Monday, July 27, 2020
Belmont Corner Meeting House
Belmont, New Hampshire

Present: Chairman Peter Harris; Vice Chair Ward Peterson; Members Michael LeClair, Gary Grant, Richard Pickwick, Rick Segalini, Jon Pike, Ex-Officio; Alternate Member Dennis Grimes.

Staff: Dari Sassan, Rick Ball.

The Chairman called the meeting to order at 6:00 pm and welcomed those in attendance

1. **Plan Submission Meeting and Public Hearing – Tap Public House Inc.:** Request for site plan approval to allow outdoor seating, expand the existing use to include the downstairs and add parking spaces. Property is located at 930 Laconia Road, Tax Lot 122-057-000-000 in the “C” Zone. PB # 0320P.

   The applicant requested to table the application until the August Planning Board meeting.

   **MOTION:** Mr. Pike moved to continue Tap Public House Inc. to the August 24, 2020 Planning Board meeting.

   The motion was seconded by Mr. LeClair, and carried (7-0)

2. **Plan Submission Meeting and Public Hearing – Blue Sky Enterprises:** Continuation of a request for Earth Excavation approval to transfer 2007 Earth Excavation approvals to Mountain Made Materials. Property is located at 224 Hurricane Road, Tax Lot 231-014-000-000 in the “R” Zone. PB # 0520P

   Mr. Howard Warren of Blue Sky Enterprises and Mr. Jake Anderson of Mountain Made Materials were present for this application.

   Mr. Warren gave a brief history of excavation and reclamation on the property. He said that the application before the Board is a paperwork exercise that will result in Mountain Made being the permittee when they take ownership of the property. Mr. Warren said there will be no change in the permitted activities on the site.

   **MOTION:** Mr. Segalini moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional
information shall be requested as necessary and must be submitted in a timely manner to complete review and act on the application. The Board shall act on this proposal by 9/26/2020 subject to extension or waiver.

The motion was seconded by Mr. Grant and carried. (7-0)

Chairman Harris stated the following definition will be used to determine if the applications before the Board tonight have a regional impact. He explained that in order to provide timely notice, provide opportunities for input and consider the interests of other municipalities, the Board shall act to determine if the development has a potential regional impact as defined by RSA 36:55. Impacts may include, but are not limited to: relative size or number of dwelling units as compared with existing stock; proximity to the borders of a neighboring community; transportation networks; anticipated emissions such as light, noise, smoke, odors, or particles; proximity to aquifers or surface waters which transcend municipal boundaries; shared facilities such as schools and solid waste disposal facilities.

**MOTION:** Mr. Pike moved that the proposal does not have a potential regional impact.

The motion was seconded by Mr. Segalini and carried. (7-0)

The chairman opened the public hearing.

There were no abutters present.

It was confirmed and agreed upon that the entrance had been brought up to specification.

Discussion surrounding the various dates of permitting, compliance hearings and Alteration of Terrain through the NHDES ensued.

**MOTION:** Mr. Segalini moved that the application be found substantially in compliance with the following items:

1. Conformance with the prior conditions of approval.
2. Operational impacts of the project conform to the description and commitment offered during the prior review process.
3. Required security is in place.

And that the application be granted Final, conditional approval as it appears to meet all of the technical requirements of the Ordinances and Regulations of the Town of Belmont with the following conditions:

4. Permit transfer requires maintenance of security in a form approved by the Town.
5. Only one pit or quarry shall be open and active at any point in time.
6. All existing conditions remain in effect except where previous conditions of approval conflict with February 24, 2020 approval, in which case 2020 approval shall prevail. No amendment was made by this action.

7. Application for the next compliance review hearing shall be submitted to the Board no later than September 1, 2023.

The motion was seconded by Mr. Pike and the motion carried. (7-0)

3 Plan Submission Meeting and Public Hearing – George Condodemetraky: Request for site plan approval to fill 4,500 sf. Property is located at 69 Main Street, Tax Lots 122-053-000-000 & 122-059-000-000 in the “C” Zone. PB # 0920P.

Mr. George Condodemetraky presented the application.

The proposal is to connect two parcels that are owned by the Condodemetrakys by filling an area of about 4500 sq. ft. with fill coming from his home.

MOTION: Mr. Segalini moved that the request to waive full-sized Plans (Site Plan Review Section 5.D.1) be granted.

The motion was seconded by Mr. Pickwick and the motion carried. (7-0)

MOTION: Mr. Segalini moved that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted in a timely manner to complete review and act on the application. The Board shall act on this proposal by 9/30/2020 subject to extension or waiver.

The motion was seconded by Mr. Grant and carried. (7-0)

MOTION: Mr. Pike moved that the proposal does not have a potential regional impact.

The motion was seconded by Mr. Grant and carried. (7-0)

Chairman Harris opened the public hearing and asked if there were any abutters or others wishing to speak.

There being none he closed the public hearing.

MOTION: Mr. Pike moved that the application be granted Final, conditional approval as it appears to meet all of the technical requirements of the Ordinances and Regulations of the Town of Belmont with the following conditions:
Conditions (precedent) to be complied with or secured (as appropriate) prior to plan being signed and decision recorded. No site improvements or approved uses shall commence and no building permit shall be issued until plan is signed and decision recorded.

