DOCKET NO. CV 13 5005787

STEVEN SADLOWSKI : WINDHAM JUDICIAL DISTRICT

v. :

LAFRAMBOISE SAND AND STONE, INC. : AUGUST 27, 2013

MEMORANDUM OF DECISION
ON MOTION FOR TEMPORARY RESTRAINING ORDER (#102)

Gravel, commonly known as dirt, possesses an economic value that belies its humble character. Alluvial gravel deposits along the banks of the Quinebaug and other Connecticut rivers are measurable in the multimillions of cubic yards, and have generated a thriving local mining industry. This case involves the operation of one of the sites of that industry, a facility located southerly of Wauregan Road in the town of Canterbury. The named plaintiff, in his capacity as that town's zoning enforcement officer, filed this action with a return date of March 14, 2013. He accompanied his complaint with a motion for temporary restraining order that is the subject of this memorandum, and in which he demands that this court enjoin the named defendant from alleged illegal use of its facility. Defendant appeared and both parties were fully heard on the motion during two days of testimony. From the evidence admitted, including review of all exhibits, the court makes the following findings of fact and conclusions of law.

I. History of Property and Permits

The corporate defendant is owned and operated by Canterbury native Wayne Laframboise[1]. As a young man, he had operated a dairy farm on the site until the late 1980's when dairy farming saw a dramatic reduction in this state. He then converted his land to a "mom and pop" gravel extraction site. He obtained a special permit from the

town which brought him into zoning compliance, and he did business there without any adverse interaction with the town for about the next twenty years.

The Laframboise property consists of 270 acres, plus or minus, bounded northerly by Wauregan Road, southerly by the Quinebaug River, and by abutting landowners on the east and west. Four separate tracts comprise that total acreage, and these are designated as Lots 1, 2, and 3 on Assessor's Map 66, and Lot 5 on Map 65. Lot 5, also known as 189 Wauregan Road, consists of 48 acres and is the focus of this action. It has no separate road frontage.

As far as this court has been made aware, the properties have been the subject of at least five permits over the years. First was an unnumbered 1989 permit, followed in turn by number 98-11-SPR in 1998, by number 07-11-SE in 2007, by number 11-4-SPR in 2011, and finally by number 12-5-SPR in 2012[2]. The applications reveal the evolution of this enterprise over the years. The 1989 application seeks permission for "clearing and removing hills of gravel to make more agricultural land – cornfields or hayfields", and estimated the volume of extraction at 2000 cubic yards. In 1998, permission was sought for "gravel operation/wash process plant/ portable crusher/ portable scale house/ portable concrete batch plant, etc.," without a quantity declared. By 2012, applicant proposed to conduct "gravel processing, washing, or screening operation/ excavating gravel for export and processing/ importing gravel, topsoil, rock, earthen materials for processing or export, etc.," and the plans accompanying that application indicate approximately 460,000 cubic yards were targeted for excavation.

For reasons that will be discussed momentarily, the Commission on September 13, 2012, revoked defendant's permits. Between that date and November 8, 2012, when

permit number 12-5-SPR was approved, defendant continued to operate despite having no permit. On December 7, 2012, plaintiff issued a cease and desist order which, on April 11, 2013, the Commission upheld and in turn revoked permit number 12-5-SPR. Defendant has operated without a permit continuously from September 13, 2012 to the present, save for the brief duration of the 2012 permit. Plaintiff now seeks the assistance of this court to enforce its zoning scheme via a temporary restraining order.

II. Canterbury's Zoning Regulations

The town of Canterbury originally promulgated zoning regulations in 1974. As of 2009, when the latest revision pertinent to this matter was enacted, the regulations (Ex. 1) include a Section 13 dealing with Special Exceptions and made applicable to land on which gravel excavation is being conducted[3]. A "Special Exception", according to definitional §2.2, permits "a use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location, or the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, or prosperity". §13.4 specifies that before issuance of a special exception permit the commission must make findings that adverse effects of the proposed use will not be unreasonably detrimental to adjacent properties or the general neighborhood, that the proposed use will not impair traffic or create road congestion, that the proposed use will not unreasonably depreciate adjacent property values, and that it will be in harmony with the existing use of adjoining properties. §13.5 requires that a permittee obtain site plan approval before expansion of any approved use. §13.9 authorizes the rescission of any permit upon finding that a permittee is out of compliance with any of the terms, conditions, or restrictions upon which such permit was

granted. Finally, §13.10 authorizes the commission to require additional conditions to achieve its objectives, including requiring an applicant to post a bond insuring compliance with the terms of the permit.

