

Town of Ghent Planning Board Meeting – Wednesday, July 27, 2011

Board Members Present: French, Groom, Machiz, Rosenstreich, Silver and Walters

Also Present: Town Attorney Ted Guterman, Town Engineer Ray Jurkowski and Larry Van Brunt, Ghent Deputy Supervisor.

This is not a public hearing, just a special meeting to get more details to the Planning Board.

Vincent and Lisa Molinari
Special Use Permit
Tax Parcel ID# 103-1-22.112

Overview of project presented by Francis Bossolini, Engineer

Persuant to the special use permit requirements of Town of Ghent, the Molinaris have applied for a special use permit to allow them to extract gravel from the property for construction of a pond. Because of the amount of material proposed to be removed, the project requires a mining permit from NYSDEC, which the Molinaris have already received. The permit sets forth requirements for reclamation and established that they conform with the DEC land use mine regulations. Town special use permit has general and specific standards relating to permits that are subject to DEC permit. That is what has been submitted to this Board. We have submitted to the Town of Ghent and the DEC a set of drawings that outlines the mining area set to scale on a map that shows the extend of mining and reclamation plan and screening and buffer areas. Want to minimize offsite effects. Within the site itself, the intention is to create a pond. The mined area is lower than the rest of the property, so there is not expected to be any runoff or flooding issues. We have discussed, over the course of time, access to the state highway and Carpenter Road goes south and west. South is the Village of Philmont, which prohibits any truck traffic. All traffic will go west to County Route 9, which connects with State Highway 66 both north and south. The Board requested the applicant complete an examination of Carpenter Road surface, including an extensive visual survey, collected core samples. The Town Engineer and Town Highway Superintendent have concluded that roadway is adequate for the amount of truck traffic expected – 18-20 trips per day. Have submitted response to pertinent code sections, special permit uses and mining. This application complies with requirements of town law. Mining is allowed by special permit.

board questions

Chair Walter asked if taxes have been paid up-to-date on this property. Answer is yes.

Ted Guterman asked if Mr. Bossolini responded to the letter from Crawford Engineering.

Mr. Bossolini answered yes. He responded to comments about fluffing of material, truck weights, quantifies that trucks hold 15 cubic yards and expected weight. Question about time frame – estimates that it will take 4 ½ years to remove all material, at 12 trucks/day average.

Board member Silver asked if that is round trips - 20 in total or 20 empty and 20 full each day.

Mr. Bossolini said truck will not be exceeding load weights. There will be visual monitoring on site. Have prohibited semi-trailers. Will have tri-axle trucks. Should not be overloaded.

Board member Silver asked who will be responsible for monitoring?

Ray Jurkowski answered whoever is loading the trucks. No scales, just visual inspection. Trucks have tarps on top to help prevent overloading. Each truck will be logged on site as well. Any truck that is overloaded can be pulled over by troopers, they can weigh trucks, and will conduct safety violation exams. Trucks don't want oversized load because of violation. The driver is liable, not trucking company.

Board member Silver asked would be better to have scale on site.

Mr. Jurkowski answered that it is not needed on this site because small trucks being used. There is no electricity at location.

Road – adequate based on investigation. Concurred with Town Engineer and Highway Superintendent. Existing condition doesn't meet new road requirements. This portion of the code that covers adequacy – Section E – input from Town Highway Superintendent and Town Engineer is needed. Have provided road structure info.

Mr. Guterman asked if the letter from Crawford & Associates has been reviewed. Your road study was completed before that letter was sent out. Asked if it is still adequate.

Mr. Jurkowski answered yes.

Board member Silver – NYS Department of Standards – sub-base and asphalt measurements are less than measurements required. NYSDOT asphalt requires

4". Measure are 1 3/8 to 4 1/4 inches. The revised mining law requires that the road be "adequate" to the use in question, not that it meet state highway standards.