1. This action is based on a plan set dated 9/4/2019
2. Submit final plans (7 paper, 1 reduced). Submit one copy for approval prior to submitting all required copies.
3. Security (reclamation): Prior to any site work security shall be provided for closure in case of abandonment. Applicant shall submit engineer’s cost estimate of closure costs to the Town for approval and the owner shall post required security in the form of a letter of credit or cash in an amount to be set by Town based upon engineer’s estimate.
4. Payment of Notice of Decision recording fee. Check made payable to BCRD in the amount of $16.60
5. Applicant shall sign and return copy of Land Use Inspection Schedule.
6. Conditions precedent shall be completed no later than 7/27/2021. Active and Substantial development of the approved improvements shall occur no later than 7/27/2022 and improvements shall be substantially completed by 7/27/2025 or shall be in accordance with the approved buildout schedule.
7. Compliance hearing shall be held by Board as necessary.

APPLICANT SHALL TAKE SPECIAL NOTICE: NO USE/WORK MAY COMMENCE UNTIL ALL PRE-CONDITIONS ABOVE HAVE BEEN SATISFIED. CONTACT THE LAND USE OFFICE WITH ANY QUESTIONS. COMMENCING WORK OR USE PRIOR TO TOWN AUTHORIZATION SUBJECTS THIS APPROVAL TO REVOCATION, AND OTHER ENFORCEMENT ACTION AND DAILY FINES.

Construction conditions to be complied with once plan has been signed and decision recorded (shall comply with full standards of the Town’s Project Security/Construction Process):

8. Construction shall be monitored and certified by a consultant appointed by the Board at the applicant's expense if any.
9. Construction phase and permanent erosion control and stormwater management shall be installed and maintained in accordance with local, state and federal requirements,
10. Obtain successful milestone observations from Land Use Staff as listed on Land Use Inspection form and additionally and separately all required inspections by the Building Official, Fire Department and Public Works Department.
11. Occupancy/use of improvements requires submission of 2 paper original record (as-built) site plans including structures, utilities, roads, drainage and other site improvements

General conditions to be complied with subsequent to plan being signed and decision recorded:

12. Approved uses include: Placement of fill to level a 4,500 square-foot area.
areas for a minimum of 2 years after project completion for reoccurrence of growth.
14. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
15. Vegetation and landscaping shall be maintained, shall be kept in a sightly manner and not allowed to deteriorate.
16. No changes shall be made to the approved plans unless application is made in writing to the Town.
17. The Planning Board shall have the power to modify or amend its approval upon its own motion to do so.
18. Approval is subject to expiration, revocation and changes in the Ordinances. This conditional approval shall expire on 7/27/2021 unless all conditions are met or an extension is applied for and granted in accordance with the Regulations. Notice to the applicant and/or a public hearing are not required for the Board to determine that a conditional approval has expired. Reapplication in the case of an expired conditional approval requires a new application meeting all applicable Regulations.
19. Where there is a conflict within the information submitted by the applicant, the town shall determine the correct information to be applied.
20. Operational conditions of the Town and other agencies shall be met.

The motion was seconded by Mr. Segalini and carried. (7-0)

Mr. Condodemetrakly complimented the Board on the positive changes and improvements it has made over the years.

4. Plan Submission Meeting and Public Hearing – Fantasy Factory LLC: Request for site plan approval for a single-family subordinate unit, outdoor inventory parking and tenant/customer parking. Property is located at 48 Dearborn Street, Tax Lot 123-028-000-000 in the “I” Zone. PB # 1020P.

Mr. Sassan stated that Mr. Gary Anderson owner of Fantasy Factory, LLC has requested that the application be continued to the August 24, 2020 meeting.

Discussion ensued regarding the logging that has taken place on the property and the issues with Department of Revenue Administration. Further the Board had asked Mr. Anderson previously to “tighten up” his plan to address the specific uses that he intends to do on the property, rather than the current laundry list.

Mr. Sassan explained that in order to meet the State’s requirements, site plan review will be required. Mr. Anderson cannot become compliant with the DRA without it.

MOTION: Mr. Pike moved to continue Fantasy Factory LLC to the August 24, 2020 Planning Board meeting.

The motion was seconded by Mr. Grant and carried (7-0)

5. Public Hearing – Pike Industries: Continuation of a request for Earth Excavation approval to increase quarry depth. Property is located at 308 Depot Street, Tax Lots 235-058-000-000, 232-031-000-000 & 236-014-000-000 in the “I” & “R” Zones. PB# 1019P.
Attorney Robert Dietel, Jeff Cloutier, Cory Gucwa, Dick Fraser, Tim Rath and Dave Maclean were present for this application.

