

A public hearing was held by the Town Board of the Town of Moreau on July 27, 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 legally existing mining operations in the M-1, M-1A and M-2 Zoning Districts.

Supervisor Jenkins opened the Public Hearing at 6:30 p.m.

The Town Clerk called the roll, which resulted in the following Town Board Members being present or absent:

Town Board Members Present

Tom Cumm	Councilman
Bob Prendergast	Councilman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

Town Board Members Absent

Gina LeClair	Councilwoman
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Also Present: Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector and Code Enforcement Officer; Paul Joseph, Highway Superintendent; Martin D. Auffredou, Attorney for the Town; Kevin J. Brown and Michael Fogel, legal counsel from the Gilberti, Stinziano, Heintz & Smith Law Firm out of Syracuse, New York, representing Cranesville; Michael O'Connor, legal counsel from Little & O'Connor, representing Lehigh Northeast; Stuart Guinther, Plant Manager, Lehigh Northeast; David Linehan, Village Resident; and at 7:58 p.m. the following people entered the meeting: Jesse Fish, Water Superintendent; Nancy Ryan, Transfer Station Clerk; Steve Gram, Recreation Director; and Vince Sporrer, Town Resident

Supervisor Jenkins welcomed everyone to the public hearing.

He asked if any board members had anything to say.

Councilman Kusnierz asked Joe Patricke how many residences there were in the M-1, M-1A or M-2 zones in the Town.

Joe Patricke replied there weren't any in the M-1A zone. In the M-2 zone there may be three or four and in the M-1 zone there is Fenimore and he wasn't sure how many there were in Fenimore.

Supervisor Jenkins stated that most of the residential section of Fenimore was rezoned to residential and Joe Patricke stated this was correct and it is now an R-2 zone.

Councilman Kusnierz asked if there are under 20 or over 20 and Joe Patricke replied over 20 and less than 40.

Attorney Fogel representing Cranesville spoke next. He stated that Cranesville is located off Route 9 in the Town of Moreau and is a long-standing operation in the Town. He expressed their gratitude for the Town's efforts in working with the mining industry including Cranesville in drafting this law. He reviewed the draft being considered tonight and in general he was encouraged with the direction this law is headed in. He noticed that the Town Board made the one change he suggested at the workshop involving Section 113-1 "Declaration of Policy", which clarified the intention of the law, which was to allow existing operations to continue and expand while prohibiting new mines in the Town. The law appears to be generally consistent with the State Mining Law (MLRL) and it also allows for expansion,

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extension or enlargement of an existing operation beyond the acreage currently permitted by DEC, which recognizes Cranesville's vested rights to continue its mining operation to the fullest extent of its property in the Town. They appreciate this. It also provides existing operations with the operational flexibility to acquire additional acreage to allow them to supply sand, gravel and construction aggregates to local communities, which is important. He thanked the Town for those changes. There is some language that prevents them from entirely supporting the law one of which is the "legally in existence" language, which he pointed out at previous Town Board Workshops. They find this language troubling, because it requires both a valid DEC permit and a Town mining permit. Cranesville possesses a valid DEC permit, but as they have said over the years, they believe that a Town mining permit is superseded by the MLRL and for that reason Cranesville has not applied for a Town Mining Permit. He stated that requiring Cranesville to have an illegal permit under the old law to be legal under the new law is troublesome to them and requiring them to have an old permit could potentially violate their vested rights to continue their mining operation to the fullest extent of the properties and those rights are protected by the Federal and State Constitution and NYS Common Law. He urged the Town to remove the "legally in existence" language to the extent that it requires a permit under the old predecessor Chapter 113 or at the very least that the language not be construed to extinguish Cranesville's vested rights to continue its' operations. Cranesville reserves its' rights going forward and they aren't able to fully support the law. They look forward to their continual cooperation with the Town. He prepared a comment letter that he submitted to the Town Clerk for the record.

