

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD FEBRUARY 28, 2022

Present: Jon Morse, Anne Whitten, Mark Cahoon

Absent: Chairman Geoffrey Aleva, Scott Strynar, David Ballard

Also Present: Matt LeConte, Michael Peverett, Julie McElhaney, Chelsi Van Patten, David Galbraith, Kathryn Harrison, Lincoln Harrison, Cheryl Hoffman, Cheryl Klausman, Jerry Klausman, Shannon Regan, Eric Regan, Chris Plachawicz, Gina Garafolo Plachowicz, Jim McIntyre, Joy McInyre, Barb Farah, Jack Olea

1. Call to Order:

Jon Morse will be the Acting Chairman for tonight's meeting.

Acting Chairman Morse called the meeting to order at 6:35 pm.

Acting Chairman Whitten moved Mark Cahoon up to full voting status.

2. Review Previous Minutes: February 10, 2022

Anne Whitten motioned to approve the minutes of February 10, 2022 as written. Mark Cahoon seconded the motion. VOTE: 3-0

3. Current Business:

3.1 Julie McElhaney
53 Clark Road, Map 005, Lot 05

Public Hearing for Conditional Use Permit request for a business: Applicant proposes to open an in-home Occupational Therapy Office in a portion of the existing single-family home.

Julie McElhaney introduced herself as well as her daughter, Chelsi Van Patten, who is the Occupational Therapist. Julie owns the home and is looking to open up an occupational therapy office. She stated the goal is to be open five days per week with four clients per day.

Chairman Morse referenced the proposed drawing and discussed how the current office in her home would now be a therapy room. Anne Whitten asked what the hours would be for the

business, i.e., what time would they open and what time would they close. Julie believes that the hours of 9:00 a.m. to 4:00 p.m. was what was stated on her application, but she did not have that in front of her. Anne referenced the application and it in fact stated 8:00 a.m. to 3:00 p.m. Anne also asked Julie if only one client at a time would be present and Julie stated yes. Chairman Morse asked if this business would be appointment only and Julie stated yes. Chairman Morse also asked about the entrance and exit and Julie explained that there were two entrances and two exits.

Chairman Morse opened up the public hearing at 6:40 p.m.

There was no public input

Chairman Morse closed the public hearing at 6:41 p.m.

Matt LeConte indicated that from his standpoint, as Code Enforcement Officer, it is a conditional use as a business and they were required to come before the Planning Board and get approval from the Planning Board which they did, and additionally as a business, it was required to hold a public hearing which has now been done. Matt then stated that it looks acceptable to him and the next step would be for the Board to approve the Conditional Use Permit or if they would like, to add conditions of the approval.

Anne Whitten motioned that the Board accept the application for Julie McElhaney of 53 Clark Road, Map 005 Lot 05 for Conditional Use Permit for the occupational therapy business with the hours of operation being from 8:00 a.m. to 3:00 p.m. with a maximum of four clients per day, five days per week (Monday through Friday). Mark Cahoon seconded the Motion. VOTED: 3-0

There was then some discussion about the actual days, whether they were Monday through Friday or Tuesday through Saturday. Julie and Chesli indicated that they would like to keep the options open to meet the needs of the clients and there may be needs on Saturdays.

Anne Whitten amended her Motion to amend the days of operation to include Saturdays so that the business can be open six days per week, Monday through Saturday. Mark Cahoon seconded the Motion. VOTED: 3-0

3.2 Curtis Sand and Gravel, LLC Stub Marsh Road, Map 009 Lot 039 & 051

Public Meeting to further review of Conditional Use Application review for Mineral Extraction - The Applicant has proposed the development of two mineral extraction locations on and including East Pit and West Pit.

Mike Peverett from Civil Consultants appeared on behalf of Nick Curtis, the owner of Curtis Sand and Gravel.

Anne Whitten asked Mike if they were going to be bringing product in and grading it. Mike indicated that that is one of the things that he would like to speak on. Anne Whitten then stated

that it is not allowed in the ordinance. Mike then stated he would like to talk about that and would like to start with that point.

Matt LeConte provided the Board with documents relating to this matter. There was a letter from SMCDP which lays out some preliminary findings of facts and procedural-type items and there was also a Memo from Dwayne Morin. The Board then took a few minutes and went over the documents.

