

TOWN OF CONCORD BOARD PUBLIC HEARING
Gernatt Asphalt Products Rezoning & Special Use Permit

June 14, 2018
6:45 p.m.

PUBLIC HEARING CALLED TO ORDER BY CLYDE M. DRAKE, SUPERVISOR

ROLL CALL:

PRESENT: CLYDE M. DRAKE, SUPERVISOR
JAMES M. KREZMIEN, COUNCILMAN
KENNETH D. ZITTEL, COUNCILMAN
WILLIAM F. SNYDER, III, COUNCILMAN

EXCUSED: PHILIP DROZD, COUNCILMAN

ALSO PRESENT: DARLENE G. SCHWEIKERT, Town Clerk
DENNIS DAINS, Hwy Supt.
BRIAN F. ATTEA, Town Attorney
CAROLYN ROBINSON, Dog Control Officer
GEORGE DONHAUSER, Planning Board

PETER SORGI, Gernatt Asphalt	NICK GIER, Gernatt Asphalt
RICH PECNIK, Gernatt Asphalt	KEN ZICCARELLI, Gernatt Asphalt
MICHAEL LOFTUS	DEBORAH BRUNO
JOHN MIESS	MARY JANE MIESS
JONATHAN EMMICK	ALLISON EMMICK
BRIAN HEBDON	JESSICA SCHUSTER
LEE WIEDEMAN	SANDY WIEDEMAN
GEORGE DEWALD	JOYCE DEWALD
GEORGE E. DEWALD	TIM SCHIEDEL
RACHAEL REESE	MICHAEL REESE
MIRANDA ROESCH	DON ROESCH
BILL GUGINO	COLLEEN MAHONEY, Springville Journal
WENDE PUKAY	RICH PLACE, Springville Times
LISA USCHOLD	

Supervisor Drake opened the Public Hearing on the Gernatt Asphalt Products LLC Rezoning Application and Special Use Permit Application for mining operations for the property at 9080 Middle Road, Town of Concord, New York (Part of SBL#323.001-2.12 and Part of SBL#322.00-2-40.31) consisting of 17.7 acres. The current zoning is Residential Agricultural and the request is for a change to Mining-Reclamation. Town Clerk Schweikert had published the Notice of Public Hearing in the Springville Times on May 18, 2018. The Notice of Public Hearing was posted on the Town's website and the sign board at the Town Hall on May 15, 2018.

Supervisor Drake opened the floor for public comments.

Brian Hebdon, 9110 Middle Road, addressed the Board. Mr. Hebdon questioned if the Town had the authority to not rezone the property and not give the applicant the Special Use Permit. Supervisor Drake said yes the Town does. Mr. Hebdon would like the Town to do that. He has lived in his home for thirty-some years and has listened to the gravel mining behind him forever. He can still hear it very clearly even though it is back 700-800 feet and below ground, from the first bucket in the truck and the backup whistles. In the last 7 days, he has been awakened a little after 6 a.m. five out of the seven days. Gernatt already has a 40 acre site that they are going to turn into a lake so he doesn't see the purpose of giving them another 17 acres. This would just be that much closer to his house. He was under the assumption all along that the property would go back to agriculture/residential. Since Gernatt got a permit to dredge, obviously that is not going to happen. Will Gernatt need a new permit to dredge the 17 acres? Yes Gernatt will need a new permit. Mr. Hebdon would like the town to say no and have it stay as farmland. Mr. Hebdon's concerns were: (1) With an excavator Gernatt reached below the water table when they were not permitted to and that site was about half way to where they are going to be. He had silt in his well for over a year and needs special

filters. DEC may say it won't affect the water but he disagrees. He is worried about his well. (2) the noise. (3) does not know why their hours of operation need to be 6:30 a.m. and 9 p.m. and why six days a week. (4) the use of the existing Gentner driveway is closer to his house and he will hear all that noise; dust. (5) if the Town says no, will Gernatt just go and do it anyways. Supervisor Drake noted that the Town works with the DEC.

Michael Loftus, 8982 Middle Road, addressed the Board. Mr. Loftus recently moved back to area after being gone for about 30 years and to say that this area has changed for the good is not really true. Mr. Loftus' concerns were: (1) concurs with Mr. Hebdon regarding the noise. (2) his well. He is on the same spring is everybody else is on. With mining, digging down and dredging now the water table is being changed. (3) the roads. Route 240 and Middle Road are in shambles. He recounted a Saturday when he took a stopwatch and timed all the trucks going by. Every two minutes there was a truck going one way or another; all Gernatt trucks with a mixed in Mayer Bros. truck. (4) Gernatt can go anywhere they want but yet they are taking all these farms, taking all the gravel out and leaving a mess. (5) Mr. Loftus was going to invest a substantial amount of money into his property but if this starts happening, why bother. He might as well bulldoze his house down and start digging gravel out.

Councilman Zittel asked those in attendance if their wells were driven wells or spring? Most all of them are driven.

Don and Miranda Roesch, 9158 Middle Road, addressed the Board. Mr. Roesch had a copy of the deed to his house and his understanding is that they own frontage access of that whole driveway and Ryan Bruno that lives on the other side owns the other part of that driveway so that Gernatt does not actually own that driveway. They have just a right of access to it. Mr. Roesch's concerns were: (1) they have two children and there are dump trucks using that driveway all day long; dusty dirty stone is flying all over their yard. That is a major concern. (2) the driveway is not technically theirs so how does that work as far as their access. Councilman Zittel advised that the paperwork presented to the Town shows that it is an easement for egress and ingress. Mr. Roesch said that his understanding was that they allowed the Gentners to use it for cars that traveled to the house because otherwise there was no access to their home. He won't deny them that but this would be dump trucks all day long and he has problems with that. He is not concerned so much about the digging in the back that would not affect him as much as the use of the driveway, everyday/all day. Mr. Hebdon noted that he would feel that this was an easement for private use not commercial.

