



Present: John Dax, Chairman
Charles Geraldi, Zoning Board Member
Jeff Hattat, Zoning Board Member
Tony Murad, Zoning Board Member
Jeannine Tonetti, Zoning Board Member

Others Present: David Mieschonz, Allyson M. Phillips, Esq., Michael Moore, Esq., Dixon S. Daniels, Mark Clemente, William Carlucci, Glenn Walken, Kevin Fuerst, Mary Fuerst, Paul Borst, Gail Heinsohn

As well as other members of the public

I. Call to order:

Chairman Dax called the regular meeting to order at 7:35 pm. Roll call indicated that all members were present.

II. Minutes Approval:

Upon review of the April 7, 2009 minutes, a motion was made by Jeff Hattat, seconded by Tony Murad to approve the minutes as submitted. Chairman Dax acknowledged that there had been a written request from the applicant's representative to make changes to the 04.07.09 minutes. However, the request was not granted. It is not this Board's practice to change minutes at the request of the public.

Chairman Dax announced that due to the number of people in attendance for the public hearing concerning Valley Materials Gravel Mine, the Board agreed to switch the agenda items in order to address Mr. Commander's application for a campground first.

III. Case No.: ZBA-2000-006 – Lebanon Valley Auto Racing

Preliminary Review: Request for Campground Permit
Parcel Nos: 7.-2-4 and 7.-2-36
Representative: Mr. Howard Commander
Property Owners: 7.-2-04 – Lebanon Valley Auto Racing
7.-2-36 – Louis Spanier

Chairman Dax reminded Mr. Commander that he sent a letter dated 05.04.09 outlining the requirements needed to be met for a complete application. Chairman Dax noted that no new information has been submitted to date and that the Board can not act until the application is complete.

Mr. Murad stated that he feels there is a conflict in procedure in that it is the Town Board's jurisdiction to grant a campground license. He wondered if the applicant should first obtain a license from the Town Board.

Chairman Dax stated that the law requires two things: a campground license from the Town Board and a special permit from the ZBA. Mr. Shaw, Attorney for the Town, has communicated that it was appropriate for the applicant to come before the ZBA first.

Tony Murad stated that if the ZBA considers the application first and places conditions on the special permit, the Town Board could potentially disagree with the conditions.

Chairman Dax explained that the Town Board has no authority to change a special permit. He further indicated that it was inappropriate to assume that the two Boards would act in conflict.

Chairman Dax stated that based upon his own observations there is currently a campground at the location in question and that if a complete application is not received soon, legal action will commence.

Chairman Dax asked if anyone had any further questions on this application. Jeannine Tonetti asked what is missing from the application. Chairman Dax said that there are numerous outstanding items and referred her to his letter to Mr. Commander dated 05-04-09.

Tony Murad moved to table this application until next month's meeting. Jeannine Tonetti seconded the motion and the vote was as follows:

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| John Dax | Aye |
| Charles Gerald | Aye |
| Jeff Hattat | Aye |
| Tony Murad | Aye |
| Jeannine Tonetti | Aye |

IV. Public Hearing

Proof of publication having been provided, Chairman Dax called the public hearing to order at 7:48 pm.

Case No.:-ZBA-2008-057 – Valley Materials, Inc. (TM# 8.-2-69 & 8.-2-41.2)

Consideration: Request for Special Permit for Commercial Excavating pertaining to the expansion of the gravel mine located on County Route 9

Chairman Dax acknowledged that there was an exchange of information at the last ZBA meeting held on 05.05.09 regarding this application where there was no quorum. Additionally, there was an exchange of information at the last Town Board meeting. He further explained that at tonight's public hearing facts being offered by the public may be entered as sworn statements or un-sworn statements at the speaker's request. Sworn testimony will be viewed as more persuasive.

Chairman Dax stated that he would limit comments to about five minutes but that he wouldn't be too rigid. This is not a time to ask questions, but we will try to answer simple questions.

Mr. Borst asked when would be a good time to ask questions. Chairman Dax replied that questions can be submitted so that we may have a record of them but this is not the time for a Q & A session.