Mike referenced the Memo from Dwayne indicating that he "*cannot find where processing of off-site material would be permissible under the zoning ordinance*". Mike stated the zoning ordinance, from what he could tell, is silent with regard to this topic and it has never been specifically mentioned. He is in front of the Board looking for a conditional use permit which falls under the Land Use Table under Earth Removal and that is essentially their conditional use permit - that they have applied for earth removal. There is a section in the ordinance that Dwayne refers to with Earth Material Removal and there is a section in the ordinance that refers to Mineral Extraction/Gravel Pit. In a gravel pit operation, it is very common when material is taken out of the ground and a certain spec material needs to be made (i.e., Maine DOT), a different type of stone or something that is not on site needs to be brought in. Mike stated that further into the Land Use Table and under the Miscellaneous Section on page 4-11E, and under Uses Accessory to Conditional Uses, Farm and Forest District that is listed as conditional use, use as similar to conditional uses is listed as conditional use.

Mike stated that they would argue that the processing of gravel including some mix from off site is integral to the conditional use but it certainly meets the criteria of accessory to conditional use. Mike stated in their opinion, they fit into that box very clearly. Dwayne's statement that the ordinance is completely silent with regard to that and it does not say you cannot do it and it does not say you can do it. It appears that he is simply looking at the mineral extraction and the earth removal part of the ordinance but there may be something else in the ordinance that he has found but Mike cannot find any references to that topic in the ordinance and he certainly thinks it is an accessory to the conditional use and if we can agree to that, they are certainly open to any sort of conditions on that such as no organic materials or garbage can be brought in but only specifically clean rock or different types of material that is needed to process a mix. Basically, the terminology when dealing with mining is called beneficiation of the product and for example with copper, chemicals or coal needs to be brought in to process that. It is very common in that industry. Mike stated Dwayne specifically mentioned that it has never been done in this town before in other gravel pits but Mike believes what might be happening is that the topic has never been brought up. They specifically wanted to bring it up so that everyone would know what is happening and everyone knows specifically what is being proposed.

Mike also stated that they were under the impression that they would need a permit from the Maine D.E.P., a permit by rule, and that is how this topic originally started. They have been in contact with the Maine D.E.P. and that is not the case, they do not require a permit from the Maine D.E.P.

Matt asked if it was applied for as a principle conditional use with an accessory use. Mike stated he would argue that it is integral to the mineral extraction and he does not think it should be a

separate permit. Matt agreed that it should not be a separate permit. Matt was just simply stating "documented as", "requesting as", as he is stating the viewpoint of the ordinance, that the bringing in of product to process with the gravel or rock that has been extracted, in his view as part of the ordinance is part of the accessory use. So, Matt asks the question is the conditional use application that is before the Planning Board specifically state that it is requesting the processing of outside materials? Mike said it is noted on the Plan and he believes that if they can get to a point where the Board agrees that it falls within the conditional use then they can put conditions on whatever the Board would like. Initially, they contend that it is integral to the operation but given the situation where Dwayne does not feel it fits the ordinance or if the Board does not feel it is integral to the operation, they believe it certainly is accessory and fits into the conditional use.

Chairman Morse stated that if the town is going to allow crushing of existing materials that comes out of the pit to make the quality of gravel or stone or whatever that he needs to run the operation, then he does not see any reason why they shouldn't let them bring in material to do the same thing. He does not see what harm that will do and he does not see anything in his materials that could stop them from letting that be done in the conditional use permits. Matt stated he is also not aware one way or the other. Chairman Morse stated that they are allowing the crushing of materials so why not allow them to bring in product that he needs more of to finish a job. Chairman Morse stated that the Board can set hours of crushing anyways. The trucks are going to be going in and out of the pits anyways so it shouldn't make a difference if they are loaded or empty. The hours of operation or the trucks moving are not going to change. They either come in empty or they come in loaded and they leave empty or they leave loaded, it does not matter, they are still going back and forth so if they come in loaded, he does not understand why that would not be allowed. Matt stated that from that perspective, Chairman Morse is correct and it is common practice with mineral extraction and pits all around that bring in other product.

