

**TOWN OF BROOKLYN  
PLANNING AND ZONING COMMISSION  
Regular Meeting  
Wednesday, November 7, 2018  
Clifford B. Green Meeting Center  
69 South Main Street  
6:30 p.m.**

**MINUTES**

- I. Call to Order** – M. Sigfridson, Chair, called the meeting to order at 6:36 p.m.
- II. Roll Call** – Michelle Sigfridson, Carleen Kelleher, Aaron Kerouac, Jules D’Agostino, Austin Tanner, Earl Starks.
- III. Seating of Alternates** – None.
- IV. Adoption of Minutes:** Regular Meeting Minutes October 3, 2018

Motion was made by C. Kelleher to approve the Minutes of the Regular Meeting of October 3, 2018. Second by A. Tanner. Motion carried (5-0-1). M. Sigfridson abstained as she had not attended that meeting.

Special Meeting Minutes October 16, 2018

Motion was made by A. Tanner to approve the Minutes of the Special Meeting of October 16, 2018. Second by E. Starks. Motion carried (5-0-1). C. Kelleher abstained as she had not attended that meeting.

- V. Public Commentary** – None.

**VI. Unfinished Business:**

- a. Reading of Legal Notice** – Read by J. Roberson. Published on Friday, September 21, 2018 and Friday, September 28, 2018.

The Public Hearing was opened on October 3, 2018.

**b. Continued Public Hearings:**

- 1. SPG18-002 Special Permit for Sand and Gravel** – FCR Realty LLC, 200 acres north of Brickyard Road and west of Day Street (Assessor’s Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot 43), Proposed removal of 97,650 cubic yards of gravel over 8.8 acres.

C. Kelleher recused herself and took a seat in the audience.

M. Sigfridson stated, for the record, that she had not attended the October 3, 2018 meeting, but that she had listened to the audio recording and feels that she is fully informed regarding what has occurred and, therefore, will participate.

Ms. Roberson gave an overview of observations from the site walk which took place on October 16, 2018:

- A portion of the access road is actually a dam and there was evidence of a recent overtopping event (on the haul road on the way into the gravel pit). This was confirmed by Town Engineer, Syl Pauley, who was on-site. The dam regularly overtops in extreme weather events and is subsequently repaired.
- At the gravel pit, it was clear that CL&P (which has transmission lines through the property) had conducted some extensive work, including importation of material and grading, completely within the right-of-way.

She explained that the on-site conditions/contours are slightly different than shown on the plans because the survey was done before CL&P's work had been completed. This work did not infringe on wetlands.

Ms. Roberson stated (as requested by the Commission) that she had consulted with Attorney Alter regarding the access license for FCR Realty over the Grandpa's Cabin property. Attorney Alter confirmed that the access license does, indeed, allow the use of the property for gravel trucks and it also specifies that any damage caused by the gravel trucks must be repaired by FCR Realty. There are time limits for the access license. Copies were included in packets to the Commission Members.

Ms. Roberson noted that it was stated, at the opening of the public hearing on October 3<sup>rd</sup>, that an alternate access haul road to Church Street had been added to the Application. FCR Realty had submitted a statement saying that the haul road had been used occasionally during the past ten years and that they intended to use it intermittently/occasionally as needed (copies were provided to Commission Members). Ms. Roberson stated that she had inspected the haul road earlier in the day and does not believe that the haul road is currently in a condition to be used by gravel trucks. She explained that to upgrade it to be functional for the purposes intended would require grading and importation of material to make it passable. Additionally, it would be subject to IWWC jurisdiction. The Wetlands permit for this Application was approved by IWWC in June, however, there was no alternate access haul road included at that time, therefore, they have not reviewed the alternate access haul road. Ms. Roberson stated that she had spoken with representatives from FCR Realty and encouraged them to either remove that access or to consider another way to handle it.

The haul road from Day Street goes over a dam and there is valid concern as to whether the dam is suitable for gravel truck traffic. She asked that the Engineer address whether it had been constructed properly.

A. Kerouac asked about Attorney Alter's comments regarding the timeline for the access license (second page of the legal description). Ms. Roberson stated that Attorney Alter's reference to it was that it is a temporary right.

Bruce Woodis, KWP Associates, agent for the Applicant, explained that the timetable for removal of materials left on the Grandpa's Cabin parcel (stockyard area) has passed (July 2017). Mr. Woodis also explained that the license agreement timetable, is on the previous page, and it refers to the five-year period and other stipulations depending on ownership and management of it.

Attorney Joe Williams, Shipman & Goodwin, Hartford, CT, made the following comments:

- They take strong issue to the operation being called illegal. They have been operating for several decades and they contend that the use is grandfathered.
- There are differences of opinion as to the exact locations of things which he feels is not relevant to the Commission's decision about whether the Application complies with the Regulations.
- Fred Green, Clifford Green & Sons Construction Company, and FCR Realty have been honest actors and productive contributors in Town for a long time.
- He commented about the statements of Ms. Vickers, a PZC Member in another town, at the October 3<sup>rd</sup> public hearing regarding that a lot of the comments that had been made were irrelevant to the Commission's decision about whether or not the Application complies with the Zoning

Regulations. Attorney Williams stated that he respectfully submits to the Commission that it does.

