TO CANDIDATES FOR BOARD OF SELECTMEN
FROM JOHN P. FEENEY
RE A HISTORY OF THE ARMSTRONG SITE

INTRODUCTION

As candidates for Selectman, you have some familiarity with major issues in town such as the proposed gravel pit/ soccer field project on Ferry Street. As a resident near this project, I have an extensive knowledge of the site and the recent proposal. I offer you my account of that history so that you can form a comprehensive understanding of the project and its implications.

You will notice that town committees previously identified a different section of Mr. Armstrong's property for athletic fields. Those fields would have been operational in 2010.

- As soon as Mr. Armstrong purchased the property, he began illegally removing sand and gravel. The Building Commissioner twice cited him for violations and on the third occasion he was issued a Cease and Desist order.
- He then twice applied for earth removal permits, and withdrew them apparently because he realized the town would not grant such a permit in an R-1 zone.
- Unable to mine sand and gravel on his own, he then proposed a project with Marshfield Youth Soccer. This project is a front for a sand and gravel mining project. The land has been appraised for $900,000. Mr. Armstrong originally sought to remove 551,000 cubic yards in this project. He also testified to the ZBA that he planned to sell the sand and gravel for $6 per cubic yard. The project he designed would have produced a gross profit of **$3,306,000**. The ZBA deemed that he wanted to remove an excessive amount of earth. They issued a special permit for the removal of 440,000 cubic yards. At $6 per cubic yard Mr. Armstrong's gross profit would be **$2,640,000.**
- Mr. Armstrong violated many other regulations including the destruction of protected species habitat without a permit.
- If an earth removal permit were granted in an R-1 zone, then the zoning map of the town would be in danger from similar mining projects.

The history below provides documentation for all the points cited above.

HISTORY

My family moved into our home at 376 Ferry Street in July 1970. Nearby was a 10-acre property owned and operated as a gravel pit by the Rugani Family in conjunction with small a family construction company. A few small trucks per month used that property until 1974.

After 1974 they ceased operating the parcel as a sand pit, and did not renew their gravel removal permit. In1984 they applied for a gravel removal permit to make the property more saleable. The permit was denied by the Board of Selectmen. The reasons stated in BOS Chair James Robinson's letter of denial dated December 12, 1984 still apply to the property. Mr. Robinson

wrote,

> ***"Essentially, the area in which your property is located is a residential area and the type and extent of activity you intended at the site was found by the board to be detrimental to the health and safety of the public.***
>
> ***"Of particular concern to the board was your limited ability for access and egress to the site and the safety hazards that were inevitable. Furthermore, the disruption to the peace and quiet of the neighborhood which would be caused by such extensive activity was found to be unacceptable."***

After a year-long hearing process, the gravel removal permit of 1984 was denied. A package of information from those hearings is available upon request.

Immediately north of the Rugani property was a 7-acre parcel owned by Mr. Calcagni. In the late 1990's Mr. Peter Armstrong bought the landlocked Calcagni parcel approximately 170 feet back from Grove Street, and adjacent to property owned by the Rugani family. Since Mr. Armstrong's seven-acre parcel lacked frontage, and since the DPW wanted to build off-road water retention ponds for Waltham Avenue runoff, a swap was made in **2001**. The town gave Mr. Armstrong a one-acre parcel with adequate frontage on Grove in exchange for 2 acres of land with a private easement and further conditions. Those conditions restricted the remaining 6 acres (5 of the 7 original plus one additional acre). Those restrictions were specified in the 2001 Annual Report including this passage.

> ***"It is agreed that only one single family dwelling with accessory uses and buildings customarily associated with a horse or agricultural farm will be built on the land remaining in and added to the ownership of P. A. Realty Trust, Peter Armstrong, Trustee and no additional land may be added that uses access through Parcel B on the above plan."***

The parcels under discussion were in an existing Water District Zone 2, and were also in Zone 2 for a potential new well under discussion. Therefore Superintendent Jeb DeLoach of the DPW approached the owner of an adjacent landlocked parcel exploring a possible purchase. Pursuant to discussions, the DPW offered the Rugani family $75,000 for their ten-acre lot. That offer was refused in a letter dated May 31, 2005 (DPW files). Mr. Armstrong approached the Rugani family, and subsequently on **November 3, 2005** he acquired the property for $175,000. That ten-acre parcel is now the site of the proposed gravel removal / soccer fields project.

