

ZONING BOARD OF APPEALS

JUNE 11, 2012

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 11, 2012, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

PRESENT: Vincent Cestone	- Chairman
Lenny Lim	- Member
Bill Flaherty	- Member
Robert Dee	- Member
Paula Clair	- Member
Dominic Cordisco	- ZBA Council
Tina Andress- Landolfi	- Secretary

ABSENT:

Contents:

Review of minutes - Page 2

Homola and Edelstein - Pages 2 thru 3

Drake Petroleum - Pages 4 thru 5

Lyons Soil Mining- Pages 5 thru 33

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Vincent Cestone - Please stand for the Pledge of Allegiance.

Vincent Cestone - Im gonna do things a little out of order. We have a full house, and everybody will have at least one chance to speak. Im gonna ask that once you have had a chance to speak if you could please have the decency to go outside and give someone else a chance to come in and speak would be very helpful. The limitations in this room are related to the fire department and the Building code. We are at the maximum in this room, and by the Fire Code we cannot have more. If I had known it was going to be this big, then I would have asked the Town to move us to the VFW hall. I did not know that it was going to be like this until about ten minutes ago. I am sorry about that. Im gonna take things a little out of order. The first thing I would like to do is a review of minutes for May 14. Are there any additions or corrections?

Paula Clair - I have some corrections and I will give them to our new secretary Tina.

Vincent Cestone - Any additional Changes? I will make a motion to accept the minutes as submitted with those changes.

Lenny Lim - I will seconded.

Vincent Cestone - All those in favor?

All members - Aye.

Vincent Cestone - Opposed?

Vincent Cestone - Next is discussion on Andrew and Susan Homola and Edelstein's request for a deer fence. I was wondering if there were any board members that wish to speak on this.

Robert Dee - I did some research on it, and the zoning code says that you don't need a building permit for a six foot fence. They are looking for an eight foot fence for deer, but I looked at the University of Vermont an article from a Dr. Leonard Perry who is supposed to be a deer expert who said that it could be done with a six foot fence by leaning it forward or it could be done by a solid six foot fence. It dose not have to be higher than that. Our job basically is to, if there is a problem issue a variance or something like that if there is an exception so, it could be done in another means than an eight foot fence in my opinion.

Vincent Cestone - I did a similar. I went to Penn State, and they said almost exactly what you were saying, and we just don't know enough about this. Maybe the solution is for the Town to put in a definition of what a deer fence is at a later date, and change the code. Does anyone else wish to speak on this? In that case.

Lenny Lim - Are the applicants here?

Andrew Homola - Here

Vincent Cestone - I think the Public Hearing was closed.

Dominic Cordisco - It was.

Vincent Cestone - Do you wish to say anything else?

Andrew Homola - No, I think we represented ourselves last time we were here. We appreciate the board considering the matter. As you spoke last time we cannot add to that, but we hope that you can understand our position.

Vincent Cestone - I did put in a request to the Town to change the zoning code to put in a definition of a deer fence.

Andrew Homola - Thank you Vincent.

Vincent Cestone - Ok. With that lets do a roll call. Let me put it in a phrase. Is your vote to approve or disapprove the deer fence?

Bill Flaherty - I vote to approve.

Paula Clair - I vote to approve also.

Lenny Lim - I will disapprove.

Robert Dee - I vote against it.

Vincent Cestone - And so do I. I vote against it. It was three to two against, and that means that it does not carry. Im sorry. I apologize for that. Maybe you should approach the Town at a Town Meeting and ask them to update the code for you, and then we can _____ this. Sorry.

Vincent Cestone - The next item I would like to address is the Drake Petroleum Resolution. Im gonna ask the attorney to read up to the conditions.

Dominic Cordisco - Yes, I prepared that resolution for your consideration, and if I may..... The Philipstown Zoning Board of appeals conducted Public Hearings on April 9, 2012, and May 14, 2012, to hear the application of Drake Petroleum Co. For variances from particular requirements set forth in the Town of Philipstown Zoning Code to reconstruct and maintain a stand alone, or freestanding, sign for a gas station/convenience store operation on property located at 1122 Route 9D, Philipstown, New York. This is an existing gas station/convenience store which is being rebranded from a Getty Station to a Gulf Station. The applicant proposes to replace the existing freestanding sign with a new one at the same location. The existing sign does not

conform with the requirements of the Zoning Code. Those improvements proposed by the applicant, which do not conform with the provisions of the Town of Philipstown Zoning Code are identified and described as follows. Sign. The applicant proposes to place a freestanding sign, 10 feet in height and 6 feet wide, 23 feet from the center line of Route 9D. The applicants proposal for the placement of the subject freestanding sign does not comply with the section 175-10, schedule B, of the Zoning Code, which requires that the sign be set back at least 30 feet from the street line. During the course of the applicants presentation to the Board, the applicant presented plans prepared by NW Sign Industries dated January 31, 2012 and consisting of 8 sheets. The applicant also revised its request by decreasing the height of the proposed new sign from 10 feet to 8 feet. At a public meeting of the Board held on May 14, 2012, and upon all discussion and testimony that preceded it, site visits made by individual Board members, and review of all submissions and proof submitted to this Board, Vincent Cestone made a motion, seconded by Bill Flaherty, as follows. Be it resolved, that the Zoning Board Appeals of the Town of Philipstown, Putnam County, New York, determines and finds. That the balance of the equities weighs in favor of granting the application for a variance to place a freestanding sign, 8 feet in height and 6 feet wide, located 23 feet from the centerline of Route 9D where a 30 foot setback is required. The grant of the area variances, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law section 267-B. Conditions of the variances granted. One, The existing sign may be replaced with a new freestanding sign that does not exceed 8 feet in height and six feet in width and is located no closer than 23 feet from the centerline of Route 9D, and shall otherwise conform to the plans prepared by NW Signs Industries dated January 31, 2012, and consisting of 8 sheets. Two, The variances granted by this resolution shall not be further enlarged or extended except in accordance with all provisions of the Philipstown Code.

Vincent Cestone - Are there any changes or updates to the resolution as read? If not I make a motion to accept it as read. Do I have a seconded?

Robert Dee - I will second it.

Vincent Cestone - All those in favor?

All Members - Aye

Vincent Cestone - Opposed? Carried.

Vincent Cestone - One last thing and then we will get into the Lyons Public Hearing. Today is rather a sad day for the Zoning Board of Appeals, but also a happy day for the Zoning Board. Today is the last day of Kim Shewmaker as being our Zoning Board secretary. She has been with us for twelve years. She has done an excellent job, and basically when she came in the Zoning Board was quite a bit in disarray and with no training and little consult she turned it around and organized the Zoning Board for us.

She turned it into something that took very little effort for the Zoning Board to take care of, and we wish her the best of luck. I would like to welcome Tina who is new to the Zoning Board, but not new to the Town of Philipstown. I talked to Tina on several occasions on the phone before this, and she is going to be taking over the duties and I'm sure she is going to do a wonderful job. I would like to thank you and welcome aboard. With that, I'm gonna go right into the Public Hearing for Lyons Realty. Things are a little bit different tonight. We have a sign in sheet for talkers, so that people will have a chance to speak. I'm sorry you can't put that there.

PCNR Rep - I can't?

Vincent Cestone - No, I'm sorry.

PCNR Rep - What about here?

Vincent Cestone - No, you are gonna have to keep it with you over there.

PCNR Rep - The Town Board lets me do it.

Vincent Cestone - If you have not signed the list, please sign the list over here, and after we have gone through the list if anyone wishes to speak that hasn't spoke you're more than welcome to talk to us again. Tina can you hand me the list please? Thank you so much. Before we go into the people who wish to speak, does the applicant wish to say anything?

Glennon Watson - I'm Glen Watson from Badey and Watson. I represent the applicants Lyons Realty who is a partnership between Nathan and Ernest Lyons who are sitting to my right. We went through the entire plan. It is a seven stage plan over thirty years. We went into quite a lot of detail last month. We believe that we have answered all of the questions that the state has. We have since turned in the last two questions plus responses to public comments that we received from the state. We sent copies of that to you as well. I do have two drawings that you specifically asked for that I would like to take a minute to go over.

Audience Member - Could you please move back further so that we can see?

Vincent Cestone - Just step back.

Glennon Watson - The first map that you asked me for is the map that shows the life of mine and the entire hundred and thirty-nine acre parcel owned by Lyons.

Audience Member - Excuse me, can you please step aside? You are blocking the map.

