

A public hearing was held by the Town Board of the Town of Moreau on April 13, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of considering the adoption of Local Law No. 2 of 2010, which if adopted would repeal and replace Chapter 113 of the Moreau Town code to prohibit the mining of sand, gravel or other natural material deposits in the Town of Moreau with the exception of existing operations.

Supervisor Jenkins opened the public hearing at 6:45 p.m. and welcomed everyone to the public hearing and briefly explained the purpose of the public hearing.

Town Board Members Present

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; Paul Joseph, Highway Superintendent; Joe Patricke, Building Inspector/Code Enforcement Officer; Steve Gram, Recreation Director; Nancy Ryan, Transfer Station Clerk; John Svare, Attorney from Bartlett, Pontiff, Stewart & Rhodes and legal counsel for the Town of Moreau; Michael O'Connor from the Law Firm of Little and O'Connor representing Lehigh Northeast Cement Company; Kevin Brown, Attorney representing Cranesville Aggregate; Stephanie Gootz, Senior Account Executive representing Broadview Networks; John Otoupal representing South Glens Falls Youth Baseball; John Davidson from Queensbury, New York; Village of South Glens Falls Residents: Gerald Fitzgerald and Harry G. Gutheil, Jr.; Town of Moreau Residents: Richard Hughes, Carol Bromley, Gordon Hadsell, Huguette Delvaux

The following Notice of Public Hearing appeared in the legal ad section of the Glens Falls Post Star Newspaper on April 2, 2010:

NOTICE IS HEREBY GIVEN pursuant to Section 20 of the Municipal Home Rule Law and Section 264 of the town Law of the State of New York, that a public hearing will be held by the Town Board of the Town of Moreau on Tuesday, April 13, 2010 at 6:45 p.m. at the Town Hall, located at 61 Hudson Street, South Glens Falls, New York for the purpose of considering the adoption of Local Law No. 2 of 2010. If adopted, Local Law No. 2 of 2010 would repeal and replace Chapter 113 of the Moreau Town Code to prohibit the mining of sand, gravel or other natural material deposits in the Town of Moreau with the exception of existing operations. Any mining operation legally in existence at the time of the enactment of the proposed local law may be continued but may not be expanded, extended or enlarged beyond the parameters of the mining operations allowed by the permit for existing operations and the New York State Department of Environmental Conservation mining permit for the facility. The proposed local law provides a mechanism for the owners and/or operators of existing mining operations to obtain a permit from the Town for a fee and further provides for penalties upon any violation. Written comments on Local law No. 2 of 2010 may be submitted to the TownClerk. A copy of proposed Local Law No. 2 of 2010 can be obtained at the Moreau Town Hall

Jeanne M. Fleury, Town Clerk

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Supervisor Jenkins began by stating that the Town Board spent about 1 ½ years on this proposed law and he didn't have any problems with the way it was drafted. He asked the Board Members if they had any comments. There were none. He then opened up the public hearing to public comment.

Kevin Brown an attorney representing Cranesville Aggregate stated he and his client have concerns with the proposed law. He stated that elements are superseded by the state mining law and the "law itself recognizes that there may be some inconsistencies and it expressly states that where there are inconsistencies between the provisions of this chapter said law shall govern". So they reserve their rights to such inconsistencies and they understand that the mining law will govern. They are also concerned that it may be inconsistent with state law as to the vesting of rights to mine properties that they own at this time. State Law/ Common Law holds that a mine operator can mine to the extent of the lands he has acquired for the purposes of mining. Their mining permit covers their acreage. Mining is done in a phased manner so the current permit term doesn't always match up with the lands they own. They would be willing to work with the Board on this to come up with language to avoid any complications over this. Mineral resources are important and you want to maintain viable mineral reserves in the Town and access to those. The Town may want to consider down the road having more reserves for these operations that are in existence and if it is an area that is already mined and if reclamation is suitable perhaps additional acreage. He said again they reserve their rights on this and they would be willing to talk through the Town Attorney or to the Board.

Michael O'Connor an attorney with the Law Firm of Little and O'Connor representing Lehigh Northeast Cement Company spoke next.

Attorney O'Connor stated that it seems as though they have been doing this for a number of years probably since the Town Board first started a moratorium five or six years ago. He wanted to state for the record some facts.

Lehigh is a good corporate citizen and is an important citizen to the Town. The last time he checked they employed around 105-115 employees and the last time he did a survey about 1/3 of them lived in South Glens Falls or in adjoining communities in Warren, Washington and Saratoga Counties and they are decent paying jobs. They have been in business for over 100 years. He wasn't sure how long the quarry has been on this side of the river. They are one of the few landowners that actually have a private bridge that spans the Hudson River. For the year 2010 they paid about \$22,000.00 in Town & County Taxes and they paid \$90,800.00 in School Taxes so they do contribute in addition to simply offering employment. At one time he reviewed their vendor list and what they spend locally is amazing. A lot of the money that comes through their door is spent locally. "You are dealing with one of their critical elements here, their material source and the way you have done your ordinance does great harm to them."

Presently they have a DEC permit with a life of mine. There are three boundaries to a mine. One is the life of mine boundary, which is the area you are permitted by DEC to operate and you get a permit from DEC in five year increments. They include within the scope of the permit the total life of mine. In this case their life of mine permit is 276 acres. They have in that parcel 370 acres and that is their property boundary right now. In addition there are some pieces of land that would make sense for the cement company to acquire to level out some of the walls they have in the mine as the parcels become available and a willing seller. They did buy a parcel within the last five years along Sisson Road. It would make it

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much easier to mine and make more sense in the mining plan. These parcels are not within their bounds right now, but would make sense in the future. This is an asset that isn't going away. It is going to be here a lot longer than we are. This is an opportunity where we really talk about the future and the stability of the future of the Town and industry in the Town and there isn't a great deal of industry in the Town right now. It is probably the largest industry in the Town. The parcels he mentioned would be outside the existing boundary.

