

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION**

**Special Meeting
Tuesday, March 21, 2017
Clifford B. Green Meeting Center
69 South Main Street
6:30 p.m.**

MINUTES

I. Call to Order - Chair, Michelle Sigfridson, called the meeting to order at 6:31 p.m.

II. Roll Call – Michelle Sigfridson; Carlene Kelleher; David Fuss; Aaron Kerouac; Jeryl Mohn; Jules D’Agostino.

Craig Dunlop arrived at 6:33 p.m.

Alan Carpenter was absent.

Staff Present – Jana Roberson, Director of Community Development; Martha Fraenkel, Zoning Enforcement Officer (seated in the audience).

III. Seating of Alternates

Motion was made by C. Kelleher to seat J. D’Agostino in the absence of A. Carpenter and C. Dunlop. Second by A. Kerouac. Motion carried unanimously (5-0-0).

C. Dunlop arrived at 6:33 p.m.

IV. Public Commentary – None.

V. New Business

1. Discussion of GBR17-001 Brooklyn Sand and Gravel Renewal, Wauregan Road (Route 205), Map 30, Lot 97, RA Zone.

D. Fuss recused himself. He stated that he and Wayne Jolley (Owner of Brooklyn Sand and Gravel) will be running for the Board of Selectman. Mr. Fuss took a seat in the audience.

Martha Fraenkel, Zoning Enforcement Officer, stated that the Permittee had submitted a timely request for renewal (Section 13.7 of the Zoning Regulations). Ms. Fraenkel referred to her Memo dated March 15, 2017, and a table that she assembled using information gathered from previous applications/renewals (both were included in the packets to the Commission Members), which showed what she was able to

decipher as the documented history of permit renewals for Brooklyn Sand and Gravel.

- The original permit issued in 1989-1990.
- A new special permit replaced the original in 1995.
- A second special permit expanded the operation to a new area in 2012. The old permit and this new permit ran separately (until merged in the 2016 renewal).
- There has never been a year where there was a refusal to grant a renewal.
- The table shows that the amount of material removed from the site is now in excess of what was approved to be removed from the site.

Ms. Fraenkel explained that she is unable to grant a renewal unilaterally because of the volume discrepancy and she feels there is a change in the scope of the operation. She noted that there has been, since 2011, a map showing the approved limits of excavation. The current proposal is 90 percent within that area (not the first time this area has been identified as an area to be excavated). However, this year, there is proposed to be a more intensive (deeper – number of feet not known) excavation of that area of 2.5 acres. Up to 100,000 cubic yards could come out of this small area.

Ms. Fraenkel has not denied the renewal, but defers to the Commission to make the decision.

J. Roberson explained that a renewal cannot be granted at this meeting because the IWWC has not acted on it yet. She stated that the P&Z Commission could take one of the following actions:

- Discuss.
- Rescind the existing permit for noncompliance.
Instruct the Applicant to seek a Special Permit Modification (which would be good for one year), as suggested by the Land Use Attorney.

Attorney JoAnne Paul, representing Brooklyn Sand and Gravel, stated that the following people were seated in the audience: David Held, Engineer with Provost & Rovero, Inc.; Wayne Jolley, Owner; and Maurice Lapierre, Manager of the Project. Attorney Paul summarized their concern that the permit has been renewed every year, including the last renewal by Ms. Fraenkel. Their contention is that once you find that the operation is in compliance, you cannot look back beyond the last renewal. She stated that from the last renewal in 2015 to the one being considered now, Brooklyn Sand and Gravel has reported that they have removed 44,000 cubic yards (reported on a quarterly basis). She stated that it is impossible to go back to the beginning of the permitting process in the 1990's to make a determination on what has actually been removed because the reporting and the oversight were not organized or specific.

Attorney Paul stated that they are excavating in the same located and are clearly in compliance in the last year as to what was removed. She stated that a determination had been made with the 2015 renewal that they were in compliance. Whatever was removed cannot be added up cumulatively, each year stands alone. She submitted (for

the record) copies of the quarterly reports of what was removed that had been submitted to the ZEO (from December 2015 through March 2017).

