

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

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

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

Non-Public Session

None scheduled.

Meeting Minutes

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

7:00 PM – General Business

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

Documents and invoices were reviewed and signed.

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

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

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

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

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

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

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

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

7:15 PM – Appointments

None scheduled.

7:15 PM – Public Hearings

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

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

Selectman Myette recused himself from this discussion as an abutter.

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

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

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

Ms. Richter asked about the verbiage in the first waiver request regarding "...excavation within eight feet of any known..." Mr. MacGuire said the request is to waive the requirement of having separation to 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.

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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-axes.

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

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

Chairman Sullivan opened the hearing to public comment.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Jason Colon of 24 Ledge Road sent written correspondence to the Board on November 8th but has not received an official response. He asked if the application is being considered as an existing site or a new site. Chairman Sullivan said that it is an existing operation with an expansion. Mr. Snyder clarified 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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update of the 1992 approved plan of the existing operation. It is an expansion in scale, but not in scope. The original plan called for removing over a million yards of material.

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

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

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

Mr. Snyder asked for additional information regarding the noise.

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

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

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

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

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

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

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

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

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

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

Mr. Snyder withdrew his motion.

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

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

Non-Public Sessions

None scheduled.

Future Meeting Dates

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

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- January 11 –

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- January 25 – Zoning Amendments PH

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

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

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Respectfully submitted,

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Beth Hanggeli, Recording Secretary