Chairman Harris read the following history of this application into the record:

TIMELINE TO DATE

1) 8/22/18 – ZBA Meeting – Variance granted allowing excavation below the seasonal high-water table because the site is not actually located over land classified as stratified drift aquifer.
2) 4/18/19 ARC Meeting – Proposal presented as represented to the Planning Board
3) 6/24/19 - PB Meeting – Case accepted by PB and determined to be a development of potential regional impact
4) 7/22/19 - PB Meeting – Extensive presentations were provided by Pike’s excavation, blasting and geohydrological consultants. Public hearing opened; comment received. Board moved to continue to August and to initiate 3rd party review process
5) 8/26/19 – PB Meeting – Pike requests continuation to October PB Meeting and ultimately continues to December 16, 2019 to allow for thorough review
6) July-September 2019 - Hire Reviewers
   a) categorize concerns expressed by staff, Board and the public
   b) identify relevant fields of expertise
      i) Law
      ii) Geohydrology
      iii) Blasting
      iv) Economics
   c) locate experts in those fields
   d) receive proposals from consultants
   e) contract with reviewers
      i) Attorney John Ratigan, DTC
      ii) Fred Bickford, HydroSource
      iii) Jay Hodkinson, GZA
      iv) Russ Thibeault, Applied Economic Research
7) 10/29/19 – Meeting between Land Use staff, HydroSource (Fred Bickford), Pike (Jeff Cloutier) and Pike’s Hydrogeologist David Maclean
8) September – November 2019 – 3rd party review reports submitted
9) December 2019 - Review 3rd party reports and finalize conditions of approval
10) March 2020 – Receive well monitoring plan, send to Town Hydrogeologist for review and approval
11) July 2020 Receive Design Review and Reporting Program and Liability Coverage information

PRIMARY DOCUMENTS TO DATE
1) Original Pike Application and Plans (sent prior to the June meeting)
2) Staff Report for June meeting
3) Staff Report Addendum for July meeting
4) 9/11/19 HydroSource Review Memorandum
5) 11/6/19 Correspondence involving HydroSource and David Maclean, Pike’s Hydrogeologist,
regarding potential acidification of water accumulating in the proposed pit
7) Letter from Tim Rath to Jay Hodkinson summarizing blasting information
8) 11/15/19 GZA Blasting Review Report
9) 12/13/19 Email from Attorney Dietel summarizing Pike’s intent to address various aspects of operation.
10) 3/10/2020 Water Monitoring and Reporting Program
11) 7/1/2020 Design Review and Reporting Program
12) CRH Americas, Inc. Pollution Legal Liability Coverage Summary

Attorney Dietel introduced himself and stated that Pike’s team of experts as well as the Town’s experts were present. He gave an update as to why he is here, what the review involves and what he feels remains to be addressed. He said it is important that the record specifically reflect that Pike does not believe this process has ever been necessary because it has a site that Belmont has historically recognized as a gravel mining operation. Attorney Dietel said that this is a process which is not required by Belmont’s earth excavation regulations. He said that he was perplexed after the December meeting with the far-ranging scope of the questions that were outside the scope of the Town’s earth excavation regulations require, and he added that the use is permitted in the district where it is located and it satisfies all of the Town’s earth excavation regulation requirements.

Attorney Dietel said that under the earth excavation regulations, the review that is before the Board is required to address required changes that the Board feels may require reasonable modifications. He said that Pike values its relationship with Belmont and is here tonight in good faith to work through where proceedings left off in December. Attorney Dietel said two primary things that remained were what does the future hold for this site and concerns about the water quality monitoring plan.

Attorney Dietel said that there will be annual reporting requirements and a compliance hearing every five years, but that Pike has also put together a design review process in consultation with the Town Planner and Town Counsel in recognition of the fact that Chairman Harris and others may be looking for something more. Attorney Dietel said that the design review process is intended to go above and beyond what is required by creating a design charrette process involving the Town Planner, the Land Use Technician and representatives from Pike, the Planning Board and the Board of Selectmen to think through the future of the site with consideration of how the Master Plan and regulations may have evolved and what the impacts to abutters may be.

Attorney Dietel said that the previous version of the water quality monitoring plan had received favorable review from the Town’s hydrogeologist, but that the Board expressed additional concerns. In response, he continued, Pike has significantly enhanced that plan to address some issues. Attorney Dietel said that one of the enhancements was to look at the existing stock of private supply wells within 2000 feet of the operation, establish baseline conditions and commit to a long term well monitoring program. He said that there would also be similar public supply well monitoring, substantial environmental monitoring and water level monitoring of the wetlands located to the west of the site. Attorney Dietel said that an ongoing annual reporting process would look at trends and provide the Town with a complete picture of what is going on with wells in the area. He said that the program also sets forth an impact response protocol. Attorney Dietel said that none of this is required by NH DES, and that any reasonable reviewer would
agree that these are substantial measures intended to specifically address the concerns of the Board. He added that these measures come at a substantial cost to Pike.

Attorney Dietel said he has worked with the Town Planner and Town Counsel on a very comprehensive set of conditions touching on a wide range of issues addressing best management practices, fugitive dust control, fueling, enhanced and ongoing monitoring and security provisions. He said that, at the end of the day, the conditions speak for themselves and that he and Pike’s experts are prepared to answer any questions.

Mr. Pike asked who is monitoring the water that is pumped out of the pit for nitrates. He said that tonight’s meeting is the biggest Planning Board meeting in the 20 years he has been on the Board. He said that he knows the operation makes people’s houses shake and he said his fear is that we are going to ruin the water system. Mr. Pike said that he looked at the $36 million insurance policy and concluded that it is “not even close.” He said his understanding is that the floor of the quarry will be at around 200 feet. Attorney Dietel stated that the excavation goes down 100 feet.