David Held, Professional Engineer/Land Surveyor with Provost & Rovero, explained that their involvement with this site only dates back to November 2015, therefore, he does not have firsthand knowledge of all that has happened on the property. He did an orientation of the property on the map.

J. Roberson stated that an aerial photo and a set of plans had been included in the packets to Commission Members.

Mr. Held continued with his presentation:

- The excavation of the previous permit renewal was performed per plan.
- Proposed for this year: He indicated a 2.4 acre area that had been previously excavated and explained that they will move the topsoil stockpiles and excavate deeper. They are proposing to bring the bottom of the excavation down to an elevation of approximately 150. They have done test pits.
- He indicated the access drive, maintenance garage, stockpiles of topsoil and subsoil materials. Material from the stockpiles to be used to restore other areas on the site which was part of the IWWC approval from last year. Some also to be used to build an earthen berm to provide screening for properties close to the proposed excavation.
- Although the proposed rate shown is 100,000 cubic yards to be removed, based on business conditions, they do not expect to remove more than 70,000 cubic yards.
- As the excavation is completed, the steep 1-to-1 side slopes would be re-graded and the excavation will be backfilled to establish the 30-percent slopes as required. For the long-term, they will try to establish grades that will coincide with the overall restoration for the entire site.
- No proposed changes to the bonding amount or disturbed acreage since this entire excavation is in previously disturbed areas. There is currently a bond in place that covers the entire disturbed area on the site including the processing plant areas, stockpile areas, and previously excavated areas that have not yet been restored.
- He indicated on the map a shaded outline showing that approximately 90-percent of the proposed excavation is within previously approved limits. It was traced as best they could reproduce it from previous plans prepared by KWP over the years. He feels there is an error and that the entire proposed excavation is within previously approved excavation limits and previously disturbed areas. He said that an inspection of the site makes it fairly obvious that the area was open and disturbed before 2011. He stated that presumably, every time a renewal has been issued (since 2008 - aerial photo provided by Ms. Fraenkel) it has been known that it's been excavated, so it's been accepted and approved.

There was discussion regarding the accuracy of the table prepared by Ms. Fraenkel. Mr. Held stated that it is impossible to determine how much material has been excavated from the site over the past 30 years. He said that at last year's renewal there was discussion and the conclusion was that the past records are unreliable and the best that can be done is to keep good records going forward and to maintain compliance going forward. Attorney Paul stated the Operator has been working with the ZEO and has been providing the quarterly reports and last year 44,000 cubic yards were removed and that number will be known for every subsequent renewal.

There was discussion regarding modifying the Application as follows: Change 250,000 Cubic Yards of Gravel Removal to 100,000 Cubic Yards of Gravel Removal; and Change 8+/- Maximum Area: Acres of Gravel Removal to 2.4 Maximum Area: Acres of Gravel Removal.

There was discussion regarding the permits issued allowing up to a total removal of 499,000 cubic yards. Ms. Fraenkel feels that the numbers in her table are correct (total material removed exceeds what was approved to be removed).

Discussion continued regarding the amount of material removed as calculated in Ms. Fraenkel's table. Mr. Jolley explained that the numbers vary because it depends on business.

Ms. Fraenkel stated that she feels the most important things to consider when a constructing a regulatory framework would not be how many cubic yards are coming out, but rather the parameter, proximity to natural resources and residences, and the ability to restore. She is concerned with there being enough material left to fill in the holes and re-grade.

There was discussion regarding what the original amount was that had been approved in the original special permit. It suggested that it may have been 430,000 cubic yards. J. Roberson explained that, the permit was initially issued with a volume maximum and an area boundary. At some point, the permit has to end. She explained that, for volume taken in or going out, they can only rely on the information provided by the permit holder.

There was more discussion regarding the numbers for material removed in Ms. Fraenkel's table as there was disagreement.