Also discussed security that applicant will post in case of road damage. Mr. Guterman said the Board considers provision of escrow for damage to road and to cover any costs for periodic inspections. The escrow balance must be maintained.

Mr. Guterman – brought up the bridge comments heard at the public hearing. Asked the Town Engineer to reiterate review.

Mr. Jurkowski contacted County DPW and asked for stats on bridge as it pertains to bridge inspections. That bridge requires County inspections. Got copies of past inspections. No yellow or red flags on bridge. No maintenance needed.

Mr. Guterman asked Mr. Jurkowski if there were any accidents at that location.

Mr. Jurkowski contacted the county sheriff's department during last review. Over an extended time frame, police only identified one accident on Carpenter Road. Driver was at fault because of excessive speeds. May have been one car/deer accident near intersection of Carpenter Road

Board member Machiz asked if bridge has to be repaired, would that be a county or town expense.

Mr. Jurkowski answered that the County has to take over project. State registered bridge, so federal funding would repair.

Board member Rosenstreich asked how often do bridges get inspected.

Mr. Jurkowski answered every 2 years, or every 5, somewhere in there.

Board member French asked if there are any weight limits.

Mr. Jurkowski answered no. There are no restrictions. No structural fatigue, no yellow flags on bridge.

Mr. Guterman asked the applicants engineer to please discuss comments regarding potential creek run-off and wetland impact.

Mr. Bossolini reviewed files and data for wetlands. Showed drawings with DEC regulated wetlands by project. Stream goes south and east of work area. Mining

operation run-off will go back in to pond. No outlet from pond. Little or no problems expected.

Chair Walters asked in relation to that, concerns about potential impact on abutters wells and their ground water levels.

Mr. Bossolini answered – no impact on storage capacity on ground water levels. Open surface.

Chair Walters asked if there would be any run-off.

Mr. Bossolini answered that there will be no run off and no lowering of water table.

Board member French asked if berms will be created to hold water.

Mr. Bossolini answered no. No berms being built to form a dam type structure. They are excavating a bowl. Berming will be done for aesthetics only.

Board member Silver asked about the traffic route. in his opinion, code calls for any trucks leaving to use the most desirable route to minimize the traffic - County Route 9 to State Highway 66 or the other way. Asked if this will prohibit trucks from using residential streets.

Mr. Bossolini answered - from the site, there are two ways out. South on Carpenter to Village of Philmont or west to County Route 9 to State Highway 66.

Board Member Silver said to reach State Route 66, there are several residential roads to use that would reduce distance. 190-76(g) and 190-75(p). Asked if a plan has been submitted to prohibit trucks from using residential roads.

Mr. Bossolini answered that trucks coming to and leaving the site will utilize the most desirable routes to the state highway. Need to define to and from the state highway.

Board member Silver thinks these sections help define that. Using County Route 9 all the way prohibits trucks from using residential roads.

Board member French asked if Sollier Heights Road has a weight limit.

Mr. Bossolini answered that the definition of residential area needs to be better. Asked if the number of houses on a road determine that.

Board member Silver thinks that is clearly defined.

Mr. Bossolini - restricted vehicles going thru more densely populated residential areas. There is a direct connection to County Route 9 which is a higher level of improved highway, similar to a state highway.

Board member Silver asked if a plan be submitted.

Mr. Bossolini answered that a the plan would be to prohibit trucks from operating on town roads, which he doesn't know if the Board can do. Asked what would happen if there is a customer on a Road that the truck shouldn't be on, if the end destination is on a town road.

Co-chair Groom asked if Board member Silver knows a better way to get from Carpenter Rd / County Route 9 to State Highway 66?

Board member Silver answered yes, you can cut across some of the other roads.

Co-chair Groom asked if that is a better way. Asked if a fully loaded truck will be able to pull out quickly. Asked if Board member Silver has a route that is better.

Board member Silver reinforced his belief that the Board should have a direct route outlined.

Co-chair Groom stated that this issue has already been discussed. The town doesn't have authority.

