

**Town of Ancram
Zoning Board of Appeals
May 29, 2008
Meeting Minutes**

Present:

Leah Wilcox, Chair
Susan Bassin
Sheldon Waldorf
Jordan Katz
Kurt Sommerhoff

Not present:

William Lutz, alternate

Others Present:

Kenneth Faroni, O&G Industries
Rick Simpson, Double D (Bryant Mine)
Fred Schneeberger
Richard Scholz
Art Bassin
Alice Katz

The Chair called the meeting to order at 7:35PM.

Minutes of the April 22, 2008 meeting were reviewed. A motion was made by Sue Bassin to approve them, her motion was seconded by Sheldon Waldorf, and the minutes were unanimously approved.

Items on the board's agenda were then considered, in the following order and detail:

1. Application 08-2, Double D Development, LLC, known as the Bryant Mine on SR 82.

Today's hearing is a continuation of the April 22, 2008 public hearing.

Basically, the permit renewal application proposed a new three-year permit for the Bryant Mine to continue operating. More specifically, to coincide with the term of the DEC permit, the new permit would officially take effect retroactively on 1/27/2008, expire on 1/26/2011, and would allow what it already allows: mining and processing sand and gravel over 17 acres in accordance with an existing DEC permit and the board's conditions.

The Chair informed the board and attending members of the public that the applicant had duly submitted mail receipts confirming written notification of abutting property owners who inadvertently were not notified of the previous meeting's public hearing.

Sheldon Waldorf suggested screening be put in place to keep the mine from view. Sue Bassin suggested Double D adopt a policy of reclaiming land over the course of operations, rather than waiting until completion of mining operations, and mentioned that there are new DEC regulations that pertain to that practice. The Chair asked if those were items that needed to be addressed at the current meeting before deciding on the application, or if those suggestions should be incorporated into future discussions if and when the permit was to come up for renewal again. Mr. Waldorf and Ms. Bassin both agreed the suggestions could wait for a future renewal discussion.

The Chair then reopened the public hearing that was adjourned on April 22nd on this matter to enable notified abutting property owners and any other concerned members of the public to address the board. No members of the public wished to comment on the application at this meeting.

The Chair then closed the public hearing to proceed to a decision and stated that she, Mr. Katz, Ms. Bassin were permitted to vote since they were present at the previous hearing and meeting.

ACTION:

All three voting board members voted in favor of granting Double D, the Bryant Mine, a new three-year permit effective 1/27/08 and expiring on 1/26/11 for mining and processing sand and gravel for 17 acres, disturbed and not fully reclaimed lands, of a 60-acre Life of Mine contingent on operations in accordance with DEC permit ID4-1020-00018/00001 and with the general and special conditions listed on the Town Mining Permit.

The Chair announced that notification of the approval would be sent the following Wednesday to the applicant and other pertinent parties.

2. Application # 08-3, O&G Industries, owner and operator of the mine on Route 22.

Basically, O&G Industries applied for an area variance to mine to a depth of 730' ASL (Above Sea Level) from the previously approved depth of 755' ASL [it's important to note that a lower ASL number indicates deeper mining – zero being at sea level, or deepest]. In addition, O&G applied for a new three-year permit.

The Chair detailed the following background for the board and the public:

The previous permit expired on Oct. 30, 2006, and the applicant submitted an application for a new three-year permit on Sept 18, 2006. At that time the ZBA informed O&G that it would wait for a determination from the DEC before scheduling a public hearing.

In addition to the renewal application, O&G submitted an application to the DEC for a modification to their permit, requesting approval to increase the depth of the mine. Last October, the DEC issued their permit renewal for operation, including approval for the modification. The new five-year permit runs from Oct. 31, 2007 to Oct. 30, 2012.

Upon receipt of the DEC permit by the ZBA, O&G's application to the ZBA was forwarded to the Town's ZEO (Zoning Enforcement Officer) to determine compliance with the Scenic Corridor Overlay Zone. In February 2008, the ZEO determined that the modification to mine deeper was not in compliance and suggested that O&G apply for an area variance.

As required, the application was referred to the CCPB, which determined at its May 20, 2008 meeting that there was no inter-community or county-wide impact and that, therefore, both applications are subject to local decision to be determined by a simple majority of the ZBA. The Town of Ancram Planning Board recommended approval for the area variance and the permit application saying, "DEC approval makes the Planning Board comfortable and this specific situation seems acceptable."

The DEC was lead agency for SEQOR as this is a Type I action.

The Chair then informed the board and the public that, at this meeting, the ZBA would consider two separate items: 1) the application for an area variance to increase the depth of the mine to 730' ASL; and 2) the application for a new three-year permit. She pronounced the applications complete, as receipts for letters mailed by the applicant to abutting property owners were submitted to the ZBA.

