

SPECIAL MEETING

The Special Meeting of the Planning Board was called to order at 7:03 pm by Chair Jonathan Walters. In attendance were Board Members Geoffrey French, Frank Mendelson, Martin Silver and Co-Chair Aaron Groom.

Absent were Members Pete Nelson Jr., and Larry Machiz.

Also in attendance were Town Attorney Ted Guterman of Guterman Shallo & Alford PLLC, Hudson, NY and Town Engineering Consultant Ray Jurkowski of Morris Associates Engineering Consultants, PLLC, Greenport, NY, Dave Ingalls of Ingalls & Associates, Schenectady, and Applicant Vince Molinari, along with news reporter Bob Green and Ghent residents.

TAX PARCEL 103.00-01-22.11 & TAX PARCEL 103.00-01-22.12

APPLICATION FOR MINING PERMIT AND SPECIAL USE PERMIT

MOLINARI, VINCENT AND LISA

CARPENTER ROAD, GHENT

Chair Walters opened the Public Hearing. He said that given the time that has passed since hearings were held on the original, larger project and the current proposal, it is appropriate to re-open the Public Hearing. He noted that the Applicant agreed. Chair Walters informed the meeting that Board members are here to listen. This Special Meeting was called as the Town's window of opportunity to provide comments to the New York State (NYS) Department of Environmental Conservation (DEC) regarding the Molinari mining application is limited. The Town requested, and was granted an extension of the public comment period until June 22, 2009 in which state a basic set of concerns. Chair Walters suggested the following items be discussed: traffic, line-of-sight, days and hours of operation, on-site excavation, loading, noise, aesthetics, including screening and views off-site, and overall length of operation. DEC writes 5-year permits that are renewable upon request from the applicant.

Town Engineering Consultant Ray Jurkowski pointed out that DEC is the lead agency for this project, as it pertains to State Environmental Quality Review (SEQR). DEC conducted a review and issued a formal negative declaration, indicating the project will not have an adverse effect on the environment. Chair Walters informed the meeting that with a project of the size of the Molinari application, DEC always acts as lead agency. The DEC reviews the project and then issues a determination: either a negative declaration (not having any impact) or a positive declaration (having some impact).

Mr. Dave Ingalls spoke. He said Ingalls & Associates became involved in the project approximately a year ago. He noted there were several pages of response to comments from the DEC and the Town's Engineering Consultant. In addition, residents of Carpenter Road had commissioned a 25 April 2007 transportation study by RSG, Inc.

of White River Junction, VT. DEC, under their co-ordinated review became the clearinghouse for all these comments: the Applicant's engineering representative responded to all comments directly to DEC. Mr. Ingalls stated that the purpose of the project is to build a recreational pond. Part of the excavation will result in excess sand and gravel, which will need to be removed from the site. The project has been substantially reduced in size; the current pond is approximately 6-acres in size, whereas it originally was 12-acres. Additional screening berms, complete with evergreen plantings, have been added to the east, west and south sides of the pond construction area and will act as visual and auditory barriers. Otherwise, it is essentially the same project.

Resident Kathi Keller questioned if the DEC rules that there is no impact, does the Town of Ghent automatically write a permit, or is a permit necessary? Mr. Jurkowski said that the Town of Ghent has a Mining Ordinance [LOCAL LAW #3-2005] and is required to provide approval in the form of a Special Use Permit and a Site Plan Review. Ms Keller asked if the Town is mandated to provide it. Town Attorney Guterman noted that the first generality with a Special Permit is that the applicant is permitted to act. It is a 'Special Use' Permit in that there are specific provisions in the Town's Mining Law that the Applicant must address and comply with, such as screening, traffic and noise. It cannot be said that a Special Use Permit will always be granted, but there's a presumption that it is a permitted use, subject to the special review conditions. It was noted that DEC has never not been lead-agency. The Planning Board reviews off-site impacts. When queried by Ms Keller, it was confirmed that the Town reviews the issues cited in Code §190-18 [SEE ATTACHED].