III. Permit Revocation Proceedings

Throughout its brief filed here on July 10, defendant has questioned the legitimacy of the commission's decisions to revoke the permits it had previously issued. While its challenges are vague, the court will briefly review those decisions in the interest of assuring that plaintiff has acted equitably in that it now seeks equitable relief.

A. 2012 Revocation

The commission approved permit application 11-4-SPR on December 2, 2011, and among the conditions imposed upon the permit was that defendant post a restoration bond (Ex. 4). As of July 9, 2012, when no bond had yet been posted, plaintiff wrote to defendant noting that this omission put defendant in violation of its permit (Ex. C). On August 31, 2012, plaintiff wrote defendant advising that the commission at its meeting of September 13 would determine an appropriate response to this omission, including the potential for revocation of the permit (Ex. D). Despite plaintiff's warning to Mr. Laframboise that he could bring an attorney with him to that meeting, he showed up alone and threw himself on the mercy of the commission, pleading financial inability as the cause for the lack of a bond. The commission voted to revoke the permit, and notice to that effect was sent to defendant on the following day (Ex. E). Defendant's brief argues that the long delay before the enforcement decision casts a shadow upon the commission's authority to do what it did, and further suggests that the revocation decision took Mr. Laframboise by surprise, as he showed up alone and evidently

expected more time to bring his corporation into compliance. The court finds that the delay demonstrates patience on the part of the commission and was of no prejudice to defendant. Despite clear notice of the commission's intentions, he failed to take reasonable and prudent steps to assure the continuity of his permit and presented no valid excuse for the lack of a bond. The commission acted properly and in accordance with §13.9 of the regulations in its actions on September 13.

B. 2013 Revocation

Following the revocation of permit 11-4-SPR, defendant filed a new application for a special exception, docketed as number 12-5-SPR, on October 8, 2012. The commission approved this application on November 8 (Ex. 6) and included twelve conditions. Ex. F, dated November 15, is a letter by means of which the commission notified defendant of its action. The conditions of concern here are number 9, providing that "[t]his operation shall not allow more than 26 Truck Loads of exported material to travel over Wauregan Road in any given day"; number 10, providing that "[t]he operation may import no more than 26 loads of material that was the product of, and specific to, a job site of an end user of material that has been exported from the permitted operation...No material may be imported from any other gravel pits or earth material suppliers;[4] and 12, "[o]peration may import concrete or asphalt for recycling...At no time shall this use cause the maximum number of truck loads to exceed the limit, indicated in #9, above, or be in excess of 2 loads daily"; (emphasis in original).

What appears in both Exhibits 6 and F to be a thirteenth condition is actually a statement of the reason for the specificity of conditions 9 through 12, and is at the heart of this controversy. Vehicular traffic from Lot 5 on Map 65 cannot access major roads

without passing in close proximity to residences located on Wauregan and adjacent roads. Since the inception of the Laframboise gravel operation in 1989, the commission had attempted to mitigate the impact of the gravel operation upon neighbors by limiting the number of vehicles that could serve the site. Thus in 1989, item II in the commission's approval letter of December 11 (Ex. 2) reads: "Hauling restricted to one truck currently owned by Wayne Laframboise and up to one additional truck may be leased on an as needed basis." In 2006 the commission "clarified" that limit by reaching a consensus that 52 loads per day were allowable (Ex. A). The approval of the 2011 permit application indicates that "a load count of 52 loads per work day over Wauregan/Maynard Road" was allowed (Ex. 4). The 2012 permit continues with the limits in effect over at least the preceding six years.

