

PLANNING & ZONING COMMISSION
TOLLAND, CONNECTICUT
REGULAR MEETING MINUTES OF MAY 24, 2010

MEMBERS PRESENT: Michael Cardin, Chair
Marilee Beebe-Kostrun, Vice Chair
Sue Errickson, Secretary
Jack Scavone, Regular
Dave Barrow, Regular
John Hughes, Alternate (arrived 7:45p.m.)
Benjamin Stanford, Alternate

OTHERS PRESENT: Linda Farmer, AICP, Director of Planning & Community Development

1. **Call to Order.** Michael Cardin, Chair, called the meeting to order at 7:34p.m. in Council Chambers.
2. **Public Comment.** None.
3. **Public Hearing**

3.1 P&Z App. #441B – Tolland Planning & Zoning Commission – (Burgundy Hills Associates) – Review conditions attached to February 25, 1991 Special Permit for possible modifications. Location: Midwood Quarry – Mt. Spring and Old Post Roads. Continued Public Hearing which commenced on May 10, 2010.

Mr. Cardin reviewed the items in Commissioner’s packets related to this hearing. He reviewed the process for the public. He said it was the PZC’s intention, because the sixteen conditions set on the quarry operation in 1991 are nineteen years old, to revisit them to see if any might need to be discarded or modified. The PZC therefore opened a Public Hearing on the matter and, as proscribed by State statute, will gather information from staff, residents, the property owner, and others. From this process, questions are certain to arise. They will then propose action whether to amend any of the conditions or leave them “as is.” He also noted that there will be no straw poll taken. Mr. Cardin further said that the permit process is intended to address compliance with the conditions while attempting to mitigate impact on neighboring properties. The intention is not to shut the business down.

Ms. Errickson read several items into the public record:

- A May 20, 2010 memo from Linda Farmer to Michael Cardin, PZC Chair.
- A May 10, 2010 letter from Kevin Havard of 23 Mountain Spring Road to Michael Cardin and Linda Farmer
- A May 20, 2010 letter from John Littell, Public Safety Supervisor to Linda Farmer
- An April 27, 2010 email from Town Attorney Richard Conti to Linda Farmer

Reference was also made to the Amended Noise Ordinance for the Town of Tolland and that the packets include a copy of the State of Connecticut Department of Public Safety Investigation Report regarding blasting date stamped October 30, 2007. Ms. Beebe-Kostrun asked if there had been any follow up since the 2007 complaint. Ms. Farmer said she was not aware of any. She said she got the report from Richard Municello, the Fire Marshal, because it shows good information about how the process for a complaint and investigation are handled.

Mr. Cardin noted that he had received a phone call from a resident wishing to discuss the quarry issue, and he explained that he did not intend to be rude by not returning the call, but that he cannot have ex parte communications while a Public Hearing is open.

The Public Hearing was opened to public comment. Art Judson of 286 Old Post Road said he had his water tested and it fell within normal parameters. He said, however, that because his property is in the backyard of the quarry, he would like to be included in the list of residents who get pre- and post-blast testing of their wells. Mr. Cardin said they already have selected wells for blasting but will consider his request as discussion of the conditions go forward. On a separate matter, Mr. Judson noted that a few people fell leaving the Public Hearing two weeks ago because the rear parking lot was unlit. Ms. Farmer said a fuse had blown and it has since been fixed.

Jay McConville of 420 Old Post Road referred to John Littell's letter and his reference to a gate around the open pit area. He said the gate at the quarry at its present position is about 80 yards in off the road and is not appropriate to keep out the public. He said the noise from ATVs on quarry property is very bothersome, but it is hard to complain when you don't know who is making the noise. Mr. McConville said he does not believe there has ever been an appropriate fence and gate and he proposed such a gate and fence be installed out near the road. He said this would improve public safety and decrease ATV activity. He also questioned why the town could not enforce the "no left turn" prohibition exiting the quarry. Ms. Farmer said they don't have the ability to be out at the quarry constantly, and they have to rely quite a bit on the quarry owner's signs and education of truck drivers. Ms. Beebe-Kostrun said that generally any public road is presumed to be constructed to handle all manner of traffic including trucks, and they cannot selectively exclude certain members of the public from using public roads. She said because it is not legally enforceable, they rely on signs that "request" drivers to not make the left turn.