Mr. Jurkowski offered that while DEC has its own regulations, and has jurisdiction to perform inspections, there is a requirement for a reclamation bond to be in place. Resident Suzanne Shepherd questioned if the project is a recreational pond, or a gravel mine. Mr. Ingalls noted that the project purpose is to create a pond. Attorney Guterman said, when any Ghent resident wishes to put in a pond on their property, material needs to be removed. If enough material is removed, that triggers the Mining Law. The ultimate goal of the Applicant, as stated in his application is a 6-acre pond. Mr. Ingalls said the maximum depth of the pond will be 15' and a little over 100,000 yards of material needs to be excavated. Ms Shepherd questioned the benefit of a mine, in this location, to the Town of Ghent. Attorney Guterman informed the meeting that the Town's Mining Subcommittee had met 12 - 13 times over the period 2004 - 2005, including public hearings regarding mining within the perimeters of the Town. More than 50% of the people, who appeared before or talked with the Committee were in favor, noting it would benefit local contractors and the development of local properties. Studies were held to determine the location of gravel deposits within the Town, which resulted in an overlay map.

Mr. Tony Cartolano, a resident of Soller Heights Road, stated his concern with traffic issues. He pointed out there already is a mine on Soller Heights Road. He commented on the constant flow of construction trucks, the road's collapsed shoulders, general disrepair, and recurring potholes that are filled with cold patch. He pointed out that the quickest access to State Route 66 from Carpenter Road would be Soller Heights Road. He expressed concern for safety issues, including resident children, curves in the road, blind driveways and the egress onto State Route 66. Chair Walters noted that this has

been discussed. German Church Road resident Barbara Bullock said the project, being described as a pond, is disingenuous. Carpenter Road resident Marcella Heintz spoke about noise, dust and dirt on Carpenter Road and gave the example of when the Town repaired a washout on Eagle Road and all that was involved. She noted there is no weight limit on the Ghent portion of Carpenter Road, yet on the Village of Philmont/Town of Claverack portion of Carpenter Road, there is an 8-ton weight limit. There is no weight limit on County bridge #54. She addressed road and bridge safety issues, including the unknown composite of the road and questioned why taxpayers should shoulder road repair costs and not the Applicant.

County Route 9 resident Jeff Robinson addressed the meeting. He said he has no bias against Mr. Molinari and spoke as to him being gracious and readily providing information. He spoke of his discontent with how the Molinari mining project has been handled by both the DEC and the Town of Ghent. He read into the record a 17 June 2009 statement from Carpenter Road residents Carsten Otto and Dewayne A. Powell, who were not able to attend [SEE ATTACHED].

Mr. Robinson offered several comments:

- o he questioned the relaxing of in-place laws and that he and others insist the Town of Ghent abide by the letter of the law
- o he informed the meeting that legal counsel for a group of neighbors was unable to attend this evening's meeting
- o he had 'FOILED' (NYS Freedom of Information Law) the Town of Ghent and is still awaiting information relating to the Molinari application
- o the project appears to be segmented
- o he requested that Town of Ghent not automatically give up lead agency status, as the philosophy of DEC has changed
- o it was his sense that the application was dead
- o Town Attorney Guterman stated at the 03 June 2009 Planning Board meeting that the Applicant had not complied with certain Code requirements
- o he initially had questioned the fast-tracking of the application; there is a party of people prepared to sue DEC and Town of Ghent if they do not abide by the letter of the law
- o the application does not meet sections of Town law §190-18.b, c, f, and m [SEE ATTACHED]
  - the application is not in harmony with the locale; it will be an industrial operation that will last 5 years
  - the Town is negligent in not conducting a highway safety study by a qualified individual; he questioned Town Highway Superintendent Mike Losa's qualifications to offer an opinion
- o application does not meet §190-76.e, g, and j [SEE ATTACHED] relating to highway design standards
  - in his 25 August 2006 letter to the Planning Board, Mr. Losa stated the road base is unknown
  - Mr. Robinson said that in the 02 August 2006 minutes, Chair Walters suggested they 'relax the requirements'
  - item g - has not been demonstrated
  - item j - granting of a special permit should not be treated as a foregone conclusion

