

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
October 20, 2016**

The minutes, as follows, are intended to provide a general summary of the Agenda items and Public Hearings. Quotes presented are not verbatim, nor is all discussion which occurred presented herein. This document should not be relied upon as a transcript or the actual proceedings. The transcript of this meeting is on a digital voice recorder and available at the Town Hall.

**CALL TO ORDER:** Chairwoman Judy Breselor called meeting to order at 7:00 PM.

**MEMBERS PRESENT:** Chairwoman Judy Breselor  
Geraldine Burger  
Scott Bendett  
Jeb Bond  
Melissa Toni  
Lawrence Howard, Esq.

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Bill Glasser, Lynne Palmer, Dick Lenseth, Dawn Hunt, Taylor Lamb, Scott Blair, William Hoffay, Michael TenEyck, Susan TenEyck, Tom Hatcher, Julia Therm, Buster Hunt, Ed Davidson, Adam Schwartz, E. Foley, Katherine Bradley and Monica Ryan

**RECORDING CLERK:** Karol O’Sullivan, Clerk for the Planning Board and Zoning Board of Appeals

**Area Variance Application And Public Hearing**

Lynne Palmer  
113 2<sup>nd</sup> Dyke Road  
Averill Park, NY 12018  
RR-2 Residential/ Recreation Zoning District

**Tax Map #169.2-2-19**

Lot Size: Original Lot = 26,028 sq ft  
Proposed Lot 1 = 14,574 sq ft  
Proposed Lot 2 = 11,454 sq ft

An Area Variance Application to subdivide a property into two lots deficient in minimum lot size and side yard setback.

Bill Glasser (BG), Surveying Consultant, presented before the ZBA on behalf of Lynne Palmer. BG stated they are subdividing the current piece of property which has two houses on it. The current lot is undersized and they would be creating two new undersized lots. Variances are needed for the side yards as the property line goes between two sheds. Lot 2 would be kept by Lynne Palmer and Lot 1 would be her son’s. The ZBA reviewed the survey map. Judith Breselor (JB) asked about the well on the property. BG stated there is currently one well on the property and a second well will be drilled by Lot 1 within two years according to a written agreement between Lynne Palmer and the son. Melissa Toni (MT) asked where the current well was located on the map and asked if there was enough room with setbacks for a new well to be drilled. BG said there was plenty of room.

JB asked the ZBA if there were any other questions. She then explained what an area variance was and the criteria to be balanced when granting a decision. JB answered the questions for each criterion as she read them as follows:

- Can the benefit be achieved by another means? – Obviously, not
- Does it create an undesirable change in neighborhood character? – No, based on her visual site visit of property.
- Is request substantial? - Yes
- Is there an adverse effect? - No because there are already two houses already there with sewer hookup.
- Is the alleged difficulty self-created? - Yes, but it is a balancing act when weighing all of the criteria.

MT asked about the lot line on the survey map that goes through a concrete patio. BG explained that the line is on an old subdivision map when the lots were subdivided in the 1920s/1930s.

JB opened the Public Hearing at 7:05 PM and with no questions/comments from the public, she closed the Public Hearing at 7:06 PM. JB then motioned to approve the SEQR. Geraldine Burger (GB) stated a Type 2 SEQR and all agreed. JB confirmed that the area variance would have no impact on the environment. JB motioned to approve the Application for the Area Variance, Scott Bendett (SB) seconded the motion and all approved.

#### **Special Exception Applications**

(Applicant) Rifenburg Construction Inc.  
159 Brick Church Road  
Troy, NY 12180

(Property Owner) Elizabeth Foley  
128 Springer Road  
West Sand Lake, NY 12196  
A-1 Zoning District

**Tax Map #147.-3-25**

Lot Size: 30 acres

(Property Owner) Melua and Harry Olsen  
159 Springer Road  
West Sand Lake, NY 12196  
A-1 Zoning District

**Tax Map #147.-3-26**

Lot Size: 60 acres

Special Exception Applications seeking a special exception for commercial excavation in an A-1 Zoning District.