Mr. Pike said that when blasting occurs there are bound to be some nitrates in the water. He said that after 20 or 30 years this “body of nitrates” is going to grow because his understanding is that nitrates do not dissipate unless they dissipate in the flow of the water. Mr. Pike said that if one takes out 10 acres of dirt, 100 feet deep, one will need to pump, adding that he did not like the response from Pike’s “environmental specialist” when the specialist said he went to Connecticut and looked at a quarry but that the quarry had been vacant for 35 years. Attorney Dietel asked Mr. Pike if he was referring to Russ and Mr. Pike said that he was. Attorney Dietel said that Russ Thibeault is the Town’s expert. Mr. Pike says he understands that, adding that he did not understand that at the time of Mr. Thibeault’s presentation, but that he now understands it after looking at how much Pike has paid for third party review expenses. Attorney Dietel said that Pike has spent a great deal of money on experts. Mr. Pike said “that’s one thing that probably you didn’t need to do.”

Mr. Pike said that the gravel operation requires reclamation but the quarrying operation does not and that the community will be stuck with a hole in the ground that will fill up with “subterranean water.” Additionally, continued Mr. Pike, “all the nitrates in this that are left are going to go into the water table, across the street from your operation which you are in now, you are higher, the subgravel water is going to carry that probably into our current water supply that we draw off now at Pout Pond to feed the water to the Town of Belmont. Again, $36 million [will not] fix that. Never mind that water levels up on Hurricane Road if you look at this the average well is around 210 feet, there’s some less, there’s some more, and I have looked at that. So you take the height of the land where they are and the height of the land where you are and subtract 100 feet, you are below, in a lot of cases you take the topsoil off, you take 20 feet of topsoil off the gravel and you drop that depth down, so you are probably going to hurt the water these artesian wells are drawing from the bedrock.”

Mr. Pike said he has never been in the earth excavation business and he said he applauds the Pike team for all it has done. He said he has been in the “very simple automobile business,” repairing Cadillacs and Buicks. He said that whenever his clients got in an accident, they would turn to him and to the insurance company. He said the insurance company would seek to reduce the amount of money that it paid out by using less expensive parts. Mr. Pike stated, “I don’t like this insurance company idea at all.” Mr. Pike
said that when “something has the ability to affect the public health of a community, I believe it is this Board and the Select Board’s job to try to stand up and make sure that doesn’t happen and somebody’s got to really show me how this can’t happen.” Mr. Pike said that the phrase “the Town monitors” appears in multiple locations. He said that if the Town is monitoring, that means the Town is paying. Mr. Pike said the small amount of money the Town receives for the materials being extracted is “peanuts” and that he would “rather leave it.”

Mr. Pike said that he is not saying no to the applicant, but that somehow somebody needs to ensure him that when he is dead and gone someone will not approach the Board and say that it threw Belmont under the bus because a water system is needed. Mr. Pike said that we’ve seen it and he said that Attorney Dietel has probably seen it through cases that he has been involved with. He said that if it happens on Hurricane Road or “anywhere within the circumference of this area,” people are going to come to the Town, and the Town will then go to Pike, who will say that the insurance policy will handle it. Mr. Pike referred back to what he called his “car story” as it pertains to insurance.

Attorney Dietel said that there was a lot he could say in response. He identified Mr. Pike’s comments as the type of conversation he had hoped to have at this meeting. Attorney Dietel said that Mr. Pike strikes him as someone who cares deeply about his community, and he added that it is that same community which enacted the Zoning Ordinance, and expressly allowed the proposed activity in the zones in which it sits. Attorney Dietel said that while Board Members may have their own personal feelings about the proposal, the Zoning Ordinance, the Earth Excavation regulations, and RSA 155-E allow it. Attorney Dietel said that he did not bring up this fact to imply that Pike does not care about the Board’s concerns, but rather because it is a reality that needs to be recognized. Attorney Dietel said that Mr. Pike’s concerns are most appropriately addressed by a hydrogeologist. He said that, to date, Pikes experts, and more importantly the Town’s experts, have determined that those concerns are not valid given the geology and the circumstances.

Attorney Dietel said that following the last hearing, he gathered that although the experts have determined that water quality concerns are not present, the Board did not want to accept that, and in response, Pike enhanced the water quality monitoring plan to provide what he described as an unprecedented level of water monitoring precisely to address these issues. He said that folks within the monitoring radius who elect to participate in the well monitoring program will have information that he himself would love to have about his own well. He said that if what he is saying turns out to be false, there will be a 5-year compliance hearing process which will provide an opportunity to address the discrepancy. Attorney Dietel explained that Pike is paying for the annual monitoring, not the Town, adding that it will occur every year at huge expense to Pike. Attorney Dietel said that these substantial measures create a situation where, even if Board Members do not accept what is being said, they can rest assured that there will be future opportunities for accountability and corrective action.

Mr. Pike asked, “What about that gray water that you’ve got sitting in that swamp right now?” Attorney Dietel said that there is an existing concern about the surrounding area filling up with water and he said he could not disagree more strongly about the premise of that concern, adding that the science does not back it up. He said the Town’s process is not the only permitting scheme Pike must undergo and that stormwater is monitored. Mr. Pike said that he is not talking about stormwater, but that he is instead talking about water being pumped out of the existing pit, adding that Pike is currently pumping 24 hours
a day. Attorney Dietel proposed the possibility of conducting water quality testing of the water that is pumped from the pit. Mr. Pike expressed concern that the water in the wetland to the west of the operation may be contaminated and that it may in turn be contaminating surrounding groundwater resources.