Vincent Cestone - You will have a chance to look at it at your convenience after he makes his presentation. Go ahead Glen.

Audience Member - I cant see what he is saying during his presentation.

Vincent Cestone - Im sorry, not everybody is going to be able to see it, but.

Audience Member - He could stand on the side, and not block it.

Vincent Cestone - Glen if you would.

ZBA Council - The presentation is for the primary purpose of the Board.

Vincent Cestone - All right Glen.

Glennon Watson - This map was prepared at your request specifically Mr. Cestone. It shows the life of mine line, which is the outline of the entire are to be disturbed within, and that is in orange which is in the middle of the map labeled life of mine. The black dash line that outlines the entire piece of property, and then there are series of three green rings that ring the life of mine on a five hundred feet a two thousand feet and a three thousand feet. Within that area we have placed red dots on each of the residential structures as we found them listed in the current assessment rolls, the two thousand twelve assessment rolls and placed a dot on each of those residential units. There are I think One hundred and ninety-one. One hundred and fifteen residential structures and seventy-six trailers within the site. The trailers are shown in slightly smaller dots, and the only reason for that is that they are so close together and would just be one big red blob if we did not do that.

Vincent Cestone - I see.

Glennon Watson - The thing of particular interest was the closest building. The closest building is shown on the map and is off the Southwest corner of the mine. It will be affected late in the process, and the process will be in the bowl that we described before. It is two hundred and fifty feet away. Another area of concern was to the Northeast, the closest building is four hundred feet away. A lot of discussion that centered mostly around this particular request had to do with Glassbury Court. Glassbury court is somewhere between two thousand and three thousand feet away, and further away and that is shown on the Southwest or southernly portion of the property. This was prepared from orthophotographs which are photographs that have been corrected to take out the lens distortion, and they are available from the state. The county tax maps which are very light lines shown in yellow that shows the various parcels. The purpose is to demonstrate exactly, or hopefully it answers the questions that you raised the last time.

Vincent Cestone - It does, thank you.

Glennon Watson - You have smaller copies on your desk, and other copies were issued. The seconded drawing is a profile drawing that you had asked for. It is actually a

plan and profile drawing. What we did was we cut the slice through the mine from route nine about easterly through the mine to a high point to where it begins to fall back off, approximately seventeen hundred feet long. You can see the landscape plan has been brought on top of the existing topography for _____. We then drew two profiles which are shown below. A profile, as IM sure you know, is a cut through the property so you can see it from a side view as opposed from a top or a plan view. We cut one through the entrance of the mine and between the two buildings that tend to provide some screening just because of their presence. The other one we cut directly up the proposed road so that, in my view anyway, in my judgement that would be the most exposed view that you would have as you pass by on Route Nine. What you see on each of these drawings, and I will just go through one of them, is you see the existing ground in a solid line, and you see the proposed ground as a dash line and the existing ground as a solid line. You can see the dash line at the beginning is above the proposed line where there would be some cut. As you go back into the property you see about six hundred and fifty feet into the property you will see the slope comes up and then tops and then goes over and thats the berm that we spoke about last month which crosses the front of the mine and provides some screening. We also provided for you two lines of sight. One of bare ground line of sight, so that if there was no planting whatsoever, how your line of sight from Route Nine would pass over that bare ground, and at that point you could see, particularly on the bottom you will see that you would catch a glimpse of some machinery with just the tops of the machinery when they were very close to the Route Nine end of the mine. As the mine falls down or gets lower or gets deeper, the line of sight doesn't change and that operation will be blocked from Route Nine, and you can see that in both profiles. Then we have a planted line of sight. Across the top of the berm that is in front of the vast majority, in front of all the mining is behind the road construction, but in front of the mining operation there is a berm that crosses across the whole property and it is a planted berm. It will be planted before the real mining starts, the activity within the mine starts. What we did was we showed those plants through the profile on top of the berm which adds an additional ten feet. We picked ten feet because thats roughly the installation size, not the mature size of the plantings. By adding that ten feet you can see clearly that the mining operation will be hidden. Once the roadway is constructed and the entry to mine is reclaimed, and that all happens before we get into the first phase of the actual mine. Again that was prepared in response to your specific request, and I hope that it dose the.

Vincent Cestone - Yes, that was exactly what I wanted.

Glennon Watson - I would like time at the end of the meeting to sum up a couple of points that I have spoken to the applicant. If I may reserve about five minutes towards the end, not even five minutes towards the end I would appreciate it.

Vincent Cestone - Any questions from the board? We are gonna go with the comments.

Audience Member - Can we see the map?

Vincent Cestone - Sorry?

Audience Member - Can we see the map? The first one. The audience could not see it.

Vincent Cestone - Your asking to flip it back over?

Audience member - Yes, and give us a chance to go up and look at it.

Vincent Cestone - Sure. OK the first person that signed was, I think John Hersh.

John Hersh - Good afternoon Mr. Cestone. Im John Hersh, and I have the privilege of representing Rodney Weber who is an adjacent land owner next to the Lyons proposed mine. Mr. Watson concluded by talking about the view from the road, but what he did not tell you is that there is going to be a tremendous impact on the homeowners and landowners who own property adjacent to the mine. Forget about (unable to interpret, too much background noise) This is going to have a tremendous impact on certainly Mr. Weber's property. Im going to speak very briefly, and then Mr. Weber is going to make a comment. Not too long, on what it is like to own property adjacent to this mine.

Vincent Cestone - He is next on the list.

John Hersh - I believe this boards mandate in determining a special permit for a major project is to look in part about the impact on adjacent property owners. What is this mine going to do to them. If it is a one year project or thirty years, this impact on their property is going to be incredible. Mr. Flaherty is an accessor, and he can tell you what is going to happen to Mr. Weber's thirty acres if this mine is approved, and it is going to be valueless. Mr Weber will have the privilege of paying taxes to the county and to the town, and he will not be able to do anything with this property. He is not going to be able to put a home on the property. He is not going to be able to stick a well on the property. He cant sell it to anyone in good faith. I ask the board in determining wether or not this special permit is going to be granted, that they look long and hard about what this overlay means, and what your mandate is from the Town Board and what you are going to do to protect the people who's property is next to or really close to this proposed mine. Mr. Weber is next.

Vincent Cestone - OK, Mr Weber.

Rodney Weber - I guess I come up to the table?

Vincent Cestone - Yes

Rodney Weber - Can I use the map?

Vincent Cestone - Yes, sure.

Rodney Weber - I just want to say something_____. I have been coming to this town for thirteen years I have always loved Cold Spring. I had property not too far away from Cold Spring, and I really enjoyed this village. I wanted to bring my company and myself to live here and call it my home. Future wife, children, and I wanted to make my home here. I saved my money like anybody else did for my retirement as well as to make my dream house, because that is what I do. I make other people's dream houses. I got my money together and I bought this property.

Vincent Cestone - Your property is where?

Rodney Weber - I bought fifty acres to begin with.

Vincent Cestone - Just point it out on the map.

Rodney Weber - The acreage I bought went like this. (indicating on the map his property location) My Board of Health approved lot has my house right here. From my house in the winter time with no leaves on the trees, I can see this part of the mine. Now if this mine is undercut, and if deep, I won't be able to see machinery at the top, but dust does come up and I don't know, I think from here to here noise will travel. I came here and invested my money into this property to sub divide fifty acres and perhaps maybe four lots and in worse case three lots. I got dwindled down to two lots from the Planning Board, because of environmental issues. I was dwindled down to two lots on fifty acres. The Planning Board actually came to my property to see it, cause they thought we don't want you to sub divide. They came to the lower, and this was just for two lots. So they came to the bottom and they came to the top and finally they said yes. It took me approximately around over fifty-thousand dollars on this process to get two lots. For the Planning Board to come to my property and check and see what I was going to do environmentally. I make environmentally friendly houses. My house is a Geo Thermo house and has less impact than anybody else's house, pretty much anybody else's house in the neighborhood. I use environmentally friendly products, all the above. If anybody knows about the environment it is me, and that is also why I love this community. My property right now with the, well I will go back. There was no overlay at that time. There was no mining district at that time, and the people that could mine at that time from my research. I could only do so much research as an individual. Was actually in the industrial areas perhaps _____ Which that would be ok if the original industrial area of that property was very close to the road right here. That's it. That's all. There was no overlay. I know somebody said in the paper that all of Philipstown was in an overlay. Before this new zoning, none of Philipstown was in an overlay. Overlay only existed when they created the new zoning. They also said that we contacted all the individuals, my take on the paper. I believe Richard Shea said something to the fact that all the people in question that could have the possibility to mine were contacted. That's interesting, because I just saw in the paper that Polhemus was in an article saying that It really surprises me that mining was ever allowed in this town because he was closed down twice when he had a five acre mine. That is going to be a twenty-two acre mine right next to my new house. I now had to sell my home because of our lovely market, which is ok. I had to sell my home up on the mountain because I can't afford the

