

A workshop was held by the Town Board of the Town of Moreau on May 25, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a revised draft of a proposed Sand, Gravel and Mining Law for the Town of Moreau.

Supervisor Jenkins opened the workshop at 6:25 p.m.

Town Board Members Present

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| Tom Cumm | Councilman |
| Bob Prendergast | Councilman |
| Gina LeClair | Councilwoman |
| Todd Kusnierz | Councilman |
| Preston Jenkins | Supervisor |

Town Board Members Absent

None

Also Present: Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector/Code Enforcement Officer; Paul Joseph, Highway Superintendent; Jesse Fish, Water Superintendent (arrived at 6:45 p.m.); Steve Gram, Recreation Director (arrived at 6:50 p.m.); Michael Fogel, Attorney from the Gilberti Law Firm, representing Cranesville Aggregate; Harry G. Guthel, Jr., Village Resident; Patricia Frederick (property owner in the Town), and the following Town Residents: Richard & Patricia Hughes, Reed Antis (arrived at 6:40 p.m.); Vince Sporrer (arrived at 6:45 p.m.)

Attorney Auffredou began the workshop by explaining that the draft mining law has undergone significant revisions since the Public Hearing. He has worked with Joe Patricke on the revisions and the revisions came from their discussions and not from any direction on the part of the Town Board.

Attorney Auffredou advised that he read the minutes and correspondence from the Public Hearing and heard some of the Board's concerns and as a result this draft came about and it is heading in a whole new direction.

The new draft law would allow **legally** existing mining operations to continue in M1, M1A and M2 zones only and allows new mining operations in M1, M1A and M2 zones only. Furthermore, existing mining operations would have to apply for a special use permit from the Zoning Board of Appeals and the Town Board and Town Clerk would be completely out of the review process. The reason for this change was that he and Joe Patricke thought given the limited authority a Town has over the review process anyway there was no sense to a double layer of review. The term "legally" as used above means any mining operation that has a permit from the Town under the predecessor chapter and a DEC mining permit. A "legally" existing mining operation would upon the effective date of adoption of this proposed law have 60 days to apply for a special use permit through the Zoning Board of Appeals. The special use permit when issued would run concurrent with the NYS DEC permit. New mining operations would also have to apply for a special use permit through the Zoning Board of Appeals and could only apply for a special use permit to operate in the M1, M1A and M2 zones in the Town of Moreau and would have to maintain a NYS DEC mining permit. The term of a special use permit issued to new mining operations would also run concurrent with the NYS DEC permit. The standard of review is the same; ingress and egress to public thoroughfares, setbacks from property lines, dust control, ground or transport vehicles on roads controlled by the Town and hours of operation. There won't be any annual inspections once they get a special use permit from the Town. It will run concurrently with the NYS DEC permit.

Attorney Auffredou advised that we have the authority to limit mining operations in certain zones and we have the authority to prohibit mining operations if we want to and there is case law directly on point. However, it is his sense that the Town Board wanted to head in the direction of this draft law.

Councilman Kusnierz asked how long the moratorium on new mining operations has been going on and Attorney Auffredou replied that it has been a few years, but has expired.

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Councilman Cumm said he read through the paperwork on this that was requested by Councilman Kusnierz and provided to the Board and he read where the moratorium and extensions went on for quite some time between 2003 through 2008.

Councilman Prendergast stated that as the result of the last meeting on this subject the Board was headed in the direction of not allowing new mining operations anyplace in the Town, but existing mining operations would be allowed to expand.

Joe Patricke replied that Councilman Prendergast's assessment was correct.

Attorney Auffredou reiterated that this was not a policy from the Town Board nor was this draft law created from the direction of the Town Board. Rather, this is a draft that he and Joe came up with in the interim.

