

ZONING BOARD OF APPEALS

February 14, 2011

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, February 14, 2011, 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
	Adam Rodd	-	Counsel

ABSENT:

Vincent Cestone – Okay. First item we are going to deal with tonight is Mary Dawn Inc. Is there someone here to speak for the applicant? I guess not. We'll call them later. I am going to do all the regular business before we get into the public hearing for Lyons Realty so we will not be interrupted. Review of Minutes for January 10, 2011. Any corrections? I'll make a motion to accept them as submitted.

Lenny Lim - Second

Vincent Cestone – All those in favor

All Board Members - Aye

Vincent Cestone – Opposed?

Vincent Cestone – Okay Review for Completeness for Dean Anderson and Joseph Libonati. Kim, do we have approval?

Kim Shewmaker - Mr. Libonati came in and signed the application.

Vincent Cestone – And, Adam do we feel comfortable with it?

Adam Rodd - Yeah, if it is a signed signature and Kim says he came in, I think, is anyone here

Applicant - Okay. Thank you.

Vincent Cestone – If there is no old business, we will go right into the public hearing for Lyons Realty Company. Let me just let everyone know that we have not received the DEC report and we can't proceed with a ruling until that is before us. So this public hearing will be open until some time after we get the DEC report, which could be a month, two, I don't know their

Glennon Watson - Understood. Okay. Thank you for your patience. I am Glennon Watson from Badey & Watson Surveying and Engineering. I am here with Nathan Lyons who is one of your applicants. Lyons Realty Company is the applicant. We are dealing with a piece of property that is 136.9 acres of which 47.21 acres lies within the soil mining overlay district in the Town. So we have permitted mining in Philipstown in this area, this 47 acres and this area is not restricted from soil mining as is the rest of the property. The site that we are actually talking about is 22.67 acres of land that will actually be disturbed at one time or another during what is called the life of the mine. The life of the mine has a dual meaning. It appropriately means time and it means area. The mine is planned for seven phases each covering approximately 5 acres and it is a progression that I will show you in a series of slides. Each phase will take out varying amounts of soil ranging from about 115,000 cubic yards to upwards of 260,000 cubic yards or a total of about 1.4 million cubic yards. In the last couple of years there has been a lack of available soil. Today's situation with Lyons Realty which hauls a lot of soil, right now they are able to get it from a 45 minute trip out of town at 4 miles to the gallon. Sometimes during the year they have to go an hour each way out of town up to Hudson, New York again at 4 miles to the gallon in a truck. So these, so we know there is material here that as you know the Lyons Realty and Harold Lyons & Son is a local business that services local needs. So we are looking to mine locally, keep the price down, make more material available, and that's the reason that we are making the application. Just to give you an idea of where the mine is, this is part of the USGS ____ map and this is the Putnam Dutchess County line. This red line going diagonally from northeast to southwest is Route 9. The property is here right just north and northeast of Clove Creek. It crosses under Clove Creek just north of Grandma's, that place that sells little barns, and this property is located behind Jaymark Jewelers, Moore's Cement and what used to be PemCorp Building, I don't know what it is called now. This basically is a blow up of the existing situation. There was some work done, I should tell you this has been a project in planning for about 15 years and it has actually been in process between design and application for about 4 years. This building is what I refer to as PemCorp building, this is Moore Cement, Jaymark Jewelers, this is Route 9, going across the property and you have Clove Creek flowing to the north and crossing under Route 9, this is Grandma's Kitchen or whatever the name of it is, as I say there has been some activity in here. At one time there was a permit to make a road cut directly on to Route 9. There is a depression in there that was created in

Robert Dee - On an average day, what do you think the truck traffic will be

Glennon Watson - We have some numbers in that regard and I don't remember. I would, I am going to go out on a limb, I think we are talking about 20 maybe 20 minutes to a half hour per truck, so we would be talking about 2 to 3 trucks an hour, in an 8 hour day, 20 to 24 truck trips. I may have to correct myself.