payments. So I now have to make a home that's here and overlooks a mine. I, right after the new zoning had an individual who was going to buy my lot. A couple of people who were interested in buying my lot, and you can confirm that with Indian Brook Properties if you would like. A well known reputable realty company in this town. They were going to buy that lot that I had for sale, which would have been great. It would have reduced the payments on my house, and I could have lived happily ever after in my dream home that I built. I couldn't, so I sold my home instead, and now I am left with a lot that I can't do anything with. It has been on the market, so it is common sense that it is obviously effecting the value of my lot. No one has even come to see my lot, yes the market is not good right now, but a lot of people were seeing my lot before the new zoning, because they liked the lot. I did something special with it, and now it is worthless. It is funny, because when I first started this initial process I went down. Jerry Albanese said that I have to talk to Badey and Watson because they will give us information on the land and the outlook on the land. I asked him if there would be anything in the area that would effect this property, and he said no. He said I will be able to work with you, perhaps we can get four lots good chance to get three. Yet, for the last six years he has been working on this mining project. Now I don't know man, if somebody was to ask me this, I would say to them yes, I am working on this mining project just so you know. Perhaps you don't want to buy this property, and the person selling this property Elison is also involved in this mining project. Now I knew there was something in the deed representing mining project that's what we were doing with the closing and this sort of thing. So, I did my due diligence and I went down to Town Hall and I said is there anything about mining, and I asked Tom Monroe and interestingly enough, Tom Monroe being the building inspector would know something about some sort of mining in this town at that time. He did not know a thing. Wasn't even in town record, nothing. So now when this new zoning came out I went back to Badey and Watson and sat behind the desk with Mr. Watson and I told him I'm really stuck with my property right now. You could have told me. It won't effect your property, and I said no it will effect my property, this is what happened to me. Well, he said you should have done your due diligence. My due diligence. I hired Mr. Watson for two hours prior to buying this lot. So, when I read in the minutes and I see on youtube and Mr. Watson says that he is reputable and he is not bias on this project, I have a very hard time with that. I don't know it is very easy to see I think. I do think it's our responsibility, I can't do this on my own, but I do believe it's our responsibility to get some engineers of our own to double check this man's work, because I don't trust him anymore. So I don't know how the board can trust him. Despite all that, right now I see all the red dots. My house does not exist. My building lot, my Board of Health approval is not one of these dots. These three dots is Elisons land, and Elison rents out these three houses and she collects money. In Elisons contract, which everybody told me there is no mining in Philipstown cause in the nineties everyone was against mining. Again, they closed down a mine twice, and that mine was five acres. We all know that it was Glassbury Court whatever, but that was five acre mining and this is twenty-two acres. This is deeper and a lot more yards proposed coming out of there. I got to wait thirty years for them to start here and gradually go towards me, and I gotta hear that noise for the next thirty years as it gets closer knowing that I lost my money on this. I don't want to live there. I didn't buy that. I bought to live in the dream town that I saw when I came to Cold Spring. I had sixty

acres of secluded property where I could make homes for a couple of people that I enjoy to work for, and myself so I could live here and not bounce from house to house. So. I would like my red dot put on there. These three red dots owned by Elison and she collects rent on those properties and she gets money for every yard that comes out of that mine. She is not going to complain. She is supposedly the closest one, well no a couple of these poor people are. And that other person that lives down there, you should see their house, nice little secluded house. They don't have money for this. nice daughter, thats it. Im having a real hard, You can tell its hard for me to let this one sit. Im probably one of the ones most effected by all of this. I felt like I was lied to. I was lied to, because if indeed they were working with the town. If they were working with this government to propose this mine at least it should be somewhere where we can see it. So that perhaps I could see it before I bought my property. There are a lot of people in here that didn't even know that mine was going to exist. So if the papers, truly and all the right avenues were taken to advertise, I didn't even see them.

Vincent Cestone - You didn't go to any of the public hearings on the zoning code?

Rodney Weber - I went to the Zoning Code meetings. That is funny, I was here for zoning and I had Richard Shea standing in your position, and I came up and the map was sitting right over here. On that map it had a pink area, need to look at that new zoning map , and by the way that old zoning map there is no mining on that old zoning map. Nothing, zero, nothing, no overlay nothing, it did not exist in this town. That new map comes out a year ago, and on that map I'm looking at the map and I ask them. There is a pink and a yellow area which one is called commercial and one is called mining. I said what is that pink area. Quote unquote from Richard Shea, there is no pink area on the map. If that was so well advertised in the index it said mining district overlay. If that was so well advertised how come Richard Shea himself did not that that pink area, that index in pink existed on the map. I picked up the map, I turned it around, all the members turned around. They took a look at the map, took their glasses off and pretended they never saw it and said, oh we will take a look into that.

Vincent Cestone - Im gonna ask you to wind it up, because there is other people that want to speak.

Rodney Weber - sorry for taking your time.

Vincent Cestone - No, no it is alright.

Rodney Weber - I apologize, but

Vincent Cestone - It is fine.

Rodney Weber - No disrespect, but I am going to leave with my lawyer so I can give the other people a chance that are standing outside that are not allowed to come in this evening to take my place.

Vincent Cestone - Thank you for that.

Rodney Weber - I appreciate your time.

Vincent Cestone - Diana Hird, you wish to speak?

Diana Hird - Diana Hird . H-I-R-D . I live on Horton Road in Cold Spring. I also will be effected by the site, but what I am going to do today is make the point that under current New York State law the mining overlay is illegal, Because mining is a land use different from that of the surrounding area. Particularly, I refer to the residential area on the Northern, Eastern and Southern borders of the mine. Under current New York State Case Law the only way that this mining overlay could be legal, is if it met two criteria. One if it was calculated to benefit the general welfare of the community and two if it was part of a comprehensive plan. It meets neither criteria. Let me address the first criteria. It is not calculated to benefit the general welfare of the community. Three points on this. First there is no shortage of gravel and there is need for a source of gravel in the Philipstown Community. Second, there would be no reduction in transportation emissions as claimed by Lyons engineer, because currently the gravel is mostly coming from Fishkill which is nearby. The mining will increase fuel emissions by _____, and if we are going to be transporting mined soil from Philipstown to other communities we are going to be increasing trucking emissions. So not only is there not a decrease in emissions, there is an increase in emissions. Second, there is no evidence of a noticeable increase tax revenue base from mining. Especially, if you take into account the decrease in tax revenue from lowered property values. Third, there is no evidence of any significant increase in employment based within the community. So, there is no benefit to the community. The mining district failed the first criteria and it is illegal. It fails the second criteria too. This mine is not consistent with a comprehensive plan. This mine is. The overriding theme of the comprehensive re-zoning is the preservation of natural resources. This mine is blatantly contrary to that theme. Just to conclude, I understand that the Lyons family has a lot of property in the town, and the comprehensive zoning plan severely restricted the use of their land, and that the town could easily feel for their plight, and want to do something nice for them. Personal reasons are impermissible under the law as justifications for spot zone. This situation here with this proposed mine is precisely the kind of case that the case law sought to avoid. This mining zone would never ever hold up in a court of law. Thank you.

Vincent Cestone - Next on the list is Stan Lovenworth.

Stanton Lovenworth - Can I ask that Mr. Butensky go first, and I will go after him?

Vincent Cestone - Sure.

Richard Butensky - How do you know I want to go?

Stanton Lovenworth - I had an idea.

Richard Butensky - The first thing I have is. Im Richard Butensky I live on East Mountain Road South, and I will be very adversely effected. I live above the mine where the mine will be now. The Lyons property comes right up to the road across from me and when they were logging down there in preparation for this , and setting up logging roads I heard everything they did, and that equipment that they were using is quite a bit less noisy. Im sorry if I have my back to you, but I have to face somebody. My first little thing here, is their EAF thing which is the Environmental Assessment Form. Just to note, one of the things I know that the town is relying on is the DEC to look out for our interest, and they are suppose to be shepherding this through and making sure that we are covered properly, but they actually not. Unless we give a push back against them, as a matter of fact _____ Whitehead who handled this thing actually has said that he got no push back from the town. The town did not show any concerns specifically to him, to make him be particularly extra thorough on this. One of the things that I see here is in the EAF statement there is prepared by the project sponsor, and as you can see there are check marks here done on their computer program where they checked them off . So then that is part one. Part two is suppose to be filled out, its the responsibility of the lead agency, and by law they are suppose to filling this part out. These are a bunch of boxes that are at their discretion.

