

Town of Dresden
Board of Appeals
Workshop minutes for November 23, 2020

Board members present – Steve Collemer (Chair), Kevin Campbell, Jon Madore, and Scott Silverman.

Others – Allan Moeller (3rd Selectman), Cindy Moeller, Gorham Lilly, Heather Beasley, Jessica Lowell (KJ News) and Shari Lilly (recording secretary).

Steve opened the workshop at 6 p.m.

He began by explaining to everyone in attendance that this is a **NO COMMENT** Workshop which meant that attendees were invited to listen to BOA discussion, but that no comments, questions or testimony would be allowed until the next public hearing, and that it is an opportunity for the Board members to focus on the Findings of Facts, without interruption, to help with the discussion at a future public hearing. The appellant did not comply. Steve passed out papers to all members in regard to the agenda he has for this workshop, as well as one that references the appeal timeline.

Findings of Facts Worksheet.

Include the CEO as one of the parties involved as he issued the Violations and Stop Work Order. Get the name of the new owner of the abutting property formerly owned by Peter and Mary Walsh.

ACTION: Steve will ask the Town Clerk, Ann Pierce, for that information.

The timeline needs to be included, especially due to delays caused by the Pandemic and guidelines.

Item #3a. - Land Use & Development Ordinances are those that we will need to adhere to in regard to the appeal. In the initial verbage, the CEO did include the correct verbage as to which section of the ordinances he was referencing. Kevin asked if there may have been a misinterpretation – does the SWO mean the whole area and is it all work? Is it an error or omission? The question is if the violation was in one area or the entire pit. What was the interpretation?

ACTION: Steve will contact MMA to see how we should address that. Jon agreed that perhaps it should not have applied to the entire area as it only affected one specific area. We must agree on the Findings of Facts and make any necessary changes.

Kevin asked if the pit was in violation at the time the first ordinance was adopted. He stated that, if so, then the area that did not meet the new ordinance setback would be grandfathered. If none of the pit violated the new ordinance then there would be no need to grandfather anything. Any area of the pit that was not in violation would not have a grandfathered status. Also, when new/updated ordinances were adopted, did that cause an area of the pit to be in violation? If so, then that area may become grandfathered at that time. If not, there is no grandfathering. There wouldn't be a setback prior to the ordinances being adopted. It's the ordinance that creates the setback. The grandfather status only means that the town recognizes that an area of the pit doesn't meet the newly adopted ordinance requirements and that the area can stay that way but can't be expanded to further violate the requirements.

ACTION: Scott will research previous versions of the ordinance prior to 1992. Kevin said grandfathered would only apply to the area that is in violation. The rest of the area cannot change.

Stop Work Order – Kevin feels the Select Board shouldn't have prevented the erosion control. Ordinances do require it to be done. Steve noted that the DEP was involved and they are less stringent than the town and were probably waiting for the Select Board to make a decision.

Jack Shaw's gravel pit had been listed incorrectly as to the Lot #. In previous minutes it was said to be Lot #47. This error has since been corrected listing the property as Lot #57, per Dresden tax map R-01.

All members are to let Steve know of anything that may need to be added or changed, etc.

Mark Stebbins memo – Steve wants to incorporate his exact statement into our document. Kevin doesn't think it really clarifies anything as it is mainly generic with no hard evidence, but that is just his opinion.

Depending on where the setback was at the time of the ordinance, there may not be any grandfathering.

Continuous Operation – is there proof that the business was in continuous operation at the time of the ordinance in 1992. Scott said it would probably depend if the date of the grandfathering was prior to the ordinances. Jon asked if there is a business permit with this. Steve said we can check this for the next public hearing. Scott noted that Sect C. -c. Continuous Use – there are no receipts verifying continuous use. Steve said it's up to the appellants to show any proof. Kevin asked if we need to go back to 1974 or the current 1992 ordinances?