- He commented about the nearby resident that did not know that there is a gravel bank operation there, which, he said is pretty good evidence that it is not impacting anyone.
- They are not proposing to increase or change the existing operation that has been going on for quite some time. To continue what FCR is and has been doing is not going to create any impact on neighboring properties or on neighbors.
- Regarding the Dam: The one substantive point (from the October 3<sup>rd</sup> public hearing) is that, on occasion, when there is heavy rain, or whatever reason, water is coming into the pond, occasionally the pond overtops the dam. Keith Green had commented that FCR cannot control that as it does not own the property or the dam. Attorney Williams stated that, if the dam needs to be improved with regard to its drainage, that is something that the property owner should do and they hope that the property owner will do it as soon as possible because they don't want it to impact the integrity of the road which FCR has the continued right to be using.

Regarding the Road: They are asking that FCR be allowed the use of for the purposes of this Application. Due to the comments from the Town Engineer, they had submitted a letter from FCR's Engineer, David Smith (KWP Associates), with a proposal for a simple and practical solution to reinforce the road to help maintain its stability and prevent it from washing out and potentially causing erosion into the wetlands.

Regarding the Church Street Haul Road: They propose that they be allowed to leave it the way that it is due to ATV activity. Mr. Green leaves it in rough condition to discourage this activity although the dump trucks can still pass if necessary as a secondary access road (only as needed). They do not want to improve the road as it may invite more people to use it. He explained that, if it is found that there is a need to use that road and they can't use it because it has become too rough, at that time they would make a proposal to the PZC and the IWWC.

E. Starks commented that Day Street has heavier traffic and new development is happening there. There was discussion regarding the road and the dam. Ms. Roberson explained that there are two separate issues. The dam isn't up to modern standards and occasionally overtops. The dam is also an access road to a gravel pit. The gravel operators have established the legal right to use this access road.

- Is the dam/road capable of handling the gravel traffic?
- Is the gravel traffic going to impair the integrity of the dam?

Ms. Roberson explained that bonding could be required to ensure that if any portion of the road were damaged by the gravel operation, that damage caused by the gravel operation would be repaired. There is a pre-existing condition independent of the gravel operation: a dam which occasionally overtops. The overtopping moves material off of the road and further down the watershed into a wetlands system. Every time material is brought in, it requires a Wetlands permit. She suggests that the owner of the dam take the long-term maintenance issues of the dam into consideration. Ms. Roberson showed aerial photos and indicated the dam and other locations. She explained that the northern and northwestern sides of the pond are impounding water. She indicated an overflow pipe that allows the water to flow out of the dam and into a stream system that flows north under Day

Street and into the Quinebaug River. She indicated the area where it overtops and she stated that she feels this situation would exist with or without a gravel pit, but it is relevant because the gravel trucks will be using it.

Attorney Williams stated that he agrees and he read a portion of the Town Engineer's letter (dated October 24, 2018 – included in packets to Commission Members) which states that the damage will continue unless something is done. He introduced David Smith to present their proposal.

David Smith, Professional Engineer and Licensed Land Surveyor, KWP Associates, who helped to prepare the plans, explained that he had witnessed the road overtop. The 24-inch pipe is undercapacity. Mr. Smith referred to his letter (dated November 2, 2018 – included in packets to Commission Members) in response to the Town Engineer's letter. He disagrees with some of Mr. Pauley's conclusions. Mr. Smith stated that he believes that the road is perfectly adequate for the truck traffic. He said it is a combination of gravel and native soils and is not intended to be a highway with paved surfaces. It requires periodic maintenance, monitoring and inspection as it's being used. It does not appear to be full of organics. It was built with the intention that it would be a durable and robust structure not only for the traffic going over the top of it, but to allow the pond to exist. He indicated the flow of the water on the photo. He does not feel that puddles on the road surface indicate any harmful or fundamental flaw with its structural integrity for a road. He said it has been utilized (for quite some time), patched, taken care of, and will continue to serve if the Application goes forward.

Mr. Smith's Recommendation (in his November 2, 2018 letter) is to force the water to go to a place where you can control it:

- Adjacent to the culvert on the proposed use side, there is a reasonably level area where existing material could be removed, reinforce it with half the depth (9-inches or so) with heavy robust cobbles, allow that to be where the trucks travel (level crossing), forcing any extra water to go over that like an emergency spillway. Dams are regulated by CT DEEP, not by local jurisdictions. He said that this dam would have a low-hazard classification and, if it were to fail, it would have minimal impact on neighboring/adjoining properties. If the dam in its current condition were compared to a current program, the design standards would be deficient. He said that his recommendation would be simple, functional and easy to maintain. He stated that after the gravel bank is finished, it would still be an enhancement to the dam.

M. Sigfridson asked if the improvements described by Mr. Smith would require permission by the Grandpa's Cabin property owners. Attorney Williams stated that he does not believe so because it is within the terms of the access easement which states that FCR would maintain the road. Attorney Williams stated that if the pond is overtopping, that is the responsibility of the property owner. The condition of the road, FCR can deal with because they are proposing to keep using it for gravel haul trucks. There was more discussion regarding the access easement and Attorney Williams explained:

- The easement allows FCR to use the road (road bed at the surface) and if it is washing out, they proposed to do what David Smith suggested.

- As to the rest of the property, the pond, overall part of the dam that is underneath the road, that is a different issue and not part of this Application and is not the responsibility of FCR and is not the responsibility of the Commission to try to interpret the document as to whose responsibility it is between private property owners. He said that it is relevant for the Commission to know that they have the authority to do what they are proposing to do for the road because it specifically says that they should maintain the road.

There was discussion regarding the maintenance of the road. Ms. Sigfridson explained that in addition to maintaining the road bed, reasonable costs of using the road should be considered also and that it will overflow whether it is used or not.