Mr. Cardin further explained that John Littell's letter referred to a cliff inside the quarry. He said ATV use is a problem all over town, not just the quarry, and is a problem on town-owned Open Space. He said he feels the gate won't be effective in keeping ATV users out. Mr. McConville said, however, that he feels the lack of fencing is an open invitation to ATV users. He said when ATV users are going in on private property, one cannot be sure if they might actually have permission to do so.

Lucette Packman of 65 Crestwood Road said that if it is one of the sixteen conditions that a gate be there, then it should be there. She said her issue is with blasting, and she asked that the town put up on its website the dates and times of all the blasts that have occurred over the years, so people can see when they occurred. She would like the town to start with the most recent blasts, but ideally would like this information to go back five to ten years. Mr. Cardin asked if this is something the Fire Marshall could do and if he has his own web page. Ms. Farmer said he would have all the information, but she does not believe he has his own page. Mr. Cardin said they will note Ms. Packman's request. Ms. Packman said she is still opposed to trucks going down Mountain Spring Road for safety reasons and she would support the lifting of the "no left turn" request.

Walter Dovan, Jr. of 113 Mountain Spring Road, asked how many private wells were being tested. Ms. Farmer said that four private wells were tested before and after this last blast. Mr. Dovan asked if there were any openings for more resident wells. Mr. Cardin said this testing of resident's wells was a recent and new provision worked out between the PZC and the property owner. He suggested Mr. Dovan contact the Planning Office with his request. Mr. Dovan said he used to have to change his filters for his well about every two months but since this last blast, he has had to do so every two weeks. He said his wife is also now complaining about skin irritations, which he feels is connected to the well water. He asked what firm is doing the well testing. William Smallwood, the quarry owner, said this was done by Columbia Labs.

Constance Chambers of 129 Mountain Spring Road requested that Mr. George Yntema be allowed to speak before her, but Mr. Smallwood said he understood Mr. Yntema did not live in town and

asked if non-residents could speak at Public Hearings. Mr. Cardin said non-residents can speak, and he also noted that Mr. Yntema has listed his address as locally at 129 Mountain Spring Road. Mr. Yntema provided handouts of a map of the quarry dated March, 2007 and a four-page document entitled "Blasting Committee – It's Mandate" which was taken from a website www.wvhighlands.org, dated September, 1998 and retrieved May 11, 2010. He said the map he produced was superimposed from the same source as the map from the memo from staff at the time of the lawsuit.

Mr. Yntema said there has been discussion whether the quarry exists in a residential zone or if the residences are in a quarrying zone. Mr. Yntema said it has been established as a residential zone. He said the criteria for determining what is allowed in a residential zone is to control businesses so as not to cause undue damage to residences. He said he feels there has been damage done to foundations and wells due to blasting at the quarry, and that the town should place greater limits on the blasting. Mr. Cardin said the Fire Marshall has reported that the blasting proscribed under State law has not exceeded allowable limits, and he does not believe the town can place stricter requirements than is allowed by the State. He said the 1991 court decision determined that the town could not put in proscriptive restrictions that would eliminate the quarry. Mr. Yntema said he would like to get a legal opinion on whether the town can place stricter restrictions on the blasting. He asked that the PZC get a legal opinion on whether they have the ability to do this.

Ms. Beebe-Kostrun asked what Mr. Yntema would recommend for stricter blasting. Mr. Yntema suggested allowing up to 10 percent of the State limits on blasting intensity. Ms. Beebe-Kostrun asked what criteria would this be based on. She said they need to have a body of evidence that proves this. She said the PZC has been down this road before. Mr. Yntema said the first step for the PZC should be to find out first if they have the legal power to set stricter limits. Then if they do, they should find a range, which may be arbitrary to some extent, that would set limits where they would not expect the blasting to cause problems with wells. Mr. Cardin noted that it is difficult to determine if blasting has caused the well problems. He said he lives about five miles away from the quarry, but he still has to change his filters every month. He said it is difficult to prove that an increase need for filter changes after a blast is due to the blast.

