

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION
Regular Meeting
Wednesday, June 18, 2019
Clifford B. Green Meeting Center
69 South Main Street
6:30 p.m.**

MINUTES

- I. Call to Order** – Michelle Sigfridson , Chair, called the meeting to order at 6:32 p.m.
- II. Roll Call** – Michelle Sigfridson, Jules D’Agostino, Earl Starks, Alan Fitzgerald, Austin Tanner. Rick Ives, First Selectman and ex Officio Member was also present (left at 8:05 p.m.). Carleen Kelleher was absent with notice.
- III. Seating of Alternates** – None.
- IV. Adoption of Minutes:** Regular Meeting June 5, 2019

Motion was made by J. D’Agostino to approve the Minutes of the Regular Meeting of June 5, 2019. Second by E. Starks. Motion carried unanimously (5-0-0).

- V. Public Commentary** – None.

VI. Introduction of Margaret Washburn, ZEO/WEO/Blight Officer

Ms. Washburn provided copies of a report that she prepared indicating what she has done since she started on June 3rd.

There was discussion and it was established that Ms. Washburn would provide (e-mail) a written, monthly report to the Commission before the first meeting of each month and that the Commission would contact her if needed. She will attend meetings on a quarterly basis, but will attend more often if needed. She is planning to attend in September.

Ms. Roberson shared that Ms. Washburn’s qualifications include the following: she is a registered, professional soil scientist; she has owned her own business as a land-use consultant; Master’s of Science in Agronomy; and has been involved in land use and land-use regulation in various capacities since 1996 (mostly in Massachusetts).

Ms. Sigfridson added that the approach is that the Commission wants people to follow the Regulations, but they also want to find ways to allow people to do what they want to do. So the Commission, the Planner, and the ZEO want to be a resource to people.

VII. Unfinished Business:

- a. **Reading of Legal Notice** – The Legal Notice had been read at a previous meeting.
- b. **Continued Public Hearings:**
1. **SPG 19-002 Gravel Special Permit**- Brooklyn Sand & Gravel, LLC, 64+- acres, 530 Wauregan Road (Assessor’s Map 30, Lots 97, 97-1, 97-2), Proposed removal of approximately 218,000 cubic yards of sand and gravel.

Last sentence (incorrectly stated on the Agenda) should read as follows:
“Proposed removal of approximately 112,000 cubic yards of sand and gravel.”

David Held, Professional Engineer and Land Surveyor with Provost & Rovero, represented the Applicant (Mr. Jolly was present). He gave a PowerPoint presentation/summary on the revisions to the plans that had been submitted earlier in the day (Commission Members had been provided copies). He also submitted earlier in the day, for the record, a signed and sealed report (dated June 18, 2019) regarding the volume excavated from the site last year, as requested by the Commission at the last public hearing (copies included in packets to Commission Members).

Mr. Held explained that, in response to the Commission's request to confirm the absence of groundwater in the active excavation area, Sheet 2 of the revised plans shows that they excavated two test holes last week (Test Pit #18 and Test Pit #19). Ms. Roberson was present to observe the excavation of the test holes. It was confirmed that, at an elevation of 135, there was no evidence of groundwater. They hit a silt layer at about eight feet in Test Pit #18 where there was some perched water (it had rained several inches the day before), they dug through the silt layer and it was pretty clear that it was just perched there. However, to confirm, they excavated Test Pit #19 to a depth of about 20 feet and there was no evidence of groundwater noticed in there. This was added to the last Sheet in the Plan Set.

Mr. Held addressed the boundary survey which had been requested by the Commission (now incorporated on Sheet 3 of the Plan Set):

- He indicated the entry driveway and abutting properties (Ogden/Cummings and Magrey/Carpenter/Valade). The survey shows that there is an encroachment of fill that extends about six feet onto the Ogden property. Mr. Held has met with Mrs. Ogden to discuss this and he showed her the location. Mr. Lapiere (present in the audience), who runs Brooklyn Sand and Gravel, met with the Ogdens last Saturday to discuss the situation and offered to do whatever is necessary to remediate it.
- Mr. Held also indicated where there are several encroachments onto Mr. Jolley's property from abutting properties.
- They can now say that they are staying 100 feet away from property lines.
- They revised the grading and he indicated where they intend to match into some of the existing grades. They have pulled the grading back, so they won't be going any deeper in that area.
- He indicated where they have started some reclamation work. The anticipated schedule for the reclamation of the Phase 1 area is that the majority of it would be ready to be seeded in the fall of this year (when the excavation is complete). They have started placing silt and backfill material in the hole in that area to start rebuilding the slope and to bring the grade back up. He explained that once at a final 30 percent slope, they can throw material and the berm into the hole, do final grading and prepare it for seeding.