Mr. Bossolini stated that the plan is for trucks to leave Carpenter Road and go to County Route 9 to state highway.

Chair Walters stated that a definite truck route is not a huge deal. Asked if it was within the Planning Boards power to tell the applicant not go on certain roads. Any exceptions can be made for local deliveries.

Mr. Guterman stated that all roads are open to the public. No one can tell people they can't use them.

Board member Silver asked then why does it say this.

Mr. Guterman answered what is says is a reasonable plan must be created. Asked if you can dictate that to the applicant. He thinks the problem is beyond the regulatory area of the Planning Board.

Board member French asked about providing a route to State Highway 66 via County Route 9.

Board member Machiz asked the applicant to give us route.

Mr. Guterman answered that the Planning Board doesn't have power to do that.

Board member French stated that either going to State Route 66 via County Route 9 or some other that does not have a weight limit. Three potential routes to 66. Whatever the legal shortest route is is the plan. Can't use Sollier Heights. Can use any road with no weight limit.

Board member Machiz asked if the planning Board can petition the Town to issue weight limits on some roads. Tice Hill Road is substantially similar to Sollier Heights. To County Route 9, and the people on Tice Hill will petition. Trucks can go to wherever they are delivering. Can someone use other roads to get to State Highway. What does the ordinance say and mean. Do we have the right to regulate.

Chair Walter asked to what extent do you want to regulate.

Board member Machiz stated the developer should propose route. He is okay with Cemetery Rd and Stone Solutions route.

Board member Silver said the onus is on the applicant. Given all controversy, this Planning Board should make sure all rules and codes be followed.

Board member Rosenstreich is not clear on why the Planning Board wouldn't set the route. Asked why is this an issue.

Mr. Bossolini stated that you can go on these roads, but not others. Asked how do we know where other trucks go. Asked at what point can you prevent a truck from going on a road, other than weight limit roads.

Board member Silver stated it shouldn't be such an issue for the applicant to submit a plan that this is the route they will follow in adherence to plan.

Mr. Guterman stated that may not be legal. The better way to do this – if a problem arises – put a weight limit on roads if it does become a problem.

Chair Walters stated the applicants plan should be the quickest way to the nearest state road. Implicit in our code.

Mr. Bossolini stated that the applicant is in compliance. The quickest way is through the Village of Philmont, which is a state highway. But it's a residential

area and we don't want to go through there. That route is not allowed. Carpenter Road to County Route 9.

Chair Walters asked if there are any other issues to be discussed.

Board member Silver asked the applicant how come you didn't include 190-79 which in fact gives us the building inspector and ZEO.

Mr. Jurkowski stated it has to do with general conditions of mining. Have had additional items that address 190-79. Can be added if the Planning Board wants. Can be added to the first paragraph and to page 4 after the last "whereas". Can add to the other sections listed there.

Mr. Jurkowski asked the Board to look at item H – this has to deal with costs incurred by Town of Ghent.

Board member Machiz asked if the Board can focus on 190-18 and 190-79. That requires us to make a finding that this project will not be detrimental to the neighbors. Heard a lot from the neighbors about how detrimental this project will be to them. Asked how he can come to a finding that this project is not detrimental to the neighbors.

Chair Walters stated that the Town re-did the mining law. in the course of re-doing the mining law, the Town in essence designated places where they thought mining could be done safely and with minimal impact to folks in Ghent. He wanted them to put Orchard Road and County Route 22 in the mining zone, but lost. That would be a good place to get to County Route 9H. That decision was made when the Town created overlay zone. it is a moot point now.

Board member Machiz asked why did they leave this provision in.

Chair Walters answered that it is a general standard. Chair Walters asked why would they have put that parcel in the overlay zone if they thought it violated that standard.

Board member Machiz answered that he doesn't know. If he is sitting here and asking the applicant how I get there, I can understand the intent of the law may have been to liberalize and allow the use of this location and maybe if this particular parcel had frontage on County Route 9 we could make a finding that it would not be detrimental, but this parcel doesn't have that.