Attorney Dietel said that Pike’s hydrogeologist and the Town’s hydrogeologist are both in attendance and both have gone on record in saying that the proposed provisions are adequate. Attorney Dietel said that if Selectman Pike is asked by citizens what he did to protect water quality in this area, he can say that by accepting the water quality monitoring plan that has been put forward the Board has agreed to a comprehensive, substantial plan that goes above and beyond anything that has come before it. Attorney Dietel said that he specifically spoke with Dave Maclean and Jeff Cloutier about coming back to the Board with a plan that sets the gold standard and one which nobody can legitimately question.

Mr. Segalini asked Mr. Pike if he would feel more comfortable if the wetlands water were to be tested. Attorney Dietel said that such testing is unnecessary, and that the measure which has already been put forward of monitoring water levels in the wetlands goes above and beyond, and through that measure, the Town will be made aware of fluctuations that may occur.

Mr. Peterson asked who will pay if there is a problem, stating that there is nothing in Pike’s monitoring plan that addresses what happens once Pike has identified to the Town that there is an issue. Attorney Dietel said that the impact response section of the plan addresses that matter in that it requires that Pike report adverse findings to NH DES and to the Town for consultation as to whether any corrective action is necessary and, if so, to come to an agreement on the appropriate response. In addition, continued Attorney Dietel, if wells show potential adverse effects associated with blasting, it will be further identified in the annual report and owners of impacted wells will be notified. Attorney Dietel said that he does not believe one could ask for more than requiring an operator to conduct monitoring and share that monitoring with the understanding that Pike will have to come before the Board for a discussion about what needs to be done in response to any adverse findings.

Mr. Pike expressed concern that there may still remain disagreement about who is responsible and what remedy shall be offered. Attorney Dietel said that if Pike is called in to a Planning Board meeting to discuss a problem, it must appear as a matter of compliance with its approval. Attorney Dietel said that Pike would come to the Planning Board with data in hand, and that the Town’s planning staff will also look at the data and make a determination as to whether Pike is responsible. He said that if Pike is responsible, the plan requires corrective action to make it right. Attorney Dietel said that, on the other hand, if someone is claiming Pike destroyed his or her well, and the data does not support that claim, anyone would agree that Pike should not be held responsible.

Mr. Grimes expressed concern about the increment of time between the point at which a problem is reported and the point at which it is remedied. He provided an example of someone having no water for up to a year while the problem is being discussed. Attorney Dietel suggested that a timeframe could be set within the impact response section of the plan that states how soon Pike must come in to address adverse findings, but that absent a timeframe, the planning staff and Board can call Pike in whenever they chose to do so.
Mr. LeClair said that he was not aware that the operation does not need this permit, as stated by Attorney Dietel. Attorney Dietel said that he brought up that point at the first hearing. He said that upon discovering that the site is not situated above the stratified drift aquifer, Pike approached the Town to address the mapping error. Attorney Dietel said that the idea of putting forth an amendment to the regulations to allow for corrections to the map was brought to the Board and rejected. Subsequently, continued Attorney Dietel, Pike was directed to remedy the matter by applying for a Variance, which Pike did, and which was granted. Attorney Dietel said that Candace Daigle, the Town Planner at the time, then took the position that Pike must apply for an earth excavation permit, because she saw it as an expansion. Attorney Dietel stated that this is not an expansion as defined by the town’s regulations and by state law, and that in accordance with state law, this operation should be considered grandfathered. He said that he made clear to Ms. Daigle at that time, and that he remains adamant, that an earth excavation permit is not required. Attorney Dietel said that was not the end of the dialogue and that because the former Town Planner instructed Pike to follow that process, Pike agreed to do so, and that it is Pike’s hope to resolve the matter outside of the courts and come to a common understanding about what is best for the site.

Attorney Dietel stated he is confident that the alternative would be to go to court where it would be determined that the permit is unnecessary and the operation would proceed without any of the Town’s conditions in place. Attorney Dietel said that is not how the relationship with the Town has been and that Pike would much prefer to have a defined structure given where we are today and all the resources that have been expended. He said that his preference would be to work through this process, but that those legal points are points that they will make if they have to. Mr. Pike said that although the site has been operating as a gravel pit for many years, blasting is a new undertaking for the site. Attorney Dietel explained that Mr. Pike’s assertion is incorrect. Mr. LeClair said that the activity may not have changed, but he asked if Attorney Dietel is certain there have not been any changes to the monitoring of the local wells. Attorney Dietel explained that grandfathered status has no correlation to monitoring protocols.

Chairman Harris said that the applicant is dealing with a Board composed of individuals who are not experts, and who are absorbing expert testimony. He said that the Board may need time to digest what it has heard in order to formulate its questions. Chairman Harris said that although the operation has been identified as occurring outside of the stratified drift aquifer, the materials will be transported through the aquifer. He questioned whether contaminants such as nitrates and nitroglycerine from the excavation site might adhere to outgoing earth materials and subsequently be released into the aquifer during transport.

