

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION
Regular Meeting
Wednesday, May 21, 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 6:34 p.m.
- II. Roll Call** – Michelle Sigfridson, Carleen Kelleher, Jules D’Agostino, Earl Starks; Alan Fitzgerald; Rick Ives, First Selectman and ex Officio Member. Austin Tanner was absent.
- III. Seating of Alternates** – None.
- IV. Adoption of Minutes:** Regular Meeting May 1, 2019

Motion was made by J. D’Agostino to approve the Minutes of the Regular Meeting of May 1, 2019. Second by C. Kelleher.

Discussion:

Two Corrections were noted:

- Page 2, Item VII.b.1, J. D’Agostino would like the paragraph after the bullet points to read as follows: “The Commission Members were receptive to the idea, however, Mr. D’Agostino cautioned that more information should be available before the decision to add them to the Regulations.”
- Page 1, M. Sigfridson was not present at the time of Roll Call and it was not stated in the Minutes that when she arrived she assumed the Chair Position from C. Kelleher who was Acting Chair until then.

J. D’Agostino amended his motion to include the two noted corrections. C. Kelleher seconded the amendment. Amended Motion carried unanimously (5-0-0).

- V. Public Commentary** – None.

VI. Unfinished Business:

- a. Reading of Legal Notice: SPG 19-002 Gravel Special Permit** – Brooklyn Sand & Gravel, LLC

J. Roberson read the Legal Notice which had been published in the *Villager* Newspaper.

- b. Continued Public Hearings:** None.

- c. New 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.

David Held, Professional Engineer and Land Surveyor with Provost & Rovero, represented the Applicant.

Mr. Held explained that the plans and design have changed to substantially lessen the scope of the Application from what was originally submitted. They are now proposing 112,000 cubic yards of excavation in two phases rather than three phases. They were unsuccessful in obtaining the variances that they had applied for with the Zoning Board of Appeals.

Mr. Held gave a PowerPoint presentation giving an overview of the proposal, orienting the area (including the area where excavation has been ongoing for the last year) and indicating the areas of the two phases:

- The area for Phase 2 has been untouched, so there will be new clearing in that area.
- Because there are more than five acres in an unrestored state (all bonded for restoration), the new Application warrants an explanation for why that situation exists. Mr. Held submitted a summary (for the record) of open areas on the site and what is reflected in the current bond (\$200,000) which is still in effect. This would be rolled into the new Application if approved.
 - He indicated 1.9 acres open area– parking and access driveways (part of the restoration plan).
 - 3.5 acres of perimeter disturbed from the active excavation
 - Two processing plants on the property – Indicated five settling ponds and one man-made pond (water is taken from these to run the processing plants). Total area 6.9 acres.
 - He indicated an area including finished materials stockpiles on the northerly side and raw materials stockpiles on the southerly side which feed into the plants and comes out and goes into stockpiles on the other side.
 - Five different products are produced which need to be kept in separate stockpiles. Therefore, a large stockpile area is needed. This area is 8.6 acres.
 - Total area of 21 acres bonded three years ago.
- Mr. Held stated that, during the past three years of renewal applications, the ZEO had been very thorough in reviewing what had happened in the past and started a trend that the Commission could look to to impose conditions on any new approvals at the site:
 - No trucks on Maynard Road
 - Quarterly reporting of truckloads in and out of the site to monitor what is mined on site and what is imported to the site to ensure compliance with the Regulations.
- Mr. Held indicated the area for Phase One 59,000 c.y. (2.5 acres) which is the already disturbed open area where they have been excavating for the past year+. They are proposing to continuing the existing excavation going deeper. A did a test pit in the middle of the excavation to ensure that the bottom of this proposed excavation would not be intercepting groundwater or ledge. They did not encounter groundwater at 135.
- Mr. Held indicated the area for Phase Two (southeasterly corner of the site) which is 2.1 acres, 53,000 c.y.
- Based on previous years' quantities, he anticipates that Phase One would be completed this year and Phase Two would be completed next year.
- He indicated where buffers will be maintained.
- Final grades for Phase Two to be 30 percent or less.