C. Kelleher directed discussion to the impact of the excavation and how much more excavation can occur without doing harm to the neighborhood (RA Zone) before getting to a point where the property can't be restored.

Mr. Held explained that, as part of last year's renewal, they put together a site-wide restoration plan (including proposed grades) which only encompasses the areas currently disturbed. He displayed the map and indicated areas discussed. There are a lot of areas on the site with suitable material that have not yet been part of the special permit approval. The plan will have to be revised as new areas are approved in the

future. There is a pond on the property for which they have not yet received an answer from IWWC. The question is whether they can fill it in as part of a restoration plan or whether it has to stay. Mr. Held indicated two areas for future excavation where they did test pits and found that the material is of good quality. There is a large berm and that material may be used to grade parts of the site. He stated that there is no concern at this time for creating topography that is un-restorable. He explained that this plan is a placeholder to comply with the current regulations.

Ms. Fraenkel stated that Syl Pauley had reviewed the restoration plan last year and his comments indicated that he was satisfied. Mr. Pauley has not seen the current plan/proposal and Ms. Fraenkel offered to send it to him for review.

There was more discussion regarding whether the original permit was approved with a limit. How was the figure of 430,000 cubic yards calculated. It is unclear. Ms. Fraenkel explained that she cannot explain the basis for the expansion from 380,000 to 430,000 (as shown in column 3 in her table).

There was discussion regarding what would happen if the permit was not renewed:

- They can seek a new special permit within a reasonable amount of time (if they intend to continue to operate).
- If that new special permit was denied, a cease and desist order would be issued at some point.

There was discussion regarding the requirement in Section 13.7 that the amount of material originally approved to be removed and amount removed to date be provided in the application for renewal. J. Roberson stated that she objects to treating this like the volume of material doesn't matter except for last year. There was an intent from the beginning to permit a certain volume over a certain area and when that point is reached, you have to apply for a new permit. She stated that Ms. Fraenkel reviewed everything in the file and tried to make sense of it and it is her educated/informed opinion that, based on the material submitted, the volume has been exceeded.

Attorney Paul asked if there is a document that reflects the original number. J. Roberson stated that a special permit should have been recorded on the land records.

There was discussion regarding modification of current permit vs. new permit. There was more discussion regarding the numbers in the columns of Ms. Fraenkel's table and also about the previous permits.

C. Kelleher stated that she is leaning toward a modification. She pointed out that, with the re-write of the Regulations (hopefully will be in effect within a year), no renewals will be able to take place and everyone will need to apply for a new permit in accordance with the new Regulations.

M. Sigfridson asked if the Applicant would be amenable to submitting an application to modify. Attorney Paul stated that if it is needed in the form of a separate

application, they would have to do that. She asked if conditions could be attached to a renewal. J. D'Agostino stated that he has a problem with that because the original approved amount of material to be removed is not known.

Attorney Paul asked if the Commission could consider this as a final renewal based on the proposal of 100,000 cubic yards to be removed. Mr. Held stated that the proposed 100,000 cubic yards is pretty close to the practical limit of what could be taken out the already disturbed area of that site. A. Kerouac stated that an agreement has not been reached on what the limit is and that is why a simple renewal cannot be done. He said that the Commission should have received a special permit modification rather than a renewal application. He said a modification should have been done last year. Mr. Held stated that he does not feel it is appropriate to hold it against the Applicant since every renewal was granted and there was poor record keeping on both sides. Attorney Paul suggested that a renewal be fashioned with specific parameters. She said it would serve the same purpose of a technical modification of the special permit. She said it could be identified as a final renewal.

The current application expires this week. There was discussion regarding whether the Commission would require a public hearing. There was a comment that it would not require a public hearing. J. Roberson clarified that if they come in for a special permit modification, it would be a special permit modification with renewal.

There was discussion regarding language for the limit to be excavated for special permit modification application. Mr. Held stated that they would concede and are willing to stipulate that the excavation proposed on these plans is the limit of what was approved on the site with the active special permit. The Commission was agreeable to that language being included in the application.