The Chair reminded the board and the public that New York State has jurisdiction over mining, but that there are five areas in which the Town has authority:

- Setbacks
- Barriers to restrict access
- Dust
- Hours of operation
- Whether mining is prohibited at the location

Ken Faroni, representing O&G Industries, presented O&G's applications before the board. He outlined items the company filed with the board, stating that the board received a copy of the letter O&G Industries sent to abutting owners, as well as signed affidavits and receipts of mailings, and that while not all signature cards came back in time, the full record of who letters were sent to was submitted to the board.

Mr. Faroni said O&G was required to install three mining wells to monitor the mining operations, and that there are now three wells in different locations at the mine. He said that as a condition of the permit issued, O&G must maintain a minimum of five feet above the water table, and that April 1st to April 15th is typically when the maximum height of the water table is achieved. He said O&G had received a permit to operate from October 30, 2007 through October 30, 2012 (he submitted a copy to the board), and that at the time the original permit was issued, it was shown that the area available for mining was in a special zone west of Noster Kill measuring 22-plus acres, a little less than half of the parcel that O&G owns. He said the Life of Mine is 22-plus acres, although the Chair said the DEC permit cited 25.6 acres. He said this includes access roads, stockpiles, and other features.

After O&G received that permit, Mr. Faroni said, it also received a copy of the letter from the town ZEO, Mr. Florio, stating that -- based on his review of the application for proposed increased depth and the Scenic Corridor Overlay Zone (SCOZ) regulations -- O&G would have to apply for an area variance. Mr. Faroni said O&G respectfully disagreed, but it refiled its application, this time for a special use permit with an area variance. He said O&G did so because it has enjoyed a good relationship with Ancram for 19 years and would like to continue that relationship. In the original permit issued in the 1980s, he said, O&G had been allowed to mine at the newly proposed depth, thus O&G's position is that it doesn't need to apply for the area variance, but is proceeding with it at the Town's request.

The Chair asked Mr. Faroni and the board to consider the five questions the applicant must address when seeking an area variance:

Mr. Faroni submitted a written response with regard to the five areas, which was entered into the record. The members of the board reviewed the written response and concurred with the answers to the five questions that must be addressed. Then Mr. Faroni added that O&G believes it has gone above and beyond the requirements the Town has set forth in the past by reducing the visual impact of the mine in planting trees and helping to remove a dilapidated barn on Route 22, and by posting substantial bond amounts with the Town. Mr. Waldorf stated that he thought the Town should keep the bond in place and Mr. Faroni agreed.

Mr. Faroni then submitted for the record the results of the monitoring that O&G has conducted thus far and showed various measured aspects on the map he submitted on behalf of O&G. Monitoring is conducted according to DEC requirements by [Continental Placer](#) -- a 20 year-old consulting firm that provides in-depth, multidisciplinary environmental, hydraulic, geophysical, and geological investigation, mapping and analysis services to mining companies and other entities.

There were no further questions at the time from members of the board, and the Chair opened the public hearing so that notified abutting owners and other concerned members of the public could address the application.

Richard Scholz, an abutting property owner in Boston Corners, raised a number of concerns:

- whether the mine was inspected by the Town or DEC to ensure that it was operating appropriately;
- whether the current and proposed mining depths were accurate and true;
- actual depth of mining from initial excavation;
- whether his pond or well could be lost as a result of the continued and expanded mining operations;
- the effect of mining on the stream near his property;
- silt and sand runoff potentially resulting from the mining;
- excessive noise during mining work, even on holidays;
- the potential movement of the water table due to mining and resulting settlement in his well.

Overall, Mr. Scholz expressed most concern about the potential loss of his well and pond.

The Chair stated that the board also received a letter from abutting neighbor Norman Osofsky, who had some of the same concerns. The letter was entered into the file. The Chair said she gave Mr. Faroni a copy of the letter upon his arrival, and asked him to address the like concerns simultaneously at this point of the hearing.

Mr. Faroni responded, stating:

- that the most recent inspection was in late summer or early fall of 2007, when DEC and O&G surveyed the entire area (the Chair added that when O&G's application was received, she noted that February of 2006 was the date of the DEC report which stated that the mine was inspected, its perimeter walked, and measurements taken, and that everything was in order);
- how the depths are measured in comparison to sea level and that the said depths are true;
- that mining depth was likely 30-35 feet lower than what the natural grade was before mining began, and that Mr. Scholz' house is about 40 feet lower than existing mining depth and will still be about 25 feet lower than where the company would like permission to mine;
- there would not be any negative impact on Mr. Scholz's well or Mr. Osofsky's well, and that there was absolutely no possibility that the mine would affect Mr. Scholz's water or the stream;
- silt and sand would stay on the property and have no impact on the surface runoff because it is self-containing;
- the mine doesn't operate on holidays and O&G does no processing at the mine site, as their operation is confined to excavating and loading material onto trucks; Mr. Scholz may be hearing noise from Route 22 or neighboring farm work;
- the water table would not be affected in any manner raised by Mr. Scholz, based on analysis by Continental Placer.