Fred Green stated that he had given the pond, the cabin and the land around it to his two brothers and he has heard that it has been sold or given to two other people. He stated that, if someone else owns the land now, he will take care of his dirt end, but he won't take care of the dam or anything else that is not his anymore. He asked if it is true that someone else owns it now.

There was discussion regarding under what circumstances the Church Street access would be needed.

Attorney Williams stated that they would like to retain the right to use the Church Street access as a secondary/emergency alternate access if/when needed (e.g. if, for some reason, the Day Street access road was temporarily unavailable). He said that it is good planning and engineering practice, for any commercial property, to have an alternate way to get in and out, just in case. He said that they are not looking to flip/change them if approval is granted. Mr. Green stated that it has not been used in four years and it has been blocked-off and he explained how it had been used about once-per-month in the past to haul in gravel when needed.

J. Roberson displayed photos of the entrance to the Church Street access (maybe ten-feet wide) and indicated the locations of a culvert and a swiftly running stream and a gate. She does not feel that the road has been used in the past four years by ATV's or dirt bikes. She said that you cannot even walk through there. She stated that it is a long road and there are other portions of it that are more passable.

Ms. Roberson stated that the Commission is not telling the Applicant to improve the road or requiring that the Applicant improve the road, but that the Applicant is insisting that this be included as an alternate point of access for gravel trucks. She said that it is nowhere close to being an appropriate access for gravel trucks and that it would require significant improvements, subject to IWWC jurisdiction, to be used for that purpose. She explained that, if, at some time in the future, they want to use it as an access, they would need to get IWWC approval and then come back to the PZC for either a new or revised permit. She said that this road cannot be included as an alternate access point for gravel trucks in this Application without being reviewed by IWWC. This had not been added to this Application until months after the IWWC permit had been approved. If the Applicant insists on including this

in the Application, she will have to stop this process and send it back to IWWC for review.

Ms. Roberson displayed more photos indicating that wetlands are close to the road.

Attorney Williams stated that, if the Commission is going to require improvements to the road in order for it to be approved and have to go back to IWWC, his client preference is to pull it out of the Application. He stated that he believes it would be appropriate to close the public hearing tonight and he asked that the Commission approve the Application and that it could be made clear that the Church Street haul road is not approved unless and until the Applicant goes through IWWC and back to the PZC to have improvements to have the secondary road approved (which, he said, they can do at another time). He stated that there is a difference of opinion regarding the road as the Applicant believes that they can use it. Ms. Sigfridson clarified that the Commission would not be asking for improvements to the road at this time, but just that it go back to IWWC for review. Ms. Sigfridson asked if the Applicant is indicating that the option that he is choosing is to remove the Church Street haul road from the Application rather than to go back to IWWC. Attorney Williams stated, "yes."

Ms. Roberson stated that they can voluntarily remove it from the Application or it could be removed by a condition of approval for a special permit.

All photos that were submitted to J. Roberson at the October 3<sup>rd</sup> public hearing from a member of the public were included in packets to Commission Members. Photos from the site walk dated October 16<sup>th</sup> of the dam were displayed for viewing while Ms. Roberson explained their contents including: wetlands; transmission lines and materials imported by CL&P; gravel pit; restoration area (required as part of IWWC approval).

Ms. Roberson displayed an aerial photo (taken in April) and indicated various locations including: the 8.8 acres; the pond system, transmission lines; back of WalMart; the area where they are proposing to build a pond (where they are excavating below the waterline). She stated that there are trails that are kept open which are used by four-wheelers.

There was discussion regarding follow-up on the sight lines on Day Street. Ms. Roberson stated that there is no practical way to improve the sight lines without infringing upon other property owners. She discussed this with the First Selectman, the Town Engineer and the Director of Public Works. The First Selectman was receptive to the Town doing the following (if the Application were approved) to improve the safety on Day Street: getting some signs for specific locations to the north and south of the entrance (locations recommended by the Town Engineer) to warn drivers on Day Street that there are trucks entering and exiting. The posted speed limit is 25 mph.

There was discussion regarding the access point and turning radius. A.Kerouac suggested that a request be made to the Selectmen to make a suggestion for a solution regarding sight-line safety to the abutting property owners. J. Roberson stated that there are options that can be pursued, at some point, if this were approved.

J. D'Agostino to close the public hearing for **SPG 18-002 Special Permit for Sand and Gravel** – FCR Realty LLC, 200 acres north of Brickyard Road and west of Day Street (Assessor's Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot 43; Map 42, Lot 43), Proposed removal of 97,650 cubic yards of gravel over 8.8 acres. There was no second to the motion. Motion failed.

#### **COMMENTS FROM THE PUBLIC:**

**Cassandra Lavimoniere**, 91 Gormon Road, asked that Attorney Williams indicate, on the aerial photo, where the very old, pre-existing gravel bank is located. Keith Green, 140 Wauregan Road in Canterbury, son of Fred Green, indicated the area on the photo.

**Scott Cartier**, 219 Church Street:

- He asked how long the permit was for.
- He asked about the entrance on Church Street regarding how many gravel trucks per day. He said there has been talk of another entrance on Henry Road.
- He asked if the property changes hands, would it have to come back before the PZC. He expressed concern for who may purchase the property, perhaps a large company which would increase the number of trucks.
- He asked who owns the dam and whether they need the dam to access the gravel bank. He asked if the dam were not maintained to accommodate the gravel trucks, would that make the gravel bank useless?

