

11-8-2012 PUBLIC HEARING ON PROPOSED MINING OVERLAY DISTRICT

Present:

Councilman Cheryl L. Earl
Councilman Daniel L. Miller
Councilman David L. Montgomery
Councilman Douglas J. Morrell
Councilman Supervisor Mary L. Hannon

Also Present:

Attorney Alicia Rood
Highway Superintendent Donald Hopkins
Town Clerk Betsy A. Marsh
Approximately 40 guests

The Sardinia Town Board held a Public Hearing on November 8, 2012 at the Town Hall/Community Center, for the purpose of hearing comments on the proposed creation of a Mining Overlay District amendment to the Zoning Ordinance. The Town Clerk provided proof of proper notification of the hearing. The Supervisor called the hearing to order at 6:00 PM, with the Pledge to the Flag.

The Supervisor stated that an amendment to the Zoning Ordinance to add a Mining Overlay District which would allow mining in that district, and is an action on a application that Gernatt Asphalt Products has filed. She then asked the Gernatt representatives on hand, Attorney Peter Sorgi and Kenneth Ziccarelli, to explain how this came about.

Gernatt Attorney Peter Sorgi stated that they had received a Variance 2007 to mine their Gabel-Thomas property but the ZBA had to restrict the mining, so there is a portion of their property, about 90 acres, that they cannot mine. That is why they asked the Town originally for the rezoning, so they could recapture that portion, which they would not be mining for quite some years. But now they here so they can plan, and they need to put in a plant, the size of which will depend on the total acreage they will be mining in the future. He stated that the Town Board sent their original request for a rezone to the Planning Board, who considered three options: re-zoning just the Gable/Thomas property, re-zoning all AR districts in the Town, or creating a Mining Overlay District. The Planning Board decided, and recommended to the Town Board, that the matter should be handled as an amendment to the Zoning Ordinance in the form of a mining overlay district. Mr. Sorgi stated that the amendment would not take any one's property rights away. He stated that anyone wishing to mine any property within the overlay district would need a mining permit from the DEC, which would require an EIS, and farmland mitigation. Mr. Ziccarelli explained that whenever they remove any farmland from production due to mining, Gernatt must replace it, on a one to one basis, as farmland elsewhere. He stated that the Town's ZBA required, as a condition of their Variance, that the farmland be replaced within the Town of Sardinia, on a one-to-one basis. Mr. Sorgi stated that it is now up to the Town Board to decide how they want to proceed and with which kind legislation, Gernatt doesn't care which, they just want to be able to use their 90 acres. He stated that the Planning Board decided on this particular area for the Mining Overlay District because that's where most of the mining is now, it's in the Rt. 16 corridor, and near the railways. The Supervisor opened the floor to comments from the public.

John Schiener of Sardinia stated that there has very little discussion publicly about this matter among Board members, he doesn't feel that the public has been adequately informed, and the legal ad was not sufficient. He stated that there was a survey done at the polling place which talked about Wi-Fi, but not about gravel mining. He stated there are no documents concerning this on the Town's website, such as the application from Gernatt or the recommendation of the Planning Board. He stated this rezoning is not in conformance with the Comprehensive Plan, which recommends the continued use of zoning to limit the areas in the Town in which commercial gravel mines are permitted to operate. He stated it is in conflict with the current Zoning's farming overlay district, in conflict with the County's Farmland Protection law, and not compatible with the neighborhood. He stated that prime farmlands would still be lost, despite mitigating to create substandard farmland, is still a net loss. Mr. Schiener stated that other reclamation efforts, specifically the Chaffee plant, never got reclaimed to any kind of farming operations. He stated that there was a huge public awareness in the past, the State's highest court upheld the Town's zoning to prohibit new mining, and asked what's changed, why now? He stated that Gernatt needs to plan and was looking to expand their current site with spot zoning, and it is up to the Town Board to look out for the people. He stated there has been no documented regional need not being met. He stated he feels the action is premature, and the Town has tried mining overlay districts in the past, which was challenged in court by the applicant, and it was overturned. He asked the Board to please deny this application.

Ken Ziccarelli, Gernatt's representative, stated that Mr. Schiener's comments were foolish, stating that the reclamation of their Chaffee plant had been completed and the reclamation bond released by the DEC, and stated that Mr. Schiener was putting forth nonsense. Gernatt attorney Mr. Sorgi also responded that the Comprehensive Plan states "limit mining", not "prohibit mining". Mr. Sorgi stated that none of the past actions are relevant. He stated that the application documents and the Planning Board's recommendation were available in the Clerk's office, and Mr. Schiener is either completely unprepared or lying. Mr. Schiener stated he was referring to the documents not being on the Town's website, as per the resolution adopted by the Town Board.

Rich Watkins of Genesee Rd. asked when this matter would go for a vote, and Supervisor Hannon stated no decision would be made this evening, it would have to go through a Local Law procedure, and the Board will be discussing that at the regular meeting following this hearing. Mr. Watkins asked if, hypothetically, someone wanted to sell to Gernatt, they could then mine it? Mr. Sorgi replied yes. Mr. Watkins asked how large an area the overlay district covers, and Mr. Ziccarelli stated it goes from Wyoming County to Curriers Rd. to Rt. 16, Rt. 16 to Hand Rd., to Savage Rd. to Genesee Rd. Mr. Sorgi stated there are areas that are omitted, for instance, the Hamlet of Chaffee, the Town Parks, protected wetlands, etc. Mr. Sorgi stated that frankly, their proposal was just for their site but other people in the town are looking at other options. Mr. Watkins asked where they are looking to move their plant and was told the plant would stay where it is, but they would be moving the mining toward the Hamlet of Chaffee. Mr. Watkins stated he is

interested because he is a stone's throw away from their operation, which is behind him, and asked if the neighboring properties were sold to Gernatt, isolating him, what would his property be worth?

Jim Witter of Sardinia asked Mr. Sorgi if the application documents, including the map, are in digital form and if they would be willing to submit it to the Town in digital form? It was explained that the map is too large and beyond the Town's capability to put on the website, and the document contains over 50 pages. The Clerk stated everything is in her office.

John Schiener stated that the Mined Land Reclamation Law supports mining, but also allows Towns to prohibit mining by Zoning, and he was on the Comprehensive Plan committee, and they did not contemplate any such large scale commercial mining operations. Mr. Sorgi stated he feels they did not word it very well.

Rich Watkins wanted to go on record as being opposed to the proposed Mining Overlay District.

Supervisor Hannon called three times for further comment. There being none, a motion was made by Earl, seconded by Montgomery, to close the hearing at 6:25 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk