<u>Town of Granby</u> Zoning Code Review Committee Johns

Meeting Notes - March 2, 2022

A meeting was held via "ZOOM" remote meetings on Wednesday March 2, 2022 at 5:00 pm with the following members and professionals present:

John Snow Jr.

David Crockford

Lisa Somers

Lynn Lyons - absent

Christine Bassett

Jamie Lynn Sutphen - attorney

Howard Brodsky - planner

Doug Miller - engineer

Also Present: no one.

## Agenda:

- Review prior meeting discussion
- Review large-scale zoning text for final revisions
- Goals for April meeting start review of small-scale, mapping strategy, Town enforcement and DEC, review Board process.

## MINING OVERLAY ZONE DISTRICT

# Prior Meeting update:

- 1) Town options for existing mine in the CIT District Review non-conforming status regulations, and legal options vs. the DEC
- 2) Town options for existing mines -define the location; overlay needs to include active sites and properties of contiguous ownership
- 3) Town option for expanding Overlay new mines not precluded; must remain attentive to permitted small-scale activity

The current Zoning Ordinance contains a section named 'Extraction' for mining activity that is vague in description and allows mines anywhere in the Town without effective method of regulation. The Committee has developed a regulation for large-scale mining that defines activity, permitted location, minimum size, Board review procedures and termination details through the creation of an Overlay District initiated by a Zone Change through the Town Board. Small-scale mining will involve modification to the existing code and is next on the work schedule.

The future use of land for mining involves an interplay between the characteristics of the original zoning district and the requirements of the Overlay. Initially, ten zone changes will occur to implement the existing large scale mining sites into the overlay district. SEQR will be triggered as part of this adoption process. The professionals will work on a strategy for the mapping to assist the Town Board with adoption and implementation of the new regulations for the next meeting.

Town enforcement of the regulations is essential to their success. Needs of the Codes Department must be addressed by committing resources for adequate staffing and direction through training and education. Attention to DEC permits and their conditions – possible Town enforcement of those conditions to compel DEC enforcement. Awareness of DEC actions is key to Town's ability to challenge new permit issuance – a limited timeframe exists within the law to be successful for activity occurring outside of the Overlay Zone. Success of the Overlay Zone rests on the Planning Board review processes of SUP and Site Plan for new applications – following the steps outlined in the Code provides basis for obtaining needed information and establishing conditions of activity.

<u> Jamie Sutphen – Legal Questions:</u>

- 1) What can the Town do if the DEC issues permit outside of the Overlay Zone? Case Law establishes that the Town has rights and standing to pursue the validity of the permit issuance in light of Town Zoning. This is time sensitive approximately four months to establish intent to pursue an Article 78 Proceeding and file it with the Supreme Court Town has to be vigilant of DEC activity going forward. Discretionary authority is involved, wherein the State has given the authority to oversee mining activity to the DEC exclusively, therefore the challenges must occur at the beginning of new mine creation to be impactful. Current permits and their abuses would not be wise for the Town to pursue, vested rights would play a large part on the owner's behalf.
- 2) Are the existing mines considered as lawful non-conforming uses? The activity had to be a legal use initially to be considered non-conforming. Since the Zoning Ordinance did not prohibit mining, the existing mines are legal. The Overlay regulation will change that by prohibiting the large-scale in certain zoning districts, and regulate the activity with extensive review and approval process of the Planning Board.
- 3) How are contiguous properties handled?

  NYS Law states that contiguous properties of an owner can occupy the same activity because vested rights are implied. Merely granting a permit is not considered as vested, there must be activity of the use to be vested. This is key to why the Town must be vigilant of DEC issuance of permits a filing of an Article 78 at the beginning of the process eliminates a vested rights argument.

Member Bassett asked if contiguous status applies to properties purchased years later after the activity has been ongoing. Member Snow added that the owners of the mine near member Bassett purchased adjacent property that is mostly swampland, and have been logging and clearcutting during the winter while the area is frozen and equipment can move about easily. The Town has been receiving many calls recently because the activity is creating flooding and affecting well water quality along Rathburn Road. Attorney Sutphen asked when the purchase occurred, Member Snow replied that the sale was only a few years ago. The professionals didn't think that they should be considered contiguous as vested rights of mining are concerned, but the Town doesn't have the legislation in place to fight it yet. Member Bassett stated that the DEC and owners are clearly overriding the Town's Zoning again, and there's nothing we can do to stop it - this seems like wasted time and effort.

### **MOZD** text review:

Member Bassett asked what good this legislation is if we can't stop the mines from expanding, and only applies to large scale?

The legislation will fill in the gaps that the owners and DEC are currently overriding, but will require vigilance on the part of the Town to enforce. Small-scale mining is not under the purview of the DEC, but it is under Town Authority which the Committee will address next. Prevention of the small mines becoming large is to enforce the Overlay regulations when a small mine applies for a permit with the DEC. If the property isn't in the designated district for an overlay, then is stops the process, and if the property is in the designated district for an overlay, then it must obtain Town Board approval with a zone change to proceed. Member Bassett stated that the regulations need to be more restrictive otherwise Town Boards, as in the past, will just allow it. Member Snow stated that the framework is necessary to provide fair legislation of land use, while making it difficult for future rogue Boards to overturn the regulations, which means we'd be back to no control or authority. Planner Howard Brodsky agreed, stating that he had hoped that realization would be understood.