Mr. Held referred to the report (dated June 18, 2019) that he had submitted regarding volume excavated in the Phase 1 area last year and he explained that 46,000 c.y. of material had been excavated based on grades shot in February 2018 vs. the grades shot in February 2019. He said that Mr. Jolly had indicated that there were approximately 10,000 c.y. of stockpiled material (indicated location on the plan) from 2017 which they ran through the plant in 2018. This allowed Mr. Jolly to import some 50,000 c.y. Ms. Roberson stated 54,300 c.y.

Ms. Roberson asked if the volume of 10,000 c.y. had been counted as an excavated volume in 2017. Mr. Jolly stated that he does not think that it was and he said that he had tried to explain it before. He said that Martha Fraenkel had looked at everything

and located everything and counted trucks and looked at the holes. He stated that before they started working on the current hole, they had a previous hole dug at the Church which probably had 40,000 or 50,000 c.y. left in it before starting the new hole, so that gravel should count. But, he said with everything being changed with Ms. Fraenkel not being here. He said it's not a guess and he does not believe they are over. Mr. Jolly explained that it had not been counted twice and how Ms. Fraenkel had spent many days there counting and looking and doing everything that she could and if she had a problem, she called him. He said she was very tough on them. There was discussion regarding stockpiles and whether the material in them was being counted toward the import limit for multiple years. Mr. Jolly stated that it was not and that they know that it does not work that way.

Ms. Roberson displayed a Summary Table that she had prepared including the reports for the past year, including Mr. Held's report. (The table was included in packets to Commission Members.)

- Imports Volume - Timeframe March 15, 2018 thru March 15, 2019 = 54,300 c.y.
Estimated based on number of truck trips (average of 15 c.y. per load).
- On-site Excavation Volume – Timeframe 2/6/2018 thru 2-25-2019 = 46,000 c.y. Mr. Held's estimation.
- A difference in volume of 16,300 c.y. more imported than excavated on site. Ms. Roberson noted that this is an interpretation based on information she was given. If using the 46,000 c.y. (20% swell factor), the difference in volume would be 8,300 c.y.
Ms. Roberson also noted that if using the after-excavation volume and add an additional 10,000 c.y. of material stockpiled on site (which was actually excavated in 2017), then the excavation volume is slightly higher than the import volume (approximately 2,000 c.y.).

Mr. Held stated that it makes sense to compare excavated to excavated. Ms. Roberson stated that she can appreciate the comparison as the imported material has expanded from being moved.

When asked about whether they would be importing based on loose c.y. (20% swell), Mr. Held stated that it would be helpful to the Applicant to have clarification on how the PZC would like it to be measured. He said that factoring two topos is a reasonable way to do it, but it is up to the Commission.

PUBLIC COMMENT:

A.J. KEROUAC asked for clarification on Ms. Roberson's Summary Table regarding if it is import unprocessed figures vs. on-site processed figures or are both unprocessed amounts. Mr. Held stated that it would be unprocessed amounts coming in and excavated (raw material).

KEN NIEMANN, 573 Wauregan Road, asked for clarification regarding trucks in and trucks out and also what the amount should be. Ms. Roberson stated that the previous permit allowed 60 trucks per day and specified an average of 60 trips per day with a maximum of 80 trips per day. One truck going in and coming out is two trips. Ms. Roberson referred to her Summary Table where she tried to estimate truck trips, but to really know what the truck traffic is, you have to count the trucks. She suggested that the PZC could, as a condition of approval, require installing continuous traffic counters at the entrance of the site (as it varies considerably from day to day). Mr. Niemann

feels that gravel should not be allowed to be imported (when you're out, you're out). He feels that the permit should be based on the number of yards it has in it, not how much can be hauled in (because you can play with the numbers).

MARCEL DESSERT, 601 Wauregan Road, feels that hauling in is okay on commercial land, but not on residential land. Too many trucks/exhaust, too much aggravation. He said during the last two weeks, he thinks they hauled in 6,000 – 7,000 c.y. and some days there were ten trucks.