Mr. Yntema questioned where is the burden of proof. He said the Fire Marshall has reported that blasts from the quarry have been in the 25 percent to 42 percent of State limits range, and that the latest was at about 50 percent, but his report does not say where the vibration tests were taken. Ms. Beebe-Kostrun said the State report says tests were taken at 895 to over 1200 feet from the point of blast and that ground and air vibration was monitored.

Mr. Yntema referred to the West Virginia blasting handout. He said the town should consider setting limits needed to protect property and referred to the recommendations in the handout. Ms. Beebe-Kostrun asked who wrote the document. Mr. Yntema said it was an organization that is concerned about damage from blasting to some West Virginia properties, but there was no name identified in the paperwork. Ms. Beebe-Kostrun said they cannot use a recommendation from an unknown body. Mr. Yntema said he only provided the handouts as an example of the type of thing that the town should as experts to look into. He said they need to look at the velocity at the structure where the damage occurred. Ms. Beebe-Kostrun clarified that they have done this.

Mr. Smallwood, owner of Midwood Quarry, said Mr. Yntema's map goes back to the original meetings in 1991 when they were trying to determine the acres that could be quarried to satisfy the court. He said they started out including roads and accesses at nearly 100 acres, and then the Commission came back with a 40-acre proposal. He said they finally settled on 10.5 acres, which had grandfathered rights.

In Ms. Chambers' situation, he said her well was a bad well from the time it was dug. He said his partner owned that property and had to put in a system very shortly after it was dug to control manganese and iron. He said her system failed several years ago and she went after the blasters

insurance and got a new well dug. Mr. Smallwood said this was against his recommendations and wishes, and he felt she scammed the insurance company. He said she now has two operating wells on her property and she has led other neighbors to think anyone within 50' of the quarry can get away with it too. He said he does not appreciate the inflammatory issues and feels they are an insult to him and the Commission. The issue, he said, has gotten personal. Mr. Barrow asked that anyone who speaks please try to avoid personal inflammatory remarks, and Ms. Beebe-Kostrun concurred.

Ms. Chambers said her driveway is a big turnaround for trucks going into the quarry and she said as a result she has had an opportunity to talk to many people who enter the quarry. She said Mr. Smallwood has given express permission for some people to hunt and drive ATVs in the quarry. She said the quarry is a beacon for children, hunters, ATV users, fishing, horseback riding and walking and it is problematic for neighbors to have to listen to the ATVs, the shooting, and the rock crushing. She said there is a lot of traffic in the quarry which could lead to public danger, noting an ATV accident some years ago. She said it is unsafe for hunters and others to mix and suggested adding a condition to the original 16 to prohibit ATVs and hunting in the quarry and to require signage prohibiting these activities.

Ms. Chambers also took issue with the claim that she has scammed the insurance company. She said this is untrue and the water testing issue with her well took several months working with various agencies. She said she feels the problem was not caused by any activity on her property. She said there needs to be a better source of information for people who want to get answers and to provide to relevant agencies when damages have occurred as a result of blasting. She said she was told that people concerned about foundation cracks from blasting need to take before and after pictures with a digital camera, because such a camera provides a date. Additionally, she said that the Blasting Committee document provided by Mr. Yntema came out of the West Virginia Legislature, noted in the first paragraph.

Edward Gervais of 351 Old post road asked if the quarry owners is looking for an expansion of his quarrying activity or just a renewal. Mr. Cardin said this Public Hearing is about neither. It is a review of the sixteen conditions placed on the quarrying operation 19 years ago. Mr. Gervais asked how the conditions are enforced. He asked if they are going to make him put up a fence. He asked how a town would hold a business owner to the conditions. Mr. Cardin noted that this has been an ongoing challenge for the Commission and staff. He said they need to find out what is most important to the neighborhood as a whole. Mr. Gervais said he understands it is difficult to enforce existing rules, but that there needs to be a way to investigate problems such as changes to water from wells after blasts. He said they can't keep putting up their hands saying they don't know what happened. He said they don't need new rules, but need to enforce the rules they presently have.