At the time of this acquisition, Mr. Armstrong stated that he bought the land to prevent a competing bid from a planned 40-B. Mr. Armstrong has repeated that scenario numerous times over the past four years. Such statements have been recorded even in formal meetings of town boards. For example, the Board of Selectmen's minutes of **October 22, 2007** state

> ***"Mr. Armstrong said that a farm is his intention for the 6-acre parcel and that he was assuming that the 10-acre parcel would end up being owned by the town. Mr.***

Armstrong indicated that he stopped a 40B from coming in."

As we all know at this time, Mr. Armstrong for the past year has been interested in excavating millions of dollars of sand and gravel from the location. I have also interviewed local residents regarding this project.

I have learned there was no competing plan for a 40-B proposal. A letter signed on March 3, 2009 by Mrs. Joan Rugani states

"There was no conversation regarding any 40-B land deal."

Unfortunately there have been other inconsistencies in statements by Mr. Armstrong regarding the combination of the 6 acre and 10 acre parcels.

Mr. Armstrong's had earlier (2001) agreed to not use the six-acre parcel to access any other parcel of land. However within several months of his second purchase on November 3, 2005, I began to observe a steady disappearance of glacial till (sand and gravel) from the bank at the side of the former Rugani property immediately adjacent to the six-acre parcel he bought earlier. It appeared to me that he was excavating the ten-acre parcel and the loaded trucks then exited across the six-acre parcel. That path was clear based upon truck tire marks directly from the 10-acre parcel and across the six-acre parcel. At this location one can see that over 1,300 cubic yards of sand and gravel were removed.

On **March 6, 2006** I called in a complaint with the Building Department regarding Mr. Armstrong's illegal removal of sand and gravel from that portion of the ten-acre parcel. At the time, the town bylaws would have allowed the removal of up to 10 cubic yards of till from the site per one year. The Building Inspector examined and photographed the site. The inspector also spoke to Mr. Armstrong, and requested that Armstrong cease removing sand and gravel. Over the next week, more glacial till was removed. On March 13, 2006 I filed a written complaint with the department. The Building Inspector then called Mr. Armstrong and instructed him to apply for an earth removal permit. A copy of the written complaint is available upon request. .

On **March 12, 2007** I again noticed a significant amount of sand and gravel removal. This time the removal was from the south side of the plateau area. I filed a written complaint that day. The Building Inspector visited the site that day. He wrote a letter to Mr. Armstrong again reminding him of the need for an earth removal permit from the Board of Selectmen.

"The Building Department has received a complaint from one of your neighbors stating that you are hauling gravel material out of your site. I inspected the property on March 12, 2007 and I observed the areas were material was removed. However I can not tell if it was freshly removed or not.
If you plan to remove gravel from the sight (sic) under the Town of Marshfield General

By-Law Article 20, and earth removal permit is required from the Board of Selectmen. I am enclosing sections of the By-Law for your review.
I also observed a pile of construction debris including discarded wood, toilets, and other plumbing fixtures, that pile needs to be removed immediately."

On August 24, 2007 Mr. Armstrong applied to the Board of Selectmen for a gravel removal permit seeking to excavate 200,000 cubic yards of sand and gravel.

On **August 28, 2007** I observed a 10-wheel dump truck cross from Ferry Street over the bridle trail and continue over to Mr. Armstrong's 6-acre parcel along an easement that is recorded at the Registry of Deeds. From that parcel the truck crossed onto the 10-acre parcel. The town meeting agreement of 2001 specifically bans such use of access.

On the 10-acre parcel, a front end loader loaded sand and gravel into the truck. When the filled truck departed the 10-acre parcel and it returned over the 6-acre parcel, again violating the town meeting agreement of 2001. From the 6-acre parcel, the truck then drove onto Grove Street.

I immediately returned to my home, and called the Building Department. The next morning Building Commissioner Michael Clancy called Mr. Armstrong about the complaint, and then he visited the site to take photographs. After he returned to the office, Mr. Clancy sent a **Cease and Desist Order** by registered mail.