Mark Curreri, 656 Wauregan Road, asked if there will be clear cutting along the property line between the Church and the new excavation. Mr. Held explained that there would continue to be a tree buffer.

Ms. Roberson stated that approval had been received from the IWWC and that a report from Syl Pauley was included in packets to Commission Members.

Ms. Sigfridson asked Mr. Held to address Syl Pauley's comments:

- #1 – Sheet 5 of 6 Site Restoration Plan
Mr. Held read a note which is on the plan and stated that they are obligated to comply with the Regulations. He said that the IWWC has not yet clarified whether they will require that the process water pond be filled in which would take several hundred thousand yards of material and he said that they can't do that. He said that the final restoration will be compliant with the Regulations.
- #2 – Sheet 6 of 6 Detail Sheet

Mr. Held agreed that the total volume of excavation for Phases 1 & 2 could be added to the plans.

- #3 - Sheet 6 of 6 Detail Sheet

Mr. Held stated that the estimated time frame for completion of all excavation and processing would be two years.

Mr. Held explained that he anticipates that Phase One would be substantially complete prior to opening up Phase Two (graded and loam/seeded). He said that if there were a need to increase the bond when they go into Phase Two, that would not be an unreasonable condition. He suggested coordinating with the ZEO.

Ms. Roberson will provide copies of Martha Fraenkel's reports from previous renewals. Mr. Held provided what the condition were for the last renewal.

Ms. Roberson asked about the area on the western side of Phase One - proximity to the property line. Mr. Held explained that that area does not comply with the Zoning Regulations and has not for the last three years when they got permit renewals. He said that it was basically understood that it was previously disturbed and previously sloped in an inappropriate manner and the only way to address it is to do more work beyond where the buffer is supposed to be. He said the road grade would not change at all.

Mr. Ives asked if the two years would be the end of the project. Mr. Held stated that it would be the end of the special permit. Mr. Ives asked if there is a projection of when the site would be finished. Mr. Held stated pretty soon and that he could not quantify it any more than that. Excavation activities began on the site in the 1950's.

Mr. D'Agostino asked how many employees Mr. Jolly has. He has 49 and 8 work in Brooklyn.

Joe Ogden, 564 Wauregan Road, at the corner of Phase One. He said that the road was lifted about 10 to 15 feet within the last year. Since they started Phase One, all of his trees (buffer) are dying. He gets gravel in his yard because they are not securing the loads. He asked why his trees are dying if the water level is not affected. Mr. Held stated that he does not think that the elevation of the road changed in the last year.

Ken Niemann, 573 Wauregan Road, submitted a 5-page petition (dated May 17, 2019) containing approximately 35 signatures from people on Wauregan Road who are opposed. He has lived there for 35 years and would like to know when it will end. He does not feel that there was enough material to sustain the operation for all those years. He said that trucks are hauling from everywhere and he feels that it is time that the special permit be denied.

Ms. Sigfridson read the petition into the record.

Marcel Dessert, 601 Wauregan Road, voiced concern for safety regarding the truck traffic. He said the trucks are loud and are coming from all over and are in disrepair. He voiced concern for owls in the area and also regarding dust and water. He does not want material imported. He said it doesn't add up.

Michelle Niemann, 573 Wauregan Road (across the street), stated that on May 9th from 10 am to 5 pm, she counted trucks: 65 trucks went in (35 with a load); she figured that would be 120 in and out; 3.75 trucks every 13 minutes. Jake breaks are being used often and she is concerned for safety/children. She also voiced concern regarding the amount of dust and the value of the properties. She submitted a letter to Ms. Sigfridson for the record.