Attorney Sorgi explained Gernatt's understanding of the driveway issue. This has been researched quite a bit and there are easements in the deeds. On the survey it shows up as what used to be Mayo Road and that is an important fact. Attorney Sorgi gave Town Attorney Attea the following: (1) in 1925 the Town Board resolved to abandon Mayo Road. (2) in 1948 someone approached the Town Board and asked them to start taking care of Mayo Road and the document notes that the Town had abandoned the road a long time ago and no action was taken. (3) 1962-1963 New York Department of Public Works Road Inventory and it does not show Mayo Road except a small section by Sharp Street. Attorney Sorgi referred to NY Highway Law Section 205(2). Attorney Sorgi and Town Attorney Attea have a difference of opinion on technically what happens when the Town abandons a road but Town Attorney Attea will review this. Town Attorney Attea's understanding is that if the Town abandons the road and there is no specific deed out then the interest would be equally divided from what would have been the centerline of the former paper road (or abandoned road) to each of the adjoining landowners. Attorney Sorgi noted that he agrees 100% but under that scenario how would you get to the back properties and it says that it should no longer be worked at public expense however it shall not cease to be a highway for purposes of public easement.

Attorney Sorgi explained the process. Gernatt still has to go in front of the DEC and work through that. The Town is not in a position to vote on this matter tonight. There still needs to be a full SEQRA Environmental Review and a number of other matters.

Tim Schiedel addressed the Board. His daughter is Miranda Roesch. Mr. Schiedel displayed a Tellus Land Surveying survey of their property at 9158 Mayo Road to show the Board members Mayo Road on the survey. Town Clerk Schweikert made copies of the survey for the Board members.

Lisa Uschold, 11825 Snyder Road addressed the Board. Ms. Uschold questioned what the economic benefit is to the Town to have Gernatt put another pit in. Supervisor Drake noted that Gernatt employs people. Ms. Uschold wondered if the Town gets tax revenue/sales tax revenue? Does Gernatt pay to fix the roads that they use? Supervisor Drake stated no. Councilman Zittel advised that both Middle Road and Route 240 are both county owned roads.

Supervisor Drake asked the Gernatt representatives if they already have an access off Route 240 for this property? No they do not; not to this property. It would be 2.7 miles to get around to the same point.

Mr. Loftus questioned what benefit it is to Gernatt to have the zoning changed to mining? Will that eliminate their requirement for a permit in the future? No it would not eliminate the permitting process. Attorney Sorgi noted that there are two layers of government involved; the parcel must be in compliance with the zoning laws of the Town. The parcel needs to be zoned M-R for the DEC to consider a permit. The DEC will do a lengthy environmental review and the Town is a part of that review; and the DEC would still need to issue a permit.

Councilman Zittel questioned if the 11 acre lake will be incorporated into the 40 acre lake or will it be a separate lake? Attorney Sorgi said it would be a separate lake. Some of those in attendance thought it would be combined. Rich Pecnik advised that there is a clear separation in the plan that was submitted to the Town. Mr. Pecnik noted that the intended purpose of the lake would be open space, wildlife habitat, and recreational uses. Attorney Sorgi advised that that will be up to the landowner. Gernatt will need to reclaim the land. As part of the process, and the Town will have input in it as well as the general public, Gernatt will need a reclamation plan; what will happen when all is said and done. Sometimes it is returned to Agricultural; sometimes it is a combination of a lake and Agricultural. Gernatt cannot just walk away from it; they have to post a reclamation bond from the day mining starts until it is over with so that if they were to walk away the State would take that money and they would to the reclamation themselves. Ken Zicarelli advised that what the landowner is going to do rests with the Gernatt family. We can determine now that it is going to be a lake. Whoever is going to take control of that in future whether someone buys it or stays in the Gernatt family, they would decide what will happen at that time. Mr. Hebdon read from the background information submitted that "the entire parcel includes 40.5 acres and 17.7 acres of the property are included in this application for a mining permit. There will be no setback along the boundary of the common life of mine limits between the two mines." If there is no setback, doesn't that mean it is all one? Mr. Pecnik noted that it is a terminology matter if there is no setback. The state law requires a setback of 25 feet from a property boundary but since Gernatt owns both parcels, there is no reason to have that setback. It will not be a continuous lake. The plan shows the property line and then mining starts at the property line and goes one way and starts at the property line and goes the other direction.

Councilman Zittel noted that there is one corner of the property that he hasn't quite figured out; down towards the power line on the edge of the property. Is it possible that a driveway could go from the Ruth Gentner property all the way out to Route 240? There are some wetlands in that area. Mr. Pecnik noted that that would be a lot more distance that the trucks would be travelling. There are other things that are mitigated; dust. This would all be taken care of with the DEC permit. Mr. Loftus questioned how long all of this will take place. Mr. Zicarelli advised that it is subject to business demands. Councilman Snyder noted that the plan submitted in the application to the Town stated 10-15 years.

Attorney Sorgi advised that there are a lot of regulations that Gernatt has to follow. More than most businesses.

No one else wished to address the Board. Supervisor Drake advised that there will be no action tonight. Those in attendance gave the Board a lot to think about. Supervisor Drake thanked the residents for their comments and that the Board appreciated their presence at the meeting and letting the Town know what their feelings are.

Motion made by Councilman Zittel, seconded by Councilman Krezmien, to close the Public Hearing at 7:20 p.m. Councilmen Krezmien, Zittel & Snyder; Supervisor Drake, voting aye; Councilman Drozd, excused. Carried.



Darlene G. Schweikert
Town Clerk