Ms. Fraenkel suggested that, instead of the bonding being established by simple multiplication of \$10,000 per acre, Syl Pauley be asked to review the grading plan to ensure that there is sufficient material on the site to achieve the grading plan without importation of material. Mr. Held stated that he had serious concern about that because of the pond.

Motion was made by C. Kelleher to table discussion of GBR17-001 Brooklyn Sand and Gravel Renewal, Wauregan Road (Route 205), Map 30, Lot 97, RA Zone to April 18, 2017. Second by J. Mohn.

Discussion: IWWC meets before the next meeting of the P&Z Commission.

Motion carried unanimously (6-0-0).

D. Fuss returned to the table (8:26 p.m.).
C. Dunlop left at 8:26 p.m.

VI. Unfinished Business

a. Other Business:

1. Review/Discussion Draft of the Regulations; Topics: Earth operations, Ground Mounted Solar, Donation Bins, etc.

J. Roberson provided copies of comments from Syl Pauley, NECCOG Regional Engineer (memo dated March 7, 2017); an e-mail from Jeff Rawson of Rawson Materials (dated March 21, 2017); and comments from David Held of Provost & Rovero, Inc. (letter dated February 20, 2017) had been provided at the Special Meeting on February 21, 2017. She stated that she had provided comments from the Land Use Attorney at the February 21st Special Meeting (she will resend Attorney Alter's comments via e-mail to Commission Members) as well as from Carlene Kelleher and Martha Fraenkel. Ms. Roberson also stated that she had gotten feedback from gravel operators and that it is important to consider their perspective.

The Commission reviewed Draft Regulations Section 7.K - Earth Operations (dated March 21, 2017). However, Ms. Roberson said that all comments from the February Special Meeting had not yet been incorporated into this revision of the draft.

7.K - EARTH OPERATIONS

7K.1. PURPOSES

- Re-ordered the list of items.
- Sentence added to read as follows: "These regulations are designed to provide for the re-establishment of level ground, protection of the area by suitable cover and to ensure that, following earth operations, land will be usable for residential, commercial, or agricultural purposes."

7.K.2. APPLICABILITY

- Earth operations only permitted in the RA Zone. Also added to the list of uses in the RA Zone.

7.K.3. PRE-EXISTING EXCAVATION OPERATIONS

- Ms. Roberson skipped over this section and stated that Attorney Alter had worked on this section.

7.K.4. STANDARDS FOR EXCAVATION OPERATIONS

- 1. Area of Operation –
Deleted the paragraph stating that, "no more than five (5) acres or ten (10%) percent of the premises, whichever is less, be left in an unrestored condition..."
Added the following (underlined text):

- a. “The Commission reserves the right to require project stages to limit the amount of land to be denuded or stripped at any one time. Such requirements shall be based upon the character of the neighborhood, the topography of the site, the potential for erosion by wind or water, unique site conditions, and the recommendation of the Town Engineer or such other State or local agency, or special advisor, as may provide advice to the Commission.”
2. Hours of Operation – First sentence of the first paragraph to read as follows:
 “Excavation operations, including loading and delivery of material, shall not commence before 7:00 a.m. local time and terminate not later than 6:00 p.m. local time, Monday through Friday, nor commence before 8:00 a.m. local time and terminate not later than 1:00 p.m. local time on Saturday.”
3. Property Line Setbacks – First sentence added to read as follows:
 “All property boundaries shall be clearly and permanently marked in the field.”
4. On-Site Processing –
 J. Roberson explained that the Commission had previously decided that processing of on-site materials is fine as part of the gravel bank permit, but regulations would have to be written for a separate special permit for processing of imported materials. There was discussion. C. Kelleher expressed that she is strongly opposed to processing only operations in the RA Zone. Other Commission Members expressed agreement with Ms. Kelleher. Ms. Roberson explained that imported materials is a totally different use and should be its own permit. Ms. Roberson explained that it does not mean that it would be permitted as a stand-alone use, but that, if someone has a special permit for a gravel operation and they want to import material for processing, they would have to apply for another special permit for that. She stated that the Land Use Attorney and Martha Fraenkel had pointed that out at the last Special Meeting.

