

**Town of Auburn  
PLANNING BOARD  
PUBLIC HEARING  
January 8, 2014**

**Present:** Ron Poltak, Chairman. Alan Côté, Vice Chairman, Karen Woods and Paula Marzloff, Members. Jim Tillery and Steve Grillo, Alternates. Minutes recorded by Denise Royce.

**Also Present:** Rene LaBranche

**Absent:** Russell Sullivan, Selectmen's Representative.

Mr. Poltak began the hearing by informing everyone present of the emergency exits and asked everyone to turn off their cellphones. Mr. Poltak stated that Mr. Sullivan, the Selectmen's Representative was absent from tonight's hearing and elevated Mr. Grillo to a full voting member for tonight's hearing.

**MINUTES**

**Mrs. Marzloff moved to accept the minutes of November 6, 2013 as written, Mr. Côté seconded the motion. A vote was taken; all were in favor, the motion passed.**

**ANNOUNCEMENTS/CORRESPONDENCE**

There was no correspondence to be read.

**GENERAL BUSINESS**

**Excavation Pit Renewals:**

**Alfred Sanborn  
Excavation Pit Renewal  
Tax Map 11, Lot 19**

Attorney Forbes indicated that Mr. Sanborn was supposed to be here but that his attorney, Attorney Roy was present. Attorney Roy indicated that Mr. Sanborn was supposed to arrive at his house at 7:00pm but that he never showed up and was unsure if it was a health issue. Mr. Poltak believed they could begin the meeting at this time.

Mr. Poltak began the discussion by saying that, at the last meeting, the Board took action and mailed a letter and did so absent of having an appreciation that a letter went out notifying all of the excavation pit owners to discuss the excavation pit renewals. With that in mind, Mr. Poltak understood why everyone was not present at the last meeting and would like to take it up tonight with everyone involved and would like to ask the Board to rescind the actions of the Planning Board at the last meeting which would also include pulling back the letter that was sent out in that regard indicating what that action was.

**Mr. Côté made a motion to rescind the actions of the Planning Board taken at the November 6, 2013 meeting along with the letter that was sent out to Mr. Sanborn. Mr. Grillo seconded the motion. All were in favor and the motion passed.**

Mr. Poltak turned the meeting over to Mr. Sanborn's attorney, Attorney Roy. Mr. Poltak asked the attorneys present that he would like to understand the working relationship between Mr. Sanborn and Mr. Rolfe regarding responsibility, obligation and gentlemen's agreement so he will have some familiarity. Attorney Roy began by saying that he understands that Mr. Sanborn is the owner of the property and he has delegated to Mr. Rolfe the authority to operate and manage the excavation site for many years. Attorney Forbes has prepared a letter of which the Board is in receipt of and he has reviewed the letter with his client and believes it accurately states and provides the general history and present status and proposed action and non-action with respect to the excavation site. Mr. Poltak asked Attorney Roy if his presentation was complete. Attorney Roy indicated that he was only retained a few days ago. Attorney Roy further explained to the Board that there is a long history and believed that in June of 2004 or 2006; Mr. Sanborn addressed the Board and indicated that materials had been removed from this site going back 50 years then. He understands that there was a period during which nothing was done where no material was being removed and there was no operation on the site in 1998. A restoration plan was submitted at that time and a permit was requested and granted at that time and was renewed annually. Presently, Attorney Roy believed that there was no material being removed from the site and was unsure of what to say at this time. Attorney Roy believed that a site plan is in the process of being prepared and is partially completed and will take a little review and effort to reduce this to a complete restoration plan. Mr. Poltak said that is the same view the Board has. Mr. Poltak asked the Board if they had any comments. None were noted. Attorney Forbes wanted to comment and stated that there has been a long term relationship between Mr. Sanborn and Mr. Rolfe's company where there is no written agreement. There has been a history of excavation at the site and that there have been permits granted by the Planning Board dating back to 1977, 1978 and 1979. At one point on one of the permits it states that seven (7) acres were going to be excavated. In 1998, Mr. Sanborn comes back before the Board and goes to several meetings and describes the area that was going to be excavated. The Board requested a plan and it is unclear what the plan is but there is a plan of which Attorney Forbes believes is the only plan that was approved. Attorney Forbes went on to say that in the application Mr. Sanborn filed that he stated that approximately 50,000 cubic yards would be excavated over the course of 15 years. Attached to the permit is a restoration plan that was approved by the Planning Board on June 10, 1998. It calls for removing or just pushing aside the topsoil and restoring the topsoil and seeding it.

