

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
FEBRUARY 20, 2013**

Members Present: Peter Barber, Chairman
Sharon Cupoli
Mike Marcantonio
Tom Remmert
Nicole Ventresca-Cohen, Alternate
James Sumner
Janet Thayer, Counsel

Chairman Barber opened the meeting and pointed out the emergency exits in the event they were needed.

CONTINUED CASES:

FREDERICK WAGNER – MAEOSTA LANE

Chairman Barber stated that this case was continued to this evening for decision only. Chairman Barber stated that since that time some additional materials have been received – a letter dated December 6, 2012 from Mr. Lynch's office regarding the last public hearing, a letter dated January 7, 2013 addressed to the board members from Christina and George Audi which included a letter dated June 5, 2012 to Mr. Daniel McCoy, Albany County Executive, a letter to Rodger Stone from Mr. & Mrs. Audi written on September 28, 2009 and a letter from Rodger Stone dated September 18, 2009 addressed to Fred Wagner.

Chairman Barber made a motion of non-significance in this Unlisted Action:

This Board has conducted a careful review to determine whether the granting of Frederick L. Wagner, III's application for a Special Use Permit for a landscaping contracting facility and excavation business on property located on Maeosta Lane in the Rural Agricultural 3 District would have a significant adverse impact upon the environment.

This review consisted of conducting a public hearing, reviewing the public record, including the applicants' Short Environmental Assessment Form for an Unlisted Action, and written submissions and public comments. The Board requested and considered comments by the Town Planning Board, the Town Planner, the City of Watervliet, NYS Department of Environmental Conservation, and the Town Water Department. The Board also considered hydrogeological reports by Earth Tech and Empire Zero.

In response to the Board's request for comments, DEC's Region 4, Division of Environmental Permits treated the proposed action as an Unlisted Action and had no objection to this Board acting as Lead Agency under SEQRA. DEC also stated the property was historically an active mining operation conducted under DEC permit and that, as of the early 1990s, DEC determined that the mining site was considered reclaimed.

DEC found that its review of the application was not required. The Board also notes that the removal of more than 750 cubic yards of excavation occurred in a calendar year would require a DEC Mined Land Reclamation Permit and that DEC uses aerial photography and other means to determine whether the excavating threshold has been exceeded. The Board also notes that a SPDES Permit will be required if more than one acre is disturbed. DEC also regulates the processing and disposal of concrete.

In response to the Board's request for comments, the City of Watervliet requested that the Board prohibit the storage of manure, blacktop, and potential pollutants. The Board notes that any Special Use Permit would require compliance with Watervliet Reservoir regulations.

The Board also considered the hydrogeological report provided by Empire Zero which found that there are no adverse effects from water flowing into or across the property and that there was no indication of any adverse effects on Watervliet Reservoir due to water flow at the property.

The Town of Guilderland Water Department reported that, based upon the results of thirteen test wells in a 2003 hydrogeological report by Earth Tech of a nearby mined site, there was no hydraulic connection to the Watervliet Reservoir. The Water Department did not express any concerns regarding the application.

Based upon this review, the Board finds that the granting of the Special Use Permit, with appropriate conditions, will not cause a significant adverse environmental impact, and that a negative declaration under SEQRA should issue. Motion seconded by Mike Marcantonio. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4315

Request of **Frederick L. Wagner, III** for a Special Use Permit under the Zoning Law to permit: **the operation of an excavation/landscape contracting facility on a 23.5 acre parcel of land.**

Per Articles **III & V** Sections **280-24.1 & 280-52** respectively

For property owned by **Frederick L. Wagner, III**
Situated as follows: **Maeosta Lane Altamont, NY 12009**
Tax Map # **38.00-3-27** Zoned: **RA3**

In rendering this decision, the Board makes the following findings of fact:

(1) Public notice was provided and comments were provided regarding truck traffic, use of the property, deliveries, hours of operation, and potential impacts on adjacent roads, neighboring properties, and water resources.