Vincent Cestone - You know that you are stating the obvious.

Richard Butensky - OK, I don't know what you know or don't know.

Vincent Cestone - Well I do know, this is a standard form.

Richard Butensky - Its a standard form the applicants not suppose to check off.

Vincent Cestone - No, that is their proposed, and what they do is they make these proposals, then the lead agency says yes or no.

Richard Butensky - The lead agency did not. So your saying they filled this out
(Unable to interpret, because Mr. Cestone and Mr. Butensky are speaking over one another)

Richard Butensky - The lead agency gave this back. This is their approved, so the lead agency. Their suppose to analyze this, so they just went along with everything they did not check it off themselves.

Vincent Cestone - You don't know that.

Richard Butensky - Well I do know it, this was filled out by you the applicant correct? The EAF you filled it out?

Glennon Watson - If I filled it out, it would have said suggested on the top.

Richard Butensky - Well it doesn't say it on here.

Glennon Watson - Well then it is not mine.

Richard Butensky - It was filled out by the applicant. The DEC its clear this is _____

Vincent Cestone - You are making an assumption, and thats not the way that it normally works. In my experience, I have been doing this for sixteen years. That is not normally how it works.

Richard Butensky - So anyways I have a few questions.

Robert Dee - Excuse me, can I just ask you to stand in front of the mic and speak to me, because Im having a hard time hearing you going that way.

Richard Butensky - Im Sorry, I don't know who to speak to.

Robert Dee - Speak to us.

Richard Butensky - Im trying address you both.

Robert Dee - Right.

Richard Butensky - Now what I would like to know.

Vincent Cestone - Address the board here please

Richard Butensky - Im sorry, but can I ask the applicant the question.

Vincent Cestone - You can ask us, and we can.

Richard Butensky - OK, thank you. Im sorry, my first rodeo here. Thru out the application it says processing. There is processing written thru-out the application, but nowhere in the application does it define what processing is. It doesn't define processing. So what I would like to know, if you wouldn't mind is to ask the applicant what is. Does it mean rock crushing, dose it mean washing of material, dose it mean, well thats my point. So, if you would not mind asking the applicant.

ZBA Council - Mr. Chairman.

Vincent Cestone - Well finish your presentation, and I will ask all of them.

Richard Butensky - Well that is one thing I would like to know. Now the other thing that I would like to know. You heard the presentation before mine, and I guess I would like to know, is to me I can only see spot zoning here. I would like to know how it is not spot zoning. I cant find anything that says how it isn't spot zoning. Even the one thing that would have helped it a little bit, was if it was in the comprehensive plan. That would

have helped it a little. Its not even in the comprehensive plan. So, there is nothing that is not spot zoning about this. it reeks of spot zoning, and that is illegal. So, right then and there thats another problem. I would like my question is, how is it not, and I would like you to explain to me.

Vincent Cestone - The Zoning Board dose not create the zoning code. The Zoning Board enforces the zoning code. The zoning code is developed by the town, and is handed to us. We have very little input into the actual zoning.

Richard Butensky - I understand that.

Audience Members - We can't hear you.

Richard Butensky - They don't have a microphone.

Audience Member - They don't have an amplifier.

Vincent Cestone - That is for the TV. It is on TV.

Audience Member - We want to hear what your saying.

Vincent Cestone - Im Sorry.

Audience Member - Speak up. Like you asked him to speak up, you should speak up.

Richard Butensky - OK, I realize that you don't handle zoning, but my question is, my point is. If it is illegal in its base and it is done wrong and its improper in its base. You have the obligation to turn it down. You don't have to dictate, if there is something illegal about the application, if it is done improperly you have the obligation to turn it down.

Vincent Cestone - Well, its not determined if it is illegal. Your making statements that I cant make Judgement, like _____ (Speaking over each other)

Richard Butensky - Well your attorney.

ZBA Council - I can address this. The question that you had is wether or not it is spot zoning, and then as a _____ to that if, its spot zoning then the board has an obligation to turn it down.

Richard Butensky - That is what Im saying.

ZBA Council - First of all, spot zoning is a question of wether or not the Town Board properly adopted zoning for this in the first place. Thats not something that this board can answer or go into at all.

Vincent Cestone - Thats Correct.

ZBA Council - So, as the chairman had said, this board has to deal with the zoning code that is in front of it. Not as the zoning code as you think it should be, or anyone else thinks it should be. It's the code that this board has to apply to this particular application. Whether you think it is spot zoning or not, is not something that can drive this board's decision.

Richard Butensky - But they are a partially judicial body, correct?

ZBA Council - They have _____

Richard Butensky - They do act as a judicial body, and somebody can prove to them that it is spot zoning, then they have the right to say, this is a bad application this does not belong before us, because this is spot zoning. If that can be proven to them.

ZBA Council - My opinion as the attorney is, that they do not. What they have before them is the zoning code that sets forth the procedure and the standards that they have to apply to this application. Right now they are in the middle of a public hearing, taking public comments regarding concerns, regarding impacts associated with this mine.

Richard Butensky - I don't think that I'm going to convince them that there is spot zoning right now. I am not trying to do that, but I believe that if there is submitted information that can make a compelling case. I believe they can act based on that. I don't think they can act based on what I am saying right here without any documentation.

ZBA Council - That is where you and I differ.

Richard Butensky - OK, well then we will leave it at that. The other thing is last time I was here I said who is looking out for us. The applicant has its engineer who put together its engineering report, and you said we have our engineer. Who is our engineer?

Ron Gainer - Right here. Ron Gainer.

Richard Butensky - So I would like to ask you. How much time have you spent analyzing.

Vincent Cestone - I'm sorry, address here please.

Richard Butensky - My Apologies. What I would like to ask you to ask the engineer.

Vincent Cestone - We do not cross examine the engineer.

Richard Butensky - I'm not asking you to cross examine the engineer, but what I do want to know is. You said that the engineer is looking out for our interest, and can

analyze this thing. So I would like to know how much time has the engineer spent analyzing this application.

Vincent Cestone - Im not prepared to answer that question, and I think it is inappropriate.

Richard Butensky - You cant ask the engineer that?

Vincent Cestone - No, Im not going to. I think it is inappropriate, so make your point.

Richard Butensky - The other thing I would want to know is, if you would let him answer it, is what would be his qualifications even if he did spend time would he be qualified to analyze this. What I was trying to say at the last meeting is that we need somebody looking out for us. There are towns that have the applicant pay and board then directs the engineering rather than the applicant. There are towns that do that. I believe Sherman Connecticut dose it . We can do that sort of thing, we can direct. In this case we did not do that, but we certainly should have someone looking out for our interest. We cant just rely on the applicants engineer and the DEC.

Vincent Cestone - Our engineer is paid by the town. This engineer has no affiliation with the applicant. He is paid by us.

Richard Butensky - I did not say he did. I did not say that. What I am saying is that our engineer may not be.

Vincent Cestone - We are not going to debate that.

Richard Butensky - Im saying that we should have.

Vincent Cestone - _____ Im not going to go into something like that. Make your point, then let someone else speak.

Richard Butensky - OK, absolutely. I also want to say that the engineer made a point in this application of saying that. I don't know if it was this time or the hearing before that last year, but they made a point of saying that they are using state of the art equipment that is quieter and everything else like that. I had the opportunity along with Russ Cusick back there to visit the Westhook mine. We actually filmed it, and I would be happy to show you the film of the operations of the Westhook mine, and the sound, and they were mining gravel with the same sort of equipment that these people will be using. We went and it was incredibly loud. I would say almost deafening. We went after we observed that from above, we went down to, by the way from a point above the mine which would be similar to where my house would be. It was very disturbing to me. Then we went down to the mine, and we went into the mine, and we went to the mining manager. He was a nice guy, a great guy, and was very forth coming. One of the things he said was, he was very excited, he loved his job. He said we have state of the art equipment here. we have all the best stuff. You can feel how quiet it is in here, isn't it

quiet in here. Of course he was half deaf from being around this stuff. He was very proud of his equipment. He was very proud that it was state of the art, and it was quiet. Believe me, none of us would consider living next to this thing.