Attorney Forbes went on to say that she prepared a letter to the Board to summarize the history of the excavation pit and tried to respond to some of the questions that were raised at the September 4<sup>th</sup> meeting and the letter dated September 6<sup>th</sup> which asks to revise the excavation plan to show the site conditions. They have a sketch and part of the Planning Board's rules ask that the restoration plan be at the same scale as the excavation plan so they have hired a surveyor who has gone out. The surveyor has not completed this work and frankly after seeing Stantec's report where it recommends a \$214,000.00 bond which in her review of the other excavation files this Board has never come near ordering. Attorney Forbes further indicated that they have asked the surveyor to go out and point out what has already been restored in compliance with the 1998 site plan. They see it as two issues, one, there is a certain area that was permitted, based on the 1998 plan, and has it been restored and if not, what are the requirements to make it to that level because the permit that was approved anticipated 15 years

of excavation and they are actually right at that point. The second part is to show on the plan that the excavation has gone beyond what was permitted. Mr. Duval has done probes in the area to show how much soil has been regraded or pushed back into place and they do not have the total results from that. He has anticipated that he would have it in a few weeks to give them a full site plan that shows the existing conditions which will show the tree line, the extent of the current excavation and hopefully where the topsoil has been replaced as well as super imposing where the permitted area was on that. The Board has also asked for information on the amount of gravel and soil that has been removed in the area. Attorney Forbes pointed out that Mr. Rolfe has not been the only person that has removed fill and gravel but has been the primary person and the exclusive person for a long time. The numbers over the 15 years has coincidentally been 54,000 cubic yards which is close to what Mr. Sanborn projected. Attorney Forbes further pointed out that Mr. Sanborn has been the one that has pulled the pit permits and Mr. Rolfe has been the one who has done the excavating.

At this time, Attorney Forbes talked about the test pit sites and believed that the Board was waiting on the existing conditions plan which should be available shortly. Attorney Forbes further talked about future excavating sites and had met with Mr. Sanborn in early October and that he is leaning on no longer doing any more excavating but that having Attorney Roy along will help.

Lastly, Attorney Forbes talked about the issue about the acceptable buffer and vegetative restoration details which will be a function of finding out to what extent has been restored and presenting a plan to the Board for the area that was not included in the 1998 plan. Again, by having Attorney Roy involved will help in moving this along.

In closing, Attorney Forbes stated that the Cease and Desist that nothing has been removed from the property and nothing has been excavated and that the Board members were on the site and has seen the site while on the site walk back in October. Attorney Forbes indicated that the last time anything has been removed or excavated from the site was November 27, 2012 and believed that in a letter from Stantec that it was believed it was two (2) years but in fact has only been one (1) year. Attorney Forbes informed the Board members that they will need a little bit more time but believed that with Attorney Roy involved she will be able to get some answers.

Mr. Poltak thanked Attorney Forbes and Attorney Roy for their input. At this time, Attorney Morrisette spoke on behalf of Mrs. Silva and noted that 54,000 cubic yards had been removed but wanted to know what was put back in and had a concern about ground water and restoration. Stantec came in pretty fast and did a thorough over view. Attorney Morrisette pointed out that he was unaware of the notification that was sent out to appear on November 20<sup>th</sup> and would like to move this along as the cold weather is coming in. Attorney Morrisette informed the Board members that he would like to know what is going on and would like to have a conversation with Mr. Rolfe and his attorney as to the damages to Mrs. Silva's property. Attorney Morrisette went on to say that he would like an itemization of what has been taken out and would like to see it move along in a reasonable fashion. Attorney Morrisette thanked the Board and ended his presentation.