Mr. Guterman stated that the beginning, the mining law was much more invasive. You could mine almost anywhere in the town. This was an attempt to have an orderly manner to determine where you can and can't mine. it was the

Town's thought that if you required with all the specific requirements in the Town's mining law then you would in fact have an allowable finding and unarmful. The specific guidelines reinforce that it be in harmony. If it's in your back yard, you'll object. If you think about the equities to the town, you may think differently.

Co-chair Groom stated that when he looked at mining overlay, you can see that they purposely didn't put any overlay zone next to any County or State roads. They made it so you had to travel on town roads. Could be for visual impact.

Mr. Jurkowski commented on another consideration – mapping of soils to determine where the mining would be good. From that map, it was then identified – visual impact was considered. Did allow mining on some parcels that had frontage on county or state roads, however there was a buffer that was provided.

Mr. Guterman – wetland areas and flood plains considered. Also high residential areas.

Board member French – and then the other thing that goes with this is the account of all these factors and what we get when its done is a pond, which will be a haven for wildlife. It is the end use for the betterment of the Town. You have to get there somehow. There are a lot of Towns that allow people to build ponds without this stringent of a review.

Board member Machiz – here because I have to put up with “hell.” The pond doesn't mean much to the neighbors. Nice views now. Don't know whether the pond is a good thing or not. The issue is whether or not this is a detriment.

Board member French – the end use is not a detriment.

Chair Walters clarified that Board member Machiz is saying the process is.

Mr. Bossolini – we've established that the applicant has the right by the presence of the material and by the zoning to extract the material. We've gotten the mining permit from DEC, they have said it is not a significant environmental impact based on their review. Now the Planning Board can issue a Special use Permit with conditions. Trying to determine the definition of detriment. You as the Planning Board have the right to enforce hours, truck routes, security bonds, etc. to go towards minimizing the potential detriment. Can't run trucks after certain hours, and on certain days. Not a detrimental activity or it wouldn't be allowed.

Chair Walters asked if Planning Board member have any other questions.

Board member Silver – can't find exact spot, but there is a reference to this project being objectionable because it is long-term and inconvenient and if this was a one or two year project, that might change. Looking at 3-5 years this is far more than a slight inconvenience, this is long term project.

Chair Walters – this is an allowed use by special permit. Nothing in our law that says if it's very detrimental it can only last a year, but if it is somewhat detrimental it can last longer. The fact is that we have a law that allows mining on this site by special use permit. We have certain powers to regulate it.

Board member Silver – when considering the issuance, we can determine how big of a detriment it is.

Board member Rosenstreich – asked when does permit expire.

Mr. Guterman answered – DEC permit expires November 2014.

Mr. Jurkowski – refer to section 190-79(d) – indicates length of permit. Read from text. Planning Board does have the ability to regulate the time period. Planning Board can look at applicant – has he been a “good neighbor”, has he followed all regulations, or has he not. Can make changes, or can not re-issue permit. Applicant said this will take 4-5 years.

Mr. Bossolini – everyone has been expressing a desire to limit the number of trucks per day. By limiting the number of trucks, the project will take longer. There's a fixed amount of material that needs to be removed. The less traffic per day drags the time frame out farther.

Board member Machiz – what you are proposing a shortened time period enables them to prove themselves a good neighbor.

Board member French – they have permit to November 2014.

Board member Rosenstreich – we don't have to issue our permit to equal that date.

Mr. Guterman asked – why do that.

Board member Rosenstreich answered – to see if they are good neighbor. Issue permit for one year, then hold review.

Board member French state – that's what enforcement is for.

Mr. Guterman – can't be done in that amount of time, so why would you give them a permit for a shorter amount of time.

Mr. Jurkowski – restrictions on truck traffic and 3-5 year time frame.