"Condition" 13 also states the commission's finding that as of 2012 defendant was exceeding the 52 load per day limit, and that as much of the excess was attributable to importing material from other operations for processing as it was due to exporting of gravel produced on this site. That finding provoked the conditions cited. Less than a month later, on December 7, plaintiff wrote to defendant detailing his observations that the volume limits set were being routinely exceeded within days of the commission's issuance of the 2012 permit. He ordered defendant to cease and desist operations generally, both because of these violations and because he believed that defendant's appeal of the conditions imposed to the town's zoning board of appeals (which was then pending) caused an automatic stay of the permit until the conclusion of that appeal[5]. Subsequently, on April 11, the commission voted in effect to uphold that order, and,

invoking §13.9, revoked the permit (literally, 07-11-SE – see endnote 2) under which permit number 12-5-SPR had allowed expanded use.

Defendant's challenge to this decision is complicated, and depends in large part upon a settlement agreement struck by the town with other related entities in two prior lawsuits. Those companies, River Junction Estates, LLC, and Strategic Commercial Realty, Inc., d/b/a/ Rawson Materials, had each sued the planning and zoning commission in 2007 over its denial of gravel removal applications. In late 2008 the town had entered into a settlement agreement as to both suits (Ex. K), which was approved by the commission following a public hearing and which the court (Riley, J.) subsequently accepted as the basis of stipulated judgments resolving both lawsuits. Those two entities, which are related to each other in many respects, have legal or equitable interests in land northerly of Wauregan Road and extending into the next town (Brooklyn), and also southerly of Wauregan Road, including the parcel immediately adjacent to 189 Wauregan on the east. The relevance of their agreement with the town, according to defendant, is that they bargained and gave consideration for the right to control gravel-hauling traffic in the Wauregan Road area, not merely as to their own lands but "for trucks removing gravel from any land contiguous [thereto] or from any other parcel where a permit duly issued by the Commission specifically approves use of the haul road" (¶ 4). This language, they now argue, undermines the commission's present ability to limit truck traffic to 52 loads per day from the defendant's contiguous property. Consistent with that perception, Rawson signed a multi-million-dollar contract with defendant on December 13, 2011 (Ex. G) whereby those entities were given permission to alter gravel processing

operations on its site "as needed", to deposit material thereon, and by which defendant agreed to supply trucks in an unlimited number to satisfy the Rawson company's needs.

Defendant's contention that the town gave away the traffic access issue relies upon two interrelated details, one of infrastructure design and the other of manner of operation. The efforts to keep gravel-hauling vehicles off Wauregan Road, which runs generally east and west, led to the proposal of a "haul road" roughly perpendicular to it, running across Wauregan Road from the southerly Rawson land all the way northerly into the company's Brooklyn site. Further, the parties agreed, the companies would limit truck volume daily to 52 loads per day "over" Wauregan Road. A map appended to Exhibit K outlines the path of the haul road, but the actual construction of the road has followed a course deviating from the one shown on that map in two respects. One deviation resulted from the refusal of the state of Connecticut to grant access rights over some of its lands lying in the path of the proposed haul road, and defendant has spent much time in the evidence and in its brief outlining how diligently its partners attempted to negotiate that issue with the state. That discussion is not precisely on point, because it is the second deviation that concerns the town. Specifically, the haul road was mapped as running to the Rawson land easterly of Lot 5, but has been constructed and is being operated directly from the Laframboise premises without any approval of this change having been sought from the town, let alone granted.

As to the 52 load per day limitation, the evidence clearly establishes that the daily operation currently[6] amounts to approximately 300 vehicle trips per day in and out of defendant's facility[7]. In addition, no limit is being observed upon the amount of material imported into Canterbury other than the limits dictated by Rawson's operational

demands. This mode of operation, and the decision to continue operating after its permits have been revoked, reveal that taken to its logical conclusion defendant's position is that the 2008 agreement transferred supervision of gravel operations on defendant's site from the commission to the Rawson management. But the agreement which the court approved begins paragraph 4 with the preamble "*subject to issuance of any other required permit, approval or license*" (emphasis added). The defendant acts and argues as if those words did not exist. Because, it claims, the town bargained away the right to control traffic access, it has forfeited the right even to require that defendant obtain and operate within the constraints of any zoning permit. The court does not find this to be an accurate or permissible reading of the 2008 agreement.

