcherville Sand & Gravel is in violation of the permit requirements listed above.

Tom Bratko moved to request the Enforcement Officer, Larry Brandt, issue a Cease & Desist order to Pitcherville Sand & Gravel that prohibits any activity or operations on the property until compliance of the earth removal permit conditions, and Chapter XIX, Earth Removal, of the Hubbardston General Bylaws are met.

**Motion: Tom Bratko**

**Second: Tom Robinson**

**All in favor.**

10:00pm Motion to Adjourn was presented.

**Motion: Tom Bratko**

**Second: Tom Robinson**

**All in favor.**

Approved 

Date 7-6-16