JB stated that Rifenburg has been before the ZBA the prior month. She stated they would open the meeting to the public, but first the ZBA had some questions regarding the Special Exception Application and the letter from DEC. She asked the ZBA if they had reviewed the letter from the DEC and they confirmed they had. Ed Davidson (ED) from Spectra Environmental presented before the ZBA.

SB stated there are common complaints of dust issues at the mine and asked how to mitigate dust coming from the mine. ED explained there is a water truck on site that sprays water on the site on an as-needed basis throughout the day. When it is wet out, there is no spraying; when dry the truck goes out and sprays the roadways/stockpiles/faces that appear to be at issue. SB asked if there is any way to use a metric rather than an as-needed basis. ED stated not really, that as-needed is the standard used.

SB asked if they could add increased vegetation and ED stated there was quite a lot there already...particularly in the expanded area of the Foley property. JB asked what the vegetation was and ED stated mostly trees.

Melissa Toni (MT) asked how wide the buffer was between the life of mine line and property lines. ED stated to the east and southern edge of the Foley property it was 25' and was mostly trees and stated that was the DEC setback requirement. He stated there is woodland on all adjacent properties. MT advised ED that Town zoning calls for 50' and ED said OK.

JB stated the DEC letter says no through road to the Hunt Mine. She asked what roads were to be used for hauling and whether there was any planned expansion of roads. ED explained there are no changes to operations or access as part of their proposal. He referenced a prior iteration of their plan that did reference a haul road through the Hunt Mine, but that was eliminated from the plan. JB asked about the number of trucks being used. ED stated the number of trucks would be in accordance with the DEC permit and truck traffic is based on market demand. He confirmed the current haul road of Rt. 150 would continue.

JB asked if there was processing being done at the mine and ED confirmed yes. JB asked if there was planned processing expansion and ED confirmed no, stating no part of the application will change their processing. MT asked how many crushers were on site and after ED conferred with his mine manager, he stated two crushers which would not be an increase. MT confirmed no more than two crushers.

MT asked about the five-acre set aside on the Foley property and asked if they were doing a deed restriction to protect them. ED stated that was their residential property and was not included in the lease agreement or mining permit.

Jeb Bond stated he was sure ED was aware that there is no public water in the area and ground water was very important. He asked ED if there was any way they can almost guarantee no contamination to the ground water. ED confirmed sure, that all mining currently and in the proposed application is to be conducted above the water table at a separation of 5' above water table. He said the water table has been approved based on studies to date, but as mining progresses; Rifenburg has a program that tests the adequate vertical depth to measure the water table. He said there is no intent to disturb or alter the water table in any way. SB confirmed there would be no blasting and ED agreed.

MT referenced a "test pit program," asking ED if that test had been submitted to DEC. ED explained the program is essentially "ad hoc." He said as they move in a particular direction, they check the water before they move into the area and as they continue excavation, they dig until they find water. MT verified that there is nothing called a "test pit program" that will have a reference with a condition in the mining plan and ED confirmed there wouldn't be such reference.

JB read from the DEC letter and asked ED to tell the ZBA about their Reclamation Plan. It said that "open space" is not a reclamation objective. The 1988 reclamation objective was agriculture. In 2005 approved reclamation objective remained unchanged, but the description indicated meadow reclamation. JB asked ED what type of work has been done on reclamation. She asked if there was agriculture there now. ED said it is terminology; it's essentially the same thing. The reclamation objective has not changed; it's open meadow. Additionally, there have been 12 acres reclaimed to date that are agriculture, open meadow and approved. Reclamation has been going on in different areas of the site.

GB and JB asked ED to make a presentation to the public. ED showed maps to the public identifying the mine off Rt. 150 which mines aggregate for construction projects. He explained the mine currently operates on 80 acres and showed the 22-acre expansion area, which he pointed out as the dark blue area in the middle of the map. He explained that this is an agriculturally zoned area which would be applicable to receiving a Special Exception in the Town's zoning. ED said their Application is still pending with DEC, with back and forth communication and assured that the Application would be finalized to satisfy concerns regarding dust/ground water/etc.