Added the following:

- b. “Processing shall be restricted to screening, washing, crushing and sorting.”
- c. “Material processed on-site shall be excavated on-site.”
 More language will be added.

5. Drainage – First two sentences of the paragraph to read as follows:
 “During the period of excavation, provision shall be made for proper drainage to avoid uncontrolled stormwater runoff and

unnecessary erosion and sedimentation. The drainage system may include sedimentation basins designed in accordance with the Connecticut Stormwater Quality Manual, as amended.”

7. Fences And Barricades – First sentence of the paragraph to read as follows:

“Snow fence shall be used to clearly delineate the boundaries of the area of operation.”

11. Use of Buildings – Added the following (underlined text):
“The use of any proposed buildings on the permit premises during the term of the excavation operation shall be limited to sanitary facilities, the storage of tools, equipment and materials essential to the operation, and other uses integral to the operation, and may allow human habitation by the landowner, his next of kin, or any employees of the operation in accordance with other applicable provisions of these Regulations.”

13. Restoration – Second sentence of the paragraph to read as follows:

“The areas shall be mulched and seeded in accordance with recommendations of the New York State Revegetation Procedures Manual for Surface Mining Reclamation, as amended.”

Last sentence of the paragraph to read as follows:

“The Commission may authorize different restoration vegetation for areas which are to be used for different future land uses.”

J. Roberson will send the website link (for the above Manual) to the Commission Members. There was discussion regarding the minimum depth of six (6) inches. There was concern that there may not have been six inches before any excavation occurred and that topsoil may need to be imported to meet the regulation. J. Roberson will modify this language to make it a little looser.

There was discussion regarding the goal when planning a reclamation strategy. The way a property is reclaimed is closely tied to what the next use will be.

14. Loam To Be Retained –

There was discussion.

Jeff Rawson, Rawson Materials, “Why have a specific depth of topsoil?” He said that six inches is a rarity and he suggested subsoil in conjunction with topsoil. He said that currently, there is no requirement for subsoil. J. Roberson will send him the link for the New York State Revegetation Procedures Manual for Surface Mining Reclamation.

It was suggested that it need not be too specific as professional staff would be reviewing reclamation plans. Suggested language, “As approved by professional staff.” J. Roberson referenced an ordinance which allows for the applicant to be charged for impartial, technical expertise when the need has been identified.

It was suggested that as long as a State-approved soil scientist designed the reclamation plan that would be sufficient.

Ms. Roberson suggested either a sieve analysis (scientific standard) or that the amount of loam is based on the restoration plan.

Suggested language was as follows:

“No loam shall be removed from any permit premises unless the applicant can conclusively establish that the required (there was no decision on the amount/number of inches) of loam would remain to provide the cover specified in the preceding paragraph for all disturbed areas.”

M. Sigfridson suggested language to the effect that it be consistent with the New York State Revegetation Procedures Manual for Surface Mining Reclamation and that, if the applicant proposes a good reclamation plan showing that they have more than enough topsoil/subsoil to carry out that restoration plan, they should be allowed to remove any excess. There were no objections.

J. Roberson will reword the above-suggested language.

7.K.5. – APPLICATION REQUIREMENTS

J. Roberson stated that the changes made were just mostly formatting changes and that she added language regarding haul pattern (where the trucks move on the property itself), off-site traffic routing plan (may be a requirement as needed), traffic analysis (prepared by a traffic engineer). She explained that traffic routing and traffic analysis are both off-site and that the Commission can request that the applicant provide information, but it is unlikely that the Commission would have any authority to dictate where traffic get routed off-

site. There was discussion regarding imposing a condition stating that the applicant would be allowed ingress/egress going a particular way (for sight). Mr. Rawson suggested asking the applicant if they would voluntarily agree (which could then be included as a condition of approval).