[Open floor comments:]

David Mieschonz – 11 Cemetery Road: Mr. Mieschonz stated that he has heard about the mine and that his general impression is that it's a done deal with the State and that there will be no local control. The Comprehensive Plan is pretty heavy on a Nay vote for mining. There is a section under natural resources that speaks to mining being done in an environmentally sensitive manner and that the Town can impose conditions. Are

special conditions appropriate in this case or not? Has this location been actively mined? Is this an extension of an existing mine? Has a SEQR review been performed?

Chairman Dax: Chairman Dax stated that State Law indicates that Towns have limited ability to directly control mining activity. The Town's regulations indicate that mining is a specially permitted use. However, mines are regulated by the NYSDEC. The DEC has a process whereby they notice the Town so that the Town can be involved and provide local input. In this case, the Town was noticed in 2004 but the process did not take place. It is an unfortunate situation which now leaves us with limited input.

William Carlucci – 186 Hand Hill Road: Mr. Carlucci stated that one of the main concerns has been in relation to the protection of the aquifer. He would like to report that his friend, a NYS Geologist, contacted the DEC and was informed that the mine project is no where near the aquifer.

Kevin Fuerst – 4449 County Route 9: Mr. Fuerst stated that he has been opposed to this mine since its inception in the late 1990's when it was presented as a "nice family mine of 9 acres". Traffic has been a problem, the wetlands are being disturbed, the road is being destroyed and the speed limit is too high at 55 mph. At the time they said these issues would be "no big deal". Five trucks per hour equates to 90 trucks per day and 2000 per month and 20,000 per year, these trucks are destroying County Route 9 and causing hazardous situations by unloading equipment on the road, blocking the entire lane. People who are driving 55 mph are being blocked. There is no signage and no flag men. They leave their equipment on the roadway and drive up into the mine. Instead of expanding they should be thrown out. They've even built a parking lot on my property. They've taken down phone lines. Valley Materials has not had a lock on their gate until recently. The permit says a lock is required. They park vehicles on the access road leaking fuel into the wetlands and there are backhoes encroaching on the tributary. Backhoes are in the wetlands digging. There is an abandoned mobile home, trash piles, oil filters and stuff buried. This project needs a lot more investigation and enforcement of how a mine should operate. They have abused their privilege.

Chairman Dax: Asked Mr. Fuerst if he has contacted the County Highway Department.

Mr. Fuerst: Yes, but I've encountered red tape. I've contacted Mr. Kelleher's office to have someone come and take a look but nobody responds.

Chairman Dax: Chairman Dax asked Mr. Fuerst if he has contacted the DEC regarding the junk that he has observed in the wetlands.

Mr. Fuerst: Mr. Fuerst said "Yes" and I've also complained about the oil leakage on the access road.

Chairman Dax: Chairman Dax requested that Mr. Fuerst forward copies of his complaints to be included into the record.

Paul Borst – 158 Hand Hill Road: Mr. Borst asked for clarification regarding how the mine is to be operated. Will there be blasting involved? He also expressed concern regarding the road and the bridge on County Rt. 9.

Michael Moore, Esq.: Mr. Moore stated he would like to address the concerns about the wells. This is not a rock mine; it is a sand and gravel mine, nothing more than a "big sandbox". The mine has been authorized by DEC. The only way to affect the wells is to penetrate the water table. The elevation contour lines depicted on the map indicate that the final floor is 679 feet above sea level. The wetland represents the water table at 640 feet. There is a separation of 35 feet from the mining activity to the water table. There is

no danger to the wells. DEC has reviewed this application and is aware of the wetlands yet never required a further study. This operation does not pose a threat to the wells.

