

12-14-22: These minutes are subject to possible revisions/corrections during review at a subsequent Planning Board Meeting.

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**Town of Chester
Planning Board Meeting
Wednesday, December 14, 2022**

Approved Minutes

The meetings are broadcast live on Comcast Channel 20, and streamed on Government <https://reflect-chesterctv-from-nh.cablecast.tv/CablecastPublicSite/?channel=1> - click "Watch Now".

Members & Staff Present:

Brian Sullivan, Chairman
Evan Sederquest, Vice Chairman
Elizabeth Richter, Member
Richard Snyder, Member
Selectman Chuck Myette, Liaison
Andrew Hadik, Town Planner
Dana Theokas, Alternate

Members Absent:

Mike Weider, Member

Guests and Members of the Public Present:

Doug MacGuire, The Dubai Group
Corey Garabedian
Attorney Anthony Bistany
Attorney Stephen Bennett
Kevin Scott, 261 Chester Street
Jason Colon, 24 Ledge Road
Chester PACT
And others unknown to the Recording Secretary

Meeting Agenda

7:00 PM – General Business

1. Review & approve invoices, sign documents, etc.
2. Review & approve the minutes for 11/30/22 PB meeting.
3. Review proposed zoning amendments & move to take to a public hearing on January 4, 2023.

7:15 - Appointments

None scheduled.

7:15 PM – Public Hearings

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- 46 1. Continuation of Site Plan Review application by Old Sandown RD, LLC (owner – Paul Garabedian,
47 Jr.) 352 South Broadway Street, Salem, NH 03079, for a gravel pit located at 152 Fremont Road
48 in Chester, NH (Map 5, Lot 85).
- 49
- 50 2. Adopt the updated Capital Improvements Program (CIP) for the Town of Chester.

51

52 **Non-Public Session**

53

54 None scheduled.

55

56 **Meeting Minutes**

57

58 Chairman Sullivan called the meeting to order at 7:00 p.m. He announced that Ms. Theokas is sitting in
59 for Mr. Weider.

60

61 **7:00 PM – General Business**

62

63 **1. Review & approve invoices, sign documents etc.**

64

65 Documents and invoices were reviewed and signed.

66

67 **2. Review & approve the minutes for 11/30/22 PB meeting.**

68

69 *Mr. Snyder moved to approve the minutes of the 11/30/22 Planning Board meeting as written. Vice*
70 *Chairman Sederquest seconded the motion. A vote was taken. All were in favor. The motion passed*
71 *unanimously.*

72

73 **3. Review proposed zoning amendments & move to take to a public hearing on January 4, 2023.**

74

75 Mr. Hadik reviewed two proposed zoning amendments. He explained that these are not setting new
76 standards but are intended to reduce confusion reading the ordinances.

77

- 78 • To amend Section 5.7.5.4 - Building Setbacks to replace the word “building” with “structure” so
79 that this section is consistent with Zoning Table 2 - Table of Setbacks and No Clearing Buffer
80 Zones. (This amendment was requested by Building Inspector Bunker.)
- 81
- 82 • Add Section 5.3.5.3 and “Note 4” under the column heading “Minimum Frontage” at the top of
83 Table 1, both stating “Every lot shall have the minimum required frontage on a Class V or better
84 Town-approved highway.” (This amendment was also requested by Building Inspector Bunker
85 to make it easier for design engineers to find.)

86

87 Mr. Hadik noted that Mr. Bunker will be submitting proposed amendments to the Building Code in the
88 near future.

89

90 *Mr. Snyder moved to take the following two proposed zoning amendments to a Public Hearing on*
91 *January 4, 2023. In Section 5.7.5.4, changing the word "building" to "structure" for consistency with*

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92 **Table 2. And a change to Article 5, adding a new section, 5.3.5.3, reading, "Frontage: Every lot shall**
93 **have the minimum required frontage on a Class V or better Town-approved highway" and at the top**
94 **of Table 1, add Note 4: "Every lot shall have the minimum required frontage on a Class V or better**
95 **Town-approved highway." Ms. Theokas seconded the motion. A vote was taken. All were in favor.**
96 **The motion passed unanimously.**

97
98 **7:15 PM – Appointments**

99
100 None scheduled.