Robert Dee - Okay

Glennon Watson - Because we did spend the time to figure that out.

Ron Gainer - The document you have in hand estimates the number to be 10 entering and 10 exiting. That's an approximation from the application.

Glennon Watson - We move on to Phase Two. When Phase One is completed, and it will be, as it is being built it will be being restored so these phases overlap and I am showing you the two phases together. But they never fully happen because we are under requirement to keep our disturbance to 5 acres or less at any one time. So as Phase One is completed we will be moving into Phase Two where the actual mining will start but we will have reclaimed the Phase One area along the way. With that reclamation we will start and move its way up the hill towards the mining activity and it will continue to go into Phase Two. The mining will take care of Phase Two. I want to call your particular attention to this green wedge here that is to the south east of the roadway, the road is going to climb up the side of the hill and there is going to be some mining, some land where there will be no mining but which will be carried up and over so this mining that you see here is actually happening behind the hill. Behind the face of the hill that is there today so that once we get past this initial construction of the road, the mining activity will disappear from view from Route 9 except for the trucks entering and exiting.

Paula Clair - Can you describe what you will do in reclamation of the land?

Glennon Watson - The reclamation of the land which we will get to in detail at the end, but there is a series of plantings, natural species to create a forest, a meadow, that will eventually become a forest. I will say that, I had a call from DEC that the gal, Mary Rice is our landscape architect, DEC went out of their way to call us and tell us that the way we designed this reclamation of land is particularly good. They like the, they particularly like the mix of species, that was their big thing. We weren't introducing invasives, we weren't introducing a single kind of tree, we are matching the plant material to what is there now and what naturally occurs. I can go a little more quickly on this to get through the, and what will happen as we move Phase Three further in, Phase Two gets reclaimed, Phase Three gets mined. Again, I am really showing you two phases together when they will never quite be that way. Then we go on to Phase Four which moves it further in. Phase Five which moves it further in. I'm sorry this is Phase

Seven, I must have skipped a number. Phase Seven is the final phase which is the very southwest part of the mine. Again, this will all be in a fold that will be, that will bring the property here. This will be an upward slope to the southeast, to the east and southeast, this will be an upward slope to the northwest. So this is all hidden from view. There will be part of the natural contour of the ground that will be missing but this activity will be screened, will be screened from view from Route 9, from the ridge across the way, from several points the DEC has asked us to look for toward the east, including several trails from the Taconic, in the Fahnstock Park area.

Vincent Cestone – How do you deal with the water going out of the hole?

Glennon Watson - Well, the answer in this particular case is pretty simple because of this unconsolidated material. We are not taking all of it. We are leaving some of the unconsolidated material. We will have two permanent basins that will catch it and it has been sized to catch it, hold it and let it absorb back into the ground.

Lenny Lim - Excuse me Glen, you just said permanent. On the map it says temporary.

Glennon Watson - This one?

Lenny Lim - No the one to the south

Glennon Watson - This one is permanent. It may say that, I will look at the plans, but if it does say that, it is permanent.

Lenny Lim - Okay

Glennon Watson - And this will be a fairly flat surface with a gentle downward slope towards this south corner. So that's where the water will naturally run and it will be held in a basin and just go back into the ground.

Robert Dee - And the depth will be approximately 50 feet deep when you are finished with the last phase

Glennon Watson - I think that's about right. I would have to check that. And this is, what you see here, this is the same drawing, this is fully reclaimed trees on the slopes, trees on the banks here. By the time we get back here, these will have begun to really be mature and this will be allowed to populate naturally. We will give it a head start and then it will be allowed to populate naturally.

Vincent Cestone – (Cannot hear the question)

Glennon Watson - There is no plan to develop residential at this point. This is

30 years down the road when this is completely done. There is Seven Phases of 5, I am hesitating because that multiplies by 35. But it is 30 years. We have to demonstrate that it becomes, that it comes to some acceptable final use and one of those acceptable final uses is that it is returned to its natural state. And at this time it is to be, and to be perfectly frank, I don't think we are in a position to say that it will never be built on for the rest of eternity. But at this point I can honestly say there is no plan for any housing development or anything like that.