Mr. Smallwood said the one gate he has was repaired and the other one is secure. He said if he puts up a gate, ATV users just go around it. If he puts a boulder in one place, they find a different way in. He said there has not been a lack of trying on his part. He added that he cannot put a fence around the three to four miles where there is private property, and acknowledged that it has become a recreational spot that he would like people to be able to enjoy. Mr. Smallwood asked to clarify the reason why monitoring well testing was ceased after 1993. he said from 1991 to 1993 he was doing the monitoring and providing the results to the Inland Wetlands Commission and that they said after three years he could discontinue the monitoring. He said the discontinuing of the practice was not something he chose at random to do. Ms. Beebe-Kostrun asked what they were testing for back then. Mr. Smallwood said the State required testing for perchlorates and nitrates on the monitoring wells, Chapin Brook, and the pond.

Susan Macname of 192 Mile Hill Road expressed danger concerns about trucks trying to pass on narrow roads and taking a difficult curve on Timber Trail. She said if the PZC has mandates and restrictions on the property and the quarry was following them, they would not be having the complaints they are having. She compared the quarrying operation to the Rockville Fish and Game Club, which she said gets few complaints. Ms. Macname said the quarry is not being a good

neighbor, and Ms. Beebe-Kostrun asked her to identify in which way. Mr. Cardin said the most recent blasting was at 50 percent of the State's allowable limits, so they were following the rules but it still posed a problem for neighbors. Ms. Macname said that perhaps for this area, the State limits are too high. Ms. Beebe-Kostrun said they do not have the legal authority to contravene a State statute. She said they cannot arbitrarily come up with a different number for blasting limitations that the quarry must adhere to.

Kevin Havard of 23 Mountain Spring Road, said he doesn't know if his well problems were as a result of the blasting from the quarry. For this reason, he would like to be included on the list of property owners whose wells are tested before and after a blast. He said he had Banner Water take a sample of his water, and his water has been very good the last eight months. He had no problems from the latest blast and said he understands that there are many variables that play into the impacts of a blast. He recommended sampling several of the wells in the area, pre- and post-blast.

Bob Macname of 192 Mile Hill Road questioned the legal opinion that the quarry is a construction site. He said construction has a reasonable end time, but the quarry does not. He said he would want the start time of 8:00a.m to remain unchanged as a protection to residences. He referened 170-79E2 of the zoning regulations that identifies excavation within a bonafide construction site, which would not require a special permit. Ms. Farmer explained that stand alone excavation such as is done at the quarry requires a special permit

Mr. Macname also asked why a bond was not taken in the special permit during all these years. Ms. Beebe-Kostrun said a performance bond is intended to cover final reclamation costs, and they have had a lengthy discussion on this back in 2006 or 2007. She said their difficulty is in knowing what the final condition will look like 20 or more years out when quarrying operations cease. She also said they would not know who would hold that money all those years. She said a concept for reclamation for this type of site is not an established standard and what constitutes reclamation is an ongoing discussion. Ms. Farmer did note that they have an insurance policy on the quarry, but bonds have to be held for a finite period of time.

Mr. Smallwood said that when Condition 14 regarding the performance bond was put into place originally, the discussion centered around the quarry accomplishing specific tasks. They would then come up with specific costs for each task and establish a bond, with the bond being lowered each time a task was completed. However, by the time they got to the point of further discussion, the task list had been completed. The idea of reclamation only came into discussion in recent years. Mr. Smallwood said if he did walk away from the quarrying operation, the mortgage holder would assume reclamation responsibilities.

Art Jensen of 286 Old Post Road said he built his house five years ago putting in a 500' well that pumped six gallons a minute. He said he was changing the 5 micron filter every six to eight weeks, but about 2 or 2-1/2 years ago his pump fried, and he was told the transmission got clogged. He had a new pump installed with a recommended sand filter and found the water had significantly less silt. However, after the latest blast his three-day old filter was black from silt. He said he does not want to spend another \$2,000 on another pump and feels there is a correlation between the blasts and what happened to his water.

Jay McConville said they have to expect that the provisions of the conditions are followed, including rules about dust, and appropriate fencing. He said the noise from ATVs are a quality of life issue. He also said he has lost his well twice in 27 years, but asked how he could prove it was as a result of the quarrying operation.

Harriet Zahner of 134 Mountain Spring Road said she lives across from the quarry and has been affected by noise, dust, and truck traffic. She said her well to date has not been affected, but they are going to have it checked for manganese levels. Ms. Zahner said she feels it is important for Commissioners to visit the quarry when the rock crusher is in operation to get a full understanding of

what neighbors are living with. She also said she favors not doing away with the “no left turn” provision as the State roads can better handle the truck traffic. She said she is aware that they are gearing up at the quarry for a big operation, and she reviewed the dangers of trucks with loads trying to navigate various town roads.