(2) This is an Unlisted Action under SEQRA. The Board adopted a Negative Declaration under SEQRA by a unanimous vote.

(3) In an Interpretation dated April 6, 2011, this Board found that while the property had been used as a construction business since at least 1959, this use was not authorized by a Special Use Permit or a Use Variance as required by the Town's Zoning Code adopted in 1953. Based upon the Zoning Administrator's determination, the applicant was allowed to submit the current application for a Special Use Permit upon finding that the use was a landscaping contracting facility and/or excavation business which is an allowed use in the Rural Agricultural 3 District.

(4) Pursuant to Zoning Code 280-13(c)(1)(k) & (l), both the "landscape contracting facility" and "excavation and topsoil removal" are listed as Special Uses in the Rural Agricultural 3 District. Under case law, the Town Board's identifying of these uses as Special Uses is tantamount to a finding that the listed uses are compatible with character of the zoning district.

(5) In a Site Plan Review dated January 28, 2012, the Planning Board recommended approval with the following conditions: (1) attempt to find an alternative access route to avoid the single family residence; and (2) in the absence of an alternative route, restrict hours and days of operation and volume of daily truck trips.

(6) The Zoning Administrator forwarded the application to and requested comments from the City of Watervliet, as owner of the Watervliet Reservoir, and the NYS Department of Environmental Conservation, as the agency responsible for issuing mining and other permits.

(7) In a response letter dated February 13, 2012, the City of Watervliet stated that its interest in the application related to the location of the property within the watershed of the Watervliet Reservoir which provides public water supply to both the City and the Town. The City reviewed the project under the regulations of the Watervliet Reservoir which were promulgated under the NYS Public Health Law. The City stated that excavation activities do not conflict with these regulations when performed with necessary precautions including a prohibition against potential pollutants such as manure and blacktop. The City noted that while the anticipated annual excavation of 1000 cubic yards of material did not require a DEC mining permit, review of the application might benefit from the DEC permit process.

(8) In a response letter dated July 19, 2012, DEC stated that a mining permit was not required and declined to subject the application to DEC's mining permit process.

(9) At a public hearing, the applicant amended the application to reduce the amount of excavated material from 1000 cubic yards to 750 cubic yards. The applicant and the owner of the property encumbered by the easement for a haul road allowing access to the property stated that they were unable to agree upon an alternative access. The Board received public comments regarding potential impacts on the Watervliet Reservoir.

(10) At the Town's request, the applicant retained Empire Zero to perform a hydrogeological investigation of the property. In a report dated May 8, 2012, Empire Zero noted that the property was in a down gradient position relative to a man-made pond on an adjacent property, with the pond creating a discharge onto the applicant's property. The report concluded that there are no adverse effects from water flowing into or across the applicant's property and that there was no indication of any adverse effects on Watervliet Reservoir due to water flow at the applicant's property.

(11) In a letter dated July 19, 2012, DEC's Region 4, Division of Environmental Permits responded to the Town's requests for comments on the application. DEC noted that the site was historically an active mining operation conducted under DEC permit. DEC stated that, as of the early 1990s, the mining site was considered reclaimed.

(12) DEC commented that if more than 750 cubic yards of excavation occurred in a calendar year, then a Mined Land Reclamation Permit would be required. DEC also noted the need for a SPDES Permit, including a Notice of Intent and preparation of a Stormwater Pollution Prevention Plan would be required if more than one acre is disturbed.

(13) In a letter dated November 18, 2012, the Zoning Administrator requested comments from the Town of Guilderland Water Department and DEC regarding any issues relating to the application and the hydrogeological report.

(14) In a response letter dated November 29, 2012, the Town of Guilderland Water Department reported that in 2003, the Water Department had retained Earth Tech to perform a hydrogeological investigation of a nearby mining site. The report found that, based upon the results of thirteen test wells there was no hydraulic connection to the Watervliet Reservoir. The Water Department did not express any concerns regarding the application.