Mark Curreri asked if the trees will be cut down on the Church side at the end of Phase Two (he indicated the area). Mr. Held answered no. Mr. Curreri asked about how high the bank would be. Mr. Held answered 25 to 30 feet. Mr. Curreri asked about the grade on the back side of the bank. Mr. Held answered that it would be sloped off at 30 percent. He is concerned about noise echoing and property values. He said he is opposed to Phase Two.

A.Fitzgerald asked about Phase One – elevation 135 / restoration plan show 175. He said that it is over 30,000 yards to fill the hole. Reclamation would take over 200,000 yards. Wayne Jolly explained that they have filled in every hole in the last 40 years. He said it is not a problem. They now have stockpiles containing 30,000 to 40,000 yards. The silt (useable material) is a by-product of the screening operation.

Ken Niemann, stated that the with the amount of yards being hauled in and the amount of finished material hauled out and the amount to be excavated, he can't come up with enough cubic yards to fill the holes.

Gene Flemming, 567 Wauregan Road, asked if using silt for restoration is an approved process under the current permit. He asked if they are currently operating under a valid permit, why a special permit, and why has it been going for three years (applications for special permits). Ms. Roberson explained that up until April of this year, they have been operating under an existing permit that had been renewed annually. There comes a time when the permit can no longer be renewed. Their permit expired after they had initiated the process of obtaining a new special permit. However, it is standard practice, in this Town, to allow the operation to continue pending the decision. Mr. Flemming commented that they would like the operation to come to an end in the near future and he voiced concern regarding the importation of material and the restoration plan. Mr. Held explained that the time period of the permit is irrelevant and that they are doing a new permit application because the specified amount of yardage approved for removal from the site in the last permit was exhausted last year. He explained that the amount of life left on the site is totally dependent on the demand for material and he also explained that there is a finite time period when the excavation will end because there is a finite amount of material on the site. He said that, for the three years that he has been involved with the site, they have been diligent with quarterly reporting to the Town due to conditions put on renewal applications, and they have been found to be in compliance. He said that before Martha Fraenkel was the ZEO, record keeping probably wasn't the best. Mr. Held explained that it is appropriate to use silt material as fill for restoration. It is an accepted structural fill and he explained that you get a better restoration/better medium to grow vegetation.

Marcel Dessert commented that Mr. Jolly said that they fill the big holes with silt and Mr. Dessert feels that makes the area unbuildable to put a house there because silt does not a good material under foundations. Ms. Roberson explained that she agrees that silt is an appropriate fill material and she referred to the reclamation plan. She said that the goal of the plans included in this Application is to smooth the topography of the site, bring in topsoil and re-vegetate the site. Once the site is re-vegetated the reclamation is complete and the site could be used for whatever would be appropriate. Mr. Held explained that silt is a useful, structural fill and he explained that you can't build houses there anyway because you can't put in a septic system in disturbed soil. He indicated where the buildable area for a house would be located.

Ken Niemann asked if the PZC can put restrictions on the special permit. Ms. Roberson gave an explanation that the PZC is governed by CT Statutes and the

Town's Zoning Regulations and that a special permit allows the PZC to consider conditions of approval that are specifically oriented to the impacts of this proposal in this location. Mr. Niemann suggested that no imported gravel be allowed. He said that the people in the neighborhood want it to come to an end. He wants a defined end time. Ms. Roberson explained that importation of material for processing is specifically allowed by the Zoning Regulations.

Ms. Roberson asked Mr. Held and Mr. Jolly how they have not exceeded the maximum of 80 trucks per day and she asked if anyone from Brooklyn Sand & Gravel has counted trucks. Mr. Held said that he does not have an answer. Mr. Jolly explained that he did not have that calculation but, the number of trips have been reported to Martha Fraenkel over the past three years. Ms. Roberson stated that she will review that information.

Gene Flemming commented that Mr. Jolly must have documentation and that perhaps the Commission should ask him to produce that documentation. He asked that, if the Commission approves the permit, they make the Applicant responsible for complying with any conditions that are applied.

