

**Canterbury Planning & Zoning Commission
Thursday, August 13th, 2015 – 7:00 p.m.
Canterbury Municipal Building, 1 Municipal Drive**

***Special Meeting Minutes**

- I. **Call to Order-** P. Kelly called the meeting to order at 7:03 p.m.
- II. **Roll Call**
Members present- C. Bergman, J. Clark, G. Droesch, K. Green, P. Kelly, E. St. Louis, H. Tuttle, E. Dempsey, J. Smith
Alternates absent- D. Malo, T. Lord, K. Ohearn
Others present- M. Gil, Attorney M. Branse, Attorney E. Cotnoir, D. Held, W. LaFramboise, J. Rawson, L. Trahan, D. Cormier, V. Robinson Lewis, M. Sposato, and others.
- III. **Public Participation-** none
- IV. **Minutes- July 9, 2015-** The minutes were accepted as written.

(P. Kelly read the following introduction aloud)

**INTRODUCTION TO PUBLIC HEARINGS ON APPLICATIONS OF
STRATEGIC COMMERCIAL REALTY, INC.
FOR AMENDMENT TO ZONING REGULATIONS
AND
SPECIAL PERMITS FOR
STRATEGIC COMMERCIAL REALTY, INC.
AND
LAFRAMBOISE SAND & GRAVEL, 270 ACRES ON WAUREGAN ROAD**

Tonight, the Planning and Zoning Commission will hold public hearings on three separate applications which are related, yet very different. In order to be sure that Commission questions and public comment are focused on the right application, I want to begin with a review of the criteria that apply to each one.

The first application is by Strategic Commercial Realty, Inc. to amend Section 18.7.11 of the Zoning Regulations. Like any zoning section, the language applies to all properties and in all zones in the Town of Canterbury, and not to just the parcels owned or occupied by this particular applicant. In reviewing and acting on this application, the Commission acts in what is legally called a "legislative capacity." That means that the Commission is acting just like the General Assembly or Congress in adopting or amending laws that apply to the general public. When acting in its legislative capacity, the Commission has a very high level of discretion. It must consider the recommendations of our adopted Plan of Conservation and Development, if any of those policies are relevant to this application; and it may consider how this amendment will affect the public health, safety, and welfare. Because this text amendment would apply to all existing and proposed excavation permit applications, its impact is not restricted to any particular parcel of land, and Commission members and the public must consider the application in that light. It doesn't matter where you live or own property relative to any particular excavation operation today because this amendment will affect the entire Town. For this reason there is notice of this application by a published legal notice. We didn't notify "abutters" because there can't be abutters to a zoning text amendment application.

The second and third applications are by Strategic Commercial Realty, Inc. and LaFramboise Sand & Stone, Inc. for special permits under Section 18 of the Zoning Regulations to continue the operation of excavations on various parcels of land owned by each applicant and all fronting on Wauregan Road. A special permit is at what is called the "administrative" level of discretion, which means that the Commission must apply the regulations as they exist at the time of application (unless otherwise consented by the applicant), and if the criteria of the regulations are met, the

application must be granted; however, the Commission does have the authority to apply the regulatory criteria with a high level of discretion, and can add modifications or conditions to any special permit approval that it grants. Because these two applications are for particular parcels of land, the Commission requires both a published legal notice and notice to abutters. For the same reason, Commission members who own property or reside in locations that may be affected by either of these applications have a personal and/or financial interest in the applications, and should disqualify themselves, leave the Commission table, and take no part in the proceeding as Commission members. They may speak about their own property interests, like any other member of the public, but that testimony will be given no more weight or credibility because of Commission membership.

The special permit proposals would involve access to the property via Wauregan Road, which is a Town road. Section 18.7.11 of the Zoning Regulations currently prohibits "any operation having its main entrance on a Town road," but that prohibition may be waived by a two-thirds vote of the Commission if certain findings are made. The amendment that is the subject of the first public hearing would eliminate that two-thirds vote requirement. Therefore, if the text amendment is denied, the special permit will require the two-thirds vote in order to allow use of Wauregan Road.