Ms. Zahner also said she feels the quarry location should not be noted on homeowners’ deeds. She said the quarry has moved from a small quarrying operation to much more processing of materials over the years that escalated quickly, and the blasting is hazardous to homeowners. She encouraged the PZC to go slow before removing or changing any conditions. She also said sweeping and clearing of dirt, gravel, and dust is not being done, which she feels should not be hard to enforce. She said she and her husband kept a log book starting in 2005 a year after the town sewer project, but they learned that because the town is exempt from zoning, the quarry did not have to adhere to zoning laws. She also said the noise ordinance appears to be useless when it comes to the noise that they hear from the ATV users in the quarry. She suggested the gate at the quarry be brought out further near the road on Mountain Spring Road, and she does not understand how the town attorney could determine that the quarry is a construction site. She does not want the quarry to be able to operate before 8:00a.m. she added that there does not appear to be an oversight on the quarry owner’s part regarding this issue as he is usually not there, but at his East Hartford location.

Walter Dovan of 113 Mountain Spring Road, said three to four years ago when Baltazar Construction was working out of the quarry, there were situations where trucks and school buses had difficulty passing. He said some time ago a Kelly Fradet truck was forced off the road. He also expressed discontent that he had to call in a local contractor when he lost water. Hydrofracting had to be done and he had to replace his water tank and hot water heater and he has to change filters too frequently. He feels this is a result of blasting.

Carl Rosso of 8 Hillcrest said he saw nothing about the frequency of blasting that is allowed. Ms. Farmer said there is no limitation, but blasting has generally occurred once or twice a year. Mr. Rosso said he heard a lot of comments about wells and foundations, but nothing about the impacts blasting has on people. He warned the Commission that they may in the future have to deal with someone who claims physical and/or mental problems as a result of blasting.

Mr. Smallwood asked Ms. Farmer if besides the concerns raised in the last two weeks if she has gotten other complaints on dust, noise, or various issues. Ms. Farmer said she had not. Mr. Smallwood said he was concerned that Ms. Zahner was describing the operation as out of control, but that if there were constant problems, people would not wait for a public hearing to complain. He said she was combining the one blast he’s had in the past two years with the town sewer project from 2004.

Mr. Yntema said he feels it is important to get a legal opinion if the PZC can make blast strengths more restrictive than the State regulations. He said there are two types of quarrying going on at the property—one for decorative stone and the other for gravel and riprap production. It is the latter, he said, that is the problem. He said the town attorney provided no authority for determining how a quarry constitutes a construction operation. He added that the town can add their own restrictions on noise levels. He also suggested that the town could do short term bonds on the one-year permit to cover emergency situations. Mr. Yntema said Constance Chambers’ new well does not have manganese but the shallow well exists in a fragile situation where a bigger blast could damage it. Therefore, he said, they worry about the bigger blasts.

Lucette Packman said something needs to be done about the size of the blasts to reduce them. She asked how many blasts have been done since 2004 or 2005. Ms. Farmer said the Fire Marshal should have that information. Ms. Farmer said an explosives expert in the State Fire Marshal’s office did review the blasts in the past. Ms. Packman said she feels the ruling by the courts was egregious.

Constance Chambers said she wanted to clarify that the water tests done in 1993 and prior did not test for manganese and perchlorates. She provided a fact sheet on manganese and iron put out by the Health Department.

Mr. Cardin said going forward he would like to see the minutes on the discussion of the performance bonds in 1991. Mr. Barrow said he would like to see the groundwater and surface water sampling data from 1991 to 1993.

Mr. Smallwood clarified that if the town had said he had to continue doing the water testing or he would be in violation of his approval, he would have continued to do so. He wanted people to understand he did not coerce anyone into taking away that requirement.

Marilee Beebe-Kostrun/Jack Scavone motion to continue the public hearing to June 14, 2010. Motion was unanimously approved.