Ms. Sigfridson stated, for the record, that Mr. Flemming is her father and that she grew up (1981-2003) across the street from the gravel pit.

Ms. Sigfridson explained that the Commission has discussed, at length, whether to allow stand-alone processing and it was decided not to allow it. She explained that the ZBA made a decision, for the variance request, that it would be not appropriate to allow importation of additional materials. She explained that the Commission is aware that there is concern regarding abuse and she said that the former ZEO, Martha Fraenkel, had been doing a good job with keeping up with the reporting, however, there is still room for error/abuse with regard to the 50 percent.

Pam Lukin, 28 Maynard Road, commented that she, and others, have been attending and commenting at the special permit hearings regarding Brooklyn Sand & Gravel for at least 20 years and she feels that it sounds like the Commission is hearing about the concerns for the first time that the ratio just doesn't make sense. She stated that she appreciates that the bookkeeping has been done and submitted for the last three years, but there were many years of abuse that should have been monitored, but were not. She feels that it is disingenuous to lead people to believe that it has never been brought up many times before. She said that it is clearly time for the end.

Ms. Roberson read, into the record, a letter from Ed Harris (619 Wauregan Road) which she received earlier in the day via e-mail. Mr. Harris' letter was also on behalf of this fiancée, Bonnie Marcin. They are opposed and cite machines, noise, and dust as concerns.

Marcel Dessert commented that there should be a limit. He stated that RA land has been turned into Commercial by Mr. Jolly. He said that he has been having to put up with trucks as early as 5:00 am in the morning. He commented that some people's houses shake whenever the trucks go by and he commented about the dust. He said it is too much for this neighborhood. He commented about how they are hitting the Jake brake 1,300 feet from the entrance in a 30 mph zone coming up the grade.

Ken Niemann suggested hours of operation: 8:00 am – 4 pm.

A woman commented that, when she worked third shift, she had to wear earplugs in order to be able to sleep because of the noise from the trucks.

Gene Flemming suggested some conditions if it were to be approved: stricter dust control; clean Route 205 occasionally; restrict hours of operation; start the restoration process.

Phil Currier, 607 Wauregan Road, voiced concern regarding noise from trucks and the crusher which echos at his property. Mr. Dessert confirmed and stated that opening it up to Route 205 will make more dust and noise.

Ms. Roberson asked Mr. Held if an A-2 Survey has ever been done between the Gravel Bank and the adjacent residential properties (Galloway or Ogden). Mr. Held stated that he has not. Ms. Roberson stated that the plans depict a Class D Boundary Survey which shows encroachment over those properties. Grading for the access road appears to go over the Ogden's property. She asked if that could be addressed. Mr. Held stated that it could be addressed with an A-2 Survey. The area was indicated on the plan. Ms. Roberson reminded the Commission that this is a new special permit.

Ms. Sigfridson asked what the access road is accessing. Mr. Held indicated the location and explained that it goes to a building which Mr. Jolly rents out to a contractor who uses it for storage. He indicated that there is another access to that building that also goes to Route 205.

Gene Flemming asked if rental to a third party is an approved use of a gravel bank permit. Ms. Roberson stated that, if there is a residence on the property, it is possible that it could be approved as a home occupation. Mr. Dessert stated that it is a concrete forming company in the garage (not the residence of the house). Mr. Jolly confirmed that the residence of the house are not the same people that are renting the garage.

Linda Trahan, 26 Maynard Road, asked how much of the property has been reclaimed. Mr. Held stated very little and he indicated the areas.

Linda Trahan asked if the bond amount is adequate. Mr. Held stated that the original bond had been reviewed and approved by the consulting engineer and he felt it was adequate. Ms. Sigfridson explained that this is generally looked at with every permit. Current bond amounts don't take into account any proposed activity. Mr. Ives explained that the bond is not supposed to be used to reclaim. It is there in the event that Mr. Jolly refuses to reclaim and it is expected that he would reclaim voluntarily.