Both because the defendant has not adhered strictly to the mapped haul road provisions of that agreement, and, more significantly, because the commission did not thereby cede all authority to regulate the manner and scope of operations on defendant's site, the commission acted within its authority by requiring defendant to apply for and be issued the 2012 permit, and it acted within its authority under §13.9 in rescinding that permit upon the finding of noncompliance detailed in Exhibits 21 and F and amplified by the testimony before this court. While defendant has in another context raised procedural objections to the revocation[8], those issues were not presented to this court and the court makes no findings with respect to the sufficiency of the commission's procedures.

IV. Discussion

At the beginning of oral argument, this court engaged in a discussion with counsel prompted by the initial remarks of defendant's attorney that this was a complicated matter – indeed, far more complicated than even the convoluted history just recited

indicates. To begin with, this is but one of at least four suits pending between this defendant and the town, all related to various aspects of its gravel operation. The court takes notice of the pendency of *Laframboise Sand & Stone, Inc. v. Canterbury Planning and Zoning Commission*, DN# WWM CV12 6006233S (defendant's appeal from the terms of the November, 2012 permit), *Laframboise Sand & Stone, Inc. v. Zoning Board of Appeals of the Town of Canterbury*, DN# WWM CV13 6006750S (defendant's appeal from the ZBA decision upholding the conditions imposed upon the 2012 permit), and *Laframboise Sand & Stone, Inc. v. Canterbury Planning and Zoning Commission*, DN# WWM CV13 6006815S (defendant's appeal from the 2013 permit revocation). Related suits include *Strategic Commercial Realty, Inc., d/b/a Rawson Material v. Canterbury Planning and Zoning Commission*, DN# WWM CV13 6006613S, *Strategic Commercial Realty, Inc., d/b/a Rawson Material v. Canterbury Planning and Zoning Commission*, DN# WWM CV13 6006816S, and *Sadlowski v. Strategic Commercial Realty, Inc.*, DN# WWM CV13 6006163S, together with about another half dozen cases which have gone to judgment or been dismissed. Both parties assuaged the court's concerns that it would be seeing only through a glass darkly, so to speak, and perhaps missing items of major import, and concurred that, in the words of defendant's brief, "the sole matter pending before the court at this time is a determination of the plaintiff's motion for temporary injunction".

The purpose of a temporary restraining order is to preserve the status quo while a matter pending before a court awaits the entry of a final judgment; *Olcott v. Pendleton*, 128 Conn. 292, 295 (1941). In *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84 (2010), the Court held that "a court may, in its discretion, exercise its equitable power to

order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law", and that a "party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor"; 299 Conn. 84, 97-98 (citations omitted). It is the plaintiff seeking that relief who bears the burden of proof on each of those points. As previously indicated in *Karls v. Alexandra Realty Corp.,* 179 Conn. 390, at 401 (1980), the "extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm."

When a municipality's efforts to enforce its zoning regulations include applying to a court for injunctive relief, "the town is relieved of the normal burden of proving irreparable harm and the lack of an adequate remedy at law, because §8-12 by implication assumes that no adequate alternative remedy exists and that the injury was irreparable", *Gelinas v West Hartford*, 225 Conn. 575, 588 (1993). Defendant argues that this presumption is not available in the present posture of the case, at which time only a temporary injunction or restraining order is under consideration, and cites the superior court cases of *Kwiatkowski v. Johnson*, DN#CV02 0307032, judicial district of Bridgeport (1993; Vertefeuille, J.), *Town of Granby v. Schlicht*, DN# CV01 0811944, judicial district of Hartford (2002; Beach, J.), *City of Meriden v. Woodbury*, DN#CV 03 0286120, judicial district of Meriden (2004; Tanzer, J.), and *Sorrentino v. Ives*,