Vincent Cestone - So, what is your point.

Richard Butensky - My point is that when they're saying that this is not going to be particularly loud, and the noise is down because of state of the art equipment. I witnessed state of the art equipment. I can show you a video of state of the art equipment, and you will hear and see that it is not quiet. That's my point.

Vincent Cestone - OK

Richard Butensky - My other question is, what are they going to be filling the hole with? What goes into the hole? They are making a hole. Why can't they fill it up all the way? Also, my other question is. They have done noise test, but once they start exposing ledge, as they will, cause I believe they fill in some of the hole by pulling out materials from behind where the mine is. Once they start exposing ledge, won't that change the noise profile? I know once they exposed the ledge in a mine that they operated across the road, a smaller mine, then the noise that they were creating _____ up into Fahnestock Park. I believe that it will, and I would ask them if they don't agree. My other question is, why does this not go, this is, it seems from my reading of the local law, that this should be the CAC. The Conservation Commission. Why is this not being put before the CAC? I would like to know that. I would also like to know, if this is the only spot mining district in town, is there anything to stop others. If we had outlawed mining altogether we would have very strong legs to stand on. I believe, because we have allowed this one mine we are leaving the door open for other people to ask for equal treatment.

Vincent Cestone - In my experience, it is the opposite. If you have no mining district, then the whole town is eligible for mining district. If you have a mining district, it is the opposite.

Richard Butensky - Actually when we redid the new zoning we had the right to have no mining district at all. Towns are allowed not to have a mining district. Yes, if you don't set it up properly, and if you don't construct it properly in the re-zoning, I understand what you're saying and there has been problems where we did not do it properly before.

Vincent Cestone - So finish your point so I can move on.

Richard Butensky - OK. My other point is, the point I made last week is that, is that the, that there is, We will be powerless to enforce any of the conditions of the laws. We will be dependent on the DEC. If we look all around us we see DEC regulated mines, and we know what those look like. We know what those act like. I would be happy to take you all on a field trip to the Westhook Mine to see what a DEC regulated mine looks like and sounds like. I think it is the very least you can do if you are going to put

this mine in my front yard. I think enforcement is an issue. I think they will have all the money. We won't have any to enforce. They will be able to fight us with their materials. With the money they will gain with their materials we will have nothing to fight back with. Or, we will bankrupt the town fighting if we had to. Again I will also say, this mine could be sold many times over in the next thirty years. We don't know who will be operating this mine for the next thirty years. We only know who is going to operate it immediately, perhaps if it is approved, but not far after that. I guess lastly is, it's a local source, but we have a local source. The Westhook Mine is only four minutes from the border of Philipstown. That is our local source. It is the same stuff that they are pulling out of there. Exactly the same. No difference. As a matter of fact they offer more materials than this town will be able to. I thank you for your patience, and I really would like to know about the crushing of rock, and if they will be allowed to do that, and some other things that I asked, which if you remember them, you could ask them for me. Thank you.

Vincent Cestone - Glen, what can you tell us about the processing? From what I understand the soil mine is basically you take the stuff out, you screen it, then you truck it away as opposed to crushing it.

Glennon Watson - The operation involved is the extraction of unconsolidated materials, sand and gravel. It does not involve the extraction of any rock. It is not a quarry. It involves then the screening of the material, which sorts and grades the material. Part of that process if there is a by product where you get cobbles of various sizes. The smaller ones on occasion a portable crusher will be brought in, and they will be processed, and then taken out. The crushing is not an ongoing operation. It is when the stock of it gets big, and it's worthwhile to bring a crusher in for a day. No washing.

Vincent Cestone - When you reclaim the site, you just bring soil in?

Glennon Watson - If there is top soil it will be stockpiled and saved to be re-spread. The hole will not be filled up. There is no intention to fill up the hole. Material will not be taken from another place and brought in to fill up the hole. Restoration involves spreading topsoil, trees, seeding and planting the restored areas. That will be a progression through the process. That will occur on an ongoing basis.

Richard Butensky - So, I just want to be clear. Will washing and crushing be prohibited there?

Vincent Cestone - No, crushing is going to be, what he said is crushing is going to be, and they have no plans on washing.

Richard Butensky - I thought crushing was illegal in Philipstown.

Vincent Cestone - I'm not prepared to answer that.

Glennon Watson - We would be willing to take a condition that there would be no washing gravel on the site.

Vincent Cestone - OK. Next to speak, sir.

Stanton Lovenworth - Stan Lovenworth, thats L-O-V-E-N-W-O-R-T-H. I live on High road, that is off of Esselborne, a little bit outside that red line there. I am particularly concerned about the noise impact. In my view, I would like you to ask Mr. Watson some questions on this. The DEC or the sponsors, excuse me, assessment was inadequate in a few ways. The loudest noise to come from this mine are the backing of the trucks and beeping. I don't believe that they tested what that sounds like at various places, and I will point out that States guidelines on how to asses that. They say, factors to consider in determining the impact of noise on humans are as follows. Sharp and startling noise. These high frequency and high intensity noises can be extremely annoying. Initially evaluating the effect of noise from an operation, pay particular attention to the noises that can be particularly annoying. One such noise is the back up beeper that is required to be used on machinery. They defiantly catch ones attention, as they were meant to. I may be wrong, but I don't think any of that was tested at the site. The other thing that i would like to point out is, and Richard alluded to this. Putting sensors just outside a given area, in this kind of topography doesn't make a whole lot of sense. Valley creates an echo. For this to be really meaningful for the people who live there, if were going to hear these noises **(unable to interpret because of coughing)** People who live up on East Mountain Road South say they could hear the beeping from the other mine that the Lyons ran, and that is further away. That is very,very disturbing.This is the kind of impact that effects many many more people, and it is terrible to have to look at this, and I am glad that I don't have to, but I and my neighbors and people further away risk having to hear beeping all day long. That is my first point. The other thing I wanted to ask, and this is something that Im a little confused about. I understand that this is a thirty year project, but the permit is for five years right?

Vincent Cestone - The way it works, he gets a permit for the site, and there is requirements for the permit that the DEC is proposing. They can't mine more than five acres of land at a time, before they proceed to the next cell I guess you could say for lack of a better term. They have to reclaim that, so it is going to be a process.

Stanton Lovenworth - I understand that, but the town zoning law, which was just enacted, says quite clearly, the Zoning Board of Appeals may approve the application for special use permits and site plan, and issue a local mining permit under this article for a limited period of time not exceeding five years. Then it goes on and says there are conditions.

ZBA Council - If I may Mr. Chairman.

Stanton Lovenworth - It is quite clear.

ZBA Council - I can explain.

Stanton Lovenworth - Well you may be able to explain what you think it means, but the words say is that it is five years, and it seems to me that picking off of that, if this is approved, which I sincerely hope that it is not. One of the conditions should be a re-examination in five years. That will one give the Town a chance to see whether this has been a disaster that some of us think it is going to be. Second of all, will keep the operators, the Lyons brothers or somebody they might sell it to on their toes, because they will be watched very carefully. They will know that the re-assessment is coming up in five years.

Vincent Cestone - Valid Point

Stanton Lovenworth - Thank you. Am I right about the noise not being tested?

Vincent Cestone - The noise levels have been tested, and they are available for your review down in the building department.

Stanton Lovenworth - Not trucks backing up.

Vincent Cestone - You would have to look at it.

(not able to interpret, because Mr. Cestone and Mr. Lovenworth are speaking over one another)

Stanton Leavenworth - Your role is protecting the town.

Vincent Cestone - Right.

Stanton Lovenworth - You would make sure that appropriate testing was done. Just because the DEC, which doesn't know the area said that was ok, I don't think that should be sufficient for the people here. Thank you very much for your time.

Vincent Cestone - Your Welcome. The next person on the list is, Hadrien Coumans.

Hadrien Coumans - My name is Hadrien Cumins. I live on East Mountain Road North, 175, the last house going out before the _____ reservoir. I have been there since 2005. I can tell you that my family, my wife and son that we feel every single one of the aftershocks from the explosions of dynamite from the current mine. It has been interesting raising a kid under those conditions when your house shakes unexpectedly. Now he is use to it.

Vincent Cestone - You know that the only ledge that is going to be cut is from the road? There is going to be no dynamite used. Am I correct in that?

Glennon Watson - That's correct.

Hadrien Coumans - So no dynamite? In the thirty years no dynamite?

Vincent Cestone - Correct.