MICHELLE NIEMANN, 573 Wauregan Road, said she lives right across the street and there are constantly trucks going in and out. They day she counted trucks from 9 a.m. to 5 p.m., she counted 60 trucks (120 trips).

JIM BOOTH, Wolf Den Road, has been taking material out of this gravel bank for 30 years. He said that not every truck that goes in, leaves with material. He said that every truck that goes in empty, might leave with something. So, it is not two trips. He said this is an established business. He said if the gravel bank is closed down, it is \$80,000+ in taxes and jobs lost.

KEN NIEMANN spoke of the signatures that he had collected from 43 people that live on that road. He feels that those people don't count. He said it is not about people losing their jobs. It is about the amount of material. He feels that there was not 30 years of material in that 64 acres. He said that it became a processing center. He spoke of problems with dust. He said that Mr. Jolly is not complying with the Regulations and that he is now excavating Phase 1 without a permit. He said this is a problem for those 43 people.

MARCEL DESSERT stated that the hauling in is the problem and if the hauling were stopped, 50 percent of the problem would be gone. He said there is a lot of material going in there. He spoke of loud noise from truck pipes.

LAWRENCE LAPIERE, 534 Wauregan Road, explained that all of the trucks are legal and federally inspected yearly. He said they have health and dust/noise surveillance. He said that they have always gone above-and-beyond everything that Martha Fraenkel has ever asked of them. He said that they value everybody's opinion are are not looking to do anybody any wrong or threaten anybody's way of living.

MICHELLE NIEMANN stated that her way of living is being threatened and spoke of dust, truck noise. It has been over 30 years and she is tired of it. She referred to the people that signed the petition and stated that their homes are their life investments. Who will want to buy their houses?

MARCEL DESSERT stated that he does his own federal inspection on his own truck.

LAWRENCE LAPIERE explained that Mr. Jolly has enough trucks that they have their own mechanic that signs off on them yearly. They have to follow federal guidelines and provide records to the DOT for auditing. If trucks get pulled over, they have a record of it.

M. Sigfridson stated that if anyone has anything else that they would like to be heard, on the record, this would be the last chance as the public hearing will be closing.

Ms. Roberson stated that she had spoken with Mr. Lapierre regarding reclamation having been started in the Phase 1 area by bringing some of the waste material and depositing it in the hole. She noted that it has been stated that there are two more years of material left to mine on the site and that more than five acres is open (approximately 25 acres open - a lot of which is being used for stockpile area and processing area). She asked if there is a phasing plan for reclamation and, if so, what Phase would they be initiating first? She said there is a final reclamation plan which is required, but she asked what part they would start with.

Mr. Ives stated that he had asked Mr. Held two years ago how much was left in the plan. He said that the answer was that there were two years left for this Application, but that leads him to believe that there may another application after this one. He would like to know what the life of the property is. Could there be another application after this one?

Mr. Held indicated Phase 1 on the plan and explained the area will be maxed-out probably by the end of this year. He indicated where there is potentially a small amount of material and where they dug test holes (it would not be economically feasible to excavate in these areas because he said 50 percent of it will probably be garbage). As he explained earlier, the intention is that, by fall, the majority of the Phase 1 area would be backfilled and sloped at the 30 percent required and will probably be seeded in the fall as well.

Mr. Held indicated Phase 2 and where test holes were dug. He said there is a possibility that there could be a little additional material amounting to approximately six months worth of material at their current consumption rate. There is the possibility of another small excavation application assuming that there is good material deeper in Phase 2 (30,000 – 35,000 c.y. at most). He indicated an area where there is good material in a hill, but he does not feel that the IWWC would approve a permit for excavating there.

Ms. Roberson asked if there had been any consideration for the addition of the potentially marginal excavation areas to the north of the main excavation area to this Application. Mr. Held stated that they had not and he explained that it is not financially viable.

When asked when Phase 2 would be opened up, Mr. Held stated next spring, after reclamation has commenced/started for Phase 1. He expects that Phase 1 will be brought to the final contours, topsoiled and seeded by the end of fall 2019. After Phase 1 is reclaimed, they are in a situation where the rest of the site is being used for stockpiling either raw or finished material or processing. He does not know that there is a whole lot else that can practically go on until Phase 2 is done and they are ready to reclaim the whole site.