J. Roberson addressed Mr. Cartier's questions:

- The number of trucks per day, as stated in the Application, would be 10 average, with a maximum of 25 (which is binding). If it were found, that more trucks were coming and going, it would be subject to enforcement action.
- She explained the duration: It is initially good for one year and it currently may be renewed on a yearly basis until they meet their maximum approved volume (97,650 cubic yards of material). She explained that at every renewal, the volume of material removed/exported has to be documented (quarterly reporting). She explained that the gravel industry is need based.
- She stated that the Application did not include an entrance on Henry Road, therefore, it is not an issue that needs to be addressed.
- She stated that Grandpa's Cabin, LLC owns the dam. She explained that the deed for Grandpa's Cabin includes the access license that allows them to use it. If there were a conflict between the gravel operators and the owners of the dam, that would be a civil matter between the two parties. The Town will try to address as it is appropriate for a gravel permit application. She stated that they only have a right to use a particular route over the Grandpa's Cabin parcel, which includes the dam.

**Krista Haveles**, 35 Wolf Den Road, stated that there is a problem with the access license and that she has sought legal counsel for her father, Cliff Green, Jr. and herself. The Attorney has sent an FOI request and is waiting the FCR file. They would like to revoke the access license. Ms. Haveles clarified that her father is a member of Grandpa's Cabin, LLC and that she has power of attorney for her father and she is also in contract to purchase the property. Ms. Haveles explained that she has safety concerns regarding the trucks being too large to allow two vehicles to pass and also for her children.

**Heather Daly**, 221 Church Street, asked about the Cease and Desist Order placed in 2014 and why no taxes have been paid on the property. She said they are continuing to dig into the property destroying wildlife/wetlands/everything. Why is it being addressed now four years later.

A.Tanner explained that, although he understands the concerns presented, many of the comments from the public are irrelevant to the duties of the PZC in addressing the application in front them. M. Sigfridson explained the role of the Zoning Enforcement Officer regarding the Cease and Desist Order and that the policy of the PZC has been to work with the applicant to try to help bring them into compliance. Ms. Sigfridson explained why the PZC would consider approving an application for someone who has been in violation of the Zoning Regulations in the past. The PZC is limited in its ability to say no based on those grounds. There are very strict Statutory standards that the Commission must follow.

**Ms. Daly** commented that, if someone knows that they are operating illegally without the proper permits, how do they get away with it for so long? They should know that they need a permit to do this.

**Krista Haveles**, 35 Wolf Den Road, asked if her safety concerns are relevant and Mr. Tanner stated that they are. Ms. Haveles stated that Attorney St. Claire requested that she present the information regarding the FOI request at the public hearing and to request that a decision not be made until she has all of the information.

Attorney Williams stated that it is an entirely inappropriate request. Whatever somebody wants to have for FOI purposes from the Town, they can go to Town Hall to get it at any time. There is no basis for a zoning application to be held up on those grounds. There is no basis for revoking the access license, which can be dealt with later, as it may undo the whole transaction that led to this. He asked that the Commission not be drawn into a dispute between private parties.

With this new information regarding a possible regarding the access agreement, A.Kerouac asked for clarification as to whether the access agreement (for the primary access for the gravel bank), that is part of the Application, is in dispute now. Attorney Williams confirmed that it is not in dispute at this time, and he stated that he does he think that the Commission should try to draw a dispute into its consideration of the Application. Mr. Kerouac clarified that he was trying to discern whether the major point of access is a viable point of access or not. Attorney Williams stated that it is.

**Spiro Haveles**, 35 Wolf Den Road:

- Asked about the legal access, stating that the business has never been legal, so why was something that was illegal put on the deed? He said there was no business there, there was no legal, permitted gravel bank.
- He asked about taxes and said that, when gravel banks are opened, they are assessed at \$75,000 per acre. He said that this property (8.8 acres) should be paying \$13,000 per year. He stated concern for those businesses who pay their taxes and follow the Regulations or get fined.
- He expressed disappointment that the First Selectman was not present.
- He stated concern regarding wetlands on the property and asked why this property (that he is looking to purchase) had not been presented to IWWC. He stated that he hired a soil scientist and has a review showing that the road is saturated with wetlands which are being destroyed. He commented that a dam requires an engineer. Mr. Haveles submitted the report from Joseph R. Theroux, Certified Forester/Soil Scientist, for the record, and copies were provided to Commission Members. A copy was also provided to Attorney Williams.



- He stated concern for safety regarding the access. He stated concern regarding sight lines and school buses. He does not feel signs will help, but he said that he would be in favor of a light.
- He stated concern for his children.

M. Sigfridson asked Mr. Haveles what he means regarding the property not being considered by IWWC. Mr. Haveles explained that Martha Fraenkel did not take around the pond into consideration when she visited the site three months ago. Ms. Roberson stated that Ms. Frankel had communicated to her that this will be addressed at the next IWWC meeting.

J. Roberson stated that she had asked the Applicant to review their bond estimate to be certain that it included potential damage to the access road, including the dam. She received a letter dated November 7, 2018, signed by David Smith, P.E., L.S. The letter stated that the bond estimate was proposed to be increased from \$55,000 (originally) to \$58,000. This will be reviewed by the Town Engineer for appropriateness. She explained that the bond amount is usually settled at a later date. She strongly encouraged that the Commission require a bond, as with every other gravel operation, that includes an appropriate amount to address both the site restoration and any potential damage caused by, specifically, the gravel operation.

Regarding the timing for the public hearing, Mr. Roberson stated that it has to be closed tonight unless the Applicant grants an extension.