"I inspected the property and found evidence of you removing gravel material from the banking. You are in violation of the Town of Marshfield By-Law, Article 20. You are hereby ordered to cease and desist the mining of gravel material from your property until you have the proper permit in hand.

"If you have any questions, please contact me at the Building Department. You may also appeal my decision to the Board of Appeals within 30 days."

On **October 22, 2007** the Board of Selectmen conducted a hearing on Mr. Armstrong's application for an Earth Removal Permit for 200,000 cubic yards. The hearing room was packed. I presented a package to the selectmen on the history of this parcel and also a petition from **90 residents** opposed to the permit. The applicant had a court stenographer at the hearing; town council asked for a copy for the town.

Among the many aspects of the situation to emerge at the hearing was mention of an occupied trailer on the 6-acre parcel. The Selectmen's minutes state ***"Mr. Armstrong said that the person living in the trailer keeps the kids out of there."*** A security guard for a contractor's yard is an admission that the 6-acre parcel is being used in violation of the 2001 town meeting agreement that Mr. Armstrong accepted. The agreement stated,

"It is agreed that only one single family dwelling with accessory uses and buildings

customarily associated with a horse or agricultural farm will be built on the land remaining in and added to the ownership of P. A. Realty Trust, Peter Armstrong, Trustee and no additional land may be added that uses access through Parcel B on the above plan."

As Mr. Armstrong stated, a person was living on the parcel. I am unaware of any occupancy permit issued for that trailer. **The building inspector recently stated there was no record of any occupancy permit for this trailer.**

In addition, I have seen **no evidence that a permit was issued to properly connect the trailer to a septic system.** On April 15, 2008 the trailer was crushed on the premises and later removed. Building Commissioner Michael Clancy visited the site on April 15, and he took three photographs of the crushed trailer. Copies are available upon request. They clearly show a demolished trailer.

There was another situation regarding the 6-acre parcel that occurred on **April 14, 2008**. A strange odor permeated my home on that day. I went outside to find the odor's source and located it at the west end of Mr. Armstrong's 6-acre parcel. There I found one or two truckloads of **nightsoil** - solid waste removed from a septic system. It should be noted that Mr. Armstrong's primary source income is his contracting business that specializes in septic systems. I filed an oral complaint with the Building Department. The next day Building Commissioner Clancy inspected the property. He found the mounds of nightsoil to be a violation. He called Mr. Armstrong and told him to remove the nightsoil. Within a couple days, the nightsoil was removed.

If one of Mr. Armstrong's employees deposited the nightsoil without proper instruction, then Mr. Armstrong should have addressed the matter immediately. It is inconceivable that he did not know of its presence. Since the odor was highly irritating at my home, it must have been overwhelming at his work site, and by his own admission he had a security person living on the premises at the time.

It should be noted that this violation represented a potential danger to the health of Marshfield residents. The 6-acre parcel is in a Water District Zone 2 area. Massachusetts laws and regulations strongly prohibit the depositing of nightsoil in zone 2 areas. As a septic specialist, it would seem that Mr. Armstrong was aware of those laws when he or an employee deposited the nightsoil. The Marshfield Board of Health did not cite Mr. Armstrong for a violation on this matter.

The Board of Selectmen continued their October 22, 2007 hearing until November 19, 2007. That hearing was not re-opened. On **November 5, 2007** Mr. Armstrong submitted a letter to the BOS and Planning Board stating,

"I am with drawing (sic) my application for a gravel permit at Grove and Ferry Street (sic).

That evening at a Planning Board Hearing members and staff commented on the gravel removal permit application and its withdrawal. Town planner Paul Halkiotis stated that such a use should

not be allowed in the Water Resource Protection District. Board member Parrish Smolcha said plugging that hole in the Zoning Bylaw should be a priority.

Prior to Mr. Armstrong's withdrawing of the earth removal application, the Board of Selectmen had sought input from other town boards on the proposed gravel removal. They asked the Board of Health to inspect the premises. In response the Board of Health sent this message on November 7, 2007.