The Chair reiterated that NYS has jurisdiction over the mining approval process, but there are five specific areas where the Town can make recommendations. She said the Town relies upon DEC to be the lead agency because it possesses the expertise to understand geology and hydrogeology reports.

Mr. Faroni offered to allay Mr. Scholz' concerns and said that if at any time going forth Mr. Scholz experiences issues with his well, O&G will allow Mr. Scholz to select a registered professional engineer that O&G will hire to study the situation, and that if that resulting study remotely hints that O&G's mining operation may have caused the issue, O&G would have his well fixed. Mr. Scholz said that sounded fair. Mr. Faroni then said O&G would send Mr. Scholz a letter about his well and his pond.

The Chair said that agreement would have to be between O&G and Mr. Scholz, having nothing to do with the Town or the ZBA. The board members concurred with that statement.

The Chair asked if there were any other questions or concerns from the public.

Ms. Bassin asked if the perception of the depth of the mine is greater than it actually is.

Mr. Faroni said yes, perhaps, and if so, then by about five feet.

The Chair said the board was prepared to close the hearing on the area variance and asked for further questions and comments. As there were none, the public hearing was closed.

Kurt Sommerhoff said he thought Mr. Faroni and O&G had been amenable to public and Town concerns and agreed that, as none of the board members are geologists, the board has to rely on the DEC for its expertise. He added that the mine creates material and jobs for the people of the Town, and that since that is the bottom line, he would be in favor of issuing an area variance to mine lower than is occurring now, in accordance with the DEC permit.

Mr. Sommerhoff motioned that the board grant the area variance. Mr. Katz seconded the motion. A roll call vote resulted in approval of the requested area variance.

ACTION:

Based on the responses to the five questions and Mr. Faroni's responses to Mr. Scholz' concerns, the board voted unanimously in favor of granting the area variance for O&G to mine lower/deeper than previously permitted, from 755'ASL to 730' ASL in accordance with State Mining Permit ID4-1020-00011/00001.

The Chair moved on to the issue of granting a new three-year permit. She said that in addition to the DEC report, the board received copies of annual reports O&G is conditionally required to submit to the Town's ZEO stating what's gone on in the mine over the course of the year. The most recent report was entered into the record.

The Chair then opened the public hearing on the granting of the new three-year permit for O & G sand and gravel mining.

Mr. Scholz asked if O&G will leave the area in safe condition when it's finished operating the mine. Mr. Faroni said it would. Mr. Scholz inquired about the border with the setback behind the mine and whether or not someone would then buy it. His concern was that O&G shouldn't just walk away from it. Mr. Faroni said O&G didn't operate that way.

The Chair informed Mr. Scholz that the DEC changed its regulations in the past few years so they now require reclamation phase by phase, thereby ensuring that at the end of the mining process, the last phase is the only phase left. She said that the required bonds are also higher now, so towns now have much more comfort in dealing with gravel mines. She said we have all heard the bad stories and the Town is concerned about that too, but that the Town is comfortable with the operations of O&G over the years. She said the plan of reclamation is already on record.

The Chair closed the public hearing as there were no other comments or questions. She then reiterated that the Town attorney has advised the ZBA that the Town shouldn't be holding or requiring a performance bond. Mr. Waldorf suggested that the Town continue holding the bond as it was offered in good faith on O&G's part. Mr. Faroni agreed to this.

Mr. Waldorf motioned to grant the new three-year permit to O&G mine. Ms. Bassin seconded the motion. Messrs. Waldorf, Sommerhoff and Katz, Ms. Bassin and Ms. Wilcox voted in favor of granting a new three-year permit.

ACTION:

The board voted unanimously to grant O&G the new three-year permit, effective 10/31/07 and expiring on 10/30/10 for continued operation of a 25.6-acre Life of Mine sand and gravel mine, of which 20.27 acres are disturbed and not fully reclaimed. The permit would be issued subject to all the conditions specified in the State Mining Permit ID4-1020-00011/00001 issued 10/31/07. The permit would also be subject to the general and special conditions listed on the Town Mining Permit as amended 10/30/04.

Mr. Waldorf motioned to adjourn the meeting, which was seconded, and the meeting was adjourned at 8:50PM.

Suzanne Bressler
ZBA Clerk