**Damien Sorrentino**, 129 Church Street, Vice-Chair of the IWWC:

- Confirmed that improvements to the dam/road were not included in the IWWC permit at that time.
- Since the Applicant voluntarily withdrew the Church Street access, he asked for confirmation from the Applicant that any and all references to that access including the Cover Sheet (Alternate Access Haul Road) and Grading Plan (Alternate Haul Road Church Street) be removed from the plans. He agrees with Ms. Roberson that the access road is not, in its current form, anywhere close to adequate to haul gravel and tri-axle dump trucks.

The Applicant confirmed that those items will be removed from the plans. Mr. Sorrentino stated that he looks forward to reviewing the Application as a Member of the IWWC.

**Melissa Kirkconnell**, Hickory Lane, stated concern for the trucks in the residential area and also for environmental impacts/wildlife.

J. Roberson stated that there are Osprey that nest in the transmission lines and hunt for fish in the ponds and along the whole Longbrook System. She has seen Bald Eagles on Day Street hunting in the Quinebaug River. She stated that a true/full wildlife impact assessment has not been conducted. She stated that there is not a requirement to do that. This is a small gravel operation and it is not frequently done for a gravel operation of this size.

**Cassandra Lavimoniere**, 91 Gormon Road, submitted a 2007 Eastern Connecticut Environmental Review Team Report regarding Brooklyn Sand and Gravel. She explained that this organization, at the request of a town official, would do a thorough investigation using State Archeologist, DEEP, EPA (free of charge) for land use such as this application.

Ms. Sigfridson asked if the Applicant would consider granting an extension of the public hearing due to the wetlands issues that need to be addressed. Attorney Williams stated that there have been two nights of hearings and his client prefers to close the public hearing and Attorney Williams feels that is appropriate. If they need to deal with the minor amount of stone being put in the road to stabilize the road by talking to IWWC, they can do that or, he suggested, that the PZC could make it a condition that the Applicant makes sure, continually, that the road is sufficiently stabilized, and if it requires work that has to go to another Commission, then, go ahead and do it. He feels that this would be appropriate because they

know that they have an ongoing responsibility and they know that they have to come back before the PZC on a yearly basis so these things can be looked at. He does not think it is necessary to hold up this hearing and to keep dragging this out and to keep talking about the same things by keeping the hearing open. Unless the PZC tells the Applicant that there is something that hasn't been answered that is needed to determine if the Application complies with the Regulations, he would want to know that. He stated that they have done a lot of work and have submitted professional opinions and analyses and they withdrew the Church Street road, which was the subject of some concern, and potentially needing to hold things up to go to IWWC. So, it was taken out with the hope and intention to allow the hearing to close for the PZC to vote tonight.

Ms. Sigfridson explained that, without the Applicant's permission, the PZC's time limits dictate that the hearing would have to close before its next meeting (tonight).

**Melissa Kirkconnell**, Hickory Lane, asked, if the Application is approved by the PZC and it goes to the IWWC for the access/dam road, and they find that there are issues.

J. Roberson stated that the IWWC has the right to revisit if they feel like the application or the review was incomplete. Ms. Kirkconnell asked how this hearing could be closed knowing that there is something that needs to be addressed. There was discussion. Ms. Sigfridson stated that she would like to know to what degree the portion of the road crossing the Grandpa's Cabin parcel was considered by the IWWC.

**Damien Sorrentino**, Vice-Chair IWWC, stated that it was not presented at all. He stated that they did a site walk with the Wetlands Agent. He stated that they drove along the route and, at that point, it was in good repair. He did not notice anything abnormal about it, there was no erosion. To his recollection, they presented that they were going to use that road. He thought, okay, it's an existing road, it's there. There were no proposed improvements discussed. They walked the area of the excavation, looked at proposed grades, existing grades, impacts, silt fence, discussed some reclamation areas. That was the limit of the scope of their site walk. They acted based on the impacts that they considered for the excavation alone. Not for repairs to an access road. They saw an access road, in good repair, that was proposed to be utilized. It is not their jurisdiction to debate easements and licenses for hauling. It was not part of the Application at all.

Ms. Roberson stated that, at that point, there was no need to do work on the dam. She stated that, if work is to occur on the dam, it has to get IWWC approval. It is activity subject to their jurisdiction. The PZC could not approve the repair of the dam without the IWWC taking action. Any earthmoving activity that occurs within that area is subject to IWWC jurisdiction. There was no such activity when it was presented to the IWWC. She stated that it has been talked about tonight whether or not there should be repairs to the dam. She stated that if the PZC is considering requiring or accepting their offer to repair the dam, the PZC cannot take action until IWWC has first reviewed it (Statutory requirement).

Attorney Williams stated that it was not proposed to IWWC because they were not proposing to do anything to the road. He stated that the phrase "repairs to the dam" has been kicked around. He stated that they are not proposing repairs to the dam, they are proposing, in response to a comment in a letter from the Town Engineer (which they received about a week ago), to put some stone on the top of the road bed just to help prevent dirt on the road from being washed out. This is a suggestion in response to a comment. He stated that the PZC could address it by voting on the Application tonight with a condition that, if it becomes necessary to maintain the stability of the road, to take measures that would maintain the stability of the road, then visit IWWC as needed.

J. D'Agostino stated that Attorney Williams is missing the point and that there are issues that have come up that are beyond whether gravel is put on or not.