Ms. Roberson asked:

- What reclamation steps can be started right away?
- What the next intermediate step would be?
- What the intention would be to reduce the stockpile area at some point in the near future?

Mr. Held stated that he does not foresee that happening because they are at the size that they need to be. It is not practical to reduce the size. At some point you have to stop adding to the stockpiles, but he stated that they would

probably be the last areas to be reclaimed. He said it is also the easiest area to reclaim because it is essentially flat. The piles cannot be consolidated because there are five sizes of stones and two sizes of sand. They have a big stockpile of silt already which is near the settling basins. When they are excavating the Phase 1 area, when a truckload goes out, bring back a truckload of silt to be used for what they need to use it for. He said that, by the time the excavation is done, a lot of the material needed for final grading is already going to be in there.

Ms. Roberson recommended that the Commission consider requiring phasing for the reclamation plan and also consider a condition of approval that reclamation start immediately or at least a schedule for order of reclamation.

Mr. Held stated that there may have been a condition of approval of either the IWWC or part of the special permit approval for the past three years that there was a timeframe for after commercial operations on the site cease you have so long to get the reclamation started and you get so long to get the reclamation complete. He suggested that it could be carried forward.

Mr. Tanner asked what they would be doing in between Phase 1 and Phase 2. Mr. Held stated that it would be winter. He said that if it is too late to seed in the fall, they would need to do it in the spring.

Mr. Held stated that they are not expecting a partial reduction of the bond after the Phase 1 area is reclaimed. He said that it is fine to keep the reclamation bond at what it has been at for the entire site.

LINDA TRAHAN, Maynard Road, commented that, should the PZC approve the Application, there were conditions of previous approvals that had been put in place:

- She asked for the continuation of the following condition: No traffic from Mr. Jolley's permitted gravel banks on Wauregan Road to travel on Maynard Road.

Ms. Roberson also suggested that the Commission consider some safety fencing along the residential property boundary (she indicated the area on the plan) where it is steep along the top of the slope. Mr. Ogden stated that he does not mind if the orange snow fence were installed. Mr. Held suggested that it be placed at the top of the berm (to be consistent with what Martha Frankel had requested around the process water pond) rather than along the property line and the woods. There were no comments from other property owners regarding the fencing. Mr. Lapierre stated that they would be happy to install the fencing if the Commission wants it.

There was discussion regarding whether to close the public hearing and, when asked, Ms. Roberson stated that all of the relevant issues had been discussed and that the information requested at the last meeting had been received. Ms. Sigfridson stated that even if the public hearing were closed, the PZC does not have to act on it at this meeting. She suggested that the Commission Members review the previous permit and look at those conditions of approval.

Motion was made by A. Tanner to close the public hearing for **SPG 19-002 Gravel Special Permit-** Brooklyn Sand & Gravel, LLC, 64+- acres, 530 Wauregan Road (Assessor's Map 30, Lots 97, 97-1, 97-2), Proposed removal of approximately 112,000 cubic yards of sand and gravel. Second by E. Starks. Motion carried unanimously (5-0-0).

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

d. **Other Unfinished Business:**

1. **SPG 19-002 Gravel Special Permit-** Brooklyn Sand & Gravel, LLC, 64+- acres, 530 Wauregan Road (Assessor's Map 30, Lots 97, 97-1, 97-2), Proposed removal of approximately 218,000 cubic yards of sand and gravel.

There was discussion regarding possible reasons for denial: safety, non-compliance with the Regulations (there are criteria associated with special permit – Section 5.7 of the Regulations). It is possible to approve portions of the Application, if not all of it. The three options are: 1) Approve; 2) Modify and Approve; or 3) Deny.

Ms. Sigfridson commented that she does not feel comfortable taking action on the Application tonight as she would like more time to ponder everything that has come onto the record in light of the Regulations. She asked if any of the other Commission Members agreed. Mr. D'Agostino stated that he thinks most do. Mr. Tanner stated that he needs to think about the conditions more.

Ms. Roberson will e-mail the previous renewals to the Commission Members. She read aloud the conditions of approval from the PZC 2018 renewal (not IWWC). She read and explained Note #2 on Sheet 5 regarding contours on the restoration plan.