Vincent Cestone – For at least 30 years

Glennon Watson - For at least 30 years. And again, just to make the point perhaps once too many times, what we are bringing here is a local source for local material that is needed by the Town for its dirt roads, needed by home owners who have dirt driveways, needed in all sorts of reasons for whatever construction and maintenance activity that goes on in the Town. So it will be here and we would be taking care of our own.

Vincent Cestone – What happens to the rest of the land

Glennon Watson - The rest of the land is zoned residential and well there is 47 acres that could be mined, to the southeast here is not suitable for mining. You start getting rock outcroppings and stuff you can't deal with. Here we know we have depth because we have tested it. It's not inconceivable that there might be a large lot subdivision of 2 or 3 homes on the remainder of the property but at this point there is no plan.

Bill Flaherty - Glen, if I may ask, if you go back to the original chart that you showed us with the acreage that is available. I am somewhat confused.

Glennon Watson - Okay

Bill Flaherty - And I want to ask you a question to clarify the total of 27.21 acres. However, in your last presentation you said approximately 30 acres

Glennon Watson - I think I addressed that before, when I showed you this plan I did say that. Before I pointed out we had 29.5 and now we are saying 27 and the difference is because we eliminated this road and a roadway around the edge of the mine that would connect from the end of Horton Road back to Route 9. We have eliminated that. That reduced the area that will be mined by 2 acres.

Bill Flaherty - The actual application you have before us shows 18.28 acres will be actually mined. In accordance with your application. Mr. Gainer sent a memo to us stating that there would be 20.17 acres mined.

Ron Gainer - It should be 22.67. The number that Glen has offered

Bill Flaherty - I am just trying to verify the actual number that in fact will be mined.

Glennon Watson - Okay. First phase, I think the difference and I will be happy to clarify it if I am incorrect. But we started out with a 30 acre life of mine and basically 30 acres is how much you are going to disturb. Okay? We reduced how much we are going to disturb by 2 acres by eliminating the connection to Horton Road. That got us down, I am sorry 22 I misread that. There must have been more. So we took out more of that. And another part of that is that I believe the road is not counted as part of the mining area and that covers the rest of the difference. I apologize for misreading that.

Bill Flaherty - Actually the actual acres that will be in fact mined will be 18.28?

Glennon Watson - If you take

Ron Gainer - It should be the 22.67

Glennon Watson - The disturbed, what will be the disturbed during the course of the mine, let me go back, everything that you see here that will be disturbed is the 22.67 acres. And I mis-stated that before. That was reduced significantly from the original 30 by removal of this road that was originally planned to continue around and go up above the ridge and connect. That's gone. This actually exists. It is a pathway through the woods. So there is 22 acres being disturbed. Within this core area here, I am going to say there is about 18 or 19 acres in here and there is the other 3 or 4 acres in the road area.

Bill Flaherty - The other question that I have also is that the mine is a partnership.

Glennon Watson - It was a partnership originally of Nathan and Ernest, brothers. And Harold.

Bill Flaherty - And I see in the application that it is only signed by one of the partners. I just wanted to know if whether or not that is sufficient enough in as much as there were three partners, one of whom is deceased and the other hasn't signed. Should the application be signed by both?

Glennon Watson - If you would like us to supplement it with Ernest Lyons' signature, we would be happy to do that

Adam Rodd - Okay

Glennon Watson - If you feel more comfortable

Bill Flaherty - I would

Glennon Watson - Fine. We will do that

Vincent Cestone – Any more questions from the Board?

Glennon Watson - I would be happy to try and answer any questions.

Vincent Cestone – Any questions or comments from the audience? This gentleman first.

Richard Butensky - Hi I am Richard Butensky. Isn't there a road that leads into Horton Road now? From that property?