Kevin read from the 'Blue Notebook' in regard to the ordinance explanation about the setback distances for 1974. and pointed out that only if an area of the pit is not in compliance with a new ordinance requirement would there be something to grandfather. Steve noted that the SWO referred to the property lines. Kevin asked if that would be referring to the property lines or the road. Jon asked if we would have to figure that out, but Steve said it would be up to the appellants for the burden of proof. If the road ends up being a town road, would the setback refer to that?

Steve noted that this is an 'administrative appeal' from the appellants. When asked if the BOA are supposed to come up with recommendations for the remediation, Steve said that is not up to the Board. He also noted that some of these issues we may not be able to make a clear decision, but we do need to address them.

In regard to voting on the specific appeals, Town Attorney, Jessica Avery, said the Board would only need to have a majority vote even with only four (4) members voting.

The Board has to go by the ordinances as enacted after 1992 no matter how long the pit was in existence.

Ballard Road – Mr. Dardis was to forward information on this, but due to unforeseen circumstances, he will not provide the promised info until after the Workshop, so no progress was made on Ballard Road Findings of Fact at this workshop. As soon as Steve gets it he will make sure to email it to all members. Kevin noted that we really don't have any clear information on the road.

Remediation – Heather and Mr. Dardis had previously said there was no clear explanation as to why the Select Board had denied the plan that was submitted. Steve has read through a number of papers and emails all in regard to this which he has provided to the Board. He wants all of them to look over the documents that were okayed by Mr. Dardis to be included in their information. It says the town was not satisfied with the plan that was submitted. The Board cannot challenge the decisions made by the Select Board. There is a lot of detail in the documents. The way we will be able to say we feel the CEO was in error of the denial or that he didn't give sufficient explanation.

Kevin expressed that as the burden of proof is on the appellants, all the information that was brought was to provide good light for them in order to make things better for them. That is what their job is. He remarked that he didn't feel it was right for them to suppress the important information that could have been provided by Jay Robbins who the town hired to do the research on the road so this Board would have that information and then the appellants could rebut. Scott noted that Mr. Robbins must have submitted a report so he asked if it would be for public record.

ACTION: Steve will check to see if there is any report/paper submitted by Jay. However, he said, we may not be able to apply it. Kevin agrees we should be able to look at it and perhaps compare it to what the appellants have so we can get a better idea.

With no further discussion on the appeal at this time, Steve requested to move on to business pertinent to the **Board of Appeals only**.

Board membership – Steve mentioned to all that they can register to use the MMA website which he provided the link to all. He told them that it's very helpful with a lot of information. He went on to say that the Article 3 of the Town Ordinances gives information pertinent to BOA procedure.

State Statute provides information as to the number of board members, as well as the length of terms.

Recruitment of members – It is suggested to have five (5) people on the Board, plus alternates. Steve would like to speak to the Select Board about getting replacements for departing members as well as alternates.

He has suggested that the Chairperson be a lawyer or that someone on the Board have a experienced legal background.

Those members appointed to serve a term on the Board are to be sworn in by the Town Clerk.

He would like to make sure things are set up to have a smooth transition for any changes in membership.

ACTION: Steve will connect with the Select Board to discuss all of this.

Scott gave an explanation as to his feelings in regard to all the legal issues and that this Board doesn't have a legal assistant to rebut a lot of the information that is presented by the appellants who are supported by legal counsel at any hearings. It may come down to the Board saying their decision and then leave it up to the appellants to decide the next action. Kevin said it probably would be a good idea to have a member with legal background, but not necessarily be the chairperson.

All members agreed Steve should talk to the Select Board about recruiting new members and alternates, plus any other issues he deems would be helpful to the future of the BOA.

Next public hearing – Will schedule once we have had time to look over all the documents.

Shari Lilly (Recording Secretary)

Enclosures:

- 1.) Findings of Fact Worksheet
- 2.) Timeline

Steve Collemer, Chr.
Madore

Scott Silverman

Kevin Campbell

Jon