101
102 **7:15 PM – Public Hearings**

103
104 **1. Continuation of Site Plan Review application by Old Sandown RD, LLC (owner – Paul**
105 **Garabedian, Jr.) 352 South Broadway Street, Salem, NH 03079, for a gravel pit located at 152**
106 **Fremont Road in Chester, NH (Map 5, Lot 85).**

107
108 **Mr. Snyder moved to resume the Site Plan Review application by Old Sandown RD, LLC (owner – Paul**
109 **Garabedian, Jr.) 352 South Broadway Street, Salem NH 03079, for a gravel pit located at 152 Fremont**
110 **Road in Chester, NH (Map 5, Lot 85). Ms. Richter seconded the motion. A vote was taken. All were in**
111 **favor. The vote passed unanimously.**

112
113 Selectman Myette recused himself from this discussion as an abutter.

114
115 Mr. Doug MacGuire from The Dubai Group, representing the applicant, passed out updated plans to the
116 Board members. He explained the main purpose of requesting the recent continuances was to make
117 sure they addressed all of the Board's concerns. He noted there were two outstanding items to be
118 addressed concerning waivers from the Town's Excavation Regulations.

119
120 The first waiver is a request for relief on the buffer at the southwesterly edge of the operation, as it is a
121 larger wetland body exceeding five acres and requires additional buffering per the Town's Excavation
122 Regulations. Complying with these regulations would create a berm and bowl-like depression, due to
123 the topography of the area being excavated. Accordingly, they have increased the floor elevation of the
124 excavation by four feet, which will allow them to pull away from the wetland and increase the setback
125 distance in some areas. This will result in a decrease in the disturbed area from ~18.5 acres to ~17.5
126 acres, and a decrease in the excavation volume from ~800,000 to ~690,000 cubic yards, which could
127 mean eliminating a year from the operation timeline.

128
129 The second waiver involves the seasonal high water table. The regulations speak to any known high
130 water table. Mr. MacGuire stated a seasonal high water table, which is generally related to surface flow
131 patterns and soil structure, is different than a groundwater table, which is permanent and fed from the
132 ground up. Their findings indicate this is not a groundwater wetland, so the excavation will not create a
133 resource impacting issue. (Mr. MacGuire was speaking in regard to the wetlands to the east and
134 northeast of the main excavation area.)

135
136 Ms. Richter asked about the verbiage in the first waiver request regarding "...excavation within eight
137 feet of any known..." Mr. MacGuire said the request is to waive the requirement of having separation to
138 a water table, as they believe it is impossible to excavate any area without encountering a seasonal high

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139 water table elevation. Mr. Snyder clarified, suggesting that the waiver request is seeking a waiver from
140 the requirements of Section 5.1.7.

141
142 Mr. Snyder suggested the plan address how the applicant will deal with standing water and "bowling" in
143 case these situations do arise, despite the applicant's beliefs that they will not occur. Mr. MacGuire said
144 any erosion related to seepage will be noted in the Stormwater Water Pollution Prevention Plan
145 (SWPPP), and mitigation can be done. He noted there are no longer heavy cuts on the perimeter
146 directly adjacent to the northeastern wetlands on the plan. Mr. Snyder suggested adding this
147 information to the waiver request.

148
149 Mr. Snyder noted that throughout the Public Hearing process, there has been concern regarding the
150 amount of noise created through activities, such as the blasting process and the crushing operation. He
151 asked how much noise should be expected. Mr. MacGuire said the general contractor measures decibel
152 readings from 75 to 85 decibels at their crushing apparatus, which are less than a handgun shot (160
153 decibels) or a rifle (170 decibels). He believes the large vegetative buffers surrounding the property will
154 help mitigate the noise. The Board acknowledged quantifying sound is difficult and requested
155 substantive documentation on this.

156
157 Mr. MacGuire noted that this is not intended to be a year-round operation, as the demand for
158 purchasable gravels varies with the season. They assume they will be operating during the construction
159 season. They believe blasting will not be a daily or weekly occurrence as once a blast occurs, the
160 materials obtained will then need to be processed.

161
162 Mr. Snyder mentioned the concern of blasting causing damage to neighboring wells. The Board
163 requested documentation representative of what will be expected from a blasting company in terms of
164 protections, insurance, and remedies they would provide. The Board wants to know how damage to an
165 abutter's well will be financially alleviated. Mr. MacGuire reviewed the information they have already
166 provided, including a state-required groundwater study. He noted the blasting company will be bonded
167 and regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and that the Chester
168 Fire Department has requirements in place for documentation before any blasting occurs.

169
170 Chairman Sullivan asked about the type of trucks that will be hauling gravel. Mr. MacGuire said he
171 believes there will be a mix of trailer dumps and standard tri-axles.

172
173 Mr. Hadik shared a conversation he had with Chester's former tax assessor, who abuts the current
174 blasting operation in Auburn. He said the sound of the crushing equipment was "nothing objectionable"
175 and the blasts that occurred once a day were hardly noticeable, like a minor tremor. Mr. MacGuire said
176 100,000 cubic yards was removed from that site in three months. He emphasized the applicant has an
177 intent to remove material to bring the site to a pad level. Their type of operation occurs regularly as
178 part of developing a subdivision, but they are not usually designated as a gravel pit.