Ms. Kelleher commented that she would like the Commission to keep in mind that it is possible to do as Gene Flemming had suggested earlier: to begin restoration immediately. Ms. Sigfridson asked if they could start reclaiming more areas immediately. Mr. Held referred to the summary that he had submitted and he explained that there may be some very small areas, however, for operation, they need areas for access, stockpile areas, parking areas for equipment and trucks, ponds and plant areas. Mr. Held stated that there are about 21 acres open at this time and he offered a site walk.

Ms. Sigfridson asked how many yards of material can go through the plant in a day. Mr. Jolly explained that one plant would be 40 and the other plant would be 60 yards per hour for a maximum of 100 yards per hour (both plants combined). Mr. Dessert stated that he has an old plant (built in 1948) that does 100 yards per hour. Mr. Jolly's primary crusher is 30-inch. Mr. Niemann feels it will do more than that.

The Commission Members were in agreement with doing a site walk. Mr. Ogden gave permission for the site walk to begin at his property. The site walk was scheduled for Wednesday, May 29, 2019, at 4:00 p.m. to begin at the Ogden property (564 Wauregan Road), then on to the gravel pit. A. Fitzgerald will provide hard hats.

Mr. Held asked if the Commission will require an A-2 Survey. There was discussion and some Commission Members expressed that they would like it surveyed for accuracy. Mr. Held stated that it is not an unreasonable request to resolve the issue and he will try to have an A-2 Survey done by the next meeting.

There was discussion regarding truck traffic. Mr. Held stated that the Commission could hire an outside consultant, to count trucks, at the owner's expense. Mr. Ives explained that he has looked at the truck traffic (occasionally) and he has never seen trucks at 6:00 am, but he has seen activity (getting things ready). Ms. Roberson stated concern regarding 60 trucks entering between the hours of 10 am and 5 pm (daily average is 60 and daily maximum is 80). Mr. Ives stated that 60 going in is not unusual. Discussion continued. Mr. Ives stated that the number of trucks is problematic, but what is important is, does the amount of material coming in match with what is expected to go out? Mr. Held commented that Ms. Fraenkel's reporting was based on tonnage (number of truckloads using 16-17 yards per tri-axle).

Gene Flemming commented that the volume of traffic is important and a sore point to the residents in the area and that the Commission should impose stringent requirement that everyone will be comfortable with in being able to monitor and that the Applicant will comply with. He said that he is sure that he hears trucks before 7 am on Saturday mornings. Mr. Flemming said that everyone will feel better knowing that, at some point, Mr. Jolly has exhausted the available materials and backs out of there and closes it up.

Mr. Ives left at approximately this time.

Mr. D'Agostino asked Mr. Held what are the reasons why he thinks this operation should continue and what evidence does he have to support those reasons. Mr. Held stated that the plans presented are in compliance with the Regulations so they warrant approval. He said that the plans are the evidence based on actual test pits that have been dug out there. He said that he would not propose a grading plan by assuming that there is material there.

Ms. Kelleher asked that the quarterly reports that have been done be provided to the Commission Members and also would like to know what the conditions of approval were for the last permit. Ms. Roberson will provide those.

Motion was made by C. Kelleher to continue 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 218,000 cubic yards of sand and gravel, to the next regular meeting of the Planning and Zoning Commission on Wednesday, June 5, 2019, at 6:30 p.m., in the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT. Second by A. Fitzgerald. No discussion. Motion carried unanimously (5-0-0).

There was discussion regarding the upcoming site walk. Only clarifying questions may be asked. Ms. Sigfridson suggested that Commission Members bring a notepad to write down questions they may want to ask at the public hearing.

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 – Continued.

VII. New Business:

a. Applications: None.

1. **Request for Waiver of Special Permit** under Section 3.4.8.8 of the Brooklyn Zoning Regulations for Proposed Exterior Renovations at 578 Providence Road (KFC/Taco Bell).

