

A workshop was held by the Town Board of the Town of Moreau on June 22, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a revised draft dated June 1, 2010 of a proposed Sand, Gravel and Mining Law.

Supervisor Jenkins opened the workshop 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
Gina LeClair	Councilwoman
Preston Jenkins	Supervisor

Town Board Members Absent

Todd Kusnierz	Councilman
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Also Present: Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector; Michael Fogel, Attorney representing Cranesville; Reed Antis, Town Resident arrived at 6:40 p.m.; Martin D. Auffredou, Attorney for the Town arrived at 6:41 p.m.; Paul Joseph, Highway Superintendent arrived at 6:42 p.m.

Supervisor Jenkins began by saying that the difference between the draft Sand, Gravel and Mining Law before the Board at this meeting and the last draft was that new mining was eliminated and the power of the Town Board to a take action on mining permits was reinstated. Also, legally existing mining operations would be allowed in M1, M1A and M2 zones in this draft.

Attorney Fogel representing Cranesville stated he was encouraged by the changes made in this draft especially in regards to expansions and enlargements of existing mining operations and the fact that this draft recognizes vested rights.

Attorney Fogel went on to point out that in his opinion the sentence in section 113-1 "Declaration of Policy", which reads "Excavation of sand, gravel, and other natural material deposits on lands within the Town that, to date, have not been the subject of mining activity is prohibited" was inconsistent with expansions allowed under section 113-4. He suggested that the wording under section 113-1 "Declaration of Policy" be changed to read "Excavation of sand, gravel and other natural material deposits on lands within the Town that, to date, have not been the subject of mining activity is prohibited, except as otherwise provided for in section 113-4".

Joe Patricke didn't agree with this statement and said there wasn't any contradiction in his opinion.

Supervisor Jenkins concurred that it wasn't a contradiction in that there are other zones that the second sentence in section 113-1 does apply to and section 113-4 clarifies that those existing in M1, M1A and M2 zones are allowed to operate and we need the other sentence in there for the other zones where mining isn't allowed.

Attorney Fogel was concerned over the language "legally in existence", which requires a valid DEC mining permit.

Councilman Cumm added, and a valid Town of Moreau mining permit, which Cranesville hasn't seen fit to apply for and this concerns him.

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Attorney Fogel replied that as he expressed before it is his firm's position that the Town Law is superseded by the Mining Reclamation Law and that is why Cranesville hasn't applied for a permit.

Councilman Cumm stated that the DEC Mining Permit reads that their permit does not supersede any local laws that may be in effect.

Attorney Fogel replied any local laws that are consistent with the Mining Reclamation Law (MRL) and to the extent that local laws run afoul to the MRL or are inconsistent with it then those laws aren't any good. He could talk to the Town Attorney about his if the Board wanted him to.

Councilman Cumm stated that at this point he wasn't amendable to taking that out.

Joe Patricke stated he thought there was a time about ten years ago when Cranesville did apply for a permit.

Supervisor Jenkins stated it seems to him that filling out a permit would cost Cranesville less than their paying for an attorney to travel from Syracuse to the Town of Moreau and back and he didn't understand why they didn't apply for a permit.

Councilman Cumm stated that under Town Law there is little control the Town has over mining operations except for ingress, egress, routing of transportation vehicles, dust control, setbacks from property lines and hours of operation, which are negligible. He has a problem with a business snubbing their nose at our law. Every other mining operation in the Town of Moreau applies for a mining permit and then he asked Joe Patricke if this was true and Joe Patricke replied no. The Village of Fort Edward does not have a permit, but they have inquired about applying for a permit.

Councilman Cumm referred to section 113-6 (B), which reads that the Town Board shall conduct a public hearing within sixty-two (62) days of the date the Town Board receives the application for a permit to expand a legally existing mining operation. In the prior draft it read that the Zoning Board would hold a public hearing forty-five (45) days of the date of application. He asked why it went from 45 days to 62 days.

Joe Patricke explained that Attorney Auffredou researched this and sixty-two (62) days is consistent with Town Law and the forty-five (45) days was consistent with the Zoning Law.

Attorney Auffredou entered the meeting at this point and concurred with the statement made by Joe Patricke.

Attorney Fogel then recapped for Attorney Auffredou his concerns stated at the beginning of the meeting in regards to section 113-1 and 113-4 and the term "legally in existence".

Attorney Auffredou stated that when he and Joe Patricke drafted this proposed law they recognized that the term "legally in existence" would be an issue. He also stated that section 113-4 is not a new concept and has been in all prior drafts of the proposed law in one form or another and it was a way to recognize our law and those operations who have complied with our law. If there is a mining operation that hasn't complied then there are consequences. He cannot recommend to the Town Board that they do anything different with this section at this point in time.

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The Town Board Members then acknowledged that they didn't disagree with Attorney Fogel's suggestion to include the wording in section 113-1 "except as otherwise provided for in section 113-4".

The workshop was concluded at 6:44 p.m.

Respectfully submitted,

Jeanne Fleury
Town Clerk