DN#CV10 5005282 (2010; Santos, J.). Defendant concedes that there is a split of authority on the superior court on this issue, and it appears to be beyond dispute that a superior court has the authority to issue a temporary restraining order in response to zoning violations under appropriate circumstances; *City of Stamford v. Kovac*, 228 Conn. 95 (1993). The court notes that each of these four cases cited above involves an alleged violation that is on a different order of magnitude from that in the present case, and that, if unrestrained, would not amount to incremental harm while the case wound its way through the court process. In *Kwiatkowski*, the suit was over the parking of one commercial vehicle. *Schlicht* involved a stone wall that was not going to expand in size while the litigation proceeded. *Woodbury* was a suit demanding repairs to and cleanup of one single-family residence, and *Sorrentino* dealt with remote-controlled model car racing on-site of a business permitted to sell off-road and other motor vehicles. Certainly those cases are compatible with the conclusion that a municipality, when seeking temporary as opposed to permanent equitable relief, ought to prove all four elements of the *Aqleh* test; that conclusion does not mean, as implied by defendant, that they categorically rule out the issuance of a temporary restraining order in a zoning enforcement case regardless of the proof provided by the applicant for that relief.

1. Has plaintiff shown an irreparable harm?

Applying the test outlined in the *Karls* case, supra, this court finds that the injury complained of is both substantial and imminent, and thus satisfies plaintiff's burden on this score. The court heard the testimony of three neighbors living on properties abutting the haul road or in close proximity thereto. The court finds that truck traffic begins at 7:00 each work day, and the vehicles pass over the road as often as every two minutes.

The narrow breadth of the haul road places these vehicles within inches of the boundaries of two of the neighboring properties, and within feet of their yards where their children play. The trucks are heavy-duty dump tracks and gravel haulers (Exs. 9, 10, and 14), and generate high levels of noise, dust, and diesel fumes. These conditions collectively have a substantial and negative impact upon the community's quality of life, and are both present and constant.

Secondly, these conditions have diminished the value of properties in the neighborhood of the business. Ex. 7 is a notice showing action of the town's Board of Assessment Appeals reducing the assessed value of the Sposato property (an abutter) by 25%.

Thirdly, there is ongoing harm to the town of Canterbury in forcing it to tolerate what has become a major enterprise conducting an environmentally sensitive operation in the absence of any local oversight. Exs. 13a and b and 15 are photographs depicting what has become a veritable mountain of gravel clearly visible at a distance offsite. In addition to this tangible detail, the flouting of the town's regulations and administrative directives on a daily basis is not tolerable in a society based upon the rule of law.

2. Does plaintiff have an adequate remedy at law?

No. §8-12 of the General Statutes prescribes the remedy to address violations of the zoning regulations, and aside from monetary penalties not at issue at the moment the regime in place is that town's seek judicial support in the form of an injunction when their own efforts to enforce their regulations prove futile.

Bauer v. Waste Management of Connecticut, Inc., 239 Conn. 515 (1996) is a case with some similarity to that before this court. The defendant there operated a landfill for

disposal of waste. A permit issued by the Department of Environmental Protection allowed waste to be deposited to a height of 190 feet, whereas a local zoning regulation limited the height to 90 feet. The plaintiff zoning enforcement officer sued seeking a temporary and permanent injunction enforcing the lower limit, and defendant contended that it was within its rights to go to the extra height allowed by DEP. Here, the town's insistence upon limiting vehicle trips to 52 each way daily poses a kindred quantitative constraint upon defendant's business operations. After a first round of victory for the defendant at the trial court, reversed on appeal; *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 232 (1995); a later trial court entered a temporary injunction in favor of the town, and a subsequent permanent order extending that temporary order into the future. The Supreme Court again affirmed, noting, inter alia, that injunctive relief was particularly appropriate in light of the fact that while the litigation was underway, Waste Management deposited about 1.5 million cubic yards of waste at the site, causing piles to rise as high as 160 feet. While the details of the present quantity of material at the Canterbury site have not been presented to this court yet, it is inevitable that operations on a scale of 300 vehicles per day will have a more significant impact than the same activity involving 52 vehicles per day. There is no valid argument to be made that while this litigation is pending the town should suffer the ongoing environmental degradation this entails only to hope that an adequate remediation order can be fashioned following a full trial on the merits.