In addition, the prohibition of access via Wauregan Road, other than to cross the road and limited hauling, and use of an alternative route over land of the State of Connecticut, is in accordance with the terms of a Stipulated Judgment dated April 28, 2014, which would require Commission approval before the terms of that Stipulation could be modified. This approval is completely separate from the applications that are pending this evening and if there is such a modification, it will be the subject of a separate Commission agenda item at a later date.

The format for all three hearings will be that the applicant speaks first to present their proposal and why the Commission should approve it. We will then ask for questions from Commission members. We will then receive public comment from those in favor, then those opposed, then those who don't wish to be identified either way. The applicant will be allowed a rebuttal opportunity before the public hearing closes, and that will be the last word but, the applicant may not submit new information as part of its rebuttal unless another round of public comment is held on that new information.

I would ask members of the Commission to confine their questions, and members of the public to confine their comments, to only the text amendment application during that public hearing; and only to each of the two the special permit applications during those two public hearings. In the event of a court appeal, the hearings may be transcribed and it is very confusing for a judge to read comments about one application during a public hearing on a different one. Since all three applications are related, you may summarize your testimony from one hearing in another one, or may submit written comments on all three. If you have a written statement, you don't need to read it out loud; just submit and we will make copies for all Commission members before we vote and I promise we will read those written statements. Please don't repeat what others have said; you can just say that you agree with the previous speaker's point. Please wait for me to recognize you before speaking, and please be courteous to the applicant, the Commission members, and each other. People who speak out of order will be removed from the meeting. I would ask for no applause, booing, heckling, or other discourteous conduct. During the special permit applications, facts about the area are more important for the Commission's decision because, as I said before, if the application meets the criteria of the regulations, it must be approved. It is not majority rules: people's property rights cannot be subject to a popular vote or the weight of public opinion, but only to published regulations and the facts of the situation.

We will adjourn this hearing at 10pm, and continue it until September 10, 2015 in this room if everyone hasn't finished or if the applicant desires more time to respond to the comments and questions received.

P. Kelly asked if there was any challenge to the commission members sitting on the application for the text amendment. There was no challenge.

V. **Public Hearings**

A. **PZ Application #15-12-TEXT, Strategic Commercial Realty Inc., Text Amendment to Section 18.7.11 of the Canterbury Zoning Regulations**

E. Cotnoir counsel for the applicant stated that this application was submitted in conjunction with two special exception permit applications. E. Cotnoir referred to section 18.7.11 of the Town and read, "No permit shall be approved under this section for any operation having its main entrance on a Town road. This may be waived via two-thirds majority of the voting members if it can be shown by the applicant that..." He then listed the five criteria that must be met for the commission to approve. He stated that they proposed a modification to the regulation due to a recent Superior Court case that called into question the validity of waiving regulations. E. Cotnoir stated that this may place the Commission and the applicant in a difficult position and explained that if the Commission did not have the authority to pass the waivers, then there would be no opportunity for a special exception permit to pass at all. He explained that the proposal kept in place the same criteria, but instead of granting a waiver the Commission would make an approval based on those criteria being met. E. Cotnoir explained that the amendment would eliminate the super majority.

P. Kelly opened the public hearing for questions from the Commission.

J. Clark asked when the case law that E. Cotnoir was referring to was issued. E. Cotnoir stated that to his recollection it was within the last year. M. Branse stated that it was the Mackenzie case that went to the Appellate Court. E. Cotnoir and M. Branse discussed if the proposed language would satisfy the point of the Mackenzie case.

E. St. Louis asked if the application for a gravel operation on Depot Road was denied because it accessed a town road. P. Kelly stated that this regulation was not in affect at this time.