179
180 The Board reviewed the Conditions of Approval and discussed the following:

- 181 • Days and hours of operation: Monday through Friday, from 7 a.m. to 5 p.m.
- 182 • blasting hours of operation: 10 a.m. to 3 p.m.
- 183 • crushing hours of operation: 7 a.m. to 5 p.m.
- 184 • notification to the Fire Department two days before blasting

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- 185 • supply a written plan from the environmental monitoring company describing the method and
186 frequency for monitoring surface and groundwater, and dust and silica in the air
- 187 • revised bond estimate as a result of input from DuBois & King engineer, Jeff Adler

188

189 The Board discussed whether 100,000 cubic yards/year was established as a limit. This figure was
190 calculated by considering trucking and days of operation. Mr. MacGuire pointed out if more than
191 100,000 cubic yards/year is excavated, the operation would end earlier. The operation will be market-
192 driven and need-based. Mr. Snyder pointed out the amount of truck traffic is of concern; an estimate of
193 a truck passing every five to six minutes is troublesome. Mr. MacGuire said 50 to 70 trucks a day (*loads*
194 *hauled offsite*) is an average and will vary based on fluctuations in material and weather.

195

196 Chairman Sullivan opened the hearing to public comment.

197

198 Mr. Kevin Scott of 261 Chester Street, formerly of 11 Haverhill Road, said his calculations say a truck will
199 pass a house on Fremont Road every 4.26 minutes and two trucks will regularly pass each other on the
200 road. He noted that traffic volume negatively impacted his life when living on Haverhill Road and was a
201 major factor in the decision to move to a quieter location. He said Article 7.8 of the Site Plan Review
202 regulation could offer ideas as to how the impact of the truck traffic could be lessened. He proposed
203 finishing the work on Stowe Road to a level that would allow gravel trucks to pass through the entire
204 length, and require traffic to be one way in from Fremont Road and exit on Old Sandown Road. He
205 apologized to the Board for not attending any earlier meetings, as he was not aware of the magnitude of
206 this project.

207

208 Mr. Hadik said this idea was discussed at the Highway Safety Committee meeting. Old Sandown Road
209 comes into Route 121-A at a 45-degree angle, so is not conducive to tri-axle trucks or trailers making the
210 right-hand turn. He also noted loaded trucks will come up the hill, stop at the stop sign in the center of
211 town, then try to pull out from a dead stop. He said with that amount of truck traffic, a Tier 4 or Tier 5
212 bridge would also be required to cross the waterway on Stowe Road.

213

214 Mr. Charles Myette of 159 Fremont Road experienced the noise and smells from this gravel operation
215 before it was shut down. He stressed that all federal, state, and local regulations need to be followed.
216 There needs to be a good reason to issue a waiver, to avoid setting a precedent. As a professional
217 hydrologist, he is concerned about changing wetland setbacks and buffers. He noted there are concerns
218 regarding the wetlands to the east and northeast side of the operation, not only the west. He would like
219 to retain the buffers that the regulations set.

220

221 Mr. Myette is concerned that the depth of excavation to the east side is 10 to 12 feet below the water
222 levels in the wetlands to the east and northeast of the main cut. He is familiar with the groundwater
223 levels at this site, as his home is across the street. He agrees that there is seasonal fluctuation.
224 However, the seasonal high water levels for groundwater are not being considered. The Town's
225 regulations for the wetlands and the mean water levels were implemented due to other gravel
226 operations digging below the water table and creating ponds.

227

228 Mr. Myette believes the Town should require groundwater monitoring wells up gradient and down
229 gradient to understand the water levels in the wetlands and below the excavation area. These wells
230 should be put in and monitored before truck traffic starts leaving the site. He has personal experience
231 at a previous residence with his water well being negatively impacted by blasting. He said it will be

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232 years before the negative impacts of blasting will be seen in the abutters wells, but the impact of
233 vibrations and reduced flow in the wells will be felt much sooner. There is no mechanism for
234 homeowners to complain about their wells being impacted. He recommended setting specific numbers
235 instead of waiving the regulations completely, based on hydrology.

236

237 Mr. Myette noted the truck traffic is equivalent to thousands of cars. The local roads were designed for
238 residential loads, not heavy traffic. He said the ditches along Fremont Road flow with water most of the
239 year as they were dug to the water level, and there is pavement cracking along the side slopes of the
240 road. He recommended keeping the road bond high, and setting a total dollar amount for the
241 reclamation bond for the entire project, not just each 5-acre section at a time.