Matt said the question really before the Board is whether North Berwick's ordinance allows, in any capacity, that defined use. Matt believes that is part of the question from discussions with Dwayne, that that type of use specifically, as a principle or an accessory type, is not explicitly defined within our ordinance and that is the gray area. Mike argues that Dwayne's comment "*I cannot find where processing of off-site material would be permissible under the zoning ordinance*" says that he cannot find where it is not permissible either. Anne Whitten stated that in the past if it is silent, then it is not allowed and that is how it has always been. Mike said that it is not how the ordinance reads. It states accessory to conditional uses is a conditional use in the Land Use Table and to him the reason that is there is for things that are not specifically in the conditional use. One of the things he specifically was looking for is that in some ordinances at the end of the land use table, it will say that if it is not specifically mentioned in this ordinance it is not allowed. Mike stated he was unable to find that in North Berwick's ordinance.

Mike stated again that he specifically brought this topic up originally because they wanted full disclosure. They did not want people seeing trucks going in with a full load and wondering what is in the truck. They are very open, if this is agreeable to the Board, to have conditions placed that will prevent organic materials or any undesirables in. Matt stated that it may make sense to have the applicant provide some specific language to be proposed as a condition of approval specific to that as an accessory use based on the table. Mike stated he is completely open to that

and he stated up until this point, it seemed like the door was completely closed. So, before they do that, he would like to get some consensus how the Board felt about that.

David Galbraith, who is the consultant from SMPDC, explained that he believes the Town Manager's point is that the application being applied for is for an extraction permit. Extraction means something is being taken out, not being brought in. It is basically the processing of what is there in the pit. Chairman Morse stated that there is nowhere in the ordinance that says he cannot bring material in. Mike went over again how he is in front of the Board looking for a conditional use permit which falls under the Land Use Table under Earth Removal and that is essentially their conditional use permit - that they have applied for earth removal. There is a section in the ordinance that Dwayne refers to with Earth Material Removal and there is a section in the ordinance that refers to Mineral Extraction/Gravel Pit. Their argument is that the bringing in of off-site material is integral to the operation. They would argue that it is an accessory to the conditional use that the Planning Board could allow as a conditional use. David stated that they may do that and that he would need to read the language of the ordinance specifically. He thinks if he is talking about bringing material in then you may be automatically talking about stockpiling and whether or not that makes a difference to the Board. Matt then stated that he does not have the original conditional use application in front of him right now but is going to look at how the conditional use was requested. He stated he could research past pits and mineral extraction conditional use permits that were allowed and if they were specifically designed as extraction only and no processing of any way. Mike stated again that he believes that this issue simply was not addressed. Matt would say that it is possible that the prior mineral extraction or gravel pits have been applied and as part of an accessory use to the mineral extraction, there is the processing of a product that has been extracted which is then again, very similar to bringing in product of similar type nature to process with the extracted product but the definitions in the ordinance are not exactly specifically clear on this.

Anne Whitten then read an excerpt from a quick search on her phone which stated "*Accessory uses are uses of land that are found on the same parcel as the principal use but are subordinate or incidental. Accessory use or structure means a use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same lot, serving as a purpose customary incidental to the use of the principal building or land use.*"

Mike then stated that under our ordinance the definition of accessory structure use is "a use or structure that is incidental and subordinate to the principal use or structure. Accessory uses when aggregated shall not subordinate the principal use of the lot, deck or similar extension of the principal structure or garage attached to the principal structure by roof, a common wall is considered part of the principal structure". He stated that again, to him, the processing of off-site material fits that definition. Chairman Morse then stated he didn't see why that did not fit right in to that. Mike then stated that the fact that something is not specifically mentioned in the ordinance does not remove it. His opinion is that they certainly fit that as an accessory to the conditional use.

Mark Cahoon then asked if there was anything on the original conditional use application stating that they would be bringing in off-site material in. Mike stated that there was not but it was talked about. Mark feels it should not be talked about anymore to which Chairman Morse stated

that the Board could put stipulations on the original permit. Mike said he thought that was integral with the initial operation. Matt stated this was discussed early on.