Attorney O'Connor stated that he said there is a problem with the language that is in Section 113-4 and he read same as follows: "You are not going to affect existing mines, but they may not be expanded, extended or enlarged beyond the limits or parameters of mining operations allowed by the permit for existing operations and the New York State Department of Environmental Conservation (NYSDEC) mining permit for the facility." Right now they are limited to 296 acres, but they have another 100 acres beyond that some of which cannot be mined, but some they can use. There is the potential for these other pieces that would fit the jigsaw puzzle. He thought the Board took a very broad approach to this and applied this new ordinance that is overkill and it doesn't recognize the State mining regulations and applied it to residential and industrial. In the past there was discussion about rezoning part of the property down there and the Board said they would rezone property to the east, but leave the cement company property as is. Mining in an M1 zone was never questioned so he doesn't understand why they applied this law to the M1 zone. He mentioned the 36 acres they purchased from Mr. Buckley that is outside all the boundaries. It is a potential resource and it is an asset to the town, region and State it can be made into cement. There isn't any other resource in the immediate area that has that same capability.

Attorney O'Connor stated that it is also contrary to the Town's land use plan. He read from the land use plan as follows: "Concerns centered on the continued path to moderate growth of residential sections without corresponding growth in the commercial section. The lack of well paying, unsustainable, employment opportunities."

He stated that eventually that is what you are talking about is employment opportunities provided by this company and yes they are way down the road and yes you can change your zoning ordinance down the road, but you would probably get into the argument of spot zoning. It is very difficult to take a parcel of land and bring it back into use for the benefit of one owner. If somebody wants to challenge it they would more than likely be successful.

Attorney O'Connor stated that one of the primary goals of the master plan was to "Enhance and revitalize the local economy. Maintain and promote an environment that is attractive to current and potential commercial, industrial and agricultural development". This ordinance is not an enhancement or attractive to industrial use on this particular property.

He stated there are all kinds of contradictions with the Town's master plan. He read one of the objectives as follows: "Take advantage of Moreau's geographic assets, unique land forms and natural resource characteristics." Stone is one of those unique land characteristics and unique resource.

He stated that if the Board went back through the master plan they would wonder why they are doing what they are doing.

Attorney O'Connor read from the master plan, one of the recommendations: "Survey the needs of existing local and regional industries and develop a strategy for meeting and identifying needs." One of the needs

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of Lehigh or its successor is limestone and you are taking about 150 acres away from them on their present site. There is no saying that sometime in the future they may even go beyond that. If you were here 30 years ago you would have seen houses where the mine is now that were slowly bought up on an individual, voluntary basis and the road was moved and the mining continued. He didn't necessarily predict that in his lifetime, but we need to be prepared for that.

He stated that the Town did a great injustice when it changed the M1 zone to allow residential use in the M1 zone. There are a couple of developments in that area that probably shouldn't have been allowed and have been problematic for a lot of different reasons. The Town wasted M1 zone property and wasted the opportunity for the Town to have a commercial and industrial base. This is another little bite out of the apple that has the same impact and he urged the Town Board not to adopt the law in its present form.

Attorney O'Connor handed out to the Board a copy of Lehigh Cement Company's comments on the draft Comprehensive Land Use Plan that the Board was working on in 2008 and he thought it was still applicable.

Councilman Prendergast reaffirmed the acreage that is currently permitted by asking if it was 276 acres and Attorney O'Connor replied this was correct.

Councilman Prendergast then asked if the total land owned by the cement company was an additional 100 acres and Attorney O'Connor replied 370 acres is the life of mine and actively they have open 296 acres. They own an additional 150 acres of land.

Councilman Prendergast asked how much of the 296 acres they are operating on and Attorney O'Connor replied the permitted area is 296 acres.

Councilman Prendergast asked if they were mining the whole 296 acres right now and Attorney O'Connor replied no.

Attorney O'Connor advised that the way the mine is developed is that much of that will not be reclaimed until the mining is done and then the river will be allowed to rise back and it will probably be a pond. It won't be an area that is filled in. There is a reclamation plan filed with NYS DEC.

Councilman Prendergast asked how long it will take to completely mine the 296 acres and Attorney O'Connor replied that is proprietary information. It won't happen tomorrow or in near term. To lay it out on the table according to their engineering studies would put them at a disadvantage.

Supervisor Jenkins stated he thought he saw that information and it was something like 112 years.

Councilman Kusnierz said it has been a while since he has read the NYS DEC Mining Law, but thought mining operations permitted through NYS DEC were entitled to a one-time 50% expansion on the submitted plan.

Attorney O'Connor said he wasn't aware of that. He explained how the expansion process has worked in the past.

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Councilman Kusnierz referred to Section 113-3 regarding excavations and initially he thought the proposed law would not allow foundations to be dug in the Town, but upon further review and discussion it was found that the local law version does allow this and that the copy he was looking at was an earlier version.

There being no further comments, a motion was made by Councilman Cumm and seconded by Councilwoman LeClair to close the public hearing at 7:10 p.m.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Yes
Councilwoman LeClair	Yes
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Respectfully submitted,

Jeanne Fleury
Town Clerk