242

243 Mr. Myette said this project will impact the neighborhood. He did not see mention of road sweeping for
244 Fremont Road. He suggested in regard to braking, adding trucks entering as well as leaving, as traffic
245 noise comes from trucks slowing down, not accelerating. He is also concerned regarding the line of sight
246 at the intersection of Stowe Road and Fremont Road.

247

248 Chairman Sullivan clarified that complaint resolution is listed in the conditions of approval.

249

250 Mr. MacGuire responded that Mr. Myette has been opposed to this project from the start. Many of the
251 adjustments the applicant has made are due to concerns he has raised. At a certain point, a line needs
252 to be drawn. He said adequate testing has been done and there is no transmissivity issue. The first
253 phases are not near the wetland area of concern. Issues might arise that are not predicted as the
254 operation starts up. He suggested using the operation, which is a multi-phase operation, to obtain a
255 real-world baseline of data. If issues arise, additional testing can be implemented or additional
256 monitoring performed to determine if there will be problems with future phases. He believes the
257 requests for additional testing are unmanageable to the applicant. Mr. Snyder replied the Board would
258 manage their way through that with him, but everyone present has the right to voice their concerns.

259

260 Mr. Hadik suggested it would be prudent to have monitoring wells in place in close proximity to the site
261 before the blasting begins. If the wells of the abutters are being monitored 500, 700, 1000 feet away,
262 then contamination might not appear until after the project is completed. By that time, a contamination
263 plume would be very large and much harder to remediate. With monitoring wells located in closer
264 proximity, any problems will be discovered before the abutting homeowner's wells are impacted. He
265 suggested the Board consider if this would be a prudent and proactive measure.

266

267 Mr. MacGuire said parts of this would be beneficial to the applicant, as far as having testing onsite. He
268 would like the third-party monitoring company to establish what is appropriate (number of wells, how
269 deep they should be). Mr. Snyder said the Board should consider how involved they would like to be in
270 evaluating proposals for the third-party monitoring company. Mr. MacGuire said the Board should be
271 confident in the selection the applicant makes, or DuBois & King could have input. Mr. Hadik
272 recommended Nobis Engineering as a possible option for evaluating the third-party monitoring
273 company's proposed monitoring program and qualifications.

274

275 Mr. Jason Colon of 24 Ledge Road sent written correspondence to the Board on November 8th but has
276 not received an official response. He asked if the application is being considered as an existing site or a
277 new site. Chairman Sullivan said that it is an existing operation with an expansion. Mr. Snyder clarified
278 it is being treated as though it were a new application. Mr. MacGuire said their position is that it is an

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279 update of the 1992 approved plan of the existing operation. It is an expansion in scale, but not in scope.
280 The original plan called for removing over a million yards of material.

281
282 Mr. Colon said that as it is considered as an existing grandfathered site, he said that RSA 155 E:2 had a
283 requirement that no later than August 4, 1991, the owner of any site that was requesting grandfather
284 status file a report. He said the original site plan failed to meet the requirements of the RSA. He
285 contacted the New Hampshire Office of Strategic Initiatives, who confirmed that if these requirements
286 were not met, it would constitute being an abandoned site. The RSA expressly restricts the Board from
287 issuing a permit to any abandoned site and requires the applicant go to the ZBA for a special exception
288 in a non-residential zone. He listed the types of organizations that can inhabit a R-1 zone. He asked the
289 Board to state under which statutory or regulatory authority they feels they are empowered with the
290 authority to grant a permit as requested by the applicant.

291
292 Mr. Snyder said it is grandfathered. Chairman Sullivan said the Board is not granting a permit. Ms.
293 Richter said the appeal period for any failure to file a report has lapsed, as it was 31 years ago. Mr.
294 Colon described the offices he has consulted regarding this issue and that they concur his stance is
295 correct. He feels everyone involved in this process is benefitting from tax dollars while the ordinance is
296 being ignored. He believes this will go to litigation, as laws have been broken. Chairman Sullivan said
297 the Board appreciates his statements and will take everything under advisement, and will consult with
298 their counsel. Mr. Colon asked if he would receive a response to his correspondence and Chairman
299 Sullivan explained that the Board's response would likely be to discuss it with Mr. Hadik and that any
300 findings would be presented at the Public Hearing.

301
302 Mr. MacGuire agreed he would obtain data on the decibel levels of the equipment. Regarding the water
303 table waiver, he said Phase 1 is higher than the wetland. They are cutting substantially within the site.
304 So, if groundwater issues arise, those will be noted and mitigated, and would warrant additional review
305 on later phases. If there are no issues, that would be supportive of their current position. He asked the
306 Board to accept the information provided. He will not be doing additional testing before the next
307 meeting.