> **"RE: Person living in a trailer on property of Peter Armstrong lots H12-01-9A, G12-04-02**
>
> **The Board of Health visited this site last week and noted no trailer with an individual living in it."**

In June 2008 I showed the Health Inspectors a photograph taken by Mr. Michael Clancy depicting the crushing of the trailer as it appeared when photographed the previous April 15, 2008. These letters and photographs are available upon request. The Health Inspectors responded that this trailer (and resident) was not a problem.

I continued pursuing the inaccuracy of the trailer letter. On February 16, 2009, in my presence. the clerk of the board of health searched the department's logbook for reference to the November 2007 inspection of the Armstrong properties. She was not able to find any mention of the inspection in the department's logbook. At that time Laurel Thorne, health inspector, joined the discussion. Ms. Thorne stated that she had not inspected the property, and possibly Peter Falabella made the inspection and wrote the (unsigned) letter.

On **February 19, 2009** Peter Falabella wrote a letter to me stating the following.

> **"To clarify the November 7, 2007 note to the Board of Selectmen RE: Lots H12-01-09A, G12-04-02. Please be advised that the Board of Health inspection noted that a trailer was present on the above property on November 7, 2007, but there was no individual living in said trailer."**

I questioned if Mr. Armstrong's brother (a member of the Board of Health) had any influence on their mistaken first letter. He responded, **"You have taken up enough of our time."**

At that time I took all the information from the board of health and the minutes of the October 22 Board of Selectman's meeting to the Town Administrator to correct the file. The Town Administrator indicated that the matter was going to be forwarded to Town Counsel.

In **February 2008** Mr. Armstrong filed a second application for a gravel removal permit. In that request, he was seeking to remove **600,000 cubic yards**. On March 14, 2008 Mr. Armstrong submitted a revised application. In the revision he sought to remove **575,000 cubic yards**. The

application understated the scope of the project. For example, a bond is required in the event of safety or nuisance problems. In line 4 of application regarding a bond to protect safety/neighbors of this huge excavation and sieving project Mr. Armstrong wrote regarding a potential bond, **"Existing Permits don't have them, and I will be a small operation."** There is only one other excavation permit in Marshfield. The Biagini construction firm has a much less intensive operation, and that pit is bonded.

From 2004 to 2008 the town developed plans for an addition well along the bridle trail by the turn at the old train water tower. (That well is now online.) The two parcels owned by Mr. Armstrong were projected to be in the Water District Zone 2 of the new well and also of an existing well. Therefore the Water Department developed an increased interest in preserving the land. Superintendent Jeb DeLoach of the DPW renewed his efforts to purchase this land. He spoke with representatives of the Trails and Ways Committee and the Open Space Committee. From this the town developed a proposal to purchase both of Mr. Armstrong's parcels. The concept was to locate two athletic fields on the 6-acre parcel. The ten acre parcel was to have 80,000 cubic yards of sand and gravel removed, and then the parcel would be used for trail walks - connecting to the nearby bridle trail.

The Marshfield Town Meeting of April 2008, Article 19 section C proposed the purchase of the Armstrong properties. While the committees involved could not speak publicly about the terms of the offer, the applicant's lawyer revealed those term as indicated in the minutes of the February 10, 2009 ZBA meeting.

> **"Jay Creed - The Town of Marshfield offered Mr. Armstrong $900,000 based on a 6-lot subdivision for 16 acres which we did not think was correct given the many options we had for development. The appraisal did not take into consideration the value of the material."**

While it is not in the minutes, Mr. Creed also stated his client counter offered to sell the property for $900,000 if Mr. Armstrong could retain the right to remove sand and gravel. The Open Space Committee did not accept that offer, and they withdrew the article for purchase from town meeting. As the Marshfield Town Report of 2008 states, Article 19, section C was passed over at town meeting. **Had Mr. Armstrong accepted the $900,000 offer, the town would have two new fields opening for use as of the spring 2010.**

I am concerned that Mr. Armstrong uses the 6-acre lot as a contractor's yard. Both he and the Building Commissioner agree that is the current use of the property. In the 1960s and 1970s seven acres (five acres that remain with this parcel, of the property, not the acre on Grove Street) were used as a contractor's yard by Sylvester Ray. In the 1990s Mr. Ray sold 7 acres of the parcel to Mr. Calcagni who seldom used it. Later in the 1990s, Calcagni sold those 7 to Mr. Armstrong. In 2001 the town swapped one acre on Grove Street to Mr. Armstrong for 2 acres from the 7-acre lot. As indicated above, Mr. Armstrong agreed that going forward the 6-acre parcel (5 from Calcagni and 1-acre on Grove Street from the town) land would only be used agriculturally.