There was discussion regarding the criteria for the Commission to deny an application because of a traffic routing plan. J. Roberson will get clarification from the Land Use Attorney.

Mr. Rawson asked what is envisioned for the haul pattern. J. Roberson explained that, as an applicant, the internal road system would have to be shown.

J. Roberson provided a copy of the current draft for Section 7.K - Earth Operations (dated March 21, 2017) to Mr. Rawson and Maurice Lapierre.

There was discussion regarding how to address wetlands (during restoration) that are created unintentionally. Ms. Roberson explained that it is an issue with the Wetlands Protection Act (State-level legislation).

There was discussion regarding what the limit will be for cubic yards removed/surface acreage exposed at one time in the new Regulations from a special permit standpoint. Volume can be determined based on the existing and proposed final contour lines. There was a question as whether to enumerate the volume. Mr. Rawson suggested that the truck traffic pattern (how many trucks per day) and the final contour lines would determine volume. There was discussion regarding what other towns do. J. Roberson will try to find a town that does it differently from requiring that a new permit be applied for when the total limit that was applied for is reached. M. Sigfridson feels that the limit should be the volume of material that you can get from the site.

There was discussion regarding restoration. Mr. Rawson suggested adding a definition for useable land.

There was discussion regarding a term/time limit for the special permit. J. Roberson stated that it is in Section 7.K.7 – FOLLOWING APPROVAL (Revisions had been made to the renewal period at the Special Meeting of February 21, 2017, but have not yet been incorporated into the current draft. J. Roberson to provide to the Commission Members before the next meeting.) Ten years duration, permit renewals every two years, maximum of 4 renewals.

7.K.6 – CRITERIA FOR DECISION – No Discussion.

VII. Public Commentary

Jeff Rawson, Rawson Materials, reviewed his comments dated March 21, 2017.

- # 1 - It was clarified that it would be “or.”
- # 2 - Section 7.K.1. - Useable land was discussed tonight.
- # 3 - Section 7.K.4.2 - Hours of operation was discussed tonight.
- # 4 - Section 7.K.4.2 - Holidays – The Commission agreed to list.
- # 5 - Section 7.K.4.3. – The Commission will consider his suggestion.
- # 6 – Section 7.K.4.8. – It was clarified that it means that the first 300 feet are dustless.
- # 7 – Section 7.K.4.12 – Governed by the Federal Mine Safety and Health Administration (MSHA). Berms are the preferred safety and protective measure. Berms are to be at least 1/2 the height of the highest tire of the vehicles used on the site. There was discussion as this Section applies more to erosion. The Commission will look into this.
- # 8 – Section 7.K.4.15 – Mining means sub-surface mining. The Section to be called Underground Mining.
- # 9 – Section 7.K.5.7 - Off-site traffic routing plan was discussed tonight.
- #10 – Section 7.K.7.1.a. – There was discussion regarding bonds, letter (irrevocable) of credit, surety bonds. J. Roberson stated that surety can be required, but the form cannot be specified. Attorney Alter will be reviewing this.
- #11 – Section 7.K.7.2 – J. Roberson explained that review periods of April and August would make it easier, but they will be looking at it again to see what would be most practical. She will check with Martha Fraenkel. Mr. Rawson asked if it is a review for permit renewal or a progress check/general inspection? He feels the ZEO should be able to inspect at any time with due notice. J. Roberson stated that between renewals, it may just be complaint based.

Maurice Lapierre, Project Manager at Brooklyn Sand and Gravel, asked if he could be included to receive e-mail and he asked that load out times for exporting deliveries be changed to Monday through Friday from 6:00 a.m. to 5:00 p.m. and on Saturdays from 7:00 a.m. to noon. There was discussion regarding whether residents would object.

VIII. Adjourn

M. Sigfridson adjourned the meeting at 10:00 p.m.

Respectfully submitted,

J.S. Perreault
Recording Secretary