Mr. Moore further commented that the application before this Board is an odd situation because the mine was expanded to 30+ acres in 2004/2005. At that time the applicant applied to the Town as well as the DEC. There were miscommunications within the Town and the Town permit was never issued. However, the applicant had reason to believe that they had Town approval and in the meantime obtained their DEC permit. At this time, the applicant is seeking the Towns "after the fact" approval for something that DEC has already approved. At that time DEC had issued notice to the Town, a SEQR review was completed and a Negative Declaration was issued. A Negative Declaration means that upon environmental review, it has been determined that there is minimal environmental impact. Since then the DEC has also renewed the applicants permit. The applicant is now seeking a special permit that accords with this DEC permit.

Chairman Dax: Chairman Dax asked Mr. Moore which permit are you seeking accordance with, the 2005 or the 2008 DEC permit

Michael Moore: 2008

Tony Murad: If there is a lapse between the 2005 and the 2008 permit, it seems that a three year period should be noted in the new permit we issue.

Chairman Dax: I do not see what purpose that would serve. Permits are prospective, not retroactive.

Jeannine Tonetti: Ms. Tonetti asked Mr. Moore if he would address the roads and the operation of the mine.

Michael Moore, Esq: Mr. Moore replied that County Route 9 is a public road provided by the County and that the applicant has a right to use it. The mine is operating lawfully under DOT requirements. Regarding the wetland issue, DEC has jurisdiction and the applicant has done nothing in violation of their requirements.

Chairman Dax: Chairman Dax commented that at a prior meeting you agreed that the Town roads will not be used other than for local deliveries. Is this still the case?

Dixon Daniels: Mr. Daniels commented that there will be no local deliveries.

Paul Borst: Mr. Borst asked if the mine currently active?

Dixon Daniels: Mr. Daniels replied that there has been no activity in 2009.

Joseph Kroboth: Mr. Kroboth commented that there has been activity each year.

Kevin Fuerst: Mr. Fuerst stated that the statement was "we believe" that the wells won't be affected. This comment is not good enough.

Chairman Dax: Chairman Dax stated that we will hold the hearing record open for a week or two and encourage the public to submit their complaints in writing.

Kevin Fuerst: Mr. Fuerst stated that he has videos and pictures to submit. [Mr. Fuerst submitted approximately 100 photographs for the record].

Dixon Daniels: Mr. Daniels commented that the entire 300 acres will not be mined all at once. Reclamation is required as they go.

Chairman Dax announced that the public hearing will be suspended so that the public has an opportunity to submit further documents by the close of business on Friday, June 12, 2009.

Chairman Dax stated that his inclination is to draft a special permit that tightly accords with the 2008 DEC permit indicating that activity will be permitted in the 9+ acre area only and that when the applicants contact DEC for the modification to move forward, they will be required to return to this Board to modify the special permit from the Town as well.

Tony Murad stated that he is aware that there has been some exchange of information between Mr. Moore and Chairman Dax and he wants to be sure everyone is satisfied. However, he disagrees with Mr. Moore in that he [Mr. Murad] feels that the Town does have authority over the Town roads. Mr. Murad also stated that it seems logical that the applicant return to the ZBA for a modification after the 9+ acres has been reclaimed. Mr. Murad noted that while the ZBA would not be able to deny it at that time, they would be able to re-evaluate such things as the condition of the roads, etc.

Mr. Moore asked what that scope of the Town's review will be if the applicant does return for the modification, [noting that the permits will be transferred to another entity known as Callanan, an affiliate of Dolomite.]

Chairman Dax stated that the scope of authority will be for a modification anticipated in 2013. We do not know if the State or Town Laws will have changed. We do not know what the future holds.

Jeremy Smith, Esq. stated that he represents Callanan and Dolomite and that his applicants are expecting a Special Permit encompassing the entire 30+ acres without returning to the Town for a modification. He further stated that ECL (Environmental Conservation Law) indicates that the Town has limited authority over mining activity and that his applicants do in fact want the special permit to include the entire 30 acres.

Chairman Dax: Duly noted

Chairman Dax announced that they Board will deliberate at their next meeting.

V. Adjournment

Jeff Hattat moved to adjourn the meeting at 8:45 pm. The motion was seconded by Tony Murad and unanimously carried.

Respectfully Submitted,

Cissy Hernandez
Planning/Zoning Clerk