G. Drosch asked the access could be located on any road if the word "state" was removed from this section of the regulations. P. Kelly stated that was effectively what the applicant they're proposing, P. Kelly states read the criteria listed in Section 18.7.11. P. Kelly explained that the applicant is asking that they be required to meet these five criteria but without a waiver and not by 2/3 majority. E. Cotnoir agreed.

E. St. Louis stated that this criteria was not listed for other industrial type operations and asked if this restriction was only on earth excavations. P. Kelly stated that it was for Canterbury has numerous excavation operations. M. Branse explained that it is common for local zoning regulations to impose special requirements on excavations because they typically occur in residential zones, not industrial zones.

C. Bergman stated that whether the Commission accepts the proposed text amendment or not, they still have to ensure this criteria is met. He stated that the only difference was whether or not a 2/3 vote or a majority vote would be needed. P. Kelly agreed.

P. Kelly asked for comment from the public. There were no comments.

E. Cotnoir stated that there may be a timing issue with how this application would affect following applications. M. Branse stated that the amendment can be made effective any time after it's published although, the two special exception permits will not be governed by that amendment. It was his opinion that the applicant can voluntarily opt in to the new text. M. Branse stated that the hearings can remain open for thirty-five days from the opening date.

V. R. Lewis of 215 Wauregan Road asked if the criteria would remain exactly as worded. P. Kelly stated that it would.

C. Bergman made a motion to close the public hearing. J. Clark seconded the motion and it passed unanimously.

B. PZ Application #15-14-SE, Strategic Commercial Realty, Inc., DBA Rawson Materials, Special Exception for excavation operation, Wauregan Road, Assessor's Map 66, Lot 6 and Assessor's Map 67, Lots 13 & 17.

K. Green recused himself from this application.

E. Cotnoir explained that the application was only for the haul road that would cross Wauregan Road, and head into Brooklyn. The route would go from the LaFramboise operation, into the town of Brooklyn to another Rawson operation. It would then travel north to Beecher Road and out Route 169. E. Cotnoir stated that the only truck traffic touching Canterbury town roads would be to cross Wauregan Road at the intersection. The plan was that all trucks accessing the LaFramboise pit would use this haul road. There is another permitted site on Wauregan known as the Drobiaz parcel, which is authorized for 20 trips per day. Those trucks would also use this haul road. The most significant use would be trucks hauling out of the Rawson pit in Brooklyn. They would be using the haul road to enter the LaFramboise operation, for processing and then taken out of LaFramboise via the same route.

P. Kelly asked how the trucks they don't own or operate would be controlled. W. LaFramboise stated that it would take some time to inform their customers and other operations considering how long they have been in business.

E. St. Louis asked if the criteria of Section 18.7.12, had been met. E. Cotnoir stated that the applicants had letters of consent submitted by Casey Barron and Catherine M. and James F. Doyle.

J. Clark asked about the volume of truck traffic. E. Cotnoir stated that all trucks from these pits would be taken off Wauregan Road with the exception of the short distance those from the Drobiaz pit would have to travel to the haul road. E. Cotnoir defined a "trip end". He stated that the average would be 164 round trip ends per day. E. Cotnoir stated that the road is an existing gravel road, partially paved. It has a paved apron, and was always intended as a gravel road. He stated that he believed this road met all of the criteria. He stated that the road is adequate and sight lines are or will be made adequate. He noted that pedestrians and cyclists are not affected, this was strictly a crossing.

E. Cotnoir discussed the consent of owners of property within 400 feet of the haul road. He stated there were four houses that this would effect. Two belong to individuals with whom Rawson Materials have signed option to purchase agreements with. P. Kelly asked E. Cotnoir to acquire a statement from all four.

