

**Town of Dresden
Dresden Board of Appeals
P. O. Box 30
Dresden, Maine 04342**

**Meeting minutes for October 20, 2020 at Pownalborough Hall
Continuation of Appeal for Heather Beasley (owner of Beasley-Ballard Gravel Pit)**

Present – Board of Appeals (BOA) members - Steve Collemer (Chairman), Kevin Campbell, Jon Madore, Lorna MacKinnon and Scott Silverman.

Others present – Heather Beasley (appellant), Edward Dardis (Attorney for Ms. Beasley), Jack Shaw (abutting gravel pit owner) John Rzasa (1st. Selectman), Allan Moeller (2nd. Selectman), and Shari Lilly (recording secretary).

Residents – Kim Rzasa, Cindy Moeller, Gorham Lilly.

Others – Dick Condon.

The public hearing continuation was convened at 6:02 p.m. by Chairman, Steve Collemer. Appeal request of Heather Beasley dated September 25, 2019. The Pledge of Allegiance was recited.

Steve informed all those present that we are still following the guidance from the Maine CDC and Governor Mills implementation of social distancing and face coverings. He then requested that all cell phones be silenced during the meeting.

First order of business was to vote on and sign the minutes of the August 25, 2020 public hearing. Kevin noted a error on page 2 for a change of the lot number from 149 to Lot #49. Steve stated that the change had been made. With that noted, Kevin motioned to approve the minutes as written; Jon seconded. The motion was approved by all those present and voting. (Lorna did not cast a vote.) Steve then requested that the Board members sign these approved minutes as well as both the February workshop and the January hearing minutes as they had not been signed previously after approval.

#2 – *Missstep on Saturday, Oct. 17 site review* – At about 8:00 am, Steve opened emails from attorney, Ed Dardis and others in regard to the difficulty of having a site walk at the pit because of the heavy rains, so Steve made the decision to postpone the site review. He contacted as many of the interested people that he could, but not knowing if the word had gotten out, he went to the site to make sure he could tell anyone there that the site visit had been postponed. However, when he got there, Heather was in disagreement about allowing the site review. She was unsure that permission had been given to go down to her pit, but Mr. Dardis stated that he had publicly said he agreed to allow it and he signed off on it. However, he had not communicated with Heather that he asked to postpone the site visit due to rain. Heather said she wasn't against a site visit if it was just the BOA. But if all the public was going to be allowed, it gave her concern about liability with a crowd of people, plus the equipment that she has in the back pit. She doesn't feel it would be a controlled situation having people going all over her property, 'gawking' at what she has there. Steve told her that we (BOA) couldn't control that as the town attorney had given the advice stating it would have to be open to the public, so we have no control who would attend as it's considered a public process. The Board needs to see the property issues discussed such as the erosion, property lines and how much the rangeway has been dug out. Mr. Dardis said that even in the courts, there are site reviews held, but not all of them are open, and he feels Heather has a good point. Steve said he would have to get back to the town attorney, Jessica Avery, to discuss the points presented so he can give everyone the information and Mr. Dardis said contact can be made between everyone. He added that he thinks the site visit can be limited to the public. Steve inserted that Heather is saying she doesn't mind a site walk, to which Heather referred to pit #1, but she wants to restrict it as to attendance. Heather said she is concerned about the danger of the area from the weather as she hasn't been allowed to do any erosion control and feels there is a potential danger.

Jack Shaw, the abutting property owner adjacent to the Beasley pit, would like to invite anyone who would like to come to his property as they can get a 'birds-eye' view from there. It gives picture perfect look and can be accessed up the slope in his pit where they can see it all. He stated he

would have no concern in regard to liability as he does have a lot of insurance. Mr. Dardis said Mr. Shaw has no involvement in this issue so he doesn't affect this hearing. This is about the issue of if Heather's property is grandfathered, her remediation plan, and the actual location of Ballard Road. He further said he would like to reschedule the site review. Mr. Dardis suggested to have it within the next couple of weeks. Jon said if we can get a date set tonight, we could plan for whoever can attend. Mr. Dardis suggested either October 31 or November 07 would be good. Heather said she would like Steve to ask Jessica if it would be permissible to just have the area in question open to the Board only and not to the public.

Steve then followed next by noting that when he was at the site, Heather had also threatened to take the Board to court if she doesn't win this appeal. Heather said she was referring to the fact that this has been a restriction and has taken so long. If she doesn't win, she would go to Superior Court to appeal the BOA decision. If she wins, she's sure that others would appeal through the court, so either way she would still be stuck here with this Board. Mr. Dardis said a lot of this is just from the frustration. Which everyone is feeling.

ACTION – Steve will call Jessica Avery to discuss what has been said tonight about a site walk.

#3 – Ballard Road – Steve said he had mentioned at the last hearing about his frustration of not having the information collected by the Historian, Jay Robbins. Mr. Dardis had said he had information he would provide, but unfortunately he didn't get it to Steve. He noted that he will come up with the paperwork he has and make sure to get it to Steve. He said that some of the information is in the 'Blue notebook'. Steve asked him if he had ever talked to Mr. Robbins to which Mr. Dardis said he has not. Steve remarked that they would probably disagree on the information, but Mr. Dardis expressed that they both must have used the same resources of information. Mr. Dardis added that his facts show evidence that actually there is no rangeway. Steve then mentioned that the Town is dealing with the courts in reasserting claim of Ballard Road. Mr. Dardis stated that court action has nothing to do with the BOA.