Ms. Sigfridson asked David Smith if that was an accurate characterization of the improvements. Mr. Smith stated that, in his letter, it states that the road, in its current condition, is adequate for the task that would be asked of it for the purposes of gravel hauling. He referred to his earlier testimony and stated that anything related to a dam is not the IWWC. It is the State of CT DEEP and it is the owner's responsibility to maintain a dam in good repair. It is the responsible thing to do. He stated that the reason it was not part of the earlier IWWC Application is because the road was just a way to get there. They didn't get a permit to drive on Day Street either. It is just the way to get to the work area. He said this is all steps to try to get Mr. Green in compliance in response to the 2014 Cease and Desist Order and to try to get it advanced so it can be closed down and ultimately be put to bed.

Ms. Sigfridson asked about the dam. Mr. Smith stated that he had made a suggestion earlier for the owner of the dam if they would like to make it a little more predicatable on how it will behave when it overtops. He stated that it is not something that is necessary for it to work presently. A. Kerouac asked if the proposed increase of \$3,000 in the bond amount would be enough to perform all of the work needed (digging, disturbing, size of pipe, possibility of needing another way of water channeling around the road, etc.). Mr. Smith stated that it is an offer to ensure the functional capacity (spreading of gravel/minor touch up). He said it is maintenance, not construction. Mr. Smith suggested that the Town Engineer could review the amount to determine whether he feels it is appropriate. Mr. Smith confirmed that the \$3,000 does not include making a spillway. Mr. Kerouac stated that if it were needed in the future, the bond is not sufficient. It was noted that the Commission can discuss the bond further after the public hearing closes because it had been discussed during the public hearing.

**Scott Cartier**, 219 Church Street:

- If the driveway goes through the wetlands, isn't it a regulated area?
- Doesn't it fall under the IWWC? Even if you topdress it, you're still in a regulated area.

J. Roberson stated that her understanding is that it is subject to IWWC jurisdiction.

**Spiro Haveles**, 35 Wolf Den Road, asked if this business should be permitted to continue operating.

A Commission Member stated, "sure, why not?"

**Krista Haveles**, 35 Wolf Den Road, offered a solution to the gravel spilling over the dam: If FCR would stop putting boulders and gravel there, there wouldn't be anything to wash into the waterways. She stated that she and her father do not need to drive around the pond, but FCR needs to drive with extremely heavy equipment. She said the suggestion from the soil scientist is to put bales of hay to keep the gravel from washing away. She said that they are 2 feet wide on each side so, she's not sure how then can pass through anymore. She said her family wants to preserve the land and not have it be trashed. She said if they could safely, and without destroying, pass over it, okay, there is an agreement. But, that is not what is happening. She asked where is the gravel and boulders are coming from. She said FCR dumps them there and they wash over. She asked if it is her or her father's responsibility as a property owner to clean it up. She said to stop dumping it there.

**Cassandra Lavimoniere**, 91 Gormon Road, asked about the limited access to Day Street (only applies to FCR). She asked if the permit (if approved) goes with the property. So, if they sell it, that company would no longer be allow to use Day Street, then what happens.

Ms. Sigfridson explained that the gravel permit runs with the land, so one operator could obtain the permit and there is a requirement that the PZC be notified if ownership transers. The operator would also have to comply with other legal obligations. They would have to figure out how to get access.

J. D'Agostino asked Krista Haveles about her earlier comments regarding revoking the access license. **Ms. Haveles** stated that she has hired an attorney to revoke the access license so they will no longer have access at all. She does not know what the status is at this time.

**Maryellen Green**, 140 Wauregan Road, stated that potential litigation should have no impact on the decision of the PZC. She explained that three brothers divided land and whether or not one brother sells land, the agreement that was made giving the right-of-way until the primary owner of the property, Fred Green, passes away, cannot be contested.

**Spiro Haveles**, 35 Wolf Den Road, stated that it is not a right-of-way. He said it is an unassignable access license.

There was discussion regarding the access license. Attorney Williams explained that the access license was part of one property conveyance and the conveyance was absolutely dependent upon the access license that was part of the settlement. The settlement agreement includes that license. He confirmed that the one in the Commission Members' packet is the correct document (Schedule A Legal Description). He stated that it had been settled at the time that it was recorded in the Land Records in January 2017.

**Keith Green**, 140 Wauregan Road, stated that Brooklyn has dirt roads and they have to be maintained. He commented that there has been an abundance of rain this year. When it rains, it is a problem for everybody's dirt road. He also stated that he never knew about the dam, he always thought it was a berm. He stated that there has been a lot of run-off ever since WalMart came to Town.

**Krista Haveles**, 35 Wolf Den Road, stated that the Attorney representing her father is the same attorney who helped write the access license and recorded the access license. The Attorney believes that they are in violation of said access license.

Ms. Sigfridson stated that she believes that would be an issue to be addressed between the parties.

**Mike Malone**, 203 Church Street, stated that this is the same company that ran a gravel pit illegally without paying taxes and now they are saying that they are going to maintain a gravel road. He stated that as soon as they get the permit, they won't maintain it after that.

Motion was made by J. D'Agostino to close the public hearing for SPG18-002 Special Permit for Sand and Gravel – FCR Realty LLC, 200 acres north of Brickyard Road and west of Day Street (Assessor's Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot 43), Proposed removal of 97,650 cubic yards of gravel over 8.8 acres. Second by A. Kerouac.

Discussion:

- M. Sigfridson stated that she wished that the Commission had the Applicant's permission to leave the public hearing open due to unresolved issues.
- A. Kerouac stated that he shares the same concern, specifically: review by the Town Engineer of the bond; clarification on whatever might be challenged; and he would like to hear from the Town's Land Use Attorney regarding whether it is to be called a dam or an access way.
- J. Roberson explained that there is overlapping jurisdiction. The DEEP has a dam safety unit and there are regulations concerning registration of privately-owned dams. The IWWC also has jurisdiction over activities involving inlands, wetlands and watercourses. The PZC's jurisdiction includes special permit.

