

Town of Granby
Zoning Code Review Committee

Meeting Notes – September 14, 2021

A meeting was held via “ZOOM” remote meetings on Tuesday September 14, 2021 at 5:00 pm with the following members and professionals present:

John Snow Jr.
David Crockford
Tina Sawyer - absent
Lisa Somers
Lynn Lyons - absent
Christine Bassett
Jamie Lynn Sutphen - attorney
Howard Brodsky - planner
Doug Miller – engineer

Also Present: no one.

Agenda:

- Development of Mining regulations with initial review of preliminary draft.

MINING OVERLAY ZONE DISTRICT

The consultants had developed three documents for the Committee to review at a meeting originally scheduled for August 18th. and rescheduled to September 14th, they are as follows:

- a. Suggested To-Do List
- b. Potential changes to existing zoning code to facilitate new text for MOZD.
- c. Discussion Draft of Mining Overlay Zone District (MOZD)

Land Use Planner, Howard Brodsky, began the discussion by addressing comments received via email from Member Lynn Lyons regarding the proposed drafts to be discussed tonight. He stated that the comments provided good input for the discussion, but he also thought that a refresher of where the Committee had left the discussion in February, which had prompted the consultants draft, would also be helpful. He displayed a chart describing conventional, overlay and floating zone strategies that the committee had discussed in February, wherein a majority had favored the overlay format. He added that he had written a floating zone concept that had been discarded by the consultants because it didn't meet the objectives the Town was trying to achieve. He explained that this is a jumping off point to start discussion and debate and that the draft may be revised, accepted or even discarded entirely – all part of the working process. Christine Bassett responded that an option she would favor instead of the overlay is a complete ban of large-scale mining in the Town because there are already too many in existence. Land Use Attorney, Jamie Sutphen, responded that the draft does essentially ban mining in the future and that any new regulations would not be able to impact the existing mining practices in the Town. Member John Snow added that a town-wide ban won't fly with the current Town Board which is the only entity with authority to adopt the proposed regulations; he also doesn't want to wait two years for a different Town Board who may not adopt it either. Attorney Sutphen agreed that it was a practical approach to establish regulations where none currently exist, all in an effort to leverage the dismissive actions of the DEC to date.

On a shared screen the members reviewed a spreadsheet of the existing mines in the Town with DEC data of locations, acreage, reclaimed acreage, owners and permit expiration dates and renewals, which had been confirmed by Engineer Doug Miller, after reviewing DEC files from several FOIL attempts. A parcel map generated by the Oswego County Planning Board of existing mining activity had been labeled by Mr. Brodsky to reflect the data on the spreadsheet which was clearly inconsistent. The consultants determined that an important issue that the Town will need to address is the inter-action with the DEC which has been shown to be problematic to date, and was a core issue within Member Lyon's complaint and comments. Member Bassett commented on the wheel washing condition established by the DEC, which is not enforced, and suggested that it be added to the local code. Mr. Brodsky countered that the DEC supersedes

many aspects of the mining activity that would be useless within the local code, and wheel washing is operational in nature and falls under their purview. The Town has the ability to control the location, interaction with local roads, and possibly setbacks. Member Snow commented that he had recently dealt with the DEC concerning enforcement of the required setbacks to no avail, in fact, being told that the Town was out of control and encroaching on activity that is protected.

a. The first document provided - "Suggested To Do List" is essentially a grocery list of elements and actions that need to be considered within the amendment text, as well as formulated by Town personnel.

~ The DEC is the NYS agency that solely controls mining activity; therefore, the Town needs to develop a strategy that compels compliance by the DEC with the Town's review process.

~ Enforcement by the DEC of its permit conditions, as well as the Town committing to enforcement of their Zoning Code with a commitment to provide necessary provisions and personnel as support to do so.

~ Town Board applies MOZD regulations by amending the Zoning Map to reflect the status of existing mining operations and future permit renewals.

~ After agreed upon development of MOZD text, members should review and modify coordinating sections of the zoning code to integrate new large scale mining section - 6 areas identified.

b. The second document provided - "Potential changes to existing zoning code to facilitate new text for MOZD" was minimally discussed at this stage of the review.

~ The Establishment of Districts section was amended to separate and define the existing conventional zones from the definition and listing for the proposed overlay zone and possible future overlays.

~ The Use Chart was amended to add line items for both small-scale and large-scale mining, and the removal of the existing line item of extractive operations and soil mining.