(15) In a Notification dated November 30, 2012, DEC's Region 4, Division of Environmental Permits responded to the Town's request, recognized that the proposed action was an Unlisted Action under SEQRA and had no objection to this Board acting as lead agency under SEQRA. DEC reiterated the same issues noted in its letter dated July 19, 2012, including:

(A) SPDES Permit for stormwater discharge from construction activity if the project disturbs more than one acre of land; and

(B) A Mined Land Reclamation Permit is required if more than 750 cubic yards of material are excavated over a 12-month period.

(16) The applicant also claims that it processes concrete on site for use in landscaping activities. Pursuant to DEC regulations, the processing of concrete is prohibited except at a regulated or registered construction and debris processing facility. The property is not a regulated or registered C&D processing facility. The Board also finds that such activity would constitute a use only allowed in the Industrial District.

(17) There have been some complaints regarding the storage of boats, vehicles, and machinery on the property. The Zoning Code provides setbacks and yard locations for these items, but does not prohibit a property owner from using its property for these purposes. Nothing in this decision allows the property owner to use his property as a prohibited junkyard or otherwise allow the applicant to maintain its property in violation of applicable standards.

(18) In rendering this decision and imposing conditions, the Board considered the factors for a Special Use Permit under 280-52(D), the Guilderland Center Master Plan and recommendations in The Capital District Regional Planning Commission's Watervliet Reservoir Watershed Protection Study.

(19) For these reasons, the Board finds that the granting of a Special Use Permit for a landscape contracting facility and excavation business, with the following conditions, at the site of a former mine, is consistent with the character of the neighborhood and will not negatively impact neighboring properties, and that the requirements for a Special Use Permit have been satisfied.

In granting this Special Use Permit, the Board imposes the following conditions:

(A) No stockpiling, dumping, processing or use of concrete, construction and demolition debris, asphalt, or other solid waste material and the proper removal of such material within 60 days of the filing of this decision.

(B) No stockpiling, dumping, or storage of manure, pollutants, or other items prohibited by the regulations of the Watervliet Reservoir are allowed.

(C) The use of the property as a junkyard is prohibited.

(D) No trucks or heavy equipment other than those owned or operated by the applicant shall traverse the easement haul road. Speed limited to 5 MPH on the haul road to keep down dust and for safety purposes.

(E) The gates for the easement haul road shall be kept closed except when vehicles are accessing the property.

(F) The hours of operation of trucks entering or exiting the site shall be limited to 7AM to 5PM on Monday through Friday; 10AM to 4pm on Saturday; and none on Sunday.

(G) The use and storage of fuel, oil, and other petroleum products, the maintenance of vehicles, and the storage of equipment and materials shall comply with all applicable regulations.

(H) In the absence of a DEC Mined Land Reclamation Permit, no more than 750 cubic yards of material shall be excavated over any 12-month period. DEC has interpreted 750 cubic yards to equal 40 to 50 tandem axle dump trucks. DEC has also stated that, if aerial photography or other means show that material is continually removed from the site and the areas are not reclaimed, DEC would consider mining is occurring if it is difficult to determine whether the 750 cubic yards threshold has been exceeded.

(I) SPDES Permit for stormwater discharge from construction activity if the project disturbs more than one acre of land.

(J) The property from which material is excavated shall be reclaimed on an on-going basis pursuant to a written plan approved by the Building Department.

(K) The SUP is further conditioned upon the applicant's consent to allow Zoning Administrator's access to the property to monitor compliance with these conditions.

The Zoning Administrator is authorized to issue permits necessary to implement this decision.

Motion seconded by Mark Marcantonio. Vote 5 – 0.

Sue Green had concerns regarding the storage of pesticides and the trucks being covered.

OTHER:

The Board appointed Delaware Engineering to review the lighting options at the Bank of America at 1450 Western Avenue. Vote 5 – 0.

The Board appointed Delaware Engineering to review the issues identified in the site plan review by the Town Planning Board at Stuyvesant Plaza. Vote 5 – 0.

The meeting adjourned at 7:50pm.