Ms. Roberson explained that the Applicant was not present and is requesting a waiver of special permit which requires an affirmative votes of six Commission Members and only five Members were present. The Vice President of KFC/Taco Bell will try to be available to attend the June 5th meeting.

b. Other:

1. Appointment of interim Zoning Enforcement Officer Jonn Valente.

Motion was made by C. Kelleher to appoint John Valente as the interim Zoning Enforcement Officer. Second by J. D'Agostino. Motion carried unanimously (5-0-0).

Ms. Roberson invite the New ZEO, Margaret Washburn (who will be starting the first week in June), to attend the second meeting in June.

VIII. Reports of Officers and Committees:

1. Budget (included in packets to Commission Members).
There was discussion regarding the following:
 - A correction that has been made.
 - Legal Services.
 - Review of the Re-Write. The Town Attorney did not have any major issues with anything that Ms. Roberson asked him to look at. She is still incorporating the comments from the last public information session. She is hoping that the public hearing can be held in July (second meeting on July 16th). Ms. Sigfridson suggested keeping it open for more than one meeting (because of it being summertime).
2. Correspondence.
Ms. Roberson provided information regarding an open house regarding the Quinebaug Solar to be held at the Canterbury Elementary School on Thursday, May 30 6pm – 8 pm. There was discussion.
3. Chairman's Report – None.
J. D'Agostino asked when he could discuss with the Commission two items regarding the Re-Write that are troubling him. Ms. Sigfridson stated that Re-Write discussion would be put on the next agenda.

IX. Public Commentary

A.J. Kerouac stated that the Solar Project is in both Towns: most of the panels are in Brooklyn; most of the cost of the project is in Canterbury.

Mr. Kerouac commented about the new ZEO being really experienced with wetlands/soils and suggested that the focus be on the New Zoning Regulations and that they be properly enforced.

Mr. Kerouac commented about the uses of municipal buildings and asked about reversion. How is that governed in the Regulations. Ms. Roberson explained that if the Town sells a property/building, the owner would have to conduct a use that was permitted in the zone because it wouldn't be a municipal use anymore. It would revert back to the uses permitted in that zone. There was discussion regarding a new Town Hall, a new Library, and a new Meeting Center. Ms. Sigfridson stated that, for purposes of this Commission, any new use would have to comply with the Regulations. There was discussion regarding Churches.

Ms. Sigfridson asked if there is something that Mr. Kerouac recommends that the PZC do. Mr. Kerouac said, "Enforce the Zoning Regulations."

Ms. Roberson explained federal legislation regarding religious land uses (Loopa). If you allow a public gathering place (like a Community Center), you cannot prohibit the types of gatherings that have a religious intent.

X. Adjourn

Motion was made by J. D'Agostino to adjourn at 9:01 p.m.

Discussion: Mr. Fitzgerald asked Mr. Kerouac about his comment about the new ZEO being really experienced with wetlands/soils. **Mr. Kerouac** stated that the previous ZEO had extensive knowledge regarding wetlands and he feels she should not only focus on Zoning issues. Ms. Sigfridson stated that the Town did not specifically seek out a soil scientist. Mr. Fitzgerald commented and Ms. Kelleher agreed that the ZEO should report once per month. Ms. Sigfridson explained that the former ZEO gave written reports once per month and attended meetings occasionally. It is based on a contracted number of hours. Mr. Fitzgerald suggested that more regarding blight. Ms. Roberson explained that blight is not under the responsibility of the PZC. The ZEO acts under the direction of the First Selectman regarding the Blight Ordinance.

Mr. Fitzgerald stated that he would like to know that the ZEO is checking truck counts at gravel pits and checking permits, etc. Mr. D'Agostino voiced agreement. Ms. Roberson stated that it is a 30-hour per week position.

Second by A. Fitzgerald. Motion carried unanimously (5-0-0).

Respectfully submitted,

J.S. Perreault
Recording Secretary