- o application does not meet § 190-77, item 3 [SEE ATTACHED] criteria
- o application does not meet § 190-78.b, c, h, m, and n [SEE ATTACHED]
  - need to indicate who is the project operator
  - a time schedule has not been made available, which suggests a staged project
  - it has been 2 years and 4 months since last meeting was held and since then, two abutting properties have changed hands
- o application does not meet §190-79.c, d and e [SEE ATTACHED] – all items have been violated
- o Town road specifications, items 10 - 16 [SEE ATTACHED]
  - Carpenter Road as it exists, and it true to every road in the Town of Ghent, does not meet highway specification standards. Mr. Robinson stated that after speaking with Mr. Losa, who was overseeing the resurfacing of Carpenter Road at the time, at Town tax payers' expense, he suggested to the Town Board that core drillings be conducted so to determine road's composition.
- o requested Board members review engineer's report, previously submitted to the Planning Board by residents of Carpenter Road, that itemizes all roadway safety concerns, which have not changed in the meantime
- o asked that the Planning Board, in its response to DEC, request that the SEQR process be re-opened
- o request the Applicant to stipulate that project will never be leased, licensed etcetera for any ancillary industries
- o as DEC does not place a limit on project time frames, the amount of geologic material to be removed from site should be specified, and the time frame not extend beyond five (5) years – this will prohibit 'segmenting'
- o agree to include any size truck load as a 'trip' - include definition of a truck as a four-wheel vehicle
- o request Applicant to agree to not seek expansion of project footprint
- o noted there is an 8-ton weight limit on the Village of Philmont/Town of Claverack portion of Carpenter Road, therefore no tractor-trailer traffic along Carpenter Road and onto State Route 217
- o the project would be an industrial operation, out of harmony with the surroundings
- o reviewed truck capacity and number of required trips
  - Mike Losa had determined that a truck at capacity 85% is safe – 54,000# fully loaded will require 12,000+ return trip truckloads
  - requested a secure device be put in place to track number of truck trips
- o at the last meeting, Co-Chair Groom said that people will take alternative routes if they don't like the trucks. Later, Mr. Robinson was speaking with one of his neighbors regarding the unpredictable nature of children, which raised the concern of injury or death. A neighbor told the meeting that she recently came upon a resident child, who has Downs-Syndrome, sitting in the middle of Carpenter Road. She had to stop and return him to his home.
- o operator should be responsible for entire length of roadway and bridge repair

- o reference to Town Engineering Consultant Jurkowski noting at the 03 June 2009 Board meeting, that appendices to noise study were missing – this qualifies the application as incomplete
- o asked if a traffic study been conducted by the Applicant, and if so, Mr. Robinson would like to see a copy
- o wondered why it would be unsuitable to go up Soller Heights Road or German Church Road, yet alright to place a mining operation on Carpenter Road
- o requested use of on-site scale, which is common in the industry, to avoid overloading
- o consensus from meeting of neighbors last week, of acceptable levels of tolerance, if all criteria are met
  - 3.2 – 3.9 years for removal of gravel – based on engineer’s study
  - application not be renewed after five(5) year Life of Mine
  - County bridge #54 remain 2-lane, no traffic light on bridge,
  - no use of engine brakes by truckers to slow down
  - third party control over counting of truck trips
  - maximum of 18 daily truck trips
  - mining operation not to use tri-axle dump trucks or tractor trailers
  - requested operating hours of 8 am – 2 pm, Monday – Friday, with no weekend or holiday hours
  - if permit issued, it should be with the understanding that *any* violation will shut down the operation
  - Applicant should be responsible to maintain the entire road, and County bridge, out to County Route 9
  - a berm be constructed around the entire perimeter, to mitigate noise and dust problems
  - sufficient bonding be put in place to cover the costs of nearby wells going dry or having a diminished flow due to the change to water table caused by the pond, without having to provide proof
  - request for a deed restriction, prohibiting any major subdivision of the property, upon completion of the mining, be put in place
  - insist the Town of Ghent hire an expert to determine impact upon local property values resulting from a mining operation
  - Town of Ghent to consider review and lowering of property assessments for local properties, for the length of the time of the mine
- o forty (40) neighbors, not just a random sample, but residents of Carpenter Road, County Route 9, Soller Heights Road and German Church Road have voiced their upset with the proposed application