Bauer, incidentally, also disposes of two arguments made by defendant here. These are, first, that the pendency of the several appeals which it and its neighbor have filed stays the enforceability of the town's regulations until those appeals are resolved; at

page 529, the opinion holds that a zoning regulation is entitled to a presumption of validity, and that the filing of an administrative appeal does not operate to stay enforcement of the challenged regulation absent a court order enjoining such enforcement action. Secondly, Waste Management argued that the less-restrictive DEP permit preempted the local regulation, but the court pointed out that the company was ignoring the express condition on that permit to the effect that nothing therein was intended to limit the right of the local authorities to otherwise regulate this facility. Conceptually, that argument is similar to defendant's stance here, which is that the 2008 traffic control agreement supersedes the zoning regulations. As in *Bauer*, defendant is ignoring the fact that the agreement left gravel operations in the vicinity subject to other applicable permit requirements.

3. Is plaintiff likely to succeed on the merits?

The answer to this question is a qualified "yes", if viewed objectively rather than by the parties' subjective responses to the ultimate results achieved here. Plaintiff seeks to shut down the defendant's operation entirely, while defendant seeks a green light to continue doing business without limits upon the quantity of product it may move on and off the site. Since the court may find the two unduly polarized, and reach a result somewhere between the positions of the parties, "success on the merits" may be relative, rather than absolute.

What now appears likely is that defendant's defenses will not prevail. The main defense here is that the 2008 agreement means what the defendant says it means, that is, that the town of Canterbury ceded the power to regulate defendant's property when it entered into a settlement of an abutter's lawsuit. At least to the extent that the argument

has been framed and developed thus far, the proposition that such a sweeping consent to all imaginable expansion of the use of this site could be given so obliquely and yet so comprehensively does not impress this court as having winning prospects.

Defendant also argues that the town should be estopped from enforcing its regulations in light of what transpired in 2008. "Municipal estoppel" is a doctrine by which towns have at times been restrained from enforcing their local regulations when doing so would work an inequitable result upon a party who changed position in reliance upon what the town's agents had done or said on an earlier occasion. Even the earliest cases establish that estoppel is an extraordinary interdiction of a town's efforts to enforce its zoning regulations. "There are two essential elements to an estoppel— the party must do or say something that is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief; and the other party, influenced thereby, must actually change his position or do some act to his injury which he otherwise would not have done; *Pet Car Products, Inc. v. Barnett*, 150 Conn. 42 (1962). The same case informs that "...it is the burden of the person claiming the estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge", 150 C. 42, 54. Furthermore, that burden is the heavy one of proving that enforcement of the regulations would impose so substantial a loss upon the party restrained as to be highly inequitable or oppressive, *West Hartford v. Rechel*, 190 Conn. 122 (1983).

In *Levine v. Town of Sterling,* 300 Conn. 521 (2011) the Supreme Court set forth the following list of the factors allowing a court to apply this doctrine in a given case:

> The standards governing the application of equitable estoppel are well established. [I]n order for a court to invoke municipal estoppel, the aggrieved party must establish that: (1) an authorized agent of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and to act on that belief; (2) the party had exercised due diligence to ascertain the truth and not only lacked knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; (3) the party had changed its position in reliance on those facts; and (4) the party would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents....
>
> 300 Conn. 521, 534-5

A court must hold an evidentiary hearing to determine this issue; *Bloom v. Zoning Board of Appeals*, 233 Conn. 198 (1999). At the preliminary hearing held thus far, defendant had the opportunity to develop this issue, but did not persuade the court that either sufficient inducement by a town officer, or commensurate reliance by any representative of defendant, has been established by the party who here bears the burden of proof on this issue. While defendant may proffer additional evidence probative of estoppel at trial, the facts as found at present do not make out a prima facie case supporting its invocation of this defense.