Anne Whitten asked if this topic could be stopped now at this meeting since two other planning board members are absent and there will be no decisions made tonight anyway so she would like this conversation tabled until the next meeting. Chairman Morse stated that eventually they have to come to a decision and cannot keep continuing this from meeting to meeting. Mike stated that Mr. Curtis needs to get due process here and he does agree that without everyone present here at this meeting that a decision cannot be made but he believes there has to be some path forward. They can't keep kicking the ball down the road. Anne stated that it came to her that is not allowed and Mike suggested maybe getting the town's attorney to look at this topic. Matt stated there are several criteria, potential conditions of approval and findings of fact that David worked on that are not going to get kicked down the road but after going through the rest of the preliminary findings of fact and suggested conditions to sort of work through those and that is basically the purpose of this meeting. To get closer to a finalization regarding each of the potential conditions and findings but not to come to a final determination tonight on any one aspect. Mike feels that should not be a completely separate application. Matt said he is not suggesting that and is only suggesting that maybe the conditional use application may need to be amended to request that specifically as an accessory use or two accessory uses based on that table to spell out exactly the crushing of on-site, product as one accessory use because that is not specifically extraction of the material and then a second accessory use or in combination with the first accessory use, as processing of off-site product and how that language is determined is up to the engineers. They may put non organic materials or material of like composition on that and then it is up to the Board to then be able to review that specifically. Mike stated they could certainly write up a narrative to add to the existing application where they feel it falls under the Land Use Table and what their proposed language is and present that to the Board and he thinks that is very reasonable.

David then made a suggestion that it would be helpful for the Town to give direction to the applicant and what might be useful between now and the next meeting so the Board does not have to struggle with a legal determination or get a legal determination themselves. David stated that the bringing of gravel in is going to be a big issue so he thinks that rather than waste everyone's time, that some direction should be given. Mike stated that was a reasonable approach and that they could write up a narrative to add to the application and send to the Town and go from there. Chairman Morse stated that they could table this topic for tonight and Mike stated he now feels he has some clear direction on how to proceed.

Mike then mentioned the review comments which they have now made revisions to the plan based on that, and there were a few outstanding comments from Underwood Engineering that just came in yesterday, which have not had a chance to make a formal response to but those could be gone through tonight. He also said another thing that was up in the air was the hours of operation and that was still being discussed and an email received from Inland Fisheries & Wildlife received recently. Matt stated it would be helpful if Mike followed David's memo.

Matt stated that regarding the road conditions of Stub Marsh Road, there was discussion about the Road Commissioner is allowed to improve a narrower paved area because this is not a town

road, it is a public easement/right-of-way. David stated it was outlined quite well as *"it was an abandoned road but there is still a public easement on the road. However, the permits have been proposed for the dust control and not for access. With that being said, I approve the proposal by Civil Consultants to a lesser standard for dust control on Stub Marsh Road to abutting property which will limit the vegetation needed to be removed, keeping that natural buffer and filler. However, it should be noted that in the future should additional uses be requested for access such as a single-family dwelling, etc., the road will need to be improved to meet town road standards"*. David believes that was on page 3 of 7 of his memorandum and then he believes the engineer pulled up a similar comment on page 6 of 7. He referenced a "Details Road Improvement Plan and it states *"Although the town has waived the requirement for an 18-foot pavement with the proposed widening should be shifted to the northwest side to the maximum extent possible in order to avoid cutting trees and vegetation along the southeast side of the road"*. David believes that was to protect the abutting neighbors. Mike stated that was one of the things he wanted to speak about. He said that adjacent to the Harrison property, there was some concern as the roadway widened after the Harrison's driveway. He said there are large trees on that side of the road and there was a concern that the roadway would encroach that area and might result in tree cutting. Mike said he is proposing to revise the plan to shift the road over a little bit but they are also going to put a specific note on that plan that cutting trees will be avoided and road will be shifted away from the abutter as necessary. The revised plan will clearly state that no trees will be cut on the Harrison side of the property. There is no intention to cut any trees there.