Motion carried unanimously (6-0-0).

**c. New Public Hearings: None.**

**d. Other Unfinished Business:**

- 1. SPG18-002 Special Permit for Sand and Gravel** – FCR Realty LLC, 200 acres north of Brickyard Road and west of Day Street (Assessor's Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot 43), Proposed removal of 97,650 cubic yards of gravel over 8.8 acres.

J. Roberson stated that the Commission has 65 days to take action. Ms. Sigfridson stated that the Commission could approve, deny, table.

J. D'Agostino stated that he feels there is enough information to make a decision and he feels coming back a third or fourth time would be unfair.

Motion was made by J. D'Agostino to deny the gravel Bank Special Permit application of FCR Realty, LLC for the property located to the north of Brickyard Road and west of Day Street (Assessor's Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot 43), to remove 97,650 cubic yards of gravel over 8.8 acres and identified in the files of the Brooklyn Land Use Office as SPG 18-002, on the grounds that the location, type, character, and extent of the proposed use is not in harmony with the orderly development of the neighborhood and will hinder and/or discourage the appropriate development and use of adjacent property and impair the value thereof in accordance with Sec. 5.7.1 of the Brooklyn Zoning Regulations.

Second by A. Kerouac.

Discussion:

J. D'Agostino stated his reasons for denial:

- IWWC and the PZC did not get the full picture and, therefore, should not act at this point in time.
- Too many inconsistencies for the Town of Brooklyn to approve this Application: Church Street; No clear picture on whether the road will work with the wetlands; No idea what Grandpa's Cabin will do with the access road. He is looking at the future.
- He read from the POCD, Page 74 and 78. Under the Economic Development of this Town – "...Work with land owners and developers to explore planning priority development areas..." He stated that a 10-lot subdivision was approved two months ago which will increase traffic on Day Street. Approving this permit would affect the safety of that area and would also affect the other developments on Day Street and other areas on Day Street that can be developed.
- He said that this will not harm the proposal, but is simply saying go back, get your act together, and try again.

M. Sigfridson stated the reasons for her intention to vote in favor of the motion to deny:

- If the Commission feels that the access ways are not appropriate, it is the Commission's burden to not approve the Application.
- She has concerns regarding sight lines on Day Street which cannot be addressed by the Commission.
- She has concerns regarding material that is being flushed off the road on a regular basis and the proposed remedy to the situation is to continue putting more material on it which will continue to be washed off, she cannot approve an application that will perpetuate that cycle.
- IWWC needs to review and weigh in on that scenario.

A. Tanner stated his reasons why he will vote against the motion:

- He feels that IWWC review could be included in the motion – subject to IWWC approval. He feels that this is the main issue.
- He stated that the development on Day Street is short-term (5 years).
- He does not know what to do about the road, but he feels that if they don't put something on, the whole dam may wash out.
- He feels they met their qualifications. Legal issues may come later and if they shut it down, the whole thing is moot anyway.

M. Sigfridson clarified that an affirmative vote would be a vote in favor of denying the Application.

Motion carried (4-1-0). A. Tanner was opposed. C. Kelleher had recused herself. The Application was denied.

M. Sigfridson invited the public to attend the public information session regarding the Re-write of the Regulations where gravel banks will be discussed.

M. Sigfridson called a three-minute recess at 9:01 p.m. The meeting resumed at 9:07 p.m.

Motion was made by C. Kelleher to make the following Agenda Item change, to move Item:

**VI. Unfinished Business:**

**d. Other Unfinished Business:**

- 2. Zoning Regulation Rewrite** – Review of Comments from Public Information Session, text and zone boundary revisions (including the RB zone), etc.

To

**VII. New Business:**

**b. Other:**

- 2. Zoning Regulation Rewrite** – Review of Comments from Public Information Session, text and zone boundary revisions (including the RB zone), etc.

Second by A. Tanner. Motion carried unanimously (6-0-0).

**VII. New Business:**

**a. Applications:**

- 1. SD-18-003 Resubdivision of Grand View Acres** – Brooklyn Builders, LLC and Charlotte Larrow, Trustee, 8.22 acres, westerly end of Grand View Terrace (Assessor's Map 33, Lot 36-1 through 36-6), Proposed reduction from 6 to 3 lots.

M. Sigfridson asked if the Commission would be accepting this Application tonight. J. Roberson stated "yes" and she stated that it is a resubdivision and a public hearing is required.

Paul Terwilliger represented the Applicant:

- The site is at the end of Grand View Terrace
- A subdivision was done in 2008 by Brooklyn Builders in that neighborhood (11 lots) and had proposed an extension to Grand View Terrace (6 lots), but never built the road. They would like to reduce to 3 lots with a common driveway access.
- In the LD Zone
- Open space had been deeded to the Town (5 acres). They are not touching that and they are hoping to utilize it to address the open space requirement (same land area).

Motion was made by J. D'Agostino to schedule a public hearing for **SD-18-003 Resubdivision of Grand View Acres** – Brooklyn Builders, LLC and Charlotte Larrow, Trustee, 8.22 acres, westerly end of Grand View Terrace (Assessor's Map 33, Lot 36-1 through 36-6), Proposed reduction from 6 to 3 lots, to the next regular meeting of the Planning and Zoning Commission to be held on December 5, 2018 at 6:30 p.m. in the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT. Second by C. Kelleher.