Attorney O'Connor representing Lehigh Northeast spoke next. He thanked the Town for their efforts. Lehigh has about 40 acres that are outside their life of mine boundaries and Attorney O'Connor asked if under this law would they be able to expand their operation to the fullest extent of their property lines or would they be limited to the boundaries of their life of mine per their present permit at the time the Board adopts this law.

Attorney Auffredou stated the way he understands the intent of the Town Board in this re-draft, Lehigh has a mining operation that is permitted under DEC and permitted under the Town and they have a lot of room to expand in the M-1 zone and the way he and Joe Patricke worked on this is and his understanding has always been that they have a status that is recognized within this law as a legally existing operation and as a result they are allowed to expand within the M-1 zone. It says nothing about their life of mine or their limitations. They are allowed with a DEC permit and with a permit from the Town to expand further. That is his understanding as to how this was intended to work.

Councilman Cumm said to the limits of the property they currently own.

Attorney Auffredou said that nothing says they can't acquire additional lands as long as they are in the M-1 zone and continue further if they get a permit to do so. If they are legally in existence they can come and apply for permission to expand in the M-1 zone.

Councilman Kusnierz asked if over a period of 50 year or 100 year as the life of mine is used up and if they have the property to do so or have willing sellers could they expand their current holdings and mining operation under this law.

Attorney Auffredou said he believed this to be the case.

Councilman Kusnierz said the potential exists then that this mine could work its way, as economics dictate, from its current position in an M-1 zone all the way into the M-2 and M-1A zones.

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Attorney Auffredou said under the adoption of this law, the Town would be allowing mining operations legally in existence as defined, which means DEC Permit and permit under current Chapter 113, to seek a permit to expand into additional properties within the M-1 zone.

Councilman Kusnierz asked how this compares with the current Chapter 113.

Attorney Auffredou replied they could do a 50% one-time expansion plus there is nothing in the current law that prohibits them from going further than that.

Supervisor Jenkins said he thought when they discussed that specific issue it was because it involved some litigation that essentially would allow them to move ahead. He didn't think the Board was looking beyond what Lehigh Northeast currently owns for property.

Attorney Auffredou stated that if they want to acquire additional lands in the M-1 zone there isn't anything in this draft that prohibits them from coming to the Town Board and requesting permission to expand onto those lands.

Councilman Kusnierz said hypothetically Lehigh could purchase property, which has homes on it or next to it and legally expand and the homeowners down there wouldn't have any recourse, because this company would be protected on this law.

Attorney Auffredou said he wasn't saying that.

Councilman Cumm said they would have to sell their property to Lehigh and Councilman Kusnierz said a person can't control another neighbor's sale. The point he was making was that there could be three homes in a row and one borders Lehigh's property and the existing operation and the one in the middle decides to sell to Lehigh then it would bring the operation up closer to an existing residential home. There isn't any protection for the current residences down in Fenimore.

Joe Patricke stated that physically that can't happen and Councilman Kusnierz stated that he understands there are setback requirements.

Supervisor Jenkins said he didn't think there were any homes in the M-1 zone and he thought they were changed to residential zoning.

Joe Patricke replied that there are about 20 homes that are still in an M-1 zone.

Attorney O'Connor stated that it seems that Attorney Auffredou's interpretation is a little bit different than that of the rest of the board members and his concern is over the land use currently. There may be a problem with future boards over the interpretation of the language and what the intent of this board was. He stated that there are three or four properties to the north of Harrison Avenue that the Town Board would be doing great harm to if they didn't allow them became part of the mining operation even if only to the extent that they became a buffer to Lehigh's setbacks. It is very unlikely that their property would be able to get the highest and best use in the future. He further stated that there are three houses on the east side of Sisson Road where it ends that probably wouldn't sell except to Lehigh for mining. The board needs to leave the ability of these lands to be included for future mining. He also mentioned the land where horses are kept on Harrison Avenue and how the only sensible use of that property for the future would be for mining. He stated that in order for Lehigh to go beyond Harrison Avenue the Town would have to give up Harrison Avenue so there is a physical boundary that the Town has control over. He stated there is some benefit to them and others if they can mine more uniformly.