Glennon Watson - That's what I just said. This road, there is a path through the woods that's been driven on. The road from Weber, Horton Road, there is an extension of Horton Road through this property. It is a right of way to Rodney Weber who owns a piece of property adjacent to this.

Richard Butensky - Where does it come in?

Glennon Watson - It doesn't come into this property, into this mining area at all.

Richard Butensky - Oh okay

Glennon Watson - Horton Road ends, officially ends about here where there is a "T" on this map. The driveway goes left to Lowery's property. A driveway goes right to Ellison's property and there is now a cul-de-sac here that Mr. Lyons built and dedicated to the Town so they would have a turn around. There is a driveway that extends into the property to about this point where this blue line is intersected by this orange line. And that services Mr. Weber's lot. It is part of the property so it is infact available to this lot and this, where I said we eliminated from the plan, was originally intended to be a connection. But that connection was, we were told not to make the connection. That frankly it would not be looked on as a good idea. So we eliminated it from the plan.

Richard Butensky - So no traffic, no industrial traffic will be using that road?

Glennon Watson - The only access is to this mine is via temporary through the Moore property that I first mentioned and finally and permanently from the new Route 9 intersection that will be constructed. There will be no traffic impact on Horton Road at all

Richard Butensky - Okay. Now what about noise? What is the expected level of noise. There was a mine across the road that used to produce a significant amount of noise throughout that whole valley and up into the mountains there. How will this compare to that?

Glennon Watson - Part of the environmental assessment form that's been submitted to the State who is the lead agency in this matter, was a noise impact study done by a firm called Sound Sense from Long Island. They tested the property at the property lines and there was four or five locations, I couldn't really say which, and determined that either we not exceed the allowable decibel level at the property line in some instances, or they gave us alternatives called for placement of the machinery, muffling the machinery and those sorts of things that would control the noise. And that has been submitted to the State. So far as I know, it has been reviewed by the State and is acceptable. I am saying that because I was told there are two outstanding issues with regard to from the Environmental point of view. One of which is visibility and it wasn't that it is an insurmountable issue, it was that wasn't sufficiently discussed. We are working on that now. And the second was the, apparently I think both in this area, there is a known rattle snake den that we have to concern ourselves with. And that is being addressed as well.

Vincent Cestone – Address your questions to us. Introduce yourself and where do you live.

Linda Brucato - Hi I am Linda Brucato. I live above that site in the mountains. Off of Route 9. I am really worried about snakes. And the impact it is going to have. They tend to move when there is movement of the earth. And I don't want to _____. What do you proposed to do with them, the rattle snake dens?

Glennon Watson - We don't propose to do anything with the rattle snake den. I can tell you what I believe and I can tell you what is being done. I believe it is going to be found that we are far enough away that we are not going to impact them. That being said, we are having a study done that by a person who is an expert at that and will review the habitat and will either conclude that I am right or if they conclude that I am wrong, they will provide mitigation measures to make sure that if we are interfering with the travel of snakes during the course of the year, that we will do something to mitigate them. A typical thing is to provide for, a typical thing is to provide passageways so they can keep going or to eliminate part of the mine so that we don't interfere with that.

Linda Brucato - How far away is the den? Snakes like dry upland. That is exactly where I am. I am north. They would head north. Up the mountain.

Glennon Watson - Well they like dry upland and I wouldn't argue with you because I don't know much about them and frankly, for somebody who works in the woods a far amount during his life I am still deathly afraid of the damn things. Their den is up grade of us and maybe they wouldn't be moving downhill but we are looking into that. And we do have to, it is a very big concern with the DEC and it has to be addressed. That's why Mr. Cestone said at the beginning of the meeting that we will be continuing the hearing because that is one of the two

questions that hasn't been answered.

Richard Butensky - How many

Glennon Watson - I think we are a thousand feet but I am not honestly sure. They only let that information out to individuals that have a need to know, like the expert. They wouldn't just tell me over the phone.