Board member Silver – they can observe all restrictions and most neighbors would probably not consider them a good neighbor. Lots of traffic could be bad for neighbors.

Mr. Jurkowski – staying in compliance is important.

Board member Silver – staying in compliance doesn't make them a good neighbor. This will cause a detrimental affect on residential area even if they are in compliance.

Co-chair Groom – asked if the Planning Board can regulate the length of permit. Answer is yes. The Planning Board could give them a permit, up to 5 years.

Board member Machiz asked if the Planning Board could issue a permit for 1 ½ years.

Mr. Bossolini – would object to that.

Mr. Guterman asked – why would you want to reconsider this again in 1 ½ years and go thru all of this again. Might want to match it to DEC permit.

Board member Machiz – if 3 years is given, then they have to use more truck trips every day. Asked what incentive do they have to be good neighbors.

Chair Walters asked – how would they not be good neighbors. They would have to increase number of truck trips per day.

Board member Machiz – we have to figure out permit conditions. Control over applicant will make him a better neighbor.

Board member French stated that daily fines help.

Mr. Bossolini stated that enforcement people can shut the job down at any time.

Board member Machiz – never been confident in enforcement people. Don't want to get to that step. Want you to be a good citizen.

Mr. Bossolini – that's a more immediate route from the towns standpoint. That conflicts with DEC permitting. If there is a problem at any time with applied conditions, then the Planning Board can shut down operation at any time. There is a mechanism to shut down in some way.

Board member Silver – the DEC permit expires November 2014. Asked what happens if at that point you were to consider issuing a permit concurrent with that, what if you are in violation.

Mr. Jurkowski answered – can happen at any time.

Board member Silver asked – who is responsible for shutting it down if they walk away from it and is bond large enough to cover it.

Mr. Bossolini answered – DEC reclamation bond is big enough to handle that if they walk away. The Town bond is to repair any off site issues.

Board member Rosenstreich asked if it objectionable to run permit thru November 2014.

Chair Walters – no problem with concurrent permits.

Mr. GUTerman – good idea. Have to get DEC permit renewed at same time.

Board member French asked if the Planning Board could issue special permit beyond DEC permit.

Answer no.

Mr. Bossolini – would like to get a little longer on town permit, not concurrent. Probably easier to renew DEC permit than Town permit. Wouldn't want DEC permit to lapse.

Chair Walters asked what time frame asking for.

Board member Rosenstreich asked how long the DEC permit take.

Mr. Bossolini answered – about 6 months initially. Renewal is easier. Asked if they can have full four years on permit. Can't mine if DEC permit lapses.

Board member Silver – can we make our permit 2 ½ years so it expires before the Dec permit does. As a Town, we would know whether or not we want to approve again.

Chair Walters - unless and until DEC reviews operation.

Mr. Bossolini – would have to stop operations because your permit expired.

Mr. Guterman – if permit is issued, want it to go more quickly.

Mr. Bossolini – if we were building a house, you would want to issue a building permit that would let us get it done in time. You wouldn't want it to stand still for 3 months while we try to get a new permit.

Board member Machiz – I feel like I haven't learned anything from going through this process before. I have no experience with regulating a mine. What I ask you for today is the best that I can ask of you from what I know right now. One year from now, I'll be a lot wiser as a Planning Board member and that's why I would like a shot at a shorter period.

Mr. Guterman – if you read the length of permit section, it basically asks if owner is in compliance. Not a whole new application process.

Board member Silver asked if the renewal process require public hearings.

Mr. Guterman answered yes.

Co-chair Groom asked what happens if the permit holder violates a condition – is the permit revoked.

Mr. Guterman answered yes. The Zoning Enforcement Officer has to monitor.

Board member Silver – good point from Board member Machiz. Mine is controversial and potential of long term issue to neighbors. Would like a shorter term. Mr. Guterman said renewal is much shorter process to review project and see how everything is going.

Board member French asked how much time does the applicant want.