Attorney Dietel said that such a concern is not supported by science. He said that when Pike went for the Variance, it was Pike’s own suggestion that the Board consider whether the application should be noticed as a development of potential regional impact and that it was indeed noticed as such. Attorney Dietel said that the Lakes Region Planning Commission did not have concerns and that the Commission noted specifically that it was in agreement with the mapping that showed the operation as being outside of the stratified drift aquifer and that the operation complies with the earth excavation regulations. He said that the law allows the operation and that Pike’s experts and the Town’s experts are in agreement that the science supports the operation.

Attorney Dietel said that when he hears a concern like the one that trucking of materials across the aquifer may lead to its contamination, he has to say, and he wants the record to specifically reflect, that none of the experts on either side have supported the notion that it is a problem, and that the Town’s regulations
allow this. Chairman Harris said that if Pike were to put a roadway in it would contain spillage and provide a surface that is better for plowing. Attorney Dietel said that DOT has reviewed the proposal and that no such concern was raised.

Mr. Grimes asked if DES has looked at the proposed operation. Attorney Dietel reminded Mr. Grimes that the proposal has already undergone the alteration-of-terrain approval process and that DES reviews the operation every 5 years. Attorney Dietel said that DES is not afraid to put people through the ringer, but that DES has not raised the concerns that this Board has raised. Mr. Grimes asked for clarification that DES is not concerned about contaminants that could be present. Attorney Dietel explained that DES has the ability to require water monitoring and that DES is not requiring it of this proposed operation, adding that the proposed monitoring is in response solely to the Town’s concerns. Attorney Dietel asked that the Board consider whether the concerns they are relaying are backed up by actual science.

Mr. Peterson said that he has been here a long, long time and that he has worked a lot of years with Candace Daigle, the former Town Planner. He said he asked her how we had arrived at this point and he discussed that experts had testified. He said that Ms. Daigle provided some information from the NH Municipal Association referencing case law. Mr. Peterson read that “the Board may rely on personal knowledge of the area, but not in the face of uncontradicted expert testimony unless the Board can adequately explain in a written decision why. The Board has considerable discretion to choose between competing expert opinions.” Mr. Peterson stated that, to his knowledge, the Board has not heard any competing expert opinions. He said he understands that everyone has their own issue, but that as a Board Member, you have to take the testimony that’s given and make a decision.

Mr. Pike asked the existing Town Planner if he has looked for experts to give advice and opinions. Mr. Sassan said that the Town has four experts assigned to this case, and he identified them as a hydrogeologist and a blasting expert—both of whom he identified as being present at this meeting—an attorney and an economic analyst.

Mr. Peterson said that a discussion about how exactly a well replacement will be covered is an example of an appropriate discussion to have. Mr. LeClair proposed adding another section to the well and water quality monitoring program entitled “corrective actions” which would further delineate specifics regarding the administration of corrective measures. Attorney Dietel said that he could add more detail to the well and water quality monitoring program document along those lines. He said that he has to be careful that something like that is not binding in a way that is not helpful, adding that the way the proposed program is currently structured provides the Town’s staff with the discretion to make a determination regarding whether Pike is responsible for reported problems.

Mr. Pike said that he would like for Pike to report any negative findings or complaints to the Town within 48 hours of becoming aware of it. Mr. Pickwick asked whether Pike is currently monitoring the effluent that is pumped from the pit. Mr. Maclean said that monitoring wells around the site have been monitored and that they are remaining stable. Mr. Pickwick said he believes that Pike would want to obtain baseline data before stating that the operation will not cause harm. Attorney Dietel said that the proposed monitoring plan is new, but that Pike has conducted the necessary research, through its team, to substantiate its position that the proposed operation will be safe and compliant.
Mr. LeClair said that this possible approval protects abutters and provides corrective action at a rate that we have never seen before. He proposed forgetting about the past and looking forward in a positive way. He said that the Board, abutters, the Town and surrounding towns are seeing proposed corrective measures and monitoring that we have never had access to. Attorney Dietel said that he has looked at other approvals and that the proposed conditions are much more extensive than anything the Board has previously required. He said that this is something with which people can sleep soundly at night.

Chairman Harris opened the public hearing and asked members of the public if they would like to speak. Ms. Lori Chase expressed dissatisfaction that she had not yet been afforded an opportunity to speak, adding that forcing her to wait created the impression that her comments were not important. She said that she has lived on Glenridge Road for over 25 years and that she has experienced a level of shaking in recent years that she had previously not experienced. She said that she is concerned about her foundation cracking, especially as a result of increased depth of excavation and that she would like to hear about that.

Mr. Anthony Reals said that he is new to the State and the Town, but that his ex-wife is a paralegal so he knows “how the whole thing works.” He said that if Pike is so confident in its operation, it should set aside a lot more money and meet with the Town every so often to receive orders on what needs to be fixed. He said that insurance is a game and that everyone will tell you what you want to hear to get what they want, but when there is a problem, nobody knows your name. Mr. Reals said that he has invested a lot of hard work and money to improve his home and that business owners want to make as much money as they can and pay out as little as possible to make themselves richer, and us poorer. He said that he intends no disrespect, but that as a common man, he knows this game better than most people. Mr. Reals said that if Pike is so concerned, and so assured that nothing will happen, it should set aside money to be used to remedy damages that the Town attributes to Pike. Mr. Reals said that everybody is talking about this test, and that test, and talking about experts, and he added that experts will say what you want them to say. He said that is what you pay them for, just like in criminal court and every other court.