County Route 9 resident Barbara Robinson, a licensed insurance broker, spoke to safety issues. She said that she has settled automobile insurance claims for accidents on County bridge #54, without other vehicles involved, because the driver has not negotiated the curve. Approximately two (2) years ago, a car drove up on her lawn at 2:30 am, when the driver did not negotiate the curve in County Route 9. She stated that she is also a real estate broker. Given the economy, the present marketing time for real estate is 10 – 11 months. She stated that a gravel mine and truck traffic will double that time and negatively effect the sale value of homes in the area. She also spoke to

the proposed application being an industrial use. Ms Keller asked a procedural question. Chair Walters said that the Planning Board, along with the Town's Attorney and Engineering Consultant, will review the information from tonight's meeting and fashion a letter to DEC that encompasses concerns and raised issues. It was noted that the letter will be a public document. Chair Walters observed that the public comment period is not just for the Town; that it is also open to residents. Carpenter Road resident Lee Taylor's concern as to what would happen, should any truck travel on Carpenter Road, in the opposite direction, was duly noted.

County Route 9 resident Bruce Meyers addressed the meeting. He referred to his career with the Taconic Hills School District. He suggested that the Board's first obligation is to follow the law, and for the Planning Board to use its discretion while upholding the law, so the neighborhood is kept intact as is possible and the impact minimized. Mr. Tony Cartolano referred to the weight limit on the Village of Philmont/Town of Claverack portion of Carpenter Road. Several years ago, there was a weight limit sign on Soller Heights Road, near the State Route 66 egress. Residents were told that posting of a weight limit was illegal and the sign was removed. Mr. Catolano asked if the Town can post weight limits. Attorney Guterman said the Town has the regulatory authority to enact weight limits on Town roads. Chair Walters suggested Mr. Catolano should take this issue before the Town Board. Mary Jo Von Bieberstein resides on County Route 9, at the corner of Soller Heights Road. She raised concerns about the maintenance of County Route 9, which has virtually no shoulders, a number of curves and is driven at speeds in excess of the posted limit. Ms Von Bierberstein also pointed out that the area is the most thickly settled in the Town of Ghent, next to the Hamlet. Bruce Altshuler questioned the role of Columbia County in maintaining County bridge #54. Mr. Jurkowski said that the State performs periodic inspections of bridges, based upon the span distance. County bridge #54 was last inspected on 18 November 2005. There is no weight limit on the bridge, based upon that inspection. County Route 9 resident Tim Teeney spoke to safety issues on the Carpenter Road bridge. Mr. Walter Keller noted work was done on the railings over the past 4 - 5 years. He asked if any engineering test could be conducted. When the road is torn up from mining truck traffic, he asked who will be responsible. Mr. Jurkowski noted that any existing sub par conditions on the bridge would have been be 'flagged' by NYS Department of Transportation (DOT). Mr. Keller asked if the bridge's maximum weight limit and rating can be determined. Mr. Jurkowski said that this is a NYS DOT public roadway, open to any vehicle allowed to travel on the NYS roadway network. It is up to NYS DOT to identify any concerns. Ms Heintz spoke to the limited visibility to the west of the hairpin corner where it is proposed to place the entrance to the mining project. Chair Walters said that her concern was duly noted. Ms Robinson inquired about the application being incomplete and the Board's duty. Attorney Guterman said that the Planning Board has already accepted the Application. Chair Walters noted that before the Board makes a decision, they must be satisfied that they have all requisite information. Jeff Robinson referred to PH following 62-days from receipt of completed application. He suggested that the application remains incomplete.