Mr. Bossolini – would like max of 5 years. Have to renew DEC permit in 2014. Can have Zoning Enforcement Officer visit site everyday.

Chair Walters – I wouldn't be inclined to request that level of enforcement.

Co-chair Groom – if we are to issue a mining permit for a DEC permitted mine, it should be at least until the end of the DEC time.

Mr. Jurkowski asked if the Planning Board has no confidence in the Zoning Enforcement Officer.

Board member Machiz answered no. Confidence in ourselves. Mining understanding will be greater next year than it is today. We are supposed to protect all peoples rights. We are all limited.

Mr. Bossolini – protecting applicants rights of use is important too.

Board member Machiz agrees.

Chair Walters asked Mr. Guterman what to do now.

Mr. Guterman recommended looking at 190-76 now.

Board member Silver asked the applicant to clarify who the operator is.

Mr. Bossolini answered that Vincent and Lisa Molinari are the operators. They hold the DEC permit. Will hold permit with town if it is approved.

Board member Silver asked if the Molinari's have experience with mining.

Mr. Bossolini answered – asked if he mean personally, in terms of operating an excavator, or in terms of operating a mine.

Board member Silver clarified that he meant in terms of operating a mine.

Mr. Bossolini answered – Vincent Molinari would manage a mine like he manages his business. If he needs a mine manager he would hire one. He will always be the operator though.

Board member Rosenstreich asked is it Mr. Molinari's intention to subcontract that out to someone who is more experienced.

Mr. Bossolini answered – well if you were building a house you might hold the building permit, but you would hire a carpenter.

Board member Rosenstreich asked again what is Mr. Molinair's intention.

Mr. Bossolini – it is my understanding that he will hire someone else to act in his capacity. Answering to him as far as actual excavator and keeping site logs.

Mr. Guterman asked who is answerable to Planning Board.

Mr. Bossolini answered Mr. Molinari.

Board member Machiz asked Mr. Bossolini if he knows if the operator will be a person or an entity.

Mr. Bossolini answered that he doesn't know if anyone has been contracted yet.

Board member Machiz asked Mr. Bossolini to make his best guess.

Mr. Bossolini answered – hypothetically you can hire an excavator, you rent equipment, you can hire people. Mr. Molinari could hire a manager.

Board member Machiz asked if that person will get calls about buying gravel.

Mr. Bossolini answered – that will probably be how it goes, yes. Or he could have a larger order.

Board member Machiz asked – is person on site is responsible for number of trucks per day, weight of loads, locking date, hosing down area, sweeping road, etc.

Mr. Bossolini answered yes. Any violations, the DEC or Town would call Vincent Molinari to report problems. Either can shut down operation immediately.

Board member Machiz – we ask for owner name, we ask for operator name. Doesn't think owner and operator are the same person. Thinks operator is the person operating the machinery and is hands on at the mine. I care about the character of Mr. Molinari and the character of the person operating the mine and nobody has presented that to me. I see Molinari, I don't see who the operator is.

Mr. Bossolini – the operator is Molinari.

Mr. Guterman asked – does the Planning Board have the right to decide for Molinari what contractor he can or can't use.

Chair Walter answered – lets use Camphill Village as example. When we approved Camphill, we didn't demand credentials of who general contractor was going to be. It sure wasn't going to be John Barring who was going to be building Camphill Village. He will hire contractors and subcontractors.

Board member Machiz asked – ordinance doesn't ask us to identify contractors, did it.

Chair Walters answered no, it didn't.

Board member Machiz – here it is asking who is the operator.

Mr. Guterman – permit holder is the operator.

Chair Walters – finding of fact – read through 190-76.

Board member Silver – wants a direct truck plan. Promise not to use smaller town roads.

Board member French – we have comments in response to comments from 190-76.

Chair Walters - 190-18 has been gone through.

Board member Rosenstreich – 190-18 things not all thorough.