Councilman Kusnierz reminded the Board that the whole genesis of why the moratorium came to be and then expired and why they were working on draft legislation to regulate mining in our Town was because we do have residences in this area of the Town and the Board is well aware of the conflict between residential neighborhoods and active mining operations in the Town. He understands that the Town has limited authority to regulate mining operations, but that doesn't mean it won't change. There has been legislation introduced in the assembly, this year, that has been gaining traction that would allow municipalities to regulate mining operations and if we were to adopt this legislation as it is currently drafted we would essentially be allowing that power to be usurped, if we forwarded it to the Planning Board or whoever. It is important for the Town Board to maintain the ability to review these types of operations and he is adamantly opposed to allowing new mining operations in these zones. The whole genesis of this was to not allow new mining operations in our community. He understands that existing mines do provide a service to our surrounding community and that is why in previous drafts we allowed those operations to exist and by local resolution allowed for a onetime 50% expansion, which allows them to get a return on their investment. We have to be careful to balance the needs of the people who live down there and who expect the Board to regulate these operations. He won't be able to support the draft law as it is currently written. Especially, with the provision that allows new mining operations.

Supervisor Jenkins said he wasn't sure why they would be looking at new mining. There isn't a lot of land available in the M1, M1A and M2 zones to allow it and by the same token if that is the case why even have it in there. The Board all along has had a tough time with allowing mining operations to expand, but the courts and state have sided with them, but what we can do is not allow any new ones. The Board all along has been adamant that they didn't want to allow new mining operations.

Attorney Auffredou stated that it appears to be the consensus of the Board to not allow new mining operations in the Town, but he asked the Board if there was a consensus to Councilman Kusnierz's point of the Town Board retaining some review authority.

Councilman Cumm said he agreed with Councilman Kusnierz on this one.

Councilman Kusnierz said it was important that as elected officials they have the accountability to this type of operation and future Boards will always have the authority, as necessitated, to change the law. If an operation needs to expand and it betters the community the law could always be changed. There is an opportunity when the situation presents itself down the road to accommodate these operations that currently exist in our Town.

Supervisor Jenkins agreed with Councilman Kusnierz on this issue. He stated that as elected officials they are supposed to represent the people and to turn it over to people who are appointed isn't right and it doesn't take much time to stay involved in this process.

Councilwoman LeClair and Councilman Prendergast agreed.

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Joe Patricke stated that the time for the Board to do their review was during DEC's SEQRA process. The Town Board gets notified of their SEQRA process. Once the permit is issued by DEC the Town doesn't have any control over it. He asked if there should be something added to the draft law that addresses SEQRA, because that is the last chance.

Attorney Auffredou replied that the Town wouldn't be lead agency in SEQRA and would only be commenting to DEC. He wasn't sure that the trigger was the SEQRA review. There may be another mechanism for the Town Board to retain some review authority. What he is hearing is that the Town Board doesn't want to turn it over to the Zoning Board of Appeals and they want to be the permitting authority. The question of when would have to be looked at.

Councilman Prendergast asked if these were the only changes in the draft law.

Joe Patricke stated that they removed the provision for a bond and insurance.

Councilman Prendergast asked why they put the provision allowing new mining back in the draft law. He asked what their idea or reasoning was behind it. He said they should have known what the Board's direction was.

Attorney Auffredou replied that as often happens he and Joe Patricke discuss things and in this case they talked about the M1, M1A and M2 zones and as the discussion evolved it worked into this draft law. He couldn't pinpoint one particular idea or reason, the discussions just evolved into this draft.

Supervisor Jenkins recommended a new draft law be prepared without some of this language for the Board to review. He stated that the entire Board was in agreement that they didn't want new mining operations in the Town. There isn't much land in the M1, M1A and M2 zones and it should be preserved.

Councilman Kusnierz added that if we didn't have mixed use, residential and mining, then it would be a different scenario, but that is what we have to be sensitive about.

Supervisor Jenkins thanked everyone for attending the workshop.

This concluded the workshop at 6:55 p.m.

Respectfully submitted,

Jeanne Fleury
Town Clerk