~ Definitions for small-scale and large-scale taken from DEC terminology, borrowed to establish thresholds that distinguishes between the two levels of activities

c. The third document provided - "Draft Mining Overlay Zone District" is comprised of proposed regulations text, italicized sections to provide explanation and guidance, and red print sections to provoke discussion and debate.

Section B - The purpose of the MOZD and its connection to the NYSDEC component is described, as well as identifying that large scale mining as a land use is prohibited in all districts except for the MOZD.

Section C - A **Zone Change** is required for large -scale mining, which may be adopted by the Town Board after the consideration of listed Locational Findings: **(1)** previous established mining activity on the property, **(2)** supporting documentation of subsurface and/or geologic studies, **(3)** local infrastructure can accommodate proposal with no adverse impact, **(4)** protection of environmental resources in vicinity, and **(5)** no adverse impact to surrounding properties and their usage.

As the discussion of the draft ensued Member Bassett stated that the text needs to be stricter, that as it is written, it allows too much leeway for the Town Board to simply approve future mining as they have always done. Member Snow cautioned that being too strict could cause a repeal of the law by a future board, but if reasonably written with flexibility for isolated cases then it would be less likely to be overturned. She added that this is pointless if the laws can be changed at any time. The consultants and Member Snow replied that it takes a lot to change a law - time, consensus, appropriate drafting, support by other Town documents to begin with; and then to actually adopt a law - planning board advisory opinion, County Planning review and public hearing. Attorney Sutphen further explained that the Town Board's authority can't be restricted, they are the legislative body of the Town, and creating local laws is their purpose, to restrict those actions would be considered unlawful. Planner Brodsky added that the consideration that must be given to the listed locational finding by the Town Board provides guidance, but also gives the residents a foothold to force leverage of compliance or risk political

fallout. Member Snow stated that the current code has no restrictive ability and can not be defended in court if the Town chose to fight a mining operation, he's looking for legislation that is defensible going forward. The consultants agreed that the key for success is for the Town to establish a law that clearly states where mining can occur and where it cannot occur, which will provide a footing for court action by the Town. Member Bassett agreed in theory but still thought that section D needed to be rewritten because it allows for everything – new operations and the expansion of current boundaries – what's the point? Member Crockford stated that his understanding from February's meeting was that an overlay would be developed to identify the existing mines that they can't change, while establishing parameters for future endeavors that would control their impacts – which is what this draft is building. Section D allows some flexibility otherwise the current Town Board won't adopt it, and/or a future Board will repeal it. Mr. Brodsky agreed with that scenario and said that he would try to revise the draft in an effort to give the Town Board the ability to legitimize a situation that is good for expansion, but not allow every mine the ability to expand just because they are there. Engineer, Doug Miller, added that no one has the right to a Zone Change, and that the Town Board does not even have to entertain the review of an application, it's not a prescribed right like SUP's or site plan reviews are for usage. Member Lisa Somers stated that previously the Town had been receiving numerous calls for solar builds and even received applications during the building moratorium, but since the new regulations drafted by the committee were adopted, there are fewer repeat callers and no applications submitted – adequate and reasonable legislation has an impact.

Section D involves parameters to define the land area associated with a mining site, discussion as follows:

- (1) Minimum land area -Discussion point by Members Somers and Crockford regarding making the minimum large enough that a small-scale wouldn't easily convert to a large-scale operation. They suggested 10 acres for a minimum. Member Snow questioned if a maximum would be appropriate and limit the ability for expansion? Planner Brodsky replied that the maximum land area is established by the boundaries of the MOZD, expansion can only occur through a Zone Change – it could be an effective controlling mechanism.
- (2) and (3) Full and partial lot designation, and expanding boundaries – Clearly describes how the Town Board can establish MOZD boundaries and allow for expansion – should review and approval of a Zone Change be emphasized.
- (4) Minimum yard requirements – Planner Brodsky stated that setbacks are questionable regarding acceptance by DEC with possibility of preemption but it is worth establishing – gives additional footing for protection of impacts to surrounding properties. Clarification is needed for the point of measurements for the setback – suggested to be from the overlay boundary.

Section E involves general regulations for large-scale mining which is a new line item added to the use chart.