D. Held, of Provost and Rovero summarized a traffic study that he submitted for the record. He stated that he observed the proposed crossing. He stated that the point between the LaFramboise entrance and the existing haul road is about 20-22' in width. He stated that the speed limit in that area was listed at 30 MPH, and it was close to the speed vehicles were driving due to the curve in the road. D. Held stated that manual counts were performed. He stated that they looked at the level of service (LOS) of the road. He explained that the criteria was from the Transportation Research Board, a federal agency. He clarified that due to posted speed limits, Wauregan Road would be considered a Class 2 road opposed to a class 1 highway. He defined the LOS by letter, "A" being the best level through E and then F, being gridlock. D. Held explained, that they performed manual traffic counts from the hours of 7 a.m. to 4 p.m. for those are the hours of operation of the LaFramboise pit. He stated the counts were taken on August 6th, 2015. He stated that the peak hour was established between the hours of 2 p.m. and 3 p.m. for cars and for trucks entering and leaving LaFramboise. D. Held stated that roadside safety was provided in a separate report. D. Held explained in summary that the existing conditions, based on counts that day and proposed conditions with the majority of truck traffic off Wauregan Road would provide a level of service "A".

J. Clark asked for status of the southerly haul road proposal that the applicant was proposing to DEEP. E. Cotnoir stated they were not able to get permission.

E. Cotnoir stated that the applicant planned to improve the sight lines per D. Held's recommendations and also pave a 50' apron on both sides. He stated they would allow for formal stop signs, striping for a stop bar and the centerline. He added that they were still willing to report and log truck traffic as they now do.

P. Kelly stated that the times were to be included on the log sheets and stated that the office stopped getting the times. E. Cotnoir stated that he was not aware that the times had been omitted. P. Kelly stated that the Commission hired a manual traffic counter to sit for on Wauregan Road for ten hours. He stated that any discussion of time logs in an approval would be very detailed.

E. Cotnoir explained the status of the applicant proposals to the town of Brooklyn. He stated that the same proposal has been taken to Brooklyn Planning and Zoning, and Inland Wetland and Watercourses on an informal basis. He stated that the conversations have been very positive, and they have now submitted formal applications.

J. Rawson stated that they were proposing to change the intersection at Beecher Road to Route 169 to improve sight lines and safety.

C. Bergman expressed his concern about the traffic during events at the athletic fields off the haul road. J. Rawson stated that the traffic for the recreational activity and the excavation were at opposite times. M. Branse asked if the applicant was stating there would be no use of the haul road for gravel on the weekends. P. Kelly asked that this concern be continued.

P. Kelly called recess 8:39 p.m.

P. Kelly called the meeting to order at 8:47 p.m.

P. Kelly opened the public hearing to those in favor. There were no comments.

V. Robinson Lewis of 215 Wauregan Road, expressed concern that she did not receive notification as an abutter, but stated that her husband did. She noted that it was postmarked late. She stated that M. Gil informed her that they couldn't find her name on the town records. V. Robinson Lewis stated that she the document she printed from the town website had both the names on the property as of 2007. She stated that her and her husband jointly own two parcels. P. Kelly stated that it appeared the property was in a bank's name at this time. V. R. Lewis stated that the front portion of 215 Wauregan Road was in the bank's name, but the additional land (approximately 24 acres) was not. She stated that this parcel also abutted Strategic Commercial Realty. G. Drosch asked her to clarify where the property is located. V. R. Lewis pointed out the location on the aerial photo. P. Kelly stated that the commission will take this under advisement and look into the matter.

V. R. Lewis expressed concern about averaging truck counts. She stated they were opposed to this. She also expressed concern that the roads on the north and south side of Wauregan Road were constructed but never permitted. She stated they obtained use via the stipulation, but there was never a permit to construct the road. V. R. Lewis questioned the traffic study that stated the average speed was 30 mph. She referenced the traffic study completed by the North Eastern Connecticut Council of Governments (NECCOG) which stated that 70 percent of the traffic travels at 31-40mph and 20 % are traveling at 41-50 mph in that same area of the road. P. Kelly stated that the NECCOG report was not in the record and would submit a copy.