Chair Walters – 190-18

Co-chair Groom – use and intent

Board member Rosenstreich – objects to (b) and (c) and (d).

Chair Walters – Two years ago when overlay zones were drawn up, public hearings were held. There was never any objection. Don't remember anyone coming to the public hearing.

Board member Silver – seems to be some conflict from these sections.

Co-chair Groom – section (d) – such use will be in... application is a permitted use in that area. Overlay zone allows this.

Board member Rosenstreich – doesn't think this is a permitted use here because it is in a residential area.

Mr. Guterman asked if that means mining wouldn't be allowed in any area then.

Board member Rosenstreich stated that is what she means.

Chair Walter – his road gets tractor trailers, wagons, very diverse use. Mining has been historical activity in Ghent forever. If you ride around Ghent, you'll find mines all over the place.

Board member Rosenstreich – doesn't think those are in harmony either. Not being asked about previous actions.

Chair Walters – we have to prove that we have taken a good look.

Chair Walters read section (c).

Board member Silver – in conflict but mines have been approved. (c) in conflict with (b) in this case.

Chair Walters continued to read sections

Board member Rosenstreich asked if landscaping is included.

Co-chair answered – two large berms

Mr. Bossolini – planting and maintenance for plantings are in DEC permit.

Chair Walters continued to read sections.

Chair Walters asked if there is any lighting on site.

Mr. Bossolini answered no. No operation after 5pm.

Mr. Guterman – make a determination if this should be approved. Each Planning Board member set forth findings.

Board member French – conditions set forth in resolution by Ray Jurkowski.

Poll of Board members on proposed resolution:

Board member Machiz – no.

Board member Rosenstreich – no.

Board member Silver – maybe. Wants to see resolution – time restrictions, directions for traffic, length of time for permit.

Board member French – yes with discussion on conditions to be set in resolution.

Co-chair Groom – think applicant has met conditions and is allowed use. Yes, pending discussed details on resolution.

Chair Walters – yes, pending discussion on details in resolution.

Chair Walters read findings from resolution that Ray Jurkowski drew up.

Board member Rosenstreich – we already went thru these.

Board member Silver – would like to review totally.

Board member Machiz – long term detriment – asked for definition of “long term.”

Chair Walters – likes having that term there. It puts a restriction on it.

Mr. Guterman – findings, not conditions.

Board member Machiz – asked to find without the term “long term.”

Board member Silver – can’t approve with long term, detrimental...to neighbors. if they were removed that might be ok. As is, he doesn’t like it. (190-18m)

Chair Walters – that’s what the law says, so that’s why it’s worded that way.

Chair Walters asked for suggestions from Mr. Guterman or Mr. Jurkowski.

Mr. Guterman – need formal findings and vote.

Board member Rosenstreich asked what would happen if there is an equal, split vote.

Chair Walters answered – if applicant doesn’t get four votes, it’s not approved.

Chair Walters asked if can the Board can do an expedited finding of fact.

Mr. Guterman – subject to appeal. Votes against must have a legal, valid reason.

Votes / finding of fact:

Board member Machiz – NO. Three main areas have problems with. First, having to make a finding that a mine operation would not be detrimental to the neighborhood. Understand that the law was intended to write that out, by virtue of mine overlay rules. We have the law that we have. As I read the law, I have to say that this will not be detrimental to the neighborhood and to me it is clearly detrimental.

Chair Walters asked how so.

Board member Machiz – this is a residential neighborhood. Having 20 trucks running by peoples property everyday will change the character of the neighborhood. I think it will damage property values as well. If the provision weren't there, my vote would be different. Second, I have an obligation as a member of this Planning Board to look at the operator of this mine. Applicant has told us that Vincent Molinari is the operator. I have trouble accepting that. If he were to come with a real corporate operator with a good reputation in Columbia County I would have been heartened in that regard, but we have been stonewalled on who the operator will be. I don't feel like I am obligated to issue a permit without knowing who the operator is and I don't feel that the operator is Vincent Molinari. Third, should have a definite route that trucks will use to get to the state highway. Because of those three reasons, I can't approve this permit.