Chairman Morse read the verbiage *"It should be noted that in the future should additional uses be requested for access as frontage requirements, such as a single-family dwelling, the road would need to be improved"*. He stated that is not up to Curtis to improve the road if someone wanted to put a house in there. Matt stated that is correct and it is not a question, it is essentially adding to the record what the ordinance already says. Matt said that if any of the residents of Stub Marsh Road intend to develop it in any such way in the future, such as a single-family home, that road will have to be brought up to the minimum road standard and not be Curtis.

Anne Whitten stated that when this first started, there was supposed to be a 19-foot pavement and that was not wide enough for a public way. Matt said that Dwayne has accepted a less of a standard because this is not a public way. Mike said the pavement is not required at all but they offered to put it in. Mike said that 220 feet of pavement was going in. Anne asked about the area for the horse. Mike said yes and that beyond that they have a 50-foot-long construction entrance which was talked about at length and along the shoulder of that, is a stretch of regular gravel so the horse can stay on the right side of the road. Beyond that, the road tapers from 16-foot gravel down to 10 feet +/- . Mike said really the widening of the road is just making it a little safer for the trucks. Again, the pavement and construction entrance are to alleviate the dust. One of the things that was talked about last time was as a condition, the speed for the trucks would be limited to 20 miles per hour and another thing that has been added to the plan is a truck passing lane somewhere along the road and what they will do is have our engineer and the applicant pick the safest spot to do that. Another issue was stacking trucks on Dillingham or Abbott Road and any truck stacking would be in the pit and they will do radio communication to ensure that they are not stacking trucks on the public road.

Chairman Morse said that another use that needs to be discussed to put in the conditional use is that all of the trucks leaving the pit loaded will be covered. And if the Board does decide to allow bringing in of material, the trucks loaded going into the pit will have to be covered. Mike believes that it is all noted. David stated that on page 3 of his Memorandum there is language about this topic which state *"All trucking methods and routes shall be subject to approval of the roadway commissioner and the applicant is proposing that all loaded trucks be covered to prevent dust, contents from spilling or blowing in the road and a truck route of southwest on Stub Marsh Road to Dillingham to intersection with Lebanon Road. In my capacity as the roadway commissioner, this is an acceptable method, route and traffic flow. Civil Consultants stated no response is needed. Their concurring with the original proposal and as the roadway commissioner approval of traffic movement as proposed"*.

Matt stated that on page 5 there are comments on hours of operation which was last discussed in November of 2021. Mike stated that has been slightly revised since the last meeting and he believes the hours of operation currently listed on the plan are Monday through Friday 7:00 a.m. - 6:00 p.m., Saturdays 7:00 a.m. - 3:00 p.m. and Sundays are for emergencies which is being discussed. He then stated the crushing was proposed again as an as-needed basis. There will not be a crusher there constantly. He will bring one in as necessary but that will be Monday through Friday limited 7:00 a.m. - 5:00 p.m. Mike stated they have also added notes regarding noise and how crushing would be below the decibel allowed in town.

Matt did state there is no definitive accurate way to determine what constitutes an emergency so that is ultimately a question before the Board and what hours are allowed on Sunday for an emergency. Chairman Morse does not feel there can be time enforced if it is an emergency. David stated it would be a very infrequent happening. David also stated that he could draw up some proposed language to put in the plan regarding Sundays.

Chairman Morse then referenced a Memo from Dwayne Morin to the Board regarding the Reclamation Performance Guarantee. Matt stated there were two possible ways to reclaim amounts as performance guarantees if the applicant requests. The first pit would have to be completely reclaimed before opening the second pit so then the amount would be \$112,450.00 opposed to the performance guarantee for the entire project which would be \$167,200.00. This memo was just given to the applicants. Mike said one thing that jumps out at him and needs to be clarified is the first category which is loam. There is a requirement that all the loam on the site has to stay on the site so that needs to be clarified. The DEP standard is \$4,000.00 per acre. Dwayne's initial estimate was \$6,000 per acre but Mike is not 100% sure of that. Mike feels it needs to be clarified taking into consideration that the loam on site has to remain on site and that is clearly noted on all of the plans. David stated it is just a matter of financially structuring the bonding and phasing. Chairman Morse believes the Board needs to come up with a number in the event it gets reclaimed. He's not saying it needs to be reduced down to zero but they need to make it a number that will make it worth his wild to reclaim it. Matt stated that the review engineer with Underwood has moved on so there has been a change of hands throughout the review process and that might be where the discrepancy came from.