D. Cormier of 189 Wauregan Road stated that she agreed with V. R. Lewis. She stated that she resided on the third property in line abutting the haul road. She expressed concern about the past issues and the rules that have not been followed. She stated that she watched 400 trucks haul per day and felt there was no regard for her safety. She did not feel the Commission should accept an average truck load. She stated that although she is outside the area of notification, she is impacted by the dust and the noise.

P. Kelly asked if there were any more questions from the audience.

K. Green of 144 Wauregan Road addressed J. Rawson and asked how much gravel he has between all the pits. J. Rawson answered that there was approximately 900,000 yards in Canterbury, two million yards in Brooklyn, and 300,000 yards in the Pinedale pit. K. Green asked if material would be brought in and processed when the material was all gone. J. Rawson stated he would if it was available. K. Green stated that he was concerned with the rush hour traffic. He asked if the Public Works Director had the right to ask them to repair the road. R. Piper, First Selectman stated that the town would have to repair that section like any other road. He stated the town could ask the hauling parties to participate in the cost to repair. J. Rawson stated that would be willing to get an estimate and include that in any necessary bonding. K. Green if approved, and the two houses were purchased, if there would be an improvement to the sight light. J. Rawson stated it would.

L. Trahan of Maynard Road in Brooklyn stated that she understood the timing issue and wondered what would happen in the interim if Canterbury approved and Brooklyn had not acted on this permit. J. Rawson stated they would ask the Commission that the current conditions of the stipulated agreement be allowed until the Town of Brooklyn acts on the application. L. Trahan stated that she did not believe the truck tallies the town was receiving from LaFramboise Sand & Stone. She stated that she would like to see a firm traffic count that is monitored and enforced.

W. LaFramboise stated that every truck has a time ticket stamped when it leaves the site, and he would provide that under this new permit. J. Rawson stated that they would be using only registered trucks, not off-road trucks.

P. Larkin of 28 Maynard Road in Brooklyn stated that her main concern was the transition time and notification of customers. J. Rawson stated that they plan to send letters to all customers, and the gate to LaFramboise Sand & Stone would be locked. W. LaFramboise stated that it will be an adjustment and take time.

E. St Louis stated this application was not about excavating but about gravel. E. Cotnoir stated that this was true and they were not seeking excavation approval with this application, for it was just in regards to the haul road.

E. Cotnoir stated that he used the assessor's website and not the street cards to obtain abutters names and apologized that V. R. Lewis's name was not included with her husband's. P. Kelly asked if E. Cotnoir felt V. R. Lewis was sufficiently notified. E. Cotnoir stated that he felt that she was.

E. Cotnoir stated that this applicants would be willing to make repairs to the crossing and willing to including bonding for that. He stated that starting immediately the times would be included on the trucks load counts. E. Cotnoir stated that they would like to address the traffic along the haul road by use of the recreational fields at the next hearing. He stated that to estimate the absolute maximum truck traffic on any given day would be 150 including those from the Drobiaz pit. P. Kelly questioned this. He stated he thought the average was 160. E. Cotnoir stated that the average would be 82 round trips, for a total of 164 trip ends.

E. St Louis asked if the truck logs include all the trucks leaving the pit. M. Gil stated that the counts include all trucks, in and out. J. Rawson stated that the trucks that leave LaFramboise with product have a printed ticket. He stated that the incoming trucks are either empty to purchase or bringing material in to the pit. He stated that those drivers keep their own time sheets as well.

L. Trahan of Maynard Road stated that the original cease and desist was for 300 to 400 trucks daily and cautioned the Commission to be aware when making their decision.

P. Kelly asked if the trucks will enter onto Wauregan Road again once they go up through Brooklyn, then out to Route 169. J. Rawson stated that they will make this a stipulation that they cannot.

C. Bergman made the motion to continue the public hearing at the next regular meeting on September 10,

2015 at 7:00 p.m. G. Droesch seconded the motion and it passed unanimously.