4. Do the equities favor plaintiff's demand for a restraining order?

This is a suit with high stakes for both parties, and the court views the balancing of the equities which is the fourth of the *Aqleh* measures as arguably most important given the facts of this case. Defendant claims it will lose substantial revenue if shut down, and while the amount thereof is indeterminate at this time the court will not assume that the claim is made lightly. Neighboring residents, on the other hand, are suffering a daily onslaught of annoying, irritating, and discomforting traffic, noise, dust,

and fumes amounting to a nuisance on a scale far exceeding the volume of those disturbances present at the time they bought their homes[9].

If those tangible realities were considered, for the sake of argument, to be in equipoise, other more abstract concerns tilt the balance in favor of the plaintiff. The court considers it significant that the intensification of use of defendant's site as outlined above has occurred without any approval by the town, and even in defiance of the town's vigorous efforts to get defendant to pay attention to the mandates of the zoning regulations. Defendant has taken a dubious provision of a contract involving different properties and issues, and self-servingly insists that this provision ends the debate. Every day that this operation continues unregulated provides additional opportunity for harm to the environment and to the neighborhood, and a less definable harm in contributing to the cynicism of a community which deserves respect for its lawful regulations and expects a response to those who ignore those regulations with impunity.

V. Conclusion and Order

For all of the reasons set forth above, this court is of the opinion that a temporary restraining order should enter at this time. There yet remains the question whether that injunction should go as far as plaintiff demands, and force the shutdown of defendant's facility.

It is well established that once a trial court has determined that an injunction is warranted, the scope and quantum of that injunctive relief rests in its sound discretion; this principle has been articulated both in the land use regulation context, see *Dornfried v. October Twenty-Four, Inc.*, 230 Conn. 622 (1994); in the nuisance context, see *Nair v. Thaw*, 156 Conn. 445 (1968); and in cases, such as that now under consideration,

presenting a hybrid of regulatory and nuisance considerations, such as *Cummings v. Tripp*, 204 Conn. 67, 90 (1987), and *O'Neill v. Carolina Freight Carriers Corporation*, 156 Conn. 613 (1968). Keeping in mind that at this stage of the legal proceedings "the purpose of a temporary injunction is to maintain the status quo while the rights of the parties are being determined"; *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 682 (2012), this court will attempt to fashion an order that maintains that status quo.

Discerning the accurate "status quo" is the challenge. From the town's point of view, its enforcement activities leave defendant without any valid permit and hence unable to conduct any gravel removal business at all. At the other pole, defendant argues that its good faith incurring of contractual obligations in reliance upon its perceptions of the 2008 agreement warrant the court's tolerance of the more intensive level of operations recently engaged in. Between these two extremes is the option which strikes the court as most accurately reflecting the equities of the case, which is to permit defendant to remain in operation but with operations limited to the daily ceiling imposed by permit 12-5-SPR.

This middle ground takes note of the long, noncontroversial operation of defendant's facility at a 52 load-per-day level, and permits it to continue in operation at that reduced volume pending the conclusion of this suit. The court assumes that a long, forced shutdown might be fatal to defendant's enterprise. While that may be a necessary consequence of any permanent injunction entered following a full trial, now is not the time to precipitate that result. The option also reflects one aspect of the 2008 agreement, that is, the privilege of moving 52 loads-per-day "over" Wauregan Road. The damage to the neighborhood will diminish proportionate to the reduction in traffic allowed.

Consistent with the foregoing findings and discussion, it is, therefore,

ORDERED:

1. Effective September 3, 2013, defendant is enjoined not to allow export of material from the subject premises exceeding 26 truck loads per day to travel in any direction over Wauregan Road;
2. Effective simultaneously, it shall allow no import of material from other land to the subject premises exceeding 26 truck loads per day, and provided that a) any material imported must be the product of and specific to a job site of an end user of the material exported pursuant to the preceding paragraph, b) that no such material may be imported from any other gravel pits or earth material suppliers, and that c) no more than two of said loads may consist of imported concrete or asphalt for recycling;
3. Each daily load exceeding the limits indicated shall be considered a separate violation of this order and, upon finding by this court that such a violation of this order has occurred, shall incur a penalty of $1000 per violation to be paid once assessed to the treasurer of the town of Canterbury as a civil penalty; and
4. This injunction is to be interpreted consistent with and not in derogation of such other statutes, ordinances, regulations, court orders or other legal directives applicable to the operation of this facility as may exist and are not inconsistent with the terms of this order, and this injunction shall remain in full force and effect until any further order of this court.