Ms. Mooney said an escrow account needs to be set up. She said that she doesn’t believe in bonds because “lawyers have a way of writing their bonds.” She said that she would prefer an escrow account. She said it is important that it be held at one of our local banks. Ms. Mooney said that, as someone who has owned a public utility, she knows that clean water is a precious commodity. She said that “we’ve seen a lot, in the southern part of the State, a lot of the chemicals that have seeped into people’s waters and not all of it has been corrected.” Ms. Mooney referred to the response of DES and DOT and said “as a Select Board, we know that that is like deaf ears. We can’t even get minute things addressed by DES or DOT in this Town, so I don’t hold a lot of real positive feelings in regards to that.”

Ms. Mooney said that the Select Board will get the calls when “this all goes through,” adding that if her well runs dry, “you better hope that you’re out of Town, because I’ll be on your doorstep if I don’t have water due to blasting. That’s for sure.” She said “the other thing that I totally disagree is the grandfather issue and I wouldn’t be afraid of taking that to court. I have owned a sand and gravel business, and I totally disagree with the analogy, and maybe somebody needs to take it to court to get it clarified.” She said that it would be different if Pike were “taking off a mountain.” She said that if they were blasting a mountain, she could understand that more, but she said they are heading down and “unfortunately, all the specialists in the world can stand here and give us their analogies, but that’s all it is. Nobody at the last meeting, when I questioned it, could guarantee that there is not going to be something that happened. If all these
specialists are willing to guarantee, I’m all for it because then it will be their dime.” She said that she gets a lot of calls from tax payers and she hates to think about getting a call at 2 AM from someone saying that they are out of water and they have to go to work tomorrow. Ms. Mooney said that she knows she likes her showers and she likes being able to turn her faucet on, and that she can “just foresee something that could easily happen here in this Town as what we’ve been seeing the last few years in the southern part of the State.” She repeated that she thinks an escrow account should be set up and that if there are issues, they can be addressed immediately and “we will discuss them afterwards if need be.”

Ms. Elizabeth Austin asked what she would have to do to prove that damages to her foundation are attributable to the operation. Mr. Grimes asked that it go on record that Ms. Austin abuts the pit. Attorney Dietel said that wells go dry all the time for reasons unrelated to blasting. He said that the reasonable question is whether Pike is putting before this Board sufficient safeguards to determine whether something Pike has done has caused damage. He asked the Board to consider that there is no history of concern that the Town’s experts have flagged. He said that there have been multiple previous hearings on this case and that Pike’s experts, including its blasting experts, have provided testimony and shared years of seismographic data. He said that Pike already has in place notification protocols, and procedures for monitoring seismic impact and air blast overpressures. He said that a blasting plan is in place specifying when abutters and other parties will be notified. He said that, like the water monitoring plan, it is intended to not leave this up to guess work. He said that he is sympathetic to the concerns, but that one has to look at what is reasonable under the given circumstances.

Attorney Dietel said that, if someone had a foundation issue the first question would be whether it is reasonable that it could have been caused by Pike given the seismic and air blast overpressure readings. Attorney Dietel said that a property owner would have the right and ability to look at the data to draw his or her own conclusions. He said that if the Town’s experts state that in order for Pike to have caused some identified damage certain readings must be exceeded, and those readings are not exceeded, Pike cannot reasonably be blamed.

Mr. Pike asked Attorney Dietel how he would feel about Pike placing $250,000 in escrow in case there was a claim. Attorney Dietel said that there is a significant expense to that and it doesn’t address the concern being voiced regarding acceptance of accountability. He said that establishing an escrow account doesn’t change the fact that accountability must be proven before accessing the funds. Attorney Dietel said that Pike’s $36 million is sufficient to cure any problems that might occur, and that it would be unreasonable if the Town were to take the position that insurance is of no value. He said we do not have a legal system in which you just say, “okay, pay up,” but rather a system where you have to provide proof of a cause and effect relationship. Attorney Dietel reiterated that the annual reporting process and 5-year compliance hearings provide an opportunity for the Board to evaluate whether Pike’s claims have held true, and to address it if they have not.

Mr. Pickwick asked if the insurance would remain in effect for the duration of the operation, and Attorney Dietel confirmed that it would. Attorney Dietel read the following condition of approval proposed in the Town Planner’s staff report: “Applicant shall maintain insurance coverage for excavation site in a manner comparable to that specified in the insurance policy summary provided to the Land Use office on July 3, 2020. Applicant shall provide updated copies of insurance coverage to the Town annually and within 30
days of a request at any time. In the event of a cancellation of insurance coverage, the Town shall be notified 30 days prior.”