Hadrien Coumans - OK, well that is good news. I urge that we as a community stand to protect what this town stands for. At the very least the way that people perceive this town and what it provides. We need a place that can prosper, a community that is going forward and not backwards. In the since in what progress is this is a step backwards. Thank you.

Vincent Cestone - Your welcome. Next person to speak is Ron Soodalter.

Ron Soodalter - Im going to hold my question for now, Thank you.

Vincent Cestone - Next person is Tom Bardes. Am I correct with that?

Tony Bardes- It is Tony Bardes.

Vincent Cestone - Im sorry. Tony.

Tony Bardes - A couple of things. First of all the zoning was a thing that took like nine years to do. I know that there was a ton of input and meetings that were held about this.

Vincent Cestone - There was.

Tony Bardes- I believe that end document of the zoning was a good thing. Everybody was in agreement with it at that time, and I sat in this room and there was applause and everything at that time. I urge you guys to follow the zoning. The second thing is, I have known the Lyons family for a long time, and I have been involved with a lot of their projects and have been around their projects, and they have always operated with integrity and done everything they were suppose to do. The same thing with Mr. Watson. If anyone can come up with something wrong, it would be nice to hear that. I will be quick about it, and the next thing is the DEC, and the DEC is doing a wonderful job with protecting the environment and doing everything else. They will be seeing what is going on here, and I don't think that they are going to turn around and leave something that is half done. I believe that they will take care of it. That is all I have to say.

Vincent Cestone - Thank you.

Tony Bardes - No applause on that.

Vincent Cestone - Next person is Russ Cusick.

Russ Cusick - Russ Cusik, 541 East Mountain Road North, Cold Spring, 10516. My biggest concern about this is is the possible implications of having a soil mine in such

close proximity to the clove creek ____ and clove creek itself. I remember last august during Hurricane Irene, if anybody drove north on Route Nine up towards the Putnam Dutchess border, the runoff from East Mountain all along Route 9 was literally like Niagara Falls.

Vincent Cestone - Yes

Russ Cusick - It was outrageous. So, going in and clear cutting, even if it is five acres at a time is just going to make that even worse when we have high precipitation. I want to read from the Philipstown Comprehensive Plan. This is chapter one, page five. It is called Geography Assessing, only two paragraphs. For many reasons it can be said that for Philipstown geography, is destiny. From its strategic location on the Hudson River at the hub of the Hudson Highland region. Philipstown gets its most valuable asset, its scenic beauty. This asset also brings with it a challenging terrain for development. The towns setting of unparalleled beauty, and its feeling of isolation from the congestion of the New York metropolis are its greatest economic attractions. This is apparent to travelers driving up Route 9 from Westchester to Dutchess County. Mixed development along the four lane highway from Westchester gives way to the two lanes through the rugged terrain in Garrison, and small scale commerce in North Highlands before the road widens again to six lanes to serve mega shopping complexes in Fishlike. This pattern which is absolutely no accident is mirrored by the Hudson River, which is a wide river to the north and south. It is narrow and deep here. The Hudson Highlands are part of the Appalachian Chain which runs east and west through the region in a band ten to fifteen miles wide. The entire length of Philipstown, the North Highlands section of Route nine, is in the clove creek valley formed by geologic forces that also deposited sand and gravel. Mining of these deposits and the associated industries has had a major impact on the character of this section of Route nine. Thats all. Thank you for your time.

Vincent Cestone - Next person is Eugene White.

Eugene White - My name is Eugene White, 12 Yesterday Drive. For me the harder decisions is about the impact of a large scale industrial project in the middle of a residential area. This is a dirty large scale industrial project, and by that I mean that noise and _____ are simply by products of that industrial operation. Now, It would be one thing if there was disagreements about either of these two components, but that is not the case. The last meeting Mr. Watson representing the developers stated, and it is recorded on page twenty-one of the minutes of that public hearing. Mr. Watson said that the property ultimately, quote, might be developed residentially, because that is what it is zoned for. Mr. Watson is saying that the property is zoned residentially. So, there is no dispute about the inherent nature of the property, and furthermore there has never been any dispute about this project generating noise, dirt, traffic, and possible pollution. Now there are those who believe that you can litigate any problems that might ultimately surface, a little after the fact and certainly with no guarantees. Do you remember Mr. Watson, and Mr. Cestone you had questioned him, about sound abatement. On page

twenty-two of the minutes saying, Mr. Watson saying now, if your approval would require an annual monitoring of that or monitoring of that during a specific operation, we would have no objection to that, and we would be happy to come back and revisit that issue. He continues with a report that indicates that the impact is there, we would be reluctant to spend the money while we don't believe there is not going to be an impact. That is what he said. With this statement made, that if the Zoning Board issued an approval subject to certain conditions that the developer would comply only if he felt that the expenditure was warranted. That dose not exactly inspire confidence. Who is in charge here? Im troubled that the developer may think that he is, and that just scares the heck out of me. What communities everywhere learned over many painful years that the introduction of heavy industrial development in residential areas, and you know the answer to that as well as I do. It leads to deterioration of that residential area. It may slow, it may be gradual, but its grinding, and it happens. You cant approve this project without condemning this entire residential area and its hundreds of people to a future that is all to easy to imagine. Once the project is approved, there is no going back. This is not a limited impact project. I mean no disrespect to the people who were heard earlier in the evening. This is not the equivalent of a fence height, or the placement of a road sign. It is one thing to build a residential community like Glassbury Court in a former industrial site, now that certainly provides benefit to everyone. It is quite another to interject an operating, highly impact industrial project in a firmly established residential area. Im not willing to except the risk that come with this kind of project, and I certainly hope that you are not either. Please reject this application.

Vincent Cestone - Mr. Toshi Yano

Toshi Yano - I just want to say

Vincent Cestone - You didn't introduce yourself.

Toshi Yano - Im sorry, my name is Toshi Yano, and I live on Horton Road. Right here. My wife and my two year old daughter _____. We are immensely concerned about the environmental impact , and I would just say that there are also other young children on that road. I think _____ on the side of caution and limitations. You said something about five year limitation is what I would support at all cost. The traffic on Route Nine turning off from Horton Road to go into town or in the village can already take five minutes sometimes to get off of Horton Road. I can only imagine that when there are trucks coming off going south, and also going north, they are going to slow down traffic, and maybe double that, especially if they are going to start at seven in the morning, which is what I understand they are asking for. That is rush hour. Just the little things start to add up. Dust in the air, the sound, property values going down, all these little things build up, and they start to drive people a little bit mad after a while, and not angry, but also it pushes on our mental health. I would just ask that all five of you, your all residents of Philipstown, imagine that you live that close to something.

Lenny Lim - Yes, I do I live on Horton Road.

Toshi Yano - You can understand then how infuriating that can be.

Lenny Lim - I lived twenty years with that other mine that is Glassbury Court.

Toshi Yano - Im sure your happy that its Glassbury Court, and not a mine now.

Lenny Lim - It took twenty years to get there though.

Toshi Yano - Well that thirty plus another twenty. I would like to retire there if I can, and not retire there as an insane person. I guess my only point is, there are families _____ that live _____ the real impact on our physical and mental health, and we would just like you to consider us. Give us as much _____ as you give the Lyons. Thank you.

Vincent Cestone - Frederick Turner.

Frederick Turner - Thank you Mr. Chairman. Frederick Turner, attorney for Richard Butensky and concerned residents of the area who retained me as their attorney in Terrytown, New York with Turner and Turner. Today I submitted a letter, and I apologize for the late submittal. Do you all have a copy?

Vincent Cestone - Yes, we got it.

Frederick Turner - Should I hand it out?

Tina Landolfi - They have them.

Frederick Turner - Again I apologize for the late submittal, but I was only retained Friday.

