

Minutes for the Town of Pawlet Development Review Board Meeting and Hearing

November 1, 2021 - DRAFT

Members in Attendance:

James Glick, Gary Baierlein, Jonathan Weiss, Sarah Ludlam alternate, Brian Rawls

Others in Attendance:

Jonas Rosenthal, Zoning Administrator

Merrill Bent, council for the Town of Pawlet (via telephone)

Mike Wesko, Appellant

Charlie Mason

Marjorie Mason

John Thrasher

Colin Stabile

Chet McLellan

John Sabotka

Ed Evans

Debbie Evans

Scott McChesney

Don Dichiara

Mike Robinson

Mr. Glick called the meeting to order at 7:05pm and presented the agenda. Mr. Weiss moved to approve the agenda, seconded by Ms. Ludlam. All voting in favor, the motion so carried. Mr. Glick presented the minutes and decision from the October 18, 2021 meeting. Ms. Ludlam moved to approve, seconded by Mr. Weiss. All voting in favor, the motion so carried.

Mr. Glick read the agenda for the Hearing for Mike Wesko's Appeal of the Zoning Administrator's denial of the Appellant's complaint regarding Permit 2006-5, this complaint was originally submitted August 24, 2021. Mr. Glick requested if any of the Board members had a conflict of interest. It was noted that Keith Mason had recused himself from the hearing due to a conflict of interest. Discussion of the Town of Pawlet conflict of interest policy ensued. No members present opted to recuse themselves due to conflict of interest. Members introduced themselves. Mr. Glick identified all interested parties and administered the oath to those present.

Mr. Rosenthal presented a procedural summary of the formal complaint received from Mr. Wesko regarding potential violations of the Bylaws by an abutting property owner, Roblee Farm, and explained the documentation the Board had been provided with.

The appellant, Mr. Wesko explained to the Board the four allegations made in his complaint. He noted that the town has not retained a copy of the proposed plans for the gravel pit at Roblee Farm that were submitted when the original permit was issued. He expressed that the site had not been reclaimed, as is required when extraction operations cease. Mr. Wesko showed the board photographs of erosion of exposed soil features within the pit, water on Kelly Hill Road, and the

Town of Pawlet Highway Department mitigating water runoff in a ditch alongside the road. He explained that this was evidence of inadequate control of surface drainage, a requirement for this use in the Bylaws. He discussed issues with dust mitigation. Ms. Ludlam noted that the Bylaws only addressed surface drainage. Mr. Wesko described state environmental regulations pertaining to the site, and noted enforcement actions that had occurred previously. Ms. Bent noted that state environmental regulations were beyond the purview of the Board. Mr. Wesko described the variance granted for the setback to Kelly Hill Road, and presented surveyor's drawings indicating that the gravel pit in question was operating much closer than the required 200' setback from his property line, not just the road. Mr. Rosenthal read the variance granted to this property in 2006. The Board discussed the scope and wording of the variance. Mr. Wesko explained that he has witnessed neighbors purchasing topsoil from Roblee Farm, and has witnessed the Roblee Farm screening topsoil, and trucks removing topsoil from the site. Mr. Wesko asserted that this was evidence of violations of the Bylaws. Mr. Baierlein noted that in his observations, the site in question contains very little topsoil. Mr. Wesko showed the Board photographs of a truck moving and delivering topsoil. Mr. Baierlein noted that Mr. Wesko could not know whether this was topsoil from the pit rather than soil that may have been trucked in for screening and repurposing.

Mr. Thrasher, attorney for Roblee Farm, addressed Mr. Wesko's assertions of violations. Mr. Thrasher stated that extraction at the pit is ongoing, and therefore reclamation is not required under the Town's Bylaws. He stated that portions which have been completed have been reclaimed. Mr. Thrasher noted that the plan required by the Bylaws may not have been a written document. He further noted that if a more comprehensive plan was required, the time for appeal has passed. Mr. Thrasher explained that environmental regulators from the State of Vermont had visited the site and evaluated surface drainage. Mr. Thrasher asked Mr. McClellan, the pit operator, whether any topsoil had been stripped from the site. Mr. McClellan stated that no topsoil stripped from the site has been sold. He explained that soil is saved on the property for the purpose of reclamation. He also stated that he takes topsoil from off-site and stores it on-site for repurposing. Mr. Thrasher noted that due to the nature of a gravel extraction site, there is very little topsoil on the property, and sale of topsoil originating from that property would not be feasible.

Mr. Weiss asked Mr. Thrasher what Roblee Farm's understanding of their setback requirements is. Mr. Thrasher answered that the variance waived the setback requirements. Mr. Weiss asked Mr. Thrasher if this meant they believed they had no setback requirements whatsoever. Mr. Thrasher responded that Act 250 requires a 25 foot setback, which is the only setback requirement that they believe they are responsible for upholding. Discussion of the wording and intent of the variance ensued. Mr. Rosenthal noted that the variance was not appealed.

Mr. McChesney expressed that he wondered who is responsible for upholding boundary lines and zoning bylaws. Mr. Rosenthal explained that encroachment is a civil matter which the town cannot adjudicate. Mr. Weiss read Article VIII Section 4 of the Unified Bylaws, which outlines enforcement.

Mr. Wesko expressed that he felt the minutes of the 2006 variance hearing suggested they wished to grant a variance for only one portion of the property. Mr. Thrasher asked Mr. Mason if

his original permit submission included both the Danby Pit and Sheldon Pit. Mr. Mason affirmed that it did.

Mr. Thrasher noted that concerns with violations of state environmental regulations fell under the auspices of Act 250, and expressed that enforcement would be best accomplished by that entity.

Seeing no further testimony, Mr. Baierlein moved to enter into Deliberative Session. Mr. Weiss seconded. All being in favor, the motion carried, and the Board closed the public hearing to enter a deliberative session.

Respectfully Submitted,
Sarah Ludlam, Acting Clerk