Bill Flaherty - We'll get the report

Glennon Watson - It will be in the report that submitted to the State as part of the SEQR process and we have been copying you with all that information.

Vincent Cestone – Anyone else have any questions? Please introduce yourself.

Madeline Campbell - I am Madeline Campbell from 19 Mill Road. Can I go up to the map?

Vincent Cestone – Sure

Madeline Campbell - I am trying to figure out.

Glennon Watson - That's Mill Road

Madeline Campbell - All right, so you know _____ major amount. Is this going to be behind that? Or are you taking that ridge out?

Glennon Watson - It is a little bit of both. It will not be as high. But we are substantially above the tree before any activity

Madeline Campbell - So is there going to be, in my bedroom window am I going to be looking at a big dig out?

Glennon Watson - No.

Madeline Campbell - What's going to be there? I don't understand.

Glennon Watson - What we are doing is going up the hill and then we are taking the top off and taking down behind the hill. So we will be leaving the hill that's adjacent to Clove Creek.

Madeline Campbell - The top is going to be there

Glennon Watson - As it goes up, yes the top of it will be removed. But not the whole thing and not, I think there is about _____. Above the trees. 100 feet above and 100 feet back. So there would be 100 feet of undisturbed land

above the creek. The rise on the hill.

Madeline Campbell - Okay

Glennon Watson - And then there would be some disturbance

Madeline Campbell - Okay. So at the top of the rise, you are just going to chopping the mountain off like across the street from Mill Road. You know that berm that is just kind of chopped off

Glennon Watson - There will be a bank. There will be some. You are going to see something. The hill comes up from the creek

Madeline Campbell - Right

Glennon Watson - And then instead of continuing it will just stop. It will stop

Madeline Campbell - Am I going to see all the equipment

Glennon Watson - No. Let me clarify. You will see, when we are first taking down that part, you will see it for a time. But most of the activity will be below the bank. And you won't see it.

Richard Butensky - How much time

Madeline Campbell - Each phase takes five years so am I going to look at that for five years?

Glennon Watson - No. I don't think so

Madeline Campbell - But you don't know

Glennon Watson - I don't know the exact answer to that. There will be a period of time where you will look at it.

Madeline Campbell - And there is nothing we can do about this? The people on Mill Road

Vincent Cestone – What do you propose

Madeline Campbell - I don't know. Don't chop the mountain out. Go back away from the mountain so we don't have to look at, do you know what this is going to do to our property value? And it is noisy. It is ugly and noisy. And it is going to be five years. If each phase is five years. Well maybe I'll be dead because this thing is taking 35 years. So that will be 25 years. I'm 60. So if I left the house to my son, he would have a mess to look at.

Glennon Watson - Well, if you take a look at the last phase of it which, here is the Creek

Madeline Campbell - Right

Glennon Watson - And what you see in green here is not ever disturbed. Never. What you see, I should go to the next one, this is below the edge, the rim

Madeline Campbell - Right

Glennon Watson - Yes there will be some material taken out and this will be dug to a level that is below this rim. So there will be a time when that will be visible. But it will be, it will be approached from underneath. It will be approached from the back and, but there will be a time, I can't say there will never be a time where you couldn't see it.

Madeline Campbell - Because this is already deemed mining

Vincent Cestone – Mining is according to the town an acceptable use of that land. The town board made that assumption. The zoning board does not do that.

Madeline Campbell - We've had the house 30 years and now we have Giachinta behind us with concrete dust going in the brook right by our property and if it swells, it is all over our grass. We had the other one to the front on Route 9 and now this is going to be on the other side

Vincent Cestone – Which house is yours

Madeline Campbell - Mill Road. I am on the other side of the creek. I am over here.

Bill Flaherty - You are on the north side of that

Glennon Watson - South side of Mill Road.

Madeline Campbell - Are we going to see those big old ugly _____

Glennon Watson - Well, that I didn't say. You will see some disturbance and you will see some machinery. If you are talking about the processing equipment, the processing equipment is going to be down on the floor of the mine and that will probably, in all likelihood not going to be visible to you.