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Attorney Auffredou stated the easy solution would be to change the zoning of those properties to a residential use. That way this law would say the mining can't be expanded into the M-1 zone. Right now if those properties are in the M-1 zone and if those property owners and Mike's client reach an agreement on the sale of those properties they could theoretically come to the Town Board, under this law, and ask for approval to expand within those properties as long as they are M-1, M-1A or M-2. He said that what Mike's problem is that he has an industrial use and his neighbors are all residential. What he is saying is don't impose restrictions on us, because we want to expand as far as we possibly can someday and don't impose restrictions on any of this area and take into consideration all the neighboring properties and take into consideration his view that the highest and best use for these properties are either to be mined or serve as a buffer for the mining operations. Attorney Auffredou said he didn't agree that it was the highest and best use. That is an issue between a willing buyer and a willing seller.

Councilman Kusnierz said that goes back to his point that if there was greater protection in place then the argument could be made that the homes are worth more, because there wouldn't be an expansion of the mine as opposed to the argument made by Mr. O'Connor, which was that the potential exists that the best use of the residential properties would be for mining, because they are so close to the current mining operation.

Attorney Auffredou said only because they are zoned for mining at this point.

Attorney O'Connor said he was limiting his comments to the three or four properties to the north of Harrison Avenue. He argued before the predecessor board not to allow residential development to go in down there and wasn't successful in keeping it out of there. He didn't think the board wanted to give up their M-1 zoning if they wanted to allow growth in the Town.

Attorney O'Connor stated the other question he had was concerning renewals. He hoped the board would consider renewals of mining permits as an administrative act only and not require existing operations to go through the whole process of public hearings, etc. It appeared to him that the proposed law gives the board the absolute right to set conditions under the Town permit and he listed dust control, setbacks and hours of operation. Those conditions are taken from the Environmental Conservation Law and those are subjects the board has the right to comment on through DEC under the Rules and Regulations of the Mine Reclamation Law. DEC has the control over those items and not the Town. The Town can only comment. It was his opinion that this is inviting misconception from the public. He said the Town does have the right to control access to Town thoroughfares and impact on the roads. He thought there was some case law to that effect.

Supervisor Jenkins stated the board could leave that in the law. It may be overridden by DEC, but it is our preference whether to leave it in the law or not.

Attorney O'Connor stated that Section 113-7 talks about exceptions and earlier on in the law exceptions are discussed and the two sections are inconsistent. He also mentioned the law discusses excavation in connection with construction in two different sections of the law and they are inconsistent also.

Stuart Guintier, Plant Manager, for Lehigh Northeast stated he wanted to make sure they have the freedom to use the resources available to them. He stated they do have property contiguous to their mining operation that is not covered by their current mining permit boundary that they may at some point in time want to expand onto and they want the right to do that. There are properties they don't currently own that if they become available they may be interested in them, but only if they could expand into them or use them in some manner. If they aren't allowed to expand into those properties then the property values of those properties would be harmed.

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Councilman Prendergast asked Attorney Auffredou if the board could really stop expansion under the law as drafted or is the requirement for them to come before the board for a permit a formality and would the State Law supersede.

Attorney Auffredou said if the property is zoned for mining. If the property they intend to expand into is owned by them and zoned for mining then they would probably have some grandfathered status to expand within that property subject to acquiring DEC and Town permits. The Court of Appeals for the State of New York has said that a Town doesn't have to allow for mining. The board has long recognized that their authority to permit and regulate mining is very limited under New York State Law. He and Joe attempted to capture the board's authority in this draft law, but it is very limited. It is mostly controlled by DEC, but if the Town decides to say that mining is no longer permitted here, there or wherever the board does have control over that.