There are two separate aspects to this use of the land as a contractor's yard. First, **the one-acre lot on Grove Street had no prior history of being used as a contractor's yard.** Mr. Armstrong has never applied for a non-conforming use permit in this R-1 zoning district. Yet he initiated an industrial use in this residential zone. This is a clear violation of the zoning by-laws.

The second aspect of the contractor's yard pertains to the other 5 acres. That did have a history of use as a contractor's yard. However in 2001 Mr. Armstrong entered an agreement to only use the land agriculturally. In entering that agreement he ceded his claim to a right to continue operating a contractor's yard.

After the February 10, 2009 ZBA hearing, there was a snowstorm, and I noticed Mr. Armstrong was plowing the asphalted area between Ferry Street and the bridle path. I approached him, and asked what he was doing. He replied,

> **"I am clearing the snow for a surveyor who is coming."**
>
> **I responded that "it was illegal to operate a motor vehicle on the bridle path, and there are some signs that make this very clear."**
>
> **He responded, "I am just trying to clear it for a surveyor."**

I stepped aside and using a cell phone, called the police. Mr. Armstrong then used the loader to plow the snow further to the south, going over about 10 feet of my property.

> **I said, "Peter you are on my property."**
>
> **He responded, "No, I am not."**

I went into the house to await the police officer. When officer Jason Lucchetti arrived, Mr. Armstrong had departed the premises. I recounted the incident to Officer Lucchetti and requested that he file a complaint for me to sign. He declined to do so.

In April 2008 the town's CPA withdrew the article to purchase Mr. Armstrong's 6-acre parcel and build two athletic fields since Mr. Armstrong did not accept town's offer. Shortly after town meeting, I observed Mr. Armstrong walking the two parcels with Kevin Cantwell and another man. On January 8, 2009 Mr. Armstrong and Marshfield Youth Soccer jointly filed for a special permit from the Zoning Board of Appeals.

The initial ZBA hearing was held on February 10, 2009. The original plans were fraught with errors. One error had the **entrance road crossing over the north section of my property**,. A second error had the **exit road passing over a right of way that was prohibited by a deed restriction** from use between the two parcels. A **third error had another section of the exit road**

passing over a right of way that actually was at a different location. A fourth error showed the surveyed entrance road bypassing an NStar utility pole that actually was near the center of the proposed road.

Subsequent hearings were held on March 24, May 12, and May 26.

There were also attempts to misrepresent other problems with the property. **When a resident stated that the proposed field site was immediately adjacent to a closed sanitary landfill**, the applicant's attorney attacked the man as a fool. However others in the audience then stated only a chain-link fence separated the field site from the old landfill. **Dave Daly then stated that industrial sanitary landfill sites typically have leachates with high concentrations of heavy metals** – specifically lead, mercury, and cadmium. The applicants' attorney stated the landfill was capped. I then stated that the landfill was capped, but it is not lined, and without a lining leachates could flow into the groundwater.

Abutters such as myself question the motives of the applicants. **If Mr. Armstrong wanted fields, he could have sold his property to the town in 2008.** However since he first purchased this land in 2005, Mr. Armstrong has attempted to operate it as a gravel pit. Those efforts are documented above in this report. At the ZBA hearings Mr. Armstrong testified that he expected to sell the sand and gravel from the site for $6 per cubic yard. He wanted to remove 551,000 cubic. That would produce a **gross profit for Mr. Armstrong of $3,306,000.** If creating soccer fields was his motivation, why did he want to remove 551,000 cy?

The applicant's engineer had two explanations for removing **551,00 cy**. First, he stated that this would be the maximum amount to be removed to leave the minimum depth of soil above the town aquifer. He also stated that it was the deepest possible excavation with respect to the neighboring road. A town bylaw states that the fields could not be more than 10 feet above or 10 feet below the adjacent road. Members of the audience then asked whether the minimal protection of the town's aquifer was wise, and pointed out that for fields the system would work better if the height of the field was 10 feet above the road rather than 10 feet below the road. **The ZBA apparently took these comments seriously. In their special permit, they set the volume of glacial till removed at 440,000 cy. That change reduced Mr. Armstrong's projected gross profit to $2,640,000**.