SB asked ED to explain the Application. He stated the Application is for an expansion of size, but there will be no increase in traffic. It is an expansion of site material, but no change in traffic, operation, processing, and noise. They are just increasing inventory on the site.

GB told ED that he initially said that 80 acres were being mined. Ed explained that the total mine site was 121 acres and the current effected area was explained as an area that is currently under mining operation; i.e. excavation, processing, storm water control, haul roads and stock piles. Mining has ceased in some areas with additional topsoil and vegetation restored and several areas of the site remain to be used in the future. GB asked how many of the 121 acres have been reclaimed and ED said 12 acres have been approved as reclaimed.

Jeb Bond referenced Page 5 of the Rifenburg response to DEC comments letter and asked for a definition of "receptors." Is that residents? ED explained in general it means any area that could be negatively impacted, which could mean schools/playgrounds/etc., but in this case, it is residents.

GB restated that 12 acres have been approved as reclaimed and asked if the 121 acres includes the 12 reclaimed and was told yes. In total 118 acres, could be mined and then they are requesting the expansion of the additional 22 acres.

JB asked if they are hop scotching the property and stated they are requesting to add the 22-acre expansion when they have not used what they already have. ED said yes and the reason is for operational flexibility. Geological material is inconsistent in quality and when materials are needed for construction, a blend of materials may be needed. A portion of the site is needed for processing equipment, storm water control devices and areas undergoing reclamation activities. GB asked if the processing equipment was portable. The processing plant is not portable and sits in the center of the site, but excavators and trucks can move around. MT asked how much land is allowed to be disturbed at one time. ED said he was not aware of a limit, but to increase the current effected area must be signed off by DEC and bonded.

JB addressed hours of operation stating it is Monday-Friday, 7:30 to 5. She addressed emergency hours and mining at night in the event DOT claims an emergency, such as a bridge going out due to a storm. ED stated it could happen and such work would mostly happen during the day with trucks moving the inventory at night. To his knowledge, that has not been a huge portion of current activity. GB referenced a letter from Nancy Baker at DEC regarding Rifenburg contracts with DEC and the fact that DEC is relying on the Rifenburg mine. ED confirmed that Rifenburg has contracts with DEC, and his read on Nancy Baker's comments was it is a known fact that some night time work needs to be done and therefore DEC would need to be notified of that. MT said that ED stated night time work is generally trucks moving and asked if that is all that is allowed at night. ED said no that in an emergency, excavation certainly could be done at night so that trucks are not sitting all night waiting to be filled at

9:00 AM. JB asked how often that has occurred. Bill Hoffay introduced himself to address the ZBA "kicking around emergency operations." He stated in the last 30 years it has happened two times and only on a Saturday. In both cases the DEC and the Town had to be notified to get permission and in both cases it was trucking only.

JB opened the Public Hearing at 7:29 PM. Mike TenEyck from 225 Springer Road addressed the ZBA. He said he would speak loudly enough for the room to hear him and suggested there be some microphone equipment used by the ZBA so the audience could hear the discussions. He stated he has some concerns but hasn't weighed the pro/cons yet. He said that he believes in free enterprise and making a living and felt that West Sand Lake was built on mining. He said he sat before the same ZBA three years ago, when Ed Patanian requested a six-lot subdivision on Springer Road be cleared. This area is across the street from his property and nothing has been done with that land since it was cleared. JB asked Mr. TenEyck if his concern was about reclamation of the property on the agenda because that was the subject being addressed at the Public Hearing. He said he owns 17 acres of swamp land on Springer Road and he was proud of his swamp land. He has a pond on the property legally stocked through DEC. JB asked Mr. TenEyck to refine his concerns. He said he has no problem with the existing mining but wondered what that mining would do to his property. He said he had heard earlier in the discussions about a 25' or 50' barrier between neighboring properties and the mine. He said he thought it was 100' for wetlands. ED stated there were no existing wetlands in the mining site and they would adhere to the 50' setback suggested by the ZBA. ED also restated that 12 acres have already been reclaimed in accordance with DEC. Mr. TenEyck asked if DEC would be reaching out to him about this subject and the ZBA advised they did not think so. Mr. TenEyck reviewed the site maps with ED and said he was satisfied with what he saw.