Councilman Prendergast said they would have to change the zoning.

Attorney Auffredou replied that they would have to change the zoning, but if they did change the zoning and a mining operation said we do own the property and the property was at one time zoned for mining use the board would be hard pressed to tell them they couldn't expand their mining operation onto those lands subject to a mining permit.

Councilman Prendergast said the board has held many meetings on this and it was indicated that if a mining operation had forty acres, but they were only working ten acres, they would be allowed to work the forty acres if they decided to later on. What he is hearing tonight is a new twist and that is that a mining operation may want to acquire another sixty acres to mine on and they want the board to okay it tonight.

Attorney O'Connor replied no. He said at the most they were talking about five or six acres.

Councilman Prendergast said he didn't care about the number of acres. He was trying to make a point. This is a new twist. They were talking about land they don't own. This is the first time he was hearing about land they don't have.

Supervisor Jenkins agreed with Councilman Prendergast. He stated that this isn't perfect, but right now a new mining operation could be started up in many areas of the Town and this a way we can still work with companies already mining and provide resources and jobs and yet restrict new mining to protect homeowners.

Stuart Guinther stated that Lehigh Northeast and their predecessor have been mining since 1920 in the Town of Moreau and they have been a good neighbor. He understands from the course of the meetings held there is a general feeling that mining is not the best use and he has to disagree. He has been working in the cement industry and mining since he got out of college many years ago and it is a good use and suitable use especially when it has been governed by zoning ordinances that this board has control over. There are sections of the "M" areas that were turned over to housing developments against their wishes. As far as the perception that this is a new twist, their wanting to expand their operation, the only twist here is the language being proposed by the board. He said it is certainly within the Town's right to control expansion of mining in the areas that are not appropriate. He stated that the area bounded by roads in the area of their mining operation may not be something they proposed to the board in the past, but it would be foolish if they hadn't ever thought about the ultimate disposition of their operation and develop those properties that are in a logical location and suitable for mining. This is a small amount of property and it would straighten their borders and make the use of their existing properties more

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efficient. He said he has to be concerned about resources even if they aren't going to be utilized for eighty years from now, that is his job.

He said if it is the goal of the Town to limit the amount of mining and control any future mines in Moreau then we are dancing on the head of a pin here dealing with this particular operation when the real issue it sounds like is to make sure there isn't going to be mining anywhere else in the Town. If so then it would be within the right of the board to change the zoning in some of the other areas of the Town. He asked the board to give some consideration in that regard. He has a real problem with changing the zoning on their side of Harrison Road and said it is not logical to go in that direction.

Councilman Kusnierz told Mr. Guinther that he understood his position, but he has to understand that the board is in the position of balancing the needs of the community, the residents down there, the needs of businesses like Lehigh that operate in our community. He didn't think any board member would disagree that Lehigh hasn't been a good neighbor. Regarding the issue of "best use", mining may be the best use in that area, but if you look at other parts of the Town where there are high spots the "best use" of those areas may be cell phone towers. What they are trying to ~~project~~ **protect** as a community and quality of life and aesthetics the board is trying to limit, in some degree, expansion of businesses like Lehigh and still give them the ability to recoup their investment. That is how the board arrived at this draft law. It may not be perfect and may not make everybody happy. Laws are made to be changed. If it needs to be changed down the road it can be by this board or future boards.

Attorney O'Connor stated there are three laws and he recapped them again for the board as he did earlier in the meeting (the mine reclamation law, the zoning law and the mining regulations). His other concern also was over the lack of a variance provision in the proposed law. He stated that the moratorium on mining had a variance clause and yet this proposed law doesn't.

Supervisor Jenkins asked for a motion from the board to close the public hearing.

A motion was made by Councilman Prendergast and seconded by Councilman Cumm to close the public hearing at 7:18 p.m.

Roll call vote resulted as follows:

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

Respectfully submitted,

Jeanne Fleury
Town Clerk