Vincent Cestone - Ok

Frederick Turner - I wont ask you to judge the merits of spot zoning, but I will ask you to just as the former speaker did to apply the code as it is written. Under the code as it is written, this application doesn't measure up, and not to be approved. My letter outlines many of the issues that jump out in reviewing the application, and I say I was retained Friday. Im sure that there are many more issues here. Just to summarize the proposal the applicant seeks to conduct surface mining on thirty-two acres approximate to clove creek. A classified trout spawning stream .A mine that will operate six days a week, and will require a construction of a well for dust control, installation of an outflow discharge to clove creek and is located adjacent to a New York State regulated wetland. It is designated on your local zoning as a open space conservation overlay district. Surface mining is of course one of the most destructive environmental practices known. It is a necessary evil, it is very _____ to all the environmental regulations, all of the environmental impacts that we try to regulate, noise, air, water, vibration, traffic, all of them are impacted by this. I was struck by the previous speakers comments about

noise effecting your mental health. Indeed noise is one of the most _____ and annoying pollutants known. You will find in the DEC guidelines, that DEC does not regulate noise. There is no standards for any of this in DEC. Noise is regulated by federal law or by local government. I believe in your town code there are no noise specific regulations. If the permit is issued it should be very strict regulations regulating noise. The fact that Clove Creek is classified as a trout spawning creek is very very significant. Im not a fisherman. The last time I fished was with a plastic fishing pole as a boy. In the environmental community, what trout spawning means is that this creek is not dead. This creek has life. Its vile oxygen demand can support life. One of the surest ways to kill a stream is turbidity and sediment runoff.

Vincent Cestone - Did you see the water treatment plan that were submitted by the applicant? Have you had a chance to review those?

Frederick Turner - I did, I have seen more comprehensive drainage reports and storm water pollution prevention plans in a two lot subdivision. Im sure Mr. Watson has prepared more detailed. I would like to ask if this is the most recent copy, because i was only introduced to this case so recently, dated August 10,2007?

Vincent Cestone - No, there is something much newer.

Frederick Turner - On storm water, water management?

Glennon Watson - I will have to check the dates, but I am sure there is more than that.

Frederick Turner - Water management here is a crucial issue, not only Clove Creek but you also have the Fishkill auqafill recharge area, and it is half a mile away, and it is adjacent to a regulated wetland. Most important of all is the amount of well water in this area. I don't know, in the EAF that Mr. Butensky was holding up earlier the applicant does not disclose how much well water will be drawn from this project. That is a huge omission, unless that to is if I don't have the most recent EAF.

Vincent Cestone - File is available at your convenience. You will have to contact the clerk downstairs.

Frederick Turner - That is a huge issue for the residence of the area. How much water will be used is not disclosed in the EAF, that is a major omission. I know that DEC has assumed lead agency status, and there is some momentum behind that, but other than the mining land _____ law that is a flaw, those are minimum requirements. New York State is a _____ state, part of our legacy, our colonial past, and these decisions about land use and _____ are left to the localities to regulate and measure. I would say that under your local zoning code this application falls short. First of all, the code requires the application comply with best management practices. Since the storm water pollution prevention plan was presented, unless you have updated this, there is a new multi sector storm water pollution prevention permit issued for industrial discharges, which is what this would fall under. That is effective March 28,2012. So,

unless there is a new storm water prevention plan since March 28, 2012, whatever the applicant has submitted is not compliant. I will have to get the storm water pollution prevention plan to really analyze it, and I would ask that the record be held open to give me a little time.

Vincent Cestone - That is the plan, we are not planning to close this at least till the DEC finishes the process, and that is quite a time away.

Frederick Turner - I put out several issues in my letter, and I won't repeat all of them to you. I would say that on air pollution this is a huge issue for us in this area, although we are still in Philipstown, the New York Metropolitan air district under the Clean Air Act, it's a non attainment area, meaning our air any day of the week doesn't meet minimum clean air standards. People with respiratory problems having the added dust that this would generate can on a smog alert day can be very, very serious condition, and dust control is a major issue, and I think, and I would urge you to investigate an operations manual. I also represent cemeteries and solid waste facilities which typically require an operations manual, about what happens when it doesn't work. The manual should clearly say all operations stop once dust control starts to _____. That's what specificities can only be obtained really by an operations manual. The SEQRA compliance is, I think is an open issue, not only is there an omission about how much water will be drawn from the private well, but since the SEQRA form was filled out you adopted the open space overlay, and also the industrial permit for storm water regulation has been superseded with a new permit effective March 28. Both of those facts would lend themselves to this board, if so motivated, asking DEC to reopen the SEQRA review process, and look at the environmental impacts more closely. The DEC could do that or you could do that as lead agency here locally. I was relieved to hear that there would be no blasting, because that has not been disclosed in anything that I have read. That there won't be any washing is a huge issue for water quality, because washing is not covered under the storm water permit. That is a whole separate issue, that is waste water, as the engineers know, that's a whole huge issue for water quality and maintaining water quality, and that should be categorically prohibited in any form if you are going to protect Clove Creek. I would like my letter to please be part of the record.

Vincent Cestone - It is.

Frederick Turner - I would say under the Philipstown Town Code, I tried to go through it in my letter, as you well know the two standards for special permit one and site plan the second. As the application presently stands, I don't think that there is enough under the site plan criteria, you have to make a permanent findings of fact. You are charged with finding fact that it won't annoy neighbors, that there won't be air quality _____, that it won't impact traffic. With the material that I have seen, I don't think that there are enough facts in the records to come to that conclusion. There may be a properly completed application, but as it stands today there is not. I just stand on the letter and ask to please submit it _____. Thank you.

Vincent Cestone - Next person to speak would be Richard Szypula.

Richard Szypula - I live on East Mountain Road North. I just have two small points to make. I did not know what I was going to say, but I do know that Lyons family for many years, my family and myself have built with them for generations, so I have very mixed feelings about saying anything one way or the other. I do think that things have to be said. I was concerned about the reception given to Mr. Lovenworths comment about regarding the duration about the possible permit, and I just want to read a section of our zoning code, Section 175-17.1 . Criteria For Approval of SitePlan Subject to Local Mining Permit. In determining whether to approve a site plan subject to a local mining permit, the Zoning Board of Appeals shall be guided by the following criteria. The criteria H says that the proposed mining activity including site restoration, if followed by local mining permit under section number 175, and can be completed within a period of five years or such less a period as may be identified by the Town Board in its determination. Including the restoration. I do believe that there is. I have a question.

Vincent Cestone - Ask your question.

Richard Szypula - Whether there is a doubt or question about this provision meaning that you could not issue a permit for longer than five years.

ZBA Council - I was willing if I may, I was willing to offer an explanation before, but the gentleman preferred not to hear it. I think what your asking me is for my explanation now.

Richard Szypula - Yes

Vincent Cestone - Yes, go ahead.

ZBA Council - Mining is an activity that progresses over time, and mining is dependent on market conditions. You don't mine and sell material unless there is a market for it. So, it is hard to say exactly how long mining activity goes on. The DEC has recognized this, and so there is two separate concepts, but they are related. One is the fact that there is a life of mine, and the life of mine shown on that plan right there is outlined by the red boundary, and the red boundary is the ultimate size and scope of the mine, throughout its entire duration. However, That doesn't mean that an applicant or a miner can open up that entire site at one time. There is a permit that is issued for a permit term. The same way that you get a drivers license, and a drivers license is issued for a permit term. During that permit term there is an authorization to open up a certain area within the mine site, that can be feasibly mined during that period of time, and then has to be reclaimed. By reclaimed, by covered up, replanted, and restored according to the plan prior to moving on to another area. The DEC issues permits for five year terms, and so every five years the re-evaluate how much you have mined, and how much you have reclaimed, and how much you need for the next permit term. The code that the Town Of Philipstown has, tracts that process, and says specifically that this board would issue five year permit terms, and at anytime an applicant wishes to extend that term

with the DEC, they must simultaneously apply to this board, and prove to this board the same things they are proving to the DEC. So, yes it is a five year term, but to create the. I understand why it might create the perception, but it doesn't mean that the whole shebang has to be done within five years.

Richard Szypula - Your speaking about operational permits. What about the site plan itself?

ZBA Council - Site plans are not plans that expire.