Ms. Sigfridson commented that she doesn't see why the Commission, if approving, would not want to include all of those conditions except for the area reseeding. She also stated that she is thinking about additional conditions regarding curtailing importation somewhat, if not entirely. A lot of the testimony included issues regarding additional material being brought in. She feels embarrassed by what has not been done to ensure compliance. It cannot be proven whether the Applicant has or has not been complying.

Discussion ensued regarding reclamation, truck traffic, importation. Mr. Ives feels that if the end is truly in sight, the focus should be on the phases for restoration and perhaps limit importation. Mr. Roberson stated that if importation were limited, you would still want to be able to verify that they were not bringing loaded trucks in. Ms. Sigfridson feels that the neighbors will alert the PZC if they are bringing loaded trucks in and also it is the ZEO's job to make sure they are complying. Mr. Tanner stated that if Mr. Jolly has two years, he will have to transition his business out, and perhaps his business should not be limited during the transition. Discussion continued. Ms. Roberson will draft conditions based on concerns she has heard from the PZC during discussion (restoration/truck traffic/importation/understanding of the functionally open areas of the site/keeping the Maynard Road condition/safety fencing/phased reclamation).

Mr Ives left at 8:05 p.m.

Mr. D'Agostino commented that although the PZC is discussing conditions, it should not be interpreted as a yes vote for approving the Application. Ms. Sigfridson and Ms. Roberson explained that the PZC has to reach its decision, within its authority, based on relevant, factual evidence that is on the record and the Zoning Regulations. Ms. Roberson suggested that the PZC Members read the IWWC conditions of approval and also the restoration notes on the plans.

Motion was made by J. D'Agostino to table discussion/action regarding **SPG 19-002 Gravel Special Permit**- Brooklyn Sand & Gravel, LLC, 64+- acres, 530 Wauregan Road (Assessor's Map 30, Lots 97, 97-1, 97-2), Proposed removal of approximately 112,000 cubic yards of sand and gravel, to the next regular meeting of the Planning and Zoning Commission to be held on Tuesday, July 2, 2019, at 6:30 p.m. at the Clifford B. Green Memorial Building located at 69 South Main Street, Brooklyn, CT. Second by A. Tanner. Motion carried unanimously (5-0-0).

VIII. New Business:

- a. Applications: None.**
- b. Other:**

1. Review of Draft Zoning Regulations.

There was discussion regarding color copies vs. black and white copies. Because it is so expensive, it was decided to only make a few color copies after it is adopted.

There was discussion regarding some formatting questions (hot links) that Mr. Roberson had as it is very time consuming. She will fix the page that she used as an example and then she will send it out.

There was discussion regarding setting the public hearing.

Motion was made by J. D'Agostino to schedule a public hearing for the Draft Zoning Regulations (completely re-written) for the regular meeting of the Planning and Zoning Commission to be held on Tuesday, July 16, 2019, at 6:30 p.m., at the Clifford B. Green Memorial Building located at 69 South Main Street, Brooklyn, CT. Second by A. Fitzgerald. Motion carried unanimously (5-0-0).

There was discussion regarding that the Zoning Map should have been included in the above motion.

Motion was made by J. D'Agostino to schedule a public hearing for the Draft Zoning Map for the regular meeting of the Planning and Zoning Commission to be held on Tuesday, July 16, 2019, at 6:30 p.m., at the Clifford B. Green Memorial Building located at 69 South Main Street, Brooklyn, CT. Second by A. Fitzgerald. Motion carried unanimously (5-0-0).

IX. Reports of Officers and Committees:

1. Budget (included in packets to Commission Members).
There was discussion regarding the cost of printing the packets vs. digital.
2. Correspondence (CACIWC Winter/Spring 2019 included in packets to Commission Members).
3. Chairman's Report – No Report.

There was discussion regarding how the public might feel about the way the Commission is handling the Brooklyn Sand and Gravel Application.

X. Public Commentary:

A.J. KEROUAC 'S comments:

- How the public feels has to do with perception.

- He has an application pending, but the hearing won't be until July 22, so he is not sure which set of Regulations would be in effect.
Ms. Roberson stated that it goes by date of receipt. The new Regulations won't be adopted on July 16th.

XI. Adjourn

Motion was made by A. Tanner to adjourn at 8:36 p.m. M. Sigfridson adjourned the meeting.

Respectfully submitted,

J.S. Perreault
Recording Secretary