The engineer's initial **plans for the site incorporated a slope of 1 to 2 for the slopes** around the perimeter of each field. Residents expressed concern that the soft dry sand of the property could not sustain a slope with that pitch. Subsequently **the DPW Board found that the slopes needed to be 1 to 2.5 or flatter given the composition of the perimeter.** That change was reflected in the final permit issued by the ZBA.

The **applicants' engineer also underestimated traffic problems and flow**. His plans called for entering northbound traffic to immediately turn 135 degrees. Such a turn is impermissible. The volume of traffic was estimated at a couple hundred car trips per week. Residents have estimated that the traffic flow will be about **6,400 car trips per week**.

Residents then cited police accident reports that document that the section of Ferry Street under discussion is one of the most accident-prone locations in Marshfield. Resident John Romano suggested speed bumps on either side of Pearl's Corner to slow traffic. **The applicants' engineer then proposed roadway modifications including turning lanes, widening, and tree removal on Ferry Street, a scenic road.** Some of those changes are incorporated in the plans approved by the ZBA in its special permit, but residents are still concerned that the increased traffic flow along a dangerous section of road could have fatal consequences.

The applicants' engineer claimed to have conducted a sound test that demonstrated the excavation project would produce so little noise as to not upset abutting residents. **However when his data was examined, it was found that the equipment he claimed to use was actually not present on the site.**

At the initial hearing of the ZBA a number of residents including Jean Daly, Mary Taylor, and I stated that the proposed site was habitant for protected species. The applicants' representatives were incredulous toward our claim. The ZBA indicated that this was a matter that would need to determined Natural Heritage. The ZBA also decided that since residents had raised so many engineering issues that they would need to hire a consulting engineer to review the plans and work with other specialist such as Natural Heritage. The board retained Edward Pesce as their consulting engineer. **Based upon Mr. Pesce's recommendations a study by Natural Heritage documented the presence of approximately 15 breeding Eastern box turtles on the site that would be impacted. The residents' claim of habitat for a protected species was verified**.

Unfortunately Mr. Armstrong did not wait for the completion of the study before he began altering the habitat. **In March 2009, Mr. Armstrong began cutting the forest, removing lumber, altering the grade of land, and removing loam. These violations were documented by consulting engineer Edward Pesce in his May 25, 2009 report to the ZBA.**

> "The letter received from the Division of Fisheries and Wildlife indicates that the proposed site is within a mapped "Priority Habitat," which will require an application filing with the MA Natural Heritage and the Endangered Species Program (NHESP). This normally could be handled at the applicant's discretion, either before or after the Board's final decision. However, during the site visit on April 9, it was observed that significant areas of the eastern portion of Parcel G12-29-02 were being cleared of trees. This activity would require a permit from NHESP, and we recommend the applicant immediately cease work in this area, and apply for a permit with NHESP."

The final public hearing was held on May 26, 2009, and the Board voted to grant a special permit but not a variance for frontage. Their decision exceeded the applicant's proposal in many ways. 39 conditions were attached to their report.

On December 3, 2009 Mr. William Gage of MEPA conducted a hearing at Marshfield Town Hall. At that time, he reported that the NHESP studied had recently been completed and the report found that approximately 15 Eastern box turtles were breeding on the proposed site. Timing in this situation is unfortunate. The ZBA issued its finding on August 14, 2009, several months before the NHESP results were available. Had the ZBA realized the presence such of robust colony of a protected species was on the site, perhaps they would have denied the permit.

On February 4 I asked the selectmen's secretary if Mr. Armstrong and MYS had submitted an application for a gravel removal permit. She indicated that they had not done so.

In April 2009 Mr. Armstrong approached me and other gentleman by the town's retention ponds, and we informally discussed the proposed project. I expressed the opinion that he would not get all the necessary permits. Mr. Armstrong then responded that if the permits were denied, then he would sell the property to a 40B developer. He went further to suggest the 40B would be named Feeney Estates. I told him a better name would be GREED PARK.

Sincerely,

John P. Feeney