Richard Butensky - But you will hear it

Madeline Campbell - And the dust. It's already in my house. And you will hear it

Glennon Watson - We have already demonstrated as said before, I think that the satisfaction of the DEC that we are not exceeding the noise thresholds that we are allowed under the zoning laws. And they are pretty low.

Madeline Campbell - Because I can hear the one that is out on Route 9 now and I can hear trucks. But our backyard is disturbed because of the concrete plant and this will be our front yard. So there is nothing we can do about it because this is deemed, we have to live with it or sell our house. And who is going to want to buy a house between a concrete plant and a big dust bowl? Is that correct? Or do I have to get an attorney which I can't afford

Glennon Watson - You are accusing, now you are calling it a dust bowl but again that is another issue that was certainly _____ between the DEC and there is a requirement with regard to that, in regard to water spraying and limiting the area of activities to minimize dust, reclaiming the property as soon as possible after it is disturbed to further eliminate dust and keeping a water truck on site so that in those times of the year when the dust could be a problem, the truck is there and it can be watered. So that question has been pretty well addressed

Madeline Campbell - Are they doing all that with the one across the street? Because I go out on my front porch and I have cushions and a bench, and there is dust on it. It comes into my kitchen.

Glennon Watson - I would hesitate to blame that on that mine, I have an office on Route 9, 2 miles south and if you want to run your fingers across the drafting tables in my office any morning, you'll get it. You'll get what feels like very fine sand paper. And that is not from that mine. That's from the traffic on Route 9. Unless it is carrying 3 miles down the road.

Madeline Campbell - I am not 3 miles. I am maybe 300 feet.

Glennon Watson - From my experience is that that is what the situation is, that's where the dust comes from

Madeline Campbell - If you don't live on Mill Road and live in my house, there is nothing that can be done. No one seems to understand

Vincent Cestone – Yes sir

Lenny Lim - We do understand. There are some of us who live in North Highlands that understand. We have to deal with Quarry Pond being mined for 20 years, we know what's going on up there. We live there. Don't think we don't care about what goes on up there.

Madeline Campbell - But I live

Lenny Lim - I live on Horton Road. I live close to you. I am close to these mines, I am across the street from the other mine, I live right across from Quarry Pond for 20 years of mining. There are a lot of us who live up there.

Vincent Cestone – Any more questions from the audience? Introduce yourself and where do you live?

Anita Chester - Anita Chester, off Esselborne Road. I live basically straight up hill from this. And when I pass by the other soil mining on Route 9 that's north, they have chimneys coming out of some of the buildings. And I would like to know if this is going to have any kind of chimney where some kind of smoke or something

Glennon Watson - Are you talking about Thalle's Mining in Fishkill on that big turn

Anita Chester - Yeah

Glennon Watson - The big bend

Anita Chester - Yes

Glennon Watson - No. There are no buildings proposed here.

Anita Chester - It is not a building. It looks like

Nathan Lyons - It is a black top plant

Glennon Watson - It is a black top plant up there

Anita Chester - So you are not going to have any smoke coming out of anything

Glennon Watson - No

Anita Chester - And as far as the dust goes, is that tested for asbestos or anything like that?

Glennon Watson - There is a reporting process. I can't tell you chapter and verse but you do have to register it, you do have to identify the particulates that is possible and you are limited in, there is a limitation as to what can be done. I don't know if there is a testing. I can find that out.

Anita Chester - Is there blasting also

Glennon Watson - No. This is a mine for what is called unconsolidated material. Essentially gravel. And what we did was, we drilled test wells, test pourings to find out how deep the gravel was and we kept our design to those depths. One possible exception but what we, what happens is if you dig down and hit ledge, that's where you stop...

(Turning tape over, may have lost some dialogue)

Side 2 is all static...no dialogue

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

DATE APPROVED: 5/9/11

Respectfully submitted,



Kim Shewmaker
Secretary