Discussion:

There was discussion whether it should be called a resubdivision. Half of it had been expired and there were multiple owners of the lots. Mr. Terwilliger explained that it is actually only 2 lots now. Ms. Roberson stated that this is not addressed in the Statutes. Calling it a resubdivision will cover the situation.

Motion carried unanimously (6-0-0).

**b. Other:**

**1. Discuss with Jonathan Lisee re: Shooting range as an accessory to a gun shop.**

Mr. Lisee explained that he has been operating as a home-based dealer in Brooklyn for three years (the ATF has granted his Federal Firearms License) and would like to open a gun shop with an indoor shooting range associated to the business. He has a possible location (Mason's Lodge on Route 6) where he would lease the land and build the building. He obtained information from Action Target who have outfitted hundreds of indoor ranges across the nation and abroad. He spoke of that Company's qualifications: meet all OSHA standards; noise abatement. He provided a book/brochure for viewing by the Commission Members.

He stated that, according to the 2015 study, there are approximately 600,000 pistol permit holders in Connecticut (many in this area) and he feels that his business would bring a lot more revenue to Town.

The lot is in the RB Zone. Ms. Roberson thinks that the Masonic Lodge may be grandfathered. Mr. Lisee had offered to pave the parking lot for the Masonic Lodge as well as his own area and create the parking spaces. He offered a shared driveway/parking lot.

J. Roberson stated that the retail use is permitted in the Zone and is subject to site plan approval. The shooting range is not listed anywhere in the Regulations. Does the Commission consider a shooting range associated with a retail use to be an accessory use. There are two criteria that are relevant to accessory uses:

- That it be customary (usually associated with the use)
- Incidental (secondary to a primary use)

C. Kelleher recommends a text amendment. M. Sigfridson agreed.

Mr. Lisee added that people would not be required to buy something and that they could bring their own equipment. He plans on implementing a membership program and the members would need to sign liability waivers. He feels that opening an indoor range would not only not cause a nuisance, but may limit nuisances that are happening as there are many call complaints in the area regarding gun fire.

A. Kerouace suggested defining gun shop including a shooting range as an incidental use. He does not want it to be an incidental use to any retail. J. Roberson suggested that maybe the Commission could pursue a proposed text amendment as part of the re-write of the Regulations. C. Kelleher, M. Sigfridson and J. D'Agostino stated that they prefer that gun shop and shooting range be separate. Mr. Kerouac asked stand-alone shooting range? J. D'Agostino and C. Keller stated yes. C. Keller stated that she does not feel that gun shop needs to be defined as a particular kind of retail because what is different about it than any other shop that sells goods. She asked if the Commission would put any special requirements on gun shops that it wouldn't put on any other retail? She does not feel that it needs to be a concern.

J. D'Agostino commented that Mr. Lisee would need to think about parking.

Mr. Lisee stated that he would further define shooting range. He stated that he plans to have an eight-lane shooting range which probably would be 50 feet by 75 feet.

There was discussion regarding background checks. Mr. Lisee explained the process.

There was discussion regarding indoor recreation.

There was discussion regarding the State Police who are looking for a place to put their outdoor range.

The Commission was supportive and suggested that J. Roberson work with Mr. Lisee. Mr. Lisee offered some language for defining a shooting range: professionally installed; noise abated; and ventilated by a company that has been vetted. C. Kelleher suggested that Mr. Lisee work on requirements for specifications of the building. M. Sigfridson suggested that rather than defining what the requirements are in the Regulations, it it were going to be allowed, make it by special permit so the Commission can put conditions on it. C. Kelleher stated that having it by special permit makes sense, but you don't want to reinvent the wheel every time, so she feels that the same conditions should be on all shooting ranges.

J. Roberson asked if the Commission wants to consider only the RB Zone or also other zones that have retail uses. It had not be thought about.

**Scott Chartier**, 219 Church Street, spoke in favor.

There was discussion regarding one level vs. basement range.

There was discussion regarding whether they would need to put in a bathroom. He said if he has a lounge to keep people there longer, he would like to install multiple bathrooms. There was discussion regarding the possibility of ledge on the property. Mr. Lisee is open to suggestions for another property if this property does not work out.

**2. Zoning Regulation Rewrite** – Review of Comments from Public Information Session, text and zone boundary revisions (including the RB zone), etc.

J. Roberson stated that she had sent the map and she had received comments from J. D'Agostino.

There was discussion regarding setting a date for another Public Information Session: Wednesday, January 23, 2019, 6:30 p.m. at the Clifford B. Green Meeting Center.

Next Special Meeting: November 20, 2018. A. Tanner will not be able to attend.

**VIII. Reports of Officers and Committees:**

1. Budget – No discussion (included in packets to Commission Members).
2. Correspondence – No discussion.
3. ZEO's Report  
A.Kerouace asked about the Ford Dealership display area. M. Sigfridson will e-mail Martha Fraenkel.
4. Chairman's Report.  
M. Sigfridson stated that the meeting dates for 2019 must be submitted and she asked if the first Wednesday of the month at 6:30 p.m. is still okay with everyone. There was consensus the keep it the same. J. Roberson stated that Audrey can prepare the 2019 Meeting Schedule.

Motion was made by J. D'Agostino to adjourn at 10:07 p.m. There was no second. Discussion continued.

There was discussion regarding the denial of Application SPG 18-002. It may be appealed. M. Sigfridson will speak with Martha Fraenkel regarding making this a priority if they continue operating.

**IX. Public Commentary** – None.

**X. Adjourn** - The meeting adjourned at 10:11 p.m.

Respectfully submitted,

J.S. Perreault  
Recording Secretary