Ms. Mooney began to speak and Attorney Dietel asked that she identify herself for the record. Ms. Mooney said “Chairman Mooney.” Attorney Dietel asked what her role is with the Town and she replied “I am the Chairman of the Board of Selectmen as well as a taxpayer.” Attorney Dietel asked her if she is a member of the Planning Board and she said that she is not. Ms. Mooney presented a theoretical situation in which an abutter to the operation experiences a well failure. She said “now we’ve got to go through this long process of finding out if it’s due to the blasting or it’s due to just the well going dry, or a failure, or whatever. In the meantime, she has no water. If there is an escrow account then this can be addressed.” Ms. Mooney said that otherwise, it cannot be determined within 48 hours whether Pike’s operations are attributable, and that the abutter will call the Town because the Town ultimately is the entity approving or not approving this. Attorney Dietel expressed confidence that Ms. Mooney certainly must not be suggesting that Pike automatically be assumed to be at fault whenever accused. Ms. Mooney said that she was not suggesting that. Attorney Dietel reiterated that if a complaint is lodged, the Town will be able to review data and make a determination as to whether it is scientifically feasible to attribute responsibility to Pike. He said that is an appropriate mechanism, and that the alternative would be to say that parties cannot engage in an activity which is permitted in the Town. He said that if there is concern that the Zoning Ordinance is not the way it should be, it is not appropriate to take that out on an applicant. Attorney Dietel said that at the end of the day, this is an activity that is allowed and Pike is not trying to say that people’s concerns don’t matter. He said that Pike feels that property values and interest do matter and that Pike has the right to use the property in a way that is permitted in the Zoning Ordinance.

Mr. Grimes said that he is an engineer, so he looks at things from that perspective. He asked whether Pike is paying for baseline data that is going to look at every well within a certain distance and monitor these wells and try to understand the amount and quality of the water. Identifying himself as an engineer once again, Mr. Grimes said that he would be out at a certain distance from the blasting site looking at every foundation out there, seeing the quality of that foundation and asking whether it can withstand a blast. Mr. Segalini, Mr. LeClair and Attorney Dietel reminded Mr. Grimes that well monitoring will occur in accordance with the monitoring plan and that blasting was covered extensively by Mr. Tim Rath. Attorney Dietel said that in looking at blasts dating back to 2013, he can confirm that no blast has created any possibility of damage to nearby structures. Mr. Grimes questioned whether blasts below a certain level are incapable of causing damage. Attorney Dietel said that the Town’s expert has looked at the blast plan and accepted it. He said that this is hard science that is supported by the Town’s expert.

Ms. Chase said that her concerns should not be discounted simply because she was not in attendance at previous meetings. Attorney Dietel said that he is not trying to discount Ms. Chase’s concerns and that the proposed conditions of approval will actually be a help to the community in addressing problems. Mr. Reals said his house was built in 1993 and damage to the foundation cannot be attributed to old age. Attorney Dietel said that he can’t know what quality of cement was used to pour Mr. Reals’ foundation, whether it was poured properly or any of those types of things, but he can know what the seismic and air blast overpressure readings were, adding that if the data does not support that Pike is at fault, Pike cannot be blamed.
Chairman Harris asked if noise levels associated with blasting will increase as depth increases. Mr. Rath said that the sound levels would decrease slightly as depth increases. Chairman Harris said that Pike gave a good presentation and that the Board received answers to some of its questions. He said the Board needs some time to consider what has been discussed prior to proceeding. Attorney Dietel said that the application has been ongoing for over a year and there has not been a situation where the Town’s experts have asked for information which was not provided. He said that he has maintained an ongoing dialogue with the Town Planner and that at the end of the last meeting he was very specific in asking what questions remained to be answered. He said he has not heard anything tonight that touches on anything that has not been given an opportunity to be addressed. He asked that the Board deliberate at this meeting and render a decision that is consistent with the Town’s earth excavation regulations. Attorney Dietel said that if there is something specific that Pike missed, by all means it can be addressed.

The Board provided the following list of items about which it would like to receive more information, or greater clarification

1. Greater clarification surrounding process for instating corrective actions
2. More information regarding an escrow account
3. Testing of water being pumped from the pit
4. Information about potential impacts to the aquifer associated with trucking materials from the site.
5. The Board requested a site visit.

Mr. Gordon Austin expressed concern that hazardous waste may be transferred to his property if automobile tires happen to transport contaminated soil from the Pike site to his driveway. Attorney Dietel stated that such a concern is not realistic.

MOTION: Mr. Pike moved to continue Pike Industries, Inc. to the August 24, 2020 Planning Board meeting.

The motion was seconded by Mr. Grant, and carried (7-0)

OTHER BUSINESS:

CONCEPTUAL – FANTASY FACTORY LLC. TAX LOT 123-028-000-000:

Mr. Sassan said that Mr. Gary Anderson had agreed to postpone his conceptual discussion until a future meeting.

BOARD'S ACTION-MINUTES:

MOTION: On a motion by Mr. Peterson, seconded by Mr. LeClair, it was voted to approve the minutes of the June 22, 2020 meeting as submitted. (7-0)

STAFF REPORT:
Mr. Ball asked the Board if it would be acceptable to place a driveway on Church Hill in a different location than what was presented on the approved subdivision plan. The Board asked if the Public Works Director is in approval of the new location and Mr. Ball responded that he is. Board Members expressed unanimous consent that it would be acceptable to relocate the driveway.

**ADJOURNMENT:**

**MOTION:** On a motion by Mr. LeClair, seconded by Mr. Pickwick, it was voted unanimously to adjourn at 8:42 p.m. (7-0)

Respectfully submitted,

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Dari Sassan, Town Planner