

Minutes of the meeting of the TOCI Planning Board, August 16, 2012 at 7:15 at the Hall

Present: Mabel Doughty, Jane Frizzell, Charles Hall and Beth Howe (Chair).

Absent: Sam Birkett and Louise Doughty

Also present: Ron Tozier, CEO; Maricel Hahn, Jonathan KomLosy and Paul Belesca

1. Minutes of June 21, 2012. Charles asked whether Jane had asked whether propane it easy to ignite or easy to explode. In the context, she said she had asked whether it was easy to explode. This change has been made. Jane moved, seconded by Mabel to approve the minutes as amended. Passed unanimously.

Beth said that this is the meeting where we will begin work on revising the zoning ordinance.

Two issues are on the table: mineral extraction and a review of the site plan application provisions. Mabel said that she liked the language in North Haven's ordinance "

" . Beth looked to see if the introduction to our ordinance includes language like this. It does not. The language is all about health and safety and specific land use issues. She will make a note to note that the North Haven language might be added.

2. Section 412 of the TOCI Zoning Ordinance on mineral extraction

Beth said that this comes up because the noise on Hope Island has resumed. We have this problem because the TOCI is a physically small place, with mixed land uses; and bringing gravel from the mainland is expensive. She said there are several different issues here. One is the development of a nuisance ordinance which would address the issue of noise. At the Selectmen's meeting last week, David Hill said that this is not an issue for the Planning Board, but for the Selectmen. Beth agrees. Given the work she has done on this issue so far, she has concluded that it really requires a lawyer to develop an effective nuisance ordinance, and she does not have the expertise for this. So the discussion this evening will deal only with what may be done about the language of the zoning ordinance on mineral extraction.

Jane suggested that the Planning Board make a recommendation to the Board of Selectmen that they seriously consider developing a nuisance ordinance. Beth said she would draft a memo on this.

The central issue with the existing ordinance is that it clearly, but only implicitly deals with commercial gravel pits. If we want it to cover other kinds of mineral extraction such as borrow pits, we have to think of language to do this and decide where to draw a line between activities that would require permitting and those that would not.

Ron said there is also another issue, and that is getting people to come to the Planning Board for permits for this. He was out on Hope Island on Monday with someone from DEP. At the moment Hope is in compliance with the shoreland zoning in the TOCI, as well as the permitting for the various projects they have undertaken. They were drilling rock when he was there, in order to plant a tree. He showed a picture he had taken and said he had taken a decibel reading next to the machine, but it was not terribly high. Jane said it is not really the decibel level that is

the problem. It is the nature of the sound. Ron said he would still like to require that Hope have a permit for mineral extraction. If they do not, it is up to the Selectmen to follow through on the lack of a permit.

Maricel asked whether DEP has any regulatory jurisdiction over noise. Ron said they do not, that is something that is regulated by towns.

Ron said that aside from Hope Island, there are borrow pits on Chebeague. Some are done by a homeowner for his own use. Some are quite temporary. Others have been larger and used to sell gravel commercially. On Bustins they require a conditional use permit/special exception for extraction, so there is a public hearing.

The trigger for regulation can be the scale of the activity, and we can modify our ordinance to include mineral extraction larger than a certain level, even if it is not a formal gravel pit. In the shoreland zone you have to get a permit for moving 10 or more cubic yards (about one dump truck load) of earth. There was a discussion about what this would bring under regulation – regular foundations or regular driveway. Paul said that there is a great range of sizes of excavation even for these things – large versus small houses, short versus long driveways. Jane suggested that excavation and associated mineral extraction for these be exempt from permitting. She also said that she thinks we should think about the impact of extraction on the aquifer.

Maricel said that it is not simply the scale of the activity, but the duration of it. Ron said that usually permits do not have a fixed term.

Charles said he was surprised that the language in Sect 412 does not apply to all mineral extraction. There is nothing explicit in the language about the scale of the activity or it being for commercial purposes. He suggested that the ordinance include waivers that would put some kinds of activity outside the permitting.

Paul said that site work on Chebeague is expensive and “dirt swaps” are a necessity. He would not want to see the requirement for permitting for earth extraction stop people from building. It makes sense to have more strict regulations relative to the construction of septic system, but more strict regulation of gravel extraction would go too far. In any case, new gravel pits on Chebeague are needed and likely to be created.

Someone suggested that requiring a permit when extraction reaches 100 cubic yards – 5 to 7 dump trucks. Beth said she thought enough ideas had been put forward to make it possible to redraft the old zoning language. She will do this.

Mabel asked Ron whether we should invite the Cacoulides to come meet with us. Ron said he thought it would be a good idea to diffuse the hostility that had developed. Or we could ask to visit Hope. Jonathan said he thought the Cacoulides had a legitimate argument when they asked to secede from Cumberland, suggesting that Long Island, Chebeague and Hope become a town. The response to this generated some of the hostility. Beth said she had a hard time thinking of how we might convincingly ask to meet together; making mineral extraction the topic of a meeting would probably not work. Ron said that when Chebeague people like the rescue go out

to Hope, they make a good impression. Maricel suggested that we go to them and ask them to commit to doing their reshaping of Hope in a reasonable length of time. Ron said that from his visits to Hope, he thinks they may be coming to a close on the work. But even something as simple as planting a tree requires excavating a hole in the ledge.

Someone asked whether they could use blasting instead of the drilling machine. Beth, Maricel and several others said they thought this would be a good alternative. Ron said he thought it was because it would disturb the birds and animals.

Beth said she would try to draft a letter asking if we could come to visit.

3. Paul asked why the two items on the agenda had been up for discussion. Beth said the Board was beginning to look at revising the zoning ordinance. The issue of mineral extraction is a timely one. The issue of the site plan requirements may be a good place to start the general revision – the Board has experience with it and has seen the problems. The requirements could be simplified. Paul and Jonathan said they did not think that the existing requirements were too complex. Both of them had gone through it and they thought others should as well. The system should be fair. Beth said it could be made simpler, and Ron said the existing ordinance seems unnecessarily cumbersome.

Respectfully submitted,

Beth Howe