4. Action on Public Hearing

- 4.1 **P&Z App. #441B – Tolland Planning & Zoning Commission** – (Burgundy Hills Associates) – Review conditions attached to February 25, 1991 Special permit for possible modifications. Location: Midwood Quarry – Mt. Spring and Old Post roads. Commission to take action on May 10, 2010 and May 24, 2010 Public Hearing items. This item was not acted on as the hearing was continued.

5. Other Agenda Items

- 5.1 **P&Z App. #441A – Burgundy Hill Quarry** – Request to approve a one year extension of the excavation permit that was originally issued on February 25, 1991. Location: Midwood Quarry, Mt. Spring & Old Post roads. This items was tabled as Ms. Farmer just received the map and has not had time to review it.

- 5.2 Discuss Sign Regulations & Enforcement. The Commission reviewed the list of issues that Mr. Barrow and Ms. Farmer put together regarding signage. Ms. Farmer also included in packets a copy of current signage regulations. There was discussion about whether they should consider creating signage requirements specific to the three Neighborhood Commercial Zones and if they can even discuss this without having yet established what they want to see in those zones. Ms. Beebe-Kostrun suggested having a broad view discussion. She also asked if they should consider engaging a consultant or borrowing regulations from other towns. Ms. Farmer said it might be helpful to get input from Planimetrics. The Commission discussed each member making up a list of questions that could be ranked on importance and that asks people to identify themselves as residents, resident business owners and non-resident business owners. Members can email their lists to Ms. Farmer to disseminate to other members. They also will review information they had previously from sign expert, Lawren Rosen and will get information from a sign expert on Torrey Road. They will discuss this further at the June 28 meeting.

Kris Field of South River Road said she is developing a website called “Shop Tolland” and said she would be willing to provide a report or feedback on her findings. Ms. Farmer said she would appreciate it if Ms. Field could email the business owner email list for her database.

- 5.3 **Open Space** – Requests for designation as Public Act 490 Open Space. Commission to set Public Hearing date for June 14, 2010. Jack Scavone/Marilee Beebe-Kostrun motion to set a Public Hearing date for June 14, 2010. Motion was unanimously approved.

6. **Approval of Minutes** – approve minutes of May 10, 2010 Regular Meeting. Sue Errickson/Jack Scavone motion to approve the minutes of the May 10, 2010 meeting. Motion was unanimously approved.

7. Activities & Updates

7.1 Tolland Village Area – update on Planimetrics activities. Ms. Farmer referred to the two maps in Commissioners’ packets. There will be a meeting with Heidi Samokar and Glenn Chalder at 7:30 on June 7 in Council Chambers. Ms. Farmer said Planimetrics has recommended Commissioners walk the property beforehand.

8. Town Staff Comments

8.1 Page Property, 431 Gehring Road – Update. The Commission reviewed the photos in their packets that show progress is being made in the cleanup of the property.

8.2 Ms. Farmer said she was contacted by a local business owner asking if outside ice machines on the sidewalk against the business are permitted. The Commission agreed that sidewalks should be left open and accessible.

9. Announcements – Upcoming Meetings

9.1 June 7, 2010 – Special Meeting/Workshop with Planimetrics – Tolland Village Area

9.2 June 15, 2010 at 7:00p.m. in the Council Chambers. Workshop with WPCA, Town Council and PZC regarding revisions to the Phase II Sewer Facilities Plan. Ms. Farmer reviewed that this will include a presentation on the WPCA’s recommendations in the Phase II portion of the Plan for constructed solutions and a phased in pump ordinance.

10. **Reading of Correspondence** – Ms. Farmer directed the Commission’s attention to a letter written by a resident requesting permission to open a doggy day care facility on a 2-acre lot. It was noted that current regulations require that such an activity would need to be on at least five acres. Dog-grooming businesses were approved for smaller lots of 2 acres, but this is because the activities would be conducted inside and there would be no outside penning of animals.

11. **Communications and Petitions from Commission Members** – Mr. Scavone said he is interested in taking the Community Builders Institute Crash Course I, Fundamentals of Economic Development and Planning, and asked Ms. Farmer to sign him up for this.

12. **Public Participation** – None

13. **Adjournment:** Dave Barrow/Jack Scavone motion to adjourn the meeting and pay the clerk at 11:00p.m. Motion was unanimously approved.

Respectfully submitted,

Annie Gentile
Clerk