Richard Szypula - I beg to disagree with you. In determining _____ to approve a site plan subject to a local mining permit Zoning Board of Appeals shall be guided by the following. This is for purposes of approving the site plan. It must be guided by the criteria that the proposed activity, the proposed mining activity including site restoration would qualify for permits and can be completed within a period of five years or such lesser period as may be identified by the Town Board. I suggest to you that the site plan, should be a plan by its description, would terminate within five years. The site plan which would allow five years of work, and not thirty years of work by letter of our statute. I urge the court to investigate if this local law supersedes the proposition. The second point, I may as well now that, offer to the board the consideration that this proposed activity is being presented as a single monolithic plan, a single monolithic proposal, when it actually involves two parcels of land. One of which lies in the industrial manufacturing area and the balance of which lies in the residential rural area. The portion lying in the industrial district is approximately twenty - five percent, and the rest of its seventy-five percent lies in the residential rural district. I urge the board to consider what different considerations, values, criteria, judgements, factors, should be applied to each of these lots separately. They are two separate lots. They are part of the zoning code. Define these two separate lots, and define the different purposes and objectives. I urge you to consider the portion of this that lies in the rural residential area should be treated differently, must be treated differently in the analysis at least, from the area lying in the mining industrial area. taking into account further, that there are two different overlays involved here. There is a mining overlay to be sure, but in the residential area there is the open space overlay. So you have four things to consider. Two different districts, two different parcels, two different zoning areas, and two different overlays. You have a tough job, this is a very complex application. This is presented very simply. That map has a little bit here, a little bit there, and you do it every five years, and it is done. The conceptual issues involving what goes on in the zoning law, and your duty and judgement to interpret the zoning law for purposes of that location. I believe that those questions have not been addressed by council for the applicant. I think unless that burden of proof on his part has been presented to you in some way beyond what has been done so far, you have no obligation but to deny the application. The last point. I will read from the statutes again. This is statement of the purpose of the different districts. Section 175-7. Under Soil Mining Overlay District. The purpose of this overlay district is to provide appropriate locations for soil mining to occur, where land owners can achieve a reasonable rate of return of their land, without adversely impacting their neighbors. I think that says it all.

Vincent Cestone - _____

Tina Landolfi - I cant hear you. Name.

Connie Mayer Bakall - I am Connie Mayer Bakall, and I am president of the local Putnam Highlands Audubon Society. I represent over three hundred and fifty local members, and we resolved at our board meeting friday last, that we are opposed to the special use permit that would allow new gravel pit mining in the Town of Philipstown. Our opposition is based on environmental concerns, as not reflecting the zoning regulations and the comprehensive plan for Philipstown. We feel that need has not been established. We would hope that the Zoning Committee would deny this special use permit on these grounds, and we will be submitting more information to you as the process goes on. Thank you very much.

Vincent Cestone - Unless I missed somebody on this list, I think that takes care of the list. The only person still on the list is Glen Watson. Do you wish to speak now?

Glennon Watson - I just want to point out a couple of things in regards to the life the life of the mine, and a couple of points that were raised. The life of mine as your attorney pointed out is the maximum allowable. _____ across the piece of property. The plan is also the maximum vertically. We cant go deeper than this plan, but it is very likely in some places that we wont be able to go as deep, because we will hit rock. We have tested it. We know we can go deep in the places that we tested it, and we didn't violate that. The fact of the matter is that sometimes you hit rock, so you wont go nearly as deep. We said that we would except the condition on no washing. Some points in regards to the dust control, there was some concern at the last meeting, and we discussed it. We had represented that we would only use water, despite the fact that the DEC identified water or other substances as may be appropriate or something to that point. It is our intention to only use water. We are willing to except a limitation on amount of hours of operation. We could move it up to seven-thirty and cut back at four o'clock, which cuts off an hour and a half each day. We would be willing to except a condition that there would be no activity, no mining on Saturdays. The point about the air pollution and the metropolitan air district, I may have that term wrong. That made since to me personally, and we will certainly discuss it, and if we were under a air quality alert, we would certainly shut down. We would have no objection to the idea of an operations manual. My final comments are just to emphasize the protections that are there. There are concurrent five year terms. The applicant has paid the Town to engage the engineer, just for a matter of record, their deposit to pay those fees have been there. That is not a new concept to Philipstown, thats going on now with every project. There is an inspection fee that must be paid to the town, to hire its own inspector and periodic inspections. There is an inspection fee paid to the State. Correction, the state provides regular inspections. I am not sure if there is an inspection fee. There is a reclamation bond put up with the State. The provision in the law for a reclamation bond being put in the town, and I am sure that will happen. Just the fact that there is a five year term on the permit, if it is operated in a un workman like, shoddy manor, that is the opportunity

to look at somebody and say, you don't have the track record, and we are going to make this right. So i just wanted to make those particular points.

Vincent Cestone - With that I am going to continue this on.

Bill Flaherty - Mr. Chairman if I may. I have a statement on this issue and I would like to have it recorded for the.

Vincent Cestone - You don't have to have permission to speak.

Bill Flaherty - I just want to briefly say that this project has been reviewed by the New York State Department of Environmental Conservation, and after extensive review they have issued a negative designated report, with notice of determination of non significance concerning development areas. There are no adverse environmental impacts, that a draft impact statement will not be issued. The negative declaration was positive in all aspects including water resources, impact on traffic, no impact on air and noise or visual impact, No impact on endangered species Rattle Snakes, and no impact _____ character on the community and neighborhood. There was no impact on cultural resources. I knew those eligible for _____ state national register for historical places. The report concluded that this development will have no impact on critical environmental areas. I _____, because there are critical factors that this board must take into consideration when making a final determination as to whether or not to issue a special permit. It is absolutely imperative that we _____ Rely somewhat on the NYSDEC who prepared this report, and we cant just file it and forget it. I think we have to take the recommendation that this conservation board made into consideration when we finally make a determination as to where were gonna go with this issue. This is an important issue to everybody in the town, there is no question about that. No one wants to deface a mountain. We have seen that in Fishkill. Just a short distance from our town line in Dutchess County. That is not going to happen here. We have a plan in place that is going to reduce the environmental impact that is going to take place over time, by only allowing five acres at a time to be excavated. Each individual lot thereafter is going to have to be restored as closely as possible to the original _____ that existed _____. I have in confidence in knowing the Lyons family as I do, this project will be done in a professional way, and there will be a minimal impact on your water and the environmental aspects of this program. I live in the North Highlands. I understand where you people are coming from. I understand what problems you may feel about property values, and how it will effect the resale of our property. I think we are going to have to take that into consideration when we finally make a determination on which direction we are gonna go with this decision. It is a very important one, don't misunderstand I think we all are concerned about it, and we are gonna make a decision in the best interest with everyone concerned. With that said, Mr. Chairman I thank you for the time.

Vincent Cestone - Anyone else wish to speak on the board?

Paula Clair - Yes, I just want to say very briefly. I think that some of the borders from neighboring properties are totally inadequate. If there is a 250 feet from a property or a 500 feet away from a property, I think that is totally inadequate, and I think that is really unfair to the neighbors. I need to do more study on this to have a more comprehensive comment later on, but that particularly affected me.

Vincent Cestone - I agree with you a hundred percent on that. Any other board members want to say anything?

Linny Lim- We need a bigger boat next time, we are gonna have to get a bigger room.

Vincent Cestone - We are obviously not closing the public hearing, and our next meeting is July ninth. My initial idea was not to have anymore public comment until the DEC has rendered their _____ decisions. I think that is probably not appropriate, so I think on July ninth if the town is in agreement, maybe we should have more public comment, but this time at the VFW Hall so that everybody can come into make comment. I think that everybody has the right to speak, wether I disagree with them or not. It is the American way, and I think it is important that people voice their opinion. Sir?

Paul - My name is Paul (could not make out last name) I live on East Mountain Road South, I know Ernie (could not interpret, because speaker is in very back of room with very broken English. His comments would be available on the video tapped version of the meeting.)

Vincent Cestone - Sir introduce yourself, and this will be the last comment that I take.

(Did not get speakers name, because the audience was applauding)

Audience Member - For clarification sake, since discovering the plan for the mine, I have been hearing various estimates about the number of trucks that we could expect on Route Nine. I have heard one an hour. I have heard six an hour. I have heard twenty-four trucks a day. What is a reasonable number that we are being asked to except.

Vincent Cestone - Oh, you are asking.

Audience Member - Im asking whoever could answer that question.

Vincent Cestone - Glen could you answer that?

Glennon Watson - It is in the papers. I can't remember, but I think. If I recall correctly, I might have to be corrected, but I think it is three an hour. Every twenty minutes.

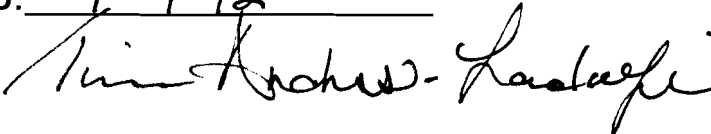
Vincent Cestone - With that we are going to continue this public hearing onto July Ninth. No more comment. We will see most of you there. Watch the website and contact Town Hall, and they will tell you where it is.

(Rest of the meeting inaudible, too much audience noise in the background)

Meeting Was Closed at 9:30 pm.

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation, and approval thereupon.

DATE APPROVED:

7-9-12


Respectfully Yours,
Tina Andress- Landolfi, ZBA Secretary