Mr. Poltak stated that he would like to turn to the Board to allow them to respond and comment at this point. Mr. Côté stated that he understood the concern to have test pits done before the ground freezes and obviously the Board would like to have a plan in place to see what the limits are to what has been excavated. Mr. Côté believed that the biggest area of concern was that it

was really close to the property line and we don't want to excavate onto the abutters property but along the tow of slope near the existing property line he believed was the area that was of greatest concern. At this time, Mr. Sanborn entered the meeting. Mr. Côté's question to Attorney Forbes is that, would they be amendable to do test pits and that the town could point out the area to do the test pits. Attorney Forbes asked Mr. Rolfe and he indicated that they could do them any time. Mr. LaBranche asked Mr. Côté where and Mr. Côté stated that he believed in the area where the tow of slope is near the existing property line. Mr. Côté asked Mr. LaBranche to coordinate it with Ms. Royce so that she could coordinate it with Mr. Rolfe to get a machine out there to see if there is something buried there that is not supposed to be. Mr. Côté suggested doing it within the next 2 to 4 weeks before the ground freezes and asked Mr. LaBranche if that seemed reasonable. Mr. LaBranche said yes. Mr. Côté believed that would give Mr. Duval enough time to do the boundary work and to come up with a restoration plan and suggested that they direct their surveyor to review our excavation regulations that detail what we require for a restoration plan. That way it will help him put together a restoration plan that will meet the town requirements. Mrs. Marzloff wanted to see a plan on paper. Attorney Forbes indicated that they do have a preliminary sketch. Discussion ensued with regard to the \$214,000.00 restoration bond and Mrs. Marzloff explained that it was based on our engineer's recommendations of what it would cost to restore this site assuming that the material would be hauled in. Attorney Forbes believed it was an assumption based on aerial photographs that didn't take into account the piles of topsoil that was pushed to the side or the areas that had been reseeded. Further discussion ensued with speaking with Stantec to revise the estimate. Ms. Woods would like to see the test pits done quickly and would like a better understanding of what has been done with regard to additional work or what's there on site. At this time, Mr. Poltak asked Mr. LaBranche for his comment. Mr. LaBranche explained that he understands the concern of what has been done and what they assumed and that they assumed that the site had been excavated and would require hauling in loam and to spread three (3) inches per the town regulations. However, if Mr. Rolfe has indicated that they have loamed a bunch of areas so that when the test pits are done they can check out the areas that have been restored and take that into consideration to revise the estimate. Attorney Forbes asked Mr. LaBranche if he has done test pits at other pit locations. Mr. LaBranche stated that to his knowledge he has not. Mr. Poltak pointed out that relative to preparing a restoration plan that to his knowledge they have no experience with a restoration plan in Auburn so they are treading new ground. Attorney Forbes did not want her client to be the test. Mr. Poltak also added that the Board has conducted a site walk on all three (3) sites and that there is no serious scar on the land and that the excavation on the land has been handled quite well.

Mr. Poltak also wanted to point out that the Planning Board would not be engaging itself with trying to pursue or try to reach any accommodation relative to the trespass issue as that is not in their area of jurisdiction. It is in everyone's best interest to move as quickly as possible before the winter weather arrives. The remainder of the survey and restoration plan will be responded to as soon as they receive it. Mr. Poltak believed that they all should be of the understanding that every effort would be made to complete this in a timely fashion and relative to this site they should all be in agreement that no further excavation as far as from an extraction point of view and that the permit as it relates to that is a non-issue. Mr. Poltak also further suggests that as far as the Cease and Desist that they will relieve them from the Cease and Desist so that they can get the material that is simply stored on the property done as soon as the test pits are done. Mr. Côté also wanted to add that provided that the test pits don't come up with something that has be removed because they would then need the materials to fill the holes back in. In closing, Mr. Poltak believed that everyone was on the same page on what was going to happen and what needed to be take place.