Board member Rosenstreich – NO. 190-18(b), (c) & (m) about harmony and character and how the special use permit will impact the character of the neighborhood, I believe it would be detrimental to the neighborhood. The other area is the proposed path of the trucks going to and from.

Board member Silver – NO. Can't say with a clean conscience that this will not be detrimental to the neighborhood. Don't think it's in harmony with the neighborhood. Think the ordinances are in conflict with the mine overlay. Follow my thoughts that in this case, the residential neighborhood is being disturbed in such a way that the ordinances are not protecting the residents. Concerned that applicant did not agree with the ordinance states that they need to submit a plan that the trucks will follow the most direct route to the state highway. That seemed to be a problem for them to agree to. That concerns me and I think there's another clause in here that states this will not be an appropriate development for this grounding area.

Chair Walter asked what would be an appropriate development.

Board member Silver answered farming, horses, homes of residential character. Not sure anyone would want to build a residence near a mine. The duration is a real concern. Think this is a long term plan. Sounds like DEC easily renews permits. Concerned with the existing permit of three years with out a designated acceptable operator could be such an inconvenience that it could be a real hardship to the rest of the residents.

Board member French – YES. Has met all requirements for a special use permit and think that as we have previously stated, the use is in harmony as stated in

the master plan, which put in place the mining overlay zone. I think the end use and purpose of the mine is for a pond, which regardless of whether its 2 years or 5 years, that end use is definitely in harmony with the surrounding area and definitely would not be a detriment. Unfortunately this happens to be the only way they can build a pond, by doing a mine. For that reason, I would vote in favor of the resolution.

Co-chair Groom – in my opinion the applicant met requirements set forth for a special use permit as set forth by 190-76 and 190-18. We didn't talk about hours, I think that was the last remaining issue. The Ghent Master Plan talks about the diversity of the different types of people who live here and who work here. It's important for us to provide affordable housing and jobs for local people. We are not currently a bedroom community. If we prohibit uses that have been going on in Ghent for years and years in this community then we will be taken over by people from New York City. We'll wind up with a community run by people who only live here on the weekends. We will be pushed out all the people who live and work in Ghent. It is important for us to have many different uses. Some of the uses will be detrimental. If I build a house in an empty lot next to someone's house, then I will cause them some harm. It's an allowed use, they should be allowed to do it. This application is for an allowed use in Ghent. If you look at the map, the zone overlay, there's a bullseye right at the corner of Carpenter Road as a potential mine site. In my opinion, half of our board has tossed out a hard look of the code over some of their personal opinions of the applicant and the application, but they haven't actually taken the code into consideration.

Chair Walters – YES. The part about harmony for the community, I have lived in Ghent for 16 or 17 years now and have been on the Planning Board for most of that time, and I have seen tons of applicants come and go, and I agree with Co-chair Groom in one of the great things about this town is there are a lot of great people doing a lot of great stuff and among the different things and the different stuff people have been doing for years is mining. And to Board member French's point about this particular application is the pond, and that's one thing that folks in Ghent and Columbia County have been doing for years and years and years. It's never been a problem and if we start to foreclose this option for property owners to do with their property what is legal as long as they meet the requirements of our code, I think we are making a bad mistake and setting a bad precedent. I'm disappointed. I think that if you take a hard look at 190-18 and 190-76 it meets the requirements. To Board member Machiz' point about 20 truck trips a day over four years being a significant "hell" that's an interesting standard. I wouldn't even begin to call that "hell".

Vote is 3-3.

Mr. Guterman asked the Planning Board to make a motion to approve the application

Motion to approve this application.

1st – Chair Walter

2nd – Co-chair Groom

In favor: Board member French

Opposed – Board members Rosenstreich, Maciz and Silver.

Application is denied.