Boland, J.

[1] The court has noted that both sides to this dispute have treated the barrier between Mr. Laframboise and the corporation as somewhat permeable. While the later applications and the land record references indicate that the corporate defendant is the property owner, Mr. Laframboise himself testified in the first person about his operations. Correspondence between the parties and others sometimes fails to clarify that the corporation is the real party in interest. For the purposes of this action, this detail is mentioned only to avoid confusion; the outcome is not significantly affected by the parties' casual treatment of the corporation as his alter ego.

[2] The suffixes "SE" and "SPR" appear to designate, respectively, "special exception" and "site plan review" proceedings. The record additionally alludes frequently to "special permits" applicable to the site. This nomenclature ought not to confuse the reader; there are occasions, and this is one, where the terms have functional equivalency. *A. Aiudi and Sons, LLC v. Planning and Zoning Commission of the Town of Plainville*, 267 Conn. 192 (2003).

[3] There are two sections potentially applicable to this situation. While Section 13 generally deals with Special Exceptions (including, according to §5.3.3 of the regulations, commercial sand and gravel operations), Section 18 deals specifically with Excavation and Filling of Earth Products. §18.5 provides that the Zoning Commission "may" grant a special permit in accordance with this Section *in lieu of the provisions of Section 13*, indicating that the two provisions are mutually exclusive and raising an initial concern as to which section should be operative here. Neither party shed any light on this question. Because Section 18 is characterized in §18.1 as having been adopted under the authority of Conn. Gen. Stat. §7-148 (a statute that is not part of the zoning statutes, but instead delegates police powers to a municipal corporation), because the *Zoning* Enforcement Officer is the plaintiff, and because there is passing mention of Section 13 in the record (Ex. 12, p. 2, for instance), but none of Section 18, the court concludes that Section 13 is indeed applicable and has analyzed the matter in accordance with its directives.

[4] Certain enumerated exceptions here and in paragraph 11 have no bearing upon this case.

[5] Neither party discussed the effect the applicant's filing an appeal for review of a permit to a town's zoning board of appeals has upon the utilization of the permit pending the appeal. Is the permit usable within the limits set, or is it stayed entirely pending completion of the appeal? The issue is not moot, because although the ZBA denied the appeal on February 7 of this year, according to plaintiff's brief (p. 12), that denial is the subject of an action pending in this judicial district under the caption *Laframboise Sand and Stone, LLC v. Zoning Board of Appeals of the Town of Canterbury*, DN# WWM-CV13 6006750S. Because the defendant has not attempted to operate within the challenged limits, however, the resolution of that question would not assist defendant in the present posture of this case.

[6] "Currently" means as of the date of the hearing. Defendant agreed to return operations to the 52 load per day level prospectively on that occasion, until the court clarified the rights of the parties. A new skirmish erupted when plaintiff appended to its post-hearing brief affidavits claiming that the defendant was in breach of this limit, to which defendant responded by demanding a hearing on that point. This court has not held such a hearing, and assumes (given the lack of any motion for contempt) that defendant is adhering, at present, to the limit it agreed to.

[7] The defendant contends that because vehicles merely cross Wauregan Road en route from the southerly to the northerly links of the haul road, they are not moving "over" Wauregan Road. It is elementary that traffic crossing a road goes "over" that road whether travelling parallel or perpendicular to its trajectory.

[8] Specifically, in its complaint filed in *Laframboise Sand & Stone, Inc. v. Canterbury Planning and Zoning Cpmmission*, DN# WWM CV13 6006815S, its appeal from the 2013 permit revocation.

[9] The court is aware that this case has not been litigated thus far as a nuisance matter. Without objection by defendant, plaintiff offered the testimony of three neighbors who established the conditions indicated. Even had an objection been made, their testimony illustrating the practical consequences to them of the situation giving rise to this lawsuit was admissible in that it was material and relevant to the plaintiff's demand for injunctive relief.