

12-13-2012 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 Linda Joseph
Highway Superintendent Donald Hopkins
Town Clerk Betsy A. Marsh
Approximately 80 guests

The Sardinia Town Board held a Public Hearing on December 13, 2012 at the Town Hall/Community Center, for the purpose of hearing comments on proposed Local Law #3, an amendment to the Town's Zoning Ordinance for the creation of a Mining Overlay District. 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 submitted this application 8 or 9 months ago. He stated that as many of those in attendance know, Gernatt has been actively mining the Gabel/Thomas site for the past 4 or 5 years. He stated that Variance in 2007 allowed them to mine about 2/3 of the site, but what they wanted to do was to be able to mine the other 1/3 of the property, which would not occur for about 20 years, but wanted to have the property available, for planning purposes. They came to the Town with a proposal which was then sent to the Planning Board, who they worked with for 4 or 5 months. He stated that the Planning Board decided, by a 5 to 2 vote, that the matter should be handled as an amendment to the Zoning Ordinance in the form of a mining overlay district. 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. Mr. Sorgi stated that the Town Board has a few options, including the Mining Overlay District as proposed or the Gernatt site only. Mr. Sorgi stated that this would not authorize mining automatically, nor take away anyone's rights who are in that district.

The Supervisor opened the floor to comments from the public, explaining that each speaker will be given 5 minutes to comment, and must have signed up to speak, and stay on topic. She stated that Board members are not here to respond to the questions or comments, only to listen.

Vincent Phelps of Chaffee stated that all his land is included in the overlay district, and he is concerned with the farmland mitigation section of the amendment, stating it is vague and capricious, and he stated the Board could only make the best law possible, and that, constitutionally, the companies cannot be compelled to spend money. He also stated his concerns about conservation easements or development rights, and capital gains taxes.

Norman Uhteg of Sardinia read his statement, asking why the Town Board let this proposal get this far in the process. He stated that to allow a new mining overlay district consisting of 3,578 acres is mind-boggling. He asked for more informational meetings for the public to become familiar with the process, stated his concerns about water table, traffic, dust, destruction of the roads, and excessive noise. He also stated that the property values would be drastically reduced, and expressed his concern over the destruction of prime farmland. Mr. Uhteg stated he feels this amendment to the Zoning would be a disaster for the Town, and asked the Board to reject and deny the proposed mining amendment, and stated that there is no benefit to the Town, only to those doing the mining.

Joe Tarrantino of Chaffee asked what this would do for him? What would it do for every homeowner there? How does it affect their mineral rights and their property values and what does it mean for tax purposes? He stated these questions need to be addressed before this can be discussed. The residents need to know if it's safe, what value it will have for them, and how it will effect their mineral rights.

John Schiener of Sardinia stated that Town Boards cannot regulate mining operations; thus if the Board approves the amendment, the Town forfeits all local control to the State, including the number of mines, acreage of mines, depth of mines, intensity of mining, setbacks, hours of operation, etc. He stated that what Towns can do is use their Zoning powers to establish where mines are permitted to exist. He stated that when you drive through communities who were blessed with gravel resources but spoiled by years of mining there, you can be thankful that the Town exercised its powers in the early 1990's to prohibit new mining operations. He asked that the Board not undo the protections that have served the Town well for the last 20 years. Mr. Schiener explained the Comprehensive Plan's goals and the County's Farmland Protection Plan goals, and stated this amendment is in conflict with those plans, and urged the Board to reject the proposed amendment, stating there is no shortage of gravel and that mining is not compatible with current residential and agricultural uses in the proposed district, and asked the Board to think more of the many residents that would receive a reduced quality of life from this proposal than the interests of the few that would profit from it.

Michelle Harmon of Chaffee asked where the 1/3 of the Gernatt Gabel/Thomas property is that they want to be able to use is, and was told that it is the northern part of the property, going toward the Hamlet of Chaffee. She asked if the company has reclaimed any part of the current operation, and was told they have not. She stated her concern about her property value, and the truck traffic entering and exiting the Gernatt driveway, stating it is scary, and was not in favor of the proposed amendment.

Jim Vrenna Savage Rd, stated he was confused by the proposal, stating that the Town's biggest asset is our farmland, and the Board recently passed the Right to Farm designation for the Town. He asked the Board to stick to the protection of farmland. He stated that Councilman Dan Miller just got the Town membership in the Erie County Farm Coalition. Congressman Chris Collins is promoting the preservation of farmland, and read a news release quoting Mr. Collins as stating he feels that the loss of farmland has a negative impact on local communities, and farms and farm products are integral to life. Mr. Vrenna also cited the Erie County Farmland Protection Plan, and stated it is clear that Erie County and NY State are in favor of protecting farmland. He stated that once prime farmland is gone, it is gone forever. He stated that we should be here to discuss the protection of farmland, rather than the destruction of it. He urged the Board to reject the proposal.