Katherine Bradley spoke before the ZBA. She explained that she owns property adjacent to the land being discussed. She said she was the developer of Bradley Park across the way and was speaking on behalf of the residents in Bradley Park as well as other neighbors. She said she has been in Town since 1948 and remembers all of the mines who have been viable businesses over the years. She explained that Springer Road was built from product donated by Don and Kate Bradley and parts of their land were also donated to take out some of the dangerous turns in the road. She said she has been in real estate since she was 23 years old which is a long time. She recognized that gravel and sand is an important commodity in Town. She stated her concern was about an increase in traffic for the Town. She stated she remembered some 30 years ago, when Will Hoffay and his mom came before the Board for a Special Exception to reclaim some farm land. She said she was the only Board member to vote no at that time and remembers the increase in activity of crushers and graders and traffic and now the requests are still going on. She said she heard that the traffic would be impacting Rt. 150 and she probably shouldn't be concerned, but was concerned because it is a part of her Town. She wanted a guarantee that Springer Road would not see additional activity and she wanted it in writing that Springer Road would not be used. She was assured by ED and the ZBA that it would be stated in the mining permit. Mrs. Bradley stated that her business always protected the neighbors when mining top soil, etc., working backward so as not to disturb them. ED stated their mining was designed for minimal impact. Mrs. Bradley asked about number of crushers (2), number of graders (1) and hours of operation (7:30 to 5). Lastly, she stated she also had wetlands owned in Bradley Park property and pointed out that the Olsen property had wetlands that should be protected by required buffer. ED assured her the wetlands would be protected. JB confirmed with Mrs. Bradley that her concern to be shared back to DEC was to keep truck traffic off Springer Road and that was confirmed by Mrs. Bradley.

With no other comments from the Public Hearing, JB explained that the ZBA would be waiting for the Planning Board's (PB) recommendation from their review of the Application and that the Public Hearing would be left open for another month until that PB recommendation was completed. That would give anyone who could not attend the October Public Hearing with another opportunity for public comment in November.

JB asked for any further ZBA questions and MT asked ED if he could characterize the visual impact of the mine to surrounding properties. ED offered that the site is screened from all sides with the typography of the land and existing vegetation. He said it was tough to tell if there was anything back there. He said the Foley property is somewhat on a hill with a five-acre buffer into the mine. He said as part of the DEC submission, a line of sight profile was included.

JB asked ED for a site visit of the mine and stated she understood the PB wanted the site visit as well. JB asked Karol O'Sullivan to coordinate the visit with ED and stated the Boards would like a visual site visit and would not be entertaining anything other than what pertains to the Applications.

## **MINUTES**

JB asked if the ZBA had a chance to review the September 22, 2016 minutes. SB motioned to accept the minutes, MT seconded the motion and all approved.

## **ADDITIONAL DISCUSSION**

MT made a request to other members of the ZBA that they make additional requests to Rifenburg regarding the mine. She said it could be handled in several ways; either directly to Rifenburg from the ZBA, submit through DEC or if ZBA was not in favor, do no additional requests. MT outlined her thoughts:

- Dust management plan – not on an “as needed basis,” but a plan that has metrics.
- The permit should specifically require prior approval for after-hours work. MR stated that the Town already does need to be notified of emergency hours. It was agreed that this prior approval process should be clarified with DEC.
- Require a water depth monitoring program that is not “ad hoc.”

The ZBA, LH and MR discussed further how the additional request should be handled and it was decided that MT would draft her suggested requirements, circulate them to all and then MR would forward the agreed-upon request to DEC.

## **ADJOURNMENT**

Jeb Bond motioned to adjourn the meeting at 7:50 PM, GB seconded the motion and all approved.