<u>Section C. (1)</u> – Stipulates that modification of the Town Zoning Map is required for large-scale activities in accordance with Section IX: Amendments. The Town Board has to complete the process of adopting a local law with advisory report, County 239Referral, SEQR and Public Hearing.

<u>Section C. (2) a)</u> – MOZD applies to land within the A-1 and A/R zones only, prohibited in the other zones.

<u>Section C. (2) b)</u> – change wording from 'currently' to 'as of the date of enactment of this section'. Member Bassett questioned the purpose of the overlay other than providing an avenue for an established small-scale to become a large-scale. The abundance of criteria to establish a large-scale will stop many from proceeding because of the lack of merit, and slow others down because of the abundance and associated cost and time to accumulate.

<u>Section D. (1)</u> – Minimum land area requirement – Member Crockford remembered discussion of 10 acres – the members agreed.

<u>Section D. (2)</u> – Minimum setback distances for mining activity. These distances apply from the MOZD boundary line, established by the Town Board designation and Zone Change, to the mining activity. The members agreed that the sample values were too small and increased as follows: 1,000-feet of road frontage, 500-feet for front, rear and both side yard setbacks. Planner Brodsky voiced concern of possible conflict with DEC standards. Member Crockford confirmed that the setbacks would apply to new applications going forward only.

Section E. (1) – Some discussion of how much 750 cubic yards is ensued. For general reference, a value of 1 cubic foot deep equals about 6,000 square feet or 77'x77' area, was used. Section F. (1) – New text for conformity of mines designated by the Town Board as MOZD with the requirements of this Section. The members agreed with the additional wording. Member Bassett asked if any Town official would be able to inspect the mine. Probable cause of a change would be required to initiate a code violation and allow access. Member Snow commented that the Planning Board has been adding a condition to every approval that the CEO has

authorization of access to inspect property at any time.

<u>Section F. (1) c)</u> – Reclamation plan – member Crockford asked if this is the responsibility of the DEC? Not necessarily, answered Howard Brodsky, the DEC may ensure closing is safe, but the Town is responsible for the condition of use and aesthetics. Attorney Sutphen likes that it supports land uses and structures, like residences of an underlying district. Member Crockford stated that the language offers guidance, but would require the services of an engineer to provide that assessment.

<u>Section F. (1) d)</u> – Staging – This paragraph seems to be overreaching and unenforceable. Attorney Sutphen stated that it makes the regulation look suspect and advised to remove it completely. Member Bassett agreed because only the DEC can control the mining activity.

<u>Section F. (1) e)</u> – Conditions of approval – Permits issued by the DEC shall be adopted as part of a SUP or Site Plan approval of the Town. An overlapping which allows the Town to enforce whatever the DEC isn't. Must be included in our regulations to gain authority to enforce elements of the DEC permit conditions.

<u>Section G. (1)</u> – Abandonment, Incomplete Implementation, Approval Revocation – wording added to place time frame for actions by the Town – 2 consecutive years from planning board approval or 3 consecutive years from Town board site adoption of MOZD. Members in agreement with time frame established. Attorney Sutphen clarified that failure to act within three years by the Town board does not waive the process. Attorney Sutphen explained that a sunsetting clause is common in law for situations with no action for 3 years, it also provides opportunity to request planning board review and revocation.

#### **Summary Discussion:**

The professionals will provide an updated text from tonight's discussion. Members Crockford will review with the planning board, and Member Snow will review with the Town board, in an effort to familiarize everyone with the legislation before adoption process begins.

Member Bassett was concerned that a small-scale mine could become a large-scale mine thru this legislation. Member Snow replied that the process would require the Town Board to designate the property after considerable scrutiny with an arduous and lengthy process of review and documentation. An avenue to allow the use is crucial to the success of the legislation being adopted as well as securing longevity as a Town law. Outright prohibition is unconstitutional

and would create a foothold to overturn the Law. A zone change is not a right designated by a use chart with review of SUP and site plan, instead, it is a discretionary decision by the Town Board via a legislative action, which also makes the decision difficult to appeal. One of the few things Towns have a right to decide is where a use can occur, it essentially balances tolerance with intolerance.

Member John Snow asked whether an SUP can be tied to an owner instead of to the property. Attorney Sutphen replied that it runs with the land only, never with an owner. Member Bassett asked whether the Town had addressed changing the A-1 and A/R districts around? Member Snow replied that they can't address it until the Comprehensive Plan is updated and revised. Currently the Plan does not support that action, therefore the County Review would be unfavorable, which is a necessary step in amending the Zoning Law and Map.

#### Tasks:

- Professionals to provide an updated draft text for review at next meeting probable Final draft.
- Engineer Doug Miller will start developing the Overlay Map which will be parcel based.
- Members review for small-scale mine regulation development.

The next meeting is scheduled via remote "ZOOM" meetings for Wednesday, April 6, 2022 between 5:00 & 7:00 pm. Howard Brodsky to send link information for ZOOM meeting.

Meeting ended at 6:30 pm.
Respectfully submitted,
Lisa Somers, Zoning Code Review Committee Clerk