Mr. Dardis noted that the State Legislature, he believes in 1997, said that rangeways are abolished after 10 years from that date, unless the town acted to take jurisdiction by accepting the road, which the Town of Dresden Selectboard didn't do. Was there a 'laying out' of a roadway over the rangeway? Mr. Dardis said it appears that due to a conflict between Dresden and the Lincoln County Commission, it ended up with the Commission that decided to do a layout of a 3-rod road (16' on each side) back in 1838. He added that rangeways are usually wider than roads. Jon wondered why the Town hasn't established it.

Heather stated she had planned to put up a gate at one time when she was leaving to go out of state, but the CEO, James Valley, asked her to hold off on the gate as the town planned to have the rangeway/road issue settled by September of 2017. She mentioned that Allan Moeller (3rd. Selectman), also knew about this. Mr. Dardis stated that the Ballard Road is actually not where the town thinks it is. The road is off about 50 - 75'. He added that it all depends on the laying out of the road. Jon asked if Jay Robbins would be helpful, but Mr. Dardis replied he wouldn't. All information he has indicates that the town has given up all rights, or at that has discontinuance.

Allan Moeller, speaking for the Road Commissioners, said the Ballard Road was only discontinued for maintenance. The Town still claims Ballard Road as a town road that is not maintained. It is a town road, not a rangeway. Mr. Dardis again stated that the Town is wrong as to where it is and when they find out, they won't be happy. It is actually closer to Jack Shaw's about 75' to the South. Jack Shaw then asked what ever happened to the 150' setback from his land. What's happened to the road he has used for years?

Steve said we are discussing this in separate areas due to the number of topics involved in the appeal filed by Mr. Dardis. It is actually several appeals so that's why we are taking them separately.

#4 - Remediation – Rejection of proposed plan – Steve gave copies of the updated Findings' of Fact draft he will be referencing. Heather asked if the original remediation plan could be re-read. She prepared a plan and spent a lot of money preparing to do the work. Steve said he had previously received a large packet (about 65 pages) from Jessica Avery & Ed Dardis containing all the paperwork provided. However, Mr. Dardis was unsure if he had seen and approved all of it, so he was supposed to get back to Steve, but he hasn't as yet. Steve asked if he needed more time to look it over. Mr. Dardis said he would want to do that, so Steve allowed him the opportunity to look over his packet. Heather requested a copy for her records also. Steve chose a few of the

pages in regard to the remediation. Mr. Dardis had a computer issue and doesn't think he has the packet so Steve will send it to him again.

ACTION ITEM – Mr. Dardis to look for the email Steve had sent him containing the specified packet.

ACTION ITEM – Steve to send a copy of the packet to Heather also.

Findings of Fact – Second page (part A) in regard to Parties Involved – Steve reported that abutting landowners, Peter and Mary Walsh have sold their property. We need to make sure the new owner(s) is aware of the issue, so he'll ask Michael (Town Administrator) to notify the owner. Kevin asked if the CEO should be on this list. All members agree that he should since he wrote all the violations. Under Part E., Steve said prior to getting the package, he couldn't really find anything referencing a remediation plan, but then he found a letter from Mr. Dardis sent to the Town Office dated August 21. It was a 2-page paper with a drawing from their surveyor, Mr. Colby. This was not considered a proper plan. The Town had replied to Heather on September 05 that she needed to provide more information on her remediation plan with more specifics.

Heather wants to go back to the initial violation of May 15. She had talked to the CEO to ask about setting 50' back from the abutter to put in a new road. She had the area surveyed, going 50' from the property line, but then it was rejected. He said she could, but then she couldn't because she didn't get the okay after her plan was rejected.

Steve wants the Board to look over his FOF draft and please give him any feedback. Any errors, corrections needed or questions would be helpful. This will get us going further on this issue.

#5 – New Violations – Steve has received two (2) new Notices of Violation, but has only received one letter of Appeal. He has the Notice of Violation and the appeal letter for June 10, but only the Notice of Violation for May 27. Mr. Dardis said that he believes both appeals were in the same letter which had been emailed. He noted that they are almost identical except for a few changes from one to the other and perhaps that is why Steve thought it was only one and maybe he should double check his email. Heather said her copy does have both on the same email. Mr. Dardis said he would resend it to him.

ACTION ITEMS– a.) Have Board members get back to Steve on the Findings of Fact.

b.) Set a workshop to go over all the information we have so hopefully we can finalize FOF.

c.) Schedule a possible final public hearing for the appeal to deliberate and vote so we can have all the public stuff completed.

d.) Prepare a document on how we voted and why.

Heather once again mentioned that she has been in contact with DEP who had asked her why the erosion wasn't fixed. She told him due to the SWO. The DEP representative thought that was only for the trucking, but Heather said it was for any work in the pit. She wants the Board to know that erosion has taken place over the past 1 ½ years.

Jack Shaw mentioned that in 1980, he was turned in to the DEP and it cost him \$33,000.00 in fines. He also said he has surveys to prove his lines are correct that the Board can look at. He asked why the encroaching on his property isn't being taken care of.

Kevin asked if the site walk would take place prior to the workshop. All members agreed it should.

Action:

Steve will poll all those concerned for a workable day and time for the site walk and the workshop.

Motion to adjourn by Kevin; seconded by Jon and approved by show of hands of all those present and voting at 7:15 p.m.

Respectfully submitted,
Shari Lilly (recording secretary)

APPROVED BY:

Steve Collemer, Chr

Jon Madore

Kevin Campbell

Scott Silverman

Dresden Board of Appeals