Attorney Morrisette disagreed that the Board did not have jurisdiction with regard to the trespass and understood that they have spoken to town counsel and that was the Board's view but wanted it made clear that he disagreed. Attorney Morrisette wanted to be informed if anything is to be removed from the Sanborn pit. Mr. Poltak asked Attorney Forbes if she wanted to respond to that. Attorney Forbes did not believe this was the venue to respond to that. Mr. Poltak asked only relative to what it relates to what is stored on the property.

Mr. Poltak believed this ended the discussion tonight. Attorney Forbes asked the Board if they were going to place this on the agenda for a date they would all be informed with now. Discussion ensued with regard to when they would be returning and believed that December had too much going on with the holiday. It was decided that they would be placed on Wednesday, January 8, 2014 meeting.

The next meeting regarding the Sanborn Excavation Pit will be held on Wednesday, January 8, 2014.

At this time, the Board took a three (3) minute break before starting the Public Hearing.

### PUBLIC HEARING

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Patty & Sheila, LLC  
346 Hooksett Road, Tax Map 31, Lot 11  
Major Site Plan Review – Medical Office Building  
Auburn Family Medical Center

Jay Heavisides began by saying that they were before the Board about 15 months ago and they are picking up this presentation from the last time. Mr. Poltak indicated that the Board was familiar with the presentation. Mr. Heavisides stated that at the last meeting there was a title issue that delayed them from coming back as there are four (4) tracts and at the last transfer it was left out. Since that time, they took the review that Stantec did and have addressed those items. At that time, they also received three (3) variances of which was a variance to construct a medical office building with a floor area of 7,904 square feet which exceeds the maximum of 3,000 square feet allowed for an Office Establishment, a variance to allow lot coverage by impervious material equal to 69.1% where the maximum allowable is 40%, a variance to allow the side setback to be 30 feet for the west and northwesterly property line along the state right-of-way in a Commercial Two zone. These variances were granted in August 2012.

Mr. Heavisides stated that Stantec had provided a very lengthy review letter of which most of them had to do with the fact that they could not bring the site into total compliance with the regulations for which is the reason for obtaining the three (3) variances. Mr. Heavisides indicated that they have worked it out and improved it and have submitted a letter and are asking for an additional ten (10) waivers on top of the three (3) waivers submitted with the last application. Mr. Heavisides asked the Board if they wanted him to go through each waiver. Mr. Poltak said no because he would like Stantec to complete their review but that they would probably accept the application at the close of this presentation. Mr. Poltak asked if everything was the same as the last application. Mr. Heavisides stated that everything was exactly the same. Ms. Woods asked if they had a tenant for the building. Mr. Heavisides indicated that they did not have a tenant as of yet. At this time, Mr. Poltak asked Ms. Royce to forward all the previous minutes to the Board members for review.

Mr. Poltak asked if there were any abutters. Mr. Moy asked about hours of operation. The Board stated that they could discuss hours of operation. Mr. Côté asked what their hours of operation would be. Mr. Heavisides stated that previously they had talked about if there was going to be a lab that they would open at 6:00am until 5:00pm/6:00pm. So if they could get it approved for these hours then they would come back before the Board if it were going to change once they have a tenant.

Mr. Moy believed that if it was all remaining the same then he did not have an issue.

**Mr. Côté made a motion to accept the application as complete for the Auburn Family Medical Facility, 346 Hooksett Road, Tax Map 31, Lot 11. Ms. Woods seconded the motion. All were in favor and the motion passed.**

**Mr. Côté made a motion to continue the Public Hearing until December 18, 2013 for the Auburn Family Medical Facility, 346 Hooksett Road, Tax Map 31, Lot 11. Ms. Woods seconded the motion. All were in favor and the motion passed.**

Mr. Poltak informed everyone present for this Public Hearing that this application has been continued until Wednesday, December 18, 2013 at 7:00pm and that this would be their only notification.

**ADJOURN**

**Mr. Côté moved to adjourn the Hearing. Mrs. Marzloff seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:18pm.**

*The next Planning Board meeting is scheduled to take place on Wednesday, January 22, 2014 which will be held at the Town Hall, 47 Chester Road.*