Mike stated that if the Board is open to the different concepts that Dwayne has brought up about the phasing, then he thinks if the Board agrees, they can discuss with the applicant about doing

the phased approach and the notes could be revised to reflect that. It sounds like from Dwayne's memo, the financial instruments could be worked out between the applicant and Dwayne's office.

Mike then referred to the Underwood memo dated February 23, 2022 which David stated he put their comments in his report as well. The new comments from Underwood start on page 6 of his report. Mike will do a formal response to these comments but they just came in so he would like to informally address them tonight.

Mike referenced A and said that had already been addressed. He stated in reference to B that they do have the DEP permit, the Notice of Intent which was issued by the DEP on January 7th. David said they have the Mining Specialist letter which the Board has a copy of. Anne Whitten inquired if this paperwork has all of the things that there were issues about (i.e., turtles, etc.). David said he believes it covers everything but if anything is missing, he can get copies of those things for the Board. There is an email from Maine Inland Fisheries and Wildlife in response to the letter from the abutter's attorney. One of the things Matt clarified with Maine Inland Fisheries and Wildlife was the wetlands that has the 250-foot setback was delineated in the field and mapped and prior to the extraction operations starting, that will all be staked by the surveyors in the field and it is noted in the plan to make sure he stays out of that 250-foot protected area.

Matt referenced the email that Mike just referred to from Mike Clark from DEP includes comments that he recommended that the 250-foot setback marker be field identified. It is on the plan but to be field identified with markings on the trees or staked. Mike stated they have classic signs marking the wooded buffer on the trees and in the areas where there are no trees, they put up fence posts with signs and also use the surveyor's ribbon to flag the trees. That is noted on the plan that all these markings will be done before anything is started.

Anne Whitten read into the record the email from Scott Lindsay, Regional Wildlife Biologist, from the Maine Department of Inland Fisheries & Wildlife to Michael Clark, Mining Coordinator with the Maine Department of Environmental Protection.

*"Though this is not the comprehensive review comments you would normally receive from MDIFW Environmental Review Dept., due to the timely nature of application review at the Town of North Berwick, next week, I wanted to at least provide notice of some wildlife resources known to exist on site. On the attached map, the current property owner's parcel boundary is shown as a blue polygon. I understand the current landowner has intent to develop part of this parcel as two gravel pits, of 7.8 acres and 3.8 acres in size. I do not know the specific location of these proposed gravel pits as I have not been provided with a plan showing details of this project. In the eastern part of this parcel there is a Moderate Value Inland Wading Bird and Waterfowl Habitat (IWWH). The identifier for this wetland is IWWH#011050. This habitat does qualify as Significant Wildlife Habitat under the Natural Resource Protection Act (NRPA). This wetland and a peripheral upland buffer of 250 ft. is protected and any alteration of the habitat is subject to MDIFW consultation. In consultation with MDIFW from the Reptile and Invertebrate Group in Bangor, I learned that state endangered Blanding turtle (*Emydoidea blandingii*) are known to occur on site. IWWH #011050 and other wetlands in the area, usually wetlands identified as wooded swamps, marshes, shrub swamps or vernal pools may provide habitat for*

this rare turtle. This turtle, though closely tied to wetlands, is known to travel amongst a half dozen or more wetlands within its home range, thus the wetlands themselves and a 250 ft. upland buffer are critical for this species and proposed impact on this habitat requires MDIFW consultation. The state endangered northern black racer snake (Coluber constrictor) is known to occur in this area, though species presence on this particular parcel has not been documented by MDIFW staff. Attached are reference map showing subject parcel and mapped wildlife habitats and a fact sheet on state endangered Blanding's turtle. I have copied lawyer Joseph Mavodenes, representing some abutters to this project site and Town of North Berwick CEO, Matt LeConte, who is evaluating this project at the town level. For additional information, please contact me..."

Mike stated they are not proposing any impact withing the 250-foot buffer line and in fact it is not allowed under the town ordinance. Chairman Morse confirmed that there is a 250-foot buffer with Mike. The whole envelope of each pit will be staked by their surveyors in the field before he starts. Matt stated that it is very clear by state law and local ordinance, the required 250-foot buffer is in fact the maximum required separation distance. Then there is in the additional suggestion to field identify which the applicant has agreed to.