- (1) Applicable underlying zone districts – It was agreed upon by all committee members, after considerable discussion of the existing conventional zone districts in respect to the changes the Town has experienced since they were developed, that the MOZD may be applied to lands within the A-1 zone only; and prohibited in the A/R, R-1 and CIT zones.
- (2) The MOZD designation allows large scale to occur on that property.
- (3) Pre-existing mines – allowed to continue under active DEC permits, but once the expiration or renewal date is reached, then the mine MUST receive a MOZD designation from the Town by request and subsequent review for a zone change. Not automatically entitled.

Member Christine Bassett changed the direction of discussion by asking if it would be pragmatic to evaluate and change the existing zone designations throughout the Town because they don't seem to adequately define the land areas they represent. The area that she lives in, County Route 85, is zoned as A-1 and originally was an enormous farm (50 or 60 years ago) but is now mostly residential with little to no farming. Member David Crockford agreed that the north of the Town is zoned A-1 and is mainly residentially developed, and the south area of the Town is zoned

A/R and is largely comprised of large farms. Howard Brodsky stated that many of the existing mines are presently located in the north area, as depicted by the County produced mining map utilized earlier in the meeting. He observed that one of the largest mines appears to be partially located within the CIT zone which the current zoning does not allow. Doug Miller and John Snow explained the Johnny Cake mine issue, that was touched upon earlier in the meeting, is in regards to the DEC's lack of compliancy with Town zoning. The original mine is and has been located within the A-1 zone, recently the adjacent parcel located within the CIT was purchased, and the owners applied for approval from the DEC to expand the current mining operations into the adjacent parcel. The Supervisor had addressed the local zoning issue as part of the DEC's process of review and was ultimately told by the DEC that they don't enforce local zoning and it's a local issue. Attorney Sutphen asserted that this situation presented a worthwhile fight going forward because mining has never been allowed within the CIT zone of the Town. The legislation they are proposing would give a defensible position. The consultants are in agreement that the mining issues that are problematic in the Town stem largely from the authority of the DEC, and their willingness to be non-compliant with local laws. A goal of these regulations is to provide leverage that will protect the residents and their properties in a meaningful way. John Snow turned the conversation back to the A/R zone, stating that mining shouldn't be allowed in this zone because its purpose is transitional between the agricultural and residential uses: A-1 and the R-1. The A/R is to provide a buffer between the two zones and promote open space and green space. He also stated that the Town promotes and supports Home Occupation use and if a home business grows and exceeds the thresholds of the home occupation tiers then the CIT provides a location in the Town to relocate and develop their business – it should be protected for that use by not allowing mining activity. The members agreed that large-scale mining should be prohibited in the CIT and A/R zones.

Attorney Sutphen commented that the consultants should consider drafting a 'grandfather and sunset clause' that would allow the existing mines to remain, but future endeavors to be targeted into the agricultural zone. Mr. Brodsky stated that only one mine currently exists in the A/R which supports the clause that Jamie would like to build into the regulations. Doug Miller countered this thought by explaining that the issue is the largest mines are in the north section of Town which should become the A/R zone due to the widespread residential growth with numerous small lots along the roadways – just the opposite of the south part of the Town with large lots and active farming. Member Crockford stated that the A/R zone was created out of the Agricultural zone to promote residential building by creating infrastructure of public water, the creation of water district #3 occurred at the same time the rezoning of the Town was decided. This information was new to everyone but made complete sense when comparing the A/R zone and Water district #3 locations. A task going forward would be to redefine the A/R zone into the north part of Town to better reflect the usage of the land. John Snow added that water infrastructure continues to be needed and wanted by the residents throughout the Town, and that he is currently attempting to form additional water districts in response. An idea was presented to leave the properties comprising the large mines in the north as A-1 and surround them with A/R zoning, thus strengthening the controls with verbiage that MOZD applies to A-1 zones only.

Attorney Sutphen was pleased with the discussion of the Town's evolutionary changes thus far, as it provides a great planning perspective to improve, support, and influence the natural trending of land uses. The discussion was productive for and by all, the consultants will work on changes for the next meeting, the members should prepare to discuss the remainder of the drafts.

The next meeting is scheduled via remote "ZOOM" meetings for **Wednesday, October 20, 2021** between **5:00 & 7:00 pm**. Howard Brodsky to send link information for ZOOM meeting.

Meeting ended at 7:00 pm.

Respectfully submitted,

Lisa Somers, Zoning Code Review Committee Clerk