Carpenter Road resident M. R. Allen, 'Red Al' said the bridge was built in 1938 and that he has traveled it daily for the past 50 - 60 years. He has serious safety concerns

relating to entry onto the bridge as well as clearance, and is worried that an accident could result in death.

Applicant Vince Molinari spoke. He wished to remind people that he is a neighbor and that he pays his taxes. The application is for a site on the mining overlay adopted by the Town. The application has never been dead; he has provided whatever asked of him by the Town, including additional engineering studies of the bridge and noise studies. Mr. Molinari said that he empathized with residents as DEC, in their role, did not keep the Town informed. From his standpoint, DEC is lead agency. It requested information for the past 2 ½ years and came to the conclusion of a complete application. He stated his faith in DEC and other professional; that safety requirements were met. Mr. Molinari considers his side to be an open door, with an open conversation policy. He said he met with representatives of Columbia County Land Conservancy (CLC) and attempted to place land in a conservancy. He paid for a specially commissioned legal opinion through the CLC that was ultimately rejected. The attraction for his family is to enjoy what has been pointed out as features of the area. He said that yes, there will be a disruption for a period of time, but that is out of his control. The time to talk was 1 to 1½ years ago. He mentioned the financial burden placed upon him, especially with the threats of litigation. Mr. Molinari said that he thought that going from a 12-acre pond to a 6-acre pond would be welcomed. He noted that he is a private landowner who pays taxes, conforms to every state county and town rules and regulations; and has rights. He spoke about possible subdivision of the land and noted that in economic terms, he would have applied to subdivide 6 – 12 months ago. He said responses were disingenuous and demonizing. The project has to be called a mine due to the extraction of aggregate, but it is a recreational pond. He said that whether it's relevant or not, there will be no huge economic windfall from the sale of gravel, nor any potential subdivision. From his standpoint, Mr. Molinari said he will never divide the property into more than two parcels: one for where his house will be going and other for his children. He will not put it in deed restriction as that would inhibit or impair any tax benefit from putting the property into conservancy. He agreed not to extend the Life of Mine beyond 5 years, or to increase the project's footprint.

While the use of explosives was possible, he had restricted usage; they are not part of the mining permit. He is concerned by the fragmentation of neighbors. In closing, Mr. Molinari said he is being respectful as possible, but he can't make everyone happy in the process, including himself.

Dave Ingalls, engineering representative for Mr. Molinari, reiterated that there is lot of information on file that has been scrutinized by both the DEC and the Ghent Planning board. There is a comprehensive, complete package with all technical information, including a mining and reclamation report that has been reviewed by DEC. He does not believe there is any other relevant information that has not been requested, studied and submitted. Chair Walters said that the Planning Board has everything asked of by law.

Co-chair Groom commented that well thought out and well presented comments had been provided by the Public. He made a motion to close the Public Hearing. The motion was seconded by Chair Walters and unanimously approved.

Chair Walters thanked Mr. Molinari for agreeing to re-open the Public Hearing.

It was determined that Engineering Consultant Ray Jurkowski will draft a letter to the DEC, on behalf of the Planning Board and provide the Town's Attorney and Planning Board members with copies. Attorney Guterman said he will write a letter to Chair Walters.

The DEC public comment period closes 22 June 2009; the response letter will be e-mailed to Mr. Mike Higgins of DEC on that date.

NEXT MEETING

The next regularly scheduled Planning Board meeting will be held on Wednesday, 01 July 2009.

There being no further business, the meeting adjourned at 9:19 pm.

ACTION                   ENGINEERING CONSULTANT JURKOWSKI TO SEND APPROVED LETTER TO DEC ON BEHALF OF GPB BY 22 JUN 09  
ATTORNEY GUTERMAN TO SEND LETTER TO CHAIR WALTERS

SUBMITTED BY  
BARBARA BARRIE  
RECORDING SECRETARY