308
309 Mr. Snyder asked for additional information regarding the noise.

310
311 Mr. Myette said the Board is approving the full plan, so they need to plan ahead. Mr. MacGuire noted
312 that in the conditions of approval, Section VII states the applicant will return for a Public Hearing two
313 years from the date of issuance to determine if the approved expansion has resulted in any adverse
314 impacts on the neighborhood, and if the measures undertaken have been effective in mitigating those
315 impacts. Chairman Sullivan said the Board will learn a lot in two years, as there are many subjective
316 issues involved.

317
318 Ms. Theokas asked if Chief Gladu has evaluated the fire and safety access to the site via Stowe Road.
319 Mr. Hadik said if tri-axle trucks can access the site, there should be no problem with emergency
320 equipment accessing it. He said they have asked for additional pullouts along Stowe Road to
321 accommodate trucks and pedestrians passing one another.

322
323 Mr. Hadik asked if Board members share any suggestions they have for improvements to the conditions
324 of approval. He will draft an updated version of the conditions for the next round of review.

325

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326 Mr. Myette said the request to obtain authorization to use Stowe Road and improve it for the mining
327 operation needs to be heard (*and approved*) by the Board of Selectmen; they only have granted
328 permission to use the road for the timbering operation at this point. This permission is granted by the
329 Supervisor of Roads or the Board of Selectmen. The use of Stowe Road for a gravel pit is not currently
330 approved by the Board of Selectmen. Mr. Myette also mentioned that the Applicant was requested to
331 give a release of liability to the Town for the improvements made on the road. Mr. Hadik will add this to
332 the conditions of approval.

333

334 ***Mr. Snyder moved to continue the Public Hearing for the Site Plan Review application by Old Sandown***
335 ***RD, LLC (owner – Paul Garabedian, Jr.) 352 South Broadway Street, Salem, NH 03079, for a gravel pit***
336 ***located at 152 Fremont Road in Chester, NH (Map 5, Lot 85) to January 4, 2023. Ms. Richter seconded***
337 ***the motion. A vote was taken. All were in favor except Selectman Myette, who had recused himself***
338 ***from the Board. The motion was approved 5-0-0.***

339

340 Mr. MacGuire said the applicant asked him to clarify that he has one item to provide the Board, which is
341 decibel numbers. He hopes they will vote on approving the application at the next meeting. Chairman
342 Sullivan said as far as deliverables, the sound concern is the only issue he is aware of. Mr. Hadik said he
343 hopes to edit the conditions of approval and send an updated version to Mr. MacGuire as quickly as
344 possible.

345

346 Mr. MacGuire thanked the Board for their time. Chairman Sullivan commended Mr. Hadik on the work
347 he has done on this challenging issue.

348

349 **2. Adopt the updated Capital Improvements Program (CIP) for the Town of Chester.**

350

351 Mr. Hadik requested a continuance until January 4, 2023, as he is waiting for information from several
352 sources.

353

354 ***Mr. Snyder moved to continue the Public Hearing for accepting the updated Capital Improvements***
355 ***Program (CIP) for the Town of Chester to January 4, 2023, at 7:15 p.m. Vice Chairman Sederquest***
356 ***seconded the motion.***

357

358 Mr. Snyder withdrew his motion.

359

360 ***Mr. Snyder moved to open the Public Hearing for the Capital Improvements Program (CIP) updates for***
361 ***the Town of Chester. Ms. Richter seconded the motion. A vote was taken. All were in favor. The***
362 ***motion passed unanimously.***

363

364 ***Mr. Snyder moved to continue the Public Hearing for accepting the updated Capital Improvements***
365 ***Program (CIP) for the Town of Chester to January 4, 2023, at 7:15 p.m. Vice Chairman Sederquest***
366 ***seconded the motion. A vote was taken. All were in favor. The motion passed unanimously.***

367

368 **Non-Public Sessions**

369

370 None scheduled.

371

372 **Future Meeting Dates**

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373

374

- January 4 – Zoning Amendments PH, Garabedian Gravel Pit CPH, CIP Update CPH

375

- January 11 –

376

- January 25 – Zoning Amendments PH

377

378

Ms. Richter moved to adjourn the meeting. Mr. Snyder seconded the motion. A vote was taken. All were in favor. The motion passed unanimously.

379

380

381

The meeting was adjourned at 10:10 p.m.

382

383

Respectfully submitted,

384

Beth Hanggeli, Recording Secretary