C. PZ Application #15-13-SE, LaFramboise Sand & Stone, Inc., Special Exception for excavation operation, Wauregan Road, Assessor's Map 66, Lots 1, 2, & 3 and Assessor's Map 65, Lot 5.

K. Green recused himself prior to this agenda item.

P. Kelly stated that notice was published in the newspaper and certificates of mailings received. He read the legal notice aloud.

E. Cotnoir was present at the public hearing. He stated that the application would be for excavation. D. Held, of Provost and Rovero, engineer for the applicant reviewed the plans with the Commission. He stated that overall 213,000 cubic yards of material would be removed from this property.

E. St Louis asked if there were any parts of this application that were not part of the previous approval. D. Held stated the only additions were the haul road, and the monitoring wells. He explained that the notes include working hours of operation and the restoration plan. He stated that some of the site had already been restored for agriculture.

M. Branse asked for clarification. He stated there was supposed to be a five foot separator to ground water and asked if the applicant was proposing to excavate less than this. D. Held responded that historically this has happened and the applicant was proposing to fix this. He stated it would not happen in the future.

P. Kelly expressed concern that the application showed the road coming in and the LaFramboise plan did not. D. Held explained that the sheet was an existing conditions map and the new haul road was not shown. He stated they were asking for approval of excavation on LaFramboise, and that the haul road was a separate application on Strategic Commercial Realty property. P. Kelly stated that if approved, the road has to be shown. J. Rawson stated that it exists, it's not used but is there. P. Kelly stated that it was never approved and never designed so the Commission had to a design of the road.

E. St. Louis asked if any activity has been happening during the off hours. W. LaFramboise stated that he did work in the pit on weekends. M. Branse asked if there would be work taking place, other than equipment maintenance, outside the regulated hours. He asked about crushing, screening, excavating, hauling, washing. J. Rawson and W. LaFramboise both said there would not be.

C. Bergman questioned that the existing access would be closed if the permit was approved. E. Cotnoir confirmed that it would. C. Bergman asked what if the haul road was denied. E. Cotnoir stated that the two application are related in this way. D. Held stated that the haul road would need approval in order to do what is proposed in this application.

P. Kelly opened the hearing to those in favor of the application. Nobody spoke. He asked for those opposed to the application.

D. Cormier of 189 Wauregan Road stated that recently she has heard a lot of hammering noises after hours and asked W. LaFramboise to show him on the aerial map where the noises were coming from. He pointed the area out on the map. She stated that she heard the noise until 7:45 p.m. one night. W. LaFramboise stated that it was jack hammering.

M. Branse asked if this would occur after hours. W. LaFramboise stated that sometimes they get rocks too big to go into the crusher and this was done at night.

V.R. Lewis stated that she felt history should speak for itself in this application and it was very frustrating. She stated that the issues would continue if they were given additional permits. She stated that there has been vandalism on the road and that it's littered with coffee cups.

C. Bergman made the motion to continue the public hearing to the next regular meeting on September 10, 2015 at 7:00 p.m. G. Droesch seconded the motion and it passed unanimously.

K. Green rejoined the Commission.

VI. New Business-none

VII. Old Business-
PZ Application #15-12-TEXT, Strategic Commercial Realty Inc., Text Amendment to Section 18.7.11 of the Canterbury Zoning Regulations. The Commission will take this up at the next regular meeting. E. St. Louis stated that he will be absent at the next meeting.

VIII. Other business

- A. Correspondence- reviewed
- B. ZEO Report- discussed
- C. Any other appropriate business- none

IX. Adjournment- E. St. Louis made the motion to adjourn at 10:17 p.m. G. Droesch seconded the motion and it passed unanimously.

Respectfully submitted,

Debby Plantamuro
Land Use Admin. Asst.
*as recorded

Cc; Town Clerk, PZ members and alternates; applicant files; PZ file