Dennis Meriea of Chaffee stated his concerns about property values, stating he has had people who are real estate agents tell him that anyone in a mining overlay district can plan on a 30% to 40% reduction in the value of their property. Gernatt's attorney, Peter Sorgi stated that anyone owning farmland does not have to sell, and a smaller property with a house on it is not mineable, which is why those properties were listed as exempt on the map. Mr. Sorgi stated he would like to see the property devaluation statement put into writing. Mr. Meriea stated to any of the homeowners in the audience that if anyone believes that their home will not lose value if they become part of a Mining Overlay District, good luck selling it.

Steve Hammond of Chaffee stated that back in 2007, a Gernatt representative came to him and asked him to speak to his neighbors on behalf of Gernatt, and urge them to be in favor of the Gabel/Thomas receiving a Variance from the Town ZBA. He stated he told them he would do so in exchange for them selling him 75' of land at fair market value so he could plant a hedge behind his home. He stated there was an agreement between him and the company, specifically Ken Zicarelli, who was the Gernatt representative he spoke to, and presented a copy of a letter with the agreement on it, to Gernatt Attorney Peter Sorgi. Mr. Hammond questioned the integrity of Gernatt Asphalt, stating that after he went door-to-door speaking in favor of the company, and after they were granted the Variance, Mr. Zicarelli then came to him and told him the proposal was off the table. He stated he would not trust Dan Gernatt or his representatives. Mr. Sorgi stated that Mr. Hammond has not shown documentation that the proposal off.

Carol Fischer of Chaffee showed court cases where other Towns used the precedent of the Town of Sardinia's winning court case against Gernatt Asphalt. She stated that every single Town won their case based on that decision. She stated that one opinion stated that "a municipality is not obliged to allow exploitation of its resources." She stated that Judge Barbara Howe gave the Town a permanent injunction prohibiting mining on the site and she asked "Why are they mining?" Ms. Fisher stated that many of these cases where Sardinia was used as a precedent to prevent fracking, and stated that allowing Gernatt to mine on over 3,000 acres jeopardizes all of those other towns.

Rick Becht of Sardinia stated he is not for aggregates, and noted his land is not in the overlay district, but wondered if other mining companies beside Gernatt would be given the same consideration, and if other overlay districts would be created in the future. He asked if his property is going to be reassessed, and asked if the whole Town is going to be assessed.

Carol Milligan of Chaffee stated this is our community and we can see by the show tonight, the Board can see that the people don't want this. She stated we didn't want this 4 years ago, and we don't want it now. She stated to the Board that if you are representing us, don't do this. She stated that Gernatt can say that it won't effect property values, but who wants to buy a house with a gravel pit as the view...Would you buy it? She asked the Board if this is what they want to do, if this is what our Town officials do...betray us? She asked the Board to please say no.

Bill Barrier of Genesee Rd. stated he lives next door to the Gernatt pit, and protested the granting of a permit for that mine. He stated he hears the noise from the pit from 7 AM until 5 PM every day. Mr. Barrier stated that their well went dry and Gernatt denied that they were at fault, so they had to have a new well drilled and it is cloudy from sediment. Mr. Barrier asked the Board to deny any more mining to protect the farmland. He stated he has heard from Gernatt employees that the gravel being mined is low grade, and asked if this is why they want more land? Mr. Barrier stated this should remain a mining community, not a gravel Mecca for this company, or any other mining company.

Mindy Hesslink of Hamburg stated she is here representing the Paradise Lake cabin owners. She stated they are here for all the reasons that have already been expressed...it is country living, farm land, and is beautiful, and for those who don't know where Paradise Lake is, it is between Genesee Rd. and Allen Rd. She stated they are already seeing the effects of mining all around them; the berms, trucks, dust, and are watching changes in the plant life, and fish and turtle populations are going down. Ms. Hesslink stated that they have seen some changes in the lake levels and their well levels, also. She stated that the Town should stay as it is...awesome! She stated they will stand on their heads to help the other homeowners, and stated they have already contacted Channel 2, the WNY Land Conservancy, and have contacted the DEC about the changes in the Lake.

Helen Tarrantino of Chaffee had signed up to speak, but passed, stating her concerns had already been expressed by others.

John Schiener of Sardinia handed a petition with approximately 60 signatures against the Overlay District to the Town Clerk.

The meeting was then closed at 6:53 PM by the Supervisor.

Respectfully Submitted,

Town Clerk