Anne Whitten asked if Scott Lindsay is going to receive that particular map and Matt indicated that he does have that map now. Anne asked what his next step will be and Matt said he has made comments and he understands it all now even further with the detailed map delineated and not just the ariel photograph which he was previously referencing.

Chairman Morse then referenced proposed mineral extraction plan L-1 in paragraph 10, and discussed how he does not see how, in the Underwood comments, that there can be five-foot discrepancies between the pits and the wetlands. He read from the comment: "*Tree water elevations and the monitoring wells is a five-foot difference in the water table*". Chairman Morse thinks they are going by the monitoring wells for his extraction and what he thinks they are saying, is that they need to bring it up by at least five feet. Mike said that is one of the things that Jeff will prepare a formal response to but the whole idea is that those wetlands do not require any separation. They are maintaining the five-foot separation and protecting the wetlands. The formal response and comments should be available for the next meeting.

Matt then brought up the accessory use question and how that comes into play, and stated that may need a legal opinion from the applicant to be submitted for the town to then comment on. If the town attorney is to give comment, that comment is coming out of the escrowed funds by the applicant and so it would behoove the applicant to supply a legal opinion that this, as an accessory use, falls within the ordinance based on that chart. Mike believes they have made a strong argument and believes submitting a narrative to amend or include their position would work. David then stated he thinks that there would be a way to make that happen. Mike would like to keep this all moving forward and for the applicant to get due process. Anne Whitten's concerns were that there has been a delay since last August and Mike stated that they were ready to go at every meeting. Chairman Morse believes that the Board is there to make rules and regulations that the town has set forth and if there is some language that is not in those regulations for whatever reason, it is up to the Board to discuss and decide if appropriate, vote

for it, if not appropriate, vote against it. He stated that there can be stipulations put on permits if necessary.

Mike then stated that they will make the formal submittal that it is an accessory use to the conditional use and that because it wasn't specifically spelled out, it is a concern. When something is or not allowed and then reference a specific section where it states that, then it is a done deal. He feels in this case, the task for the Board in bringing off-site material, subject to whatever stipulations the Board may have, is that a use accessory to conditional uses, and that is the question. He stated they will write up a narrative explaining where they are coming from referencing the section of the Land Use Table and then, he thinks it is up to the Board, with all the tools at their disposal, to determine whether that is valid or not.

Chairman Morse feels they should not have to seek out an attorney's help every time the Board has a question because it increases the length of the process by at least a month. He believes the Board needs to make decisions one way or another. David feels that what may save the Board's time and the attorney's time for things like that, is for them to get a narrative together and email it to Matt and/or himself and then at least from that, the Town can then make some determination. David also said he wants to look at the ordinance and go back and go through the definitions.

Mike feels once they submit their narrative, they will see what the response is and go from there. He agrees with John and feels they do not need to engage attorneys for each question that comes up. David stated that if some determination is made by the Board, it should be carried out and reviewed in other future projects that are similar or put it in the Code somehow if possible. Matt agreed with that as long as the projects were the same request, more or less.

Mike then closed with that he will get an email to Matt with regard to an amendment or narrative and Jeff will come up with the formal responses to the Underwood comments and they will plan to be back in two weeks.

4. Other Business:

Matt briefly commented that the Stonewood Enterprises, LLC have a public hearing on March 10th. After reviewing the Ordinance more, they have to have a full preliminary plan submitted which this shows the criteria and a checklist. He said Dwayne and himself found a checklist and provided a copy to the Board and essentially the Board needs to vote that the items on the checklist have been included. He said he will notify the applicant's engineer that it will be pushed out to a later date until a preliminary plan is deemed complete by the Board.

5. Adjournment:

Matt Cahoon motioned to adjourn the meeting at 8:45 p.m.; Anne Whitten seconded the motion.
VOTE: 3-0

Matthew LeConte
Planning Coordinator

Respectively submitted,
Jennifer Berard, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

David Ballard

Scott Strynar

Mark Cahoon