

# WINDHAM PLANNING & ZONING COMMISSION

## Regular Meeting

August 25, 2016 - 7:00 PM

2nd Floor conference room

Windham Town Hall, 979 Main St., Willimantic

**Call to Order** - Paula Stahl-Chair, Jean Chaine-Vice Chair, Claire Lary, Edward Pelletier, Michael Graf, and Scott Lambeck. Staff present were Matt Vertefeuille Director of Code Enforcement, and James Finger, Town Planner. Also numerous citizens to comment at hearing.

**Minutes for July 28, & Aug 16, 2016.** Claire Lary MOTION to approve the July 28, 2016 minutes, and Jean Chaine SECONDED the motion; all voted in favor with exception of Edward Pelletier, and Michael Graf who abstained. Jean Chaine MOTION to approve Aug 16, 2016 and Edward Pelletier SECONDED the motion; all voted in favor except Claire Lary, and Michael Graf who abstained.

**Public Hearing - DeSiato Sand & Gravel Corp. - 64 Jordan Lane, & 329R Beaver Hill Road, North Windham** – seeking a renewal of a Special Permit for the continuation of an existing earth excavation operation. The Chair explained the process for the hearing. starting with the applicant - or his Agent to make a presentation; questions from the Commission; and then opening up the opportunity for public comment - but not direct interaction between audience, and applicant.

Mr. Joseph Mr. Boucher L.S. Towne Engineering made the presentation for Mr. Phil DeSiato. Mr. Boucher gave the history of the operation starting with the Special Permit of 1999, and the stipulated agreement through the Superior Court as a result of the appeal from Mr. DeSiato in 2000. Then, they came for renewals in 2005, and 2011. This pit is one of two that are regulated under the Special Permit process - instead of by Site Plan review for existing operations under Section 75.2.2. The site comprises 45 acres in total in five phases. The excavation is occurring in the far easterly portion of phase one, and the northwesterly portion of phase two. The house is located in the southeast corner of phase three with the driveway opposite Labarre Drive.

Excavation is progressing in accordance with the conditions of the Special Permit granted in 1999 with a slight modification in 2005 to allow excavation on an additional property to the southeast and he is maintaining the hundred foot buffers. The Site is self contained in terms of sound, dust and stormwater runoff; and he is meeting the requirements of the Bureau of Mine Safety.

Mr. DeSiato has a separate access road out to Route 203, so he avoids going through the residential neighborhood. He then hauls up to Route 6 past the North Windham Fire House, then along the limited access highway to 32, the up to his screening plant in Mansfield. He doesn't process material at the North Windham site, nor does he make any deliveries from the site.

Mr. Boucher then reviewed pictures of the site to show the existing conditions, and pointed out grass growing on the site abutting Anderson.

Mr. DeSiato then explained his operation - excavating from the highest point downward, as he can't excavate from the bottom. The center portion has a lot of fine material, and the back is bony. He can't finish the center portion yet as he needs room to move around.

Matt Vertefeuille agreed that the center portion of the site has re-vegetated.

Mr. Boucher agreed, saying that they saved topsoil, but they've found that the pine trees have gone to seed, and are starting to take over on its own.

Mr. DeSiato said he's actually looking forward to finish some of the areas so he can move the topsoil out of the way to get at the gravel that's behind it.

Mr. Boucher acknowledged the letter from the neighbor on Nutmeg Lane who raised concern about them expanding the pit over to their neighborhood, and he explained that they are not planning on expanding the pit.

Mr. DeSiato explained that most of the area he plans on digging is where he's digging now. He has had the trees cleared out, so he could check to see what he has for material, but he said he's not planning on going any further over towards Beacon Road, or Nutmeg Lane as its all ledge, and all work will be contained to the existing permitted area.

The Chair asked if this was just a renewal of the area already approved, and commented - you're not expanding the operation...

Mr. Boucher confirmed that they were not expanding the pit, but they would like to modify the conditions of the current permit - as it doesn't allow him to haul during the months of July and August. The modification he's asking for is to allow hauling three days a week during the summer months. It's hard for him to operate during winter months - not so much last winter as it was mild, but the previous winter had a lot of snow. Mr. DeSiato doesn't haul when its slippery or icy; and he doesn't have that much demand for material in the winter anyway.

Mr. DeSiato explained that he needed to be able to haul during July and August - as he has a demand for some of the large round stone that people use for landscaping. He said he'd like to be able to take 20-30 loads out during a week and wash it at his plant for his customers.

Chair Stahl clarified - so you do take it back to Mansfield...

Mr. DeSiato - said he takes everything back to Mansfield.

Commissioner Chaine also clarified - so you there's no processing on the site - just the excavation?

Mr. DeSiato confirmed that this is correct.

Chair Stahl then asked for clarification on the load counts for 2016 - July had no hauling, but January was very busy ...

Mr. DeSiato answered that it was because it was so warm this winter

Chair Stahl ... and on June 8th was your busiest day - other than January - with twenty trips, three times per week; so it seems that forty trips would be a lot to ask for when its more than your average.

Mr. DeSiato answered that in June - he had so many deliveries- because of so much building going on at U-CONN, he couldn't haul because he doesn't have enough trucks; he only has seven. So he doesn't have enough to do deliveries - plus haul gravel from the site - it puts him way behind.

Chair Stahl ...in May - you have one day where its 16, and two days with 14, one with 12, and the rest were all under ten. So it just seems to be an excessive amount to request 40 trips per day during July and August, when in the spring that's not been your level of hauling.

Mr. DeSiato explained that when customers call, he has to deliver - so he can't just haul out of Windham; he has to get material from his stockpile, and other pits ...

Mr. Boucher reiterated that he only has one set of trucks - the seven... Mr. DeSiato added that three or four may be tied up with customers - so you may only see a few coming to Windham.

Commissioner Chaine commented that last time (2011 permit renewal), he was impressed that his equipment was very quiet, and wondered if he was still using the same excavator - and how will he be loading stone - by excavator or backhoe?

Mr. DeSiato replied that he is using the excavator as he has to set it in the (truck) bodies - as its less noisy and less damaging...

Matt Vertefeuille added that he also uses aluminum body trucks...

Commissioner Chaine said he understood why he wouldn't want to drop the big stones in the truck bodies, and the fringe benefit is that it's quieter for the neighborhood.

Mr. DeSiato added that most of them have a liner in them - so it doesn't bang like steel.

Commissioner Pelletier asked how large an area is exposed...and has any areas been reclaimed?

Mr. Boucher answered that it is on the plan - and it is 13.5 acres.

Mr. DeSiato said that he's restored the sloped areas on the sides (pointing to map) with top soil and seed, and its growing.

Mr. Boucher added that (side abutting) Anderson's is all done, and planted with Pine trees.

No other trucks or operators are allowed to haul out of his pit. Discussion ensued.

Chair Stahl asked if there were any other questions from the Commission, and hearing none, she opened the hearing to the audience.

Chuck Weldon of 57 Nutmeg - said he was concerned about drainage from the site, as he was concerned that excavation on the second parcel (329R Beaver Hill Rd) could change the drainage and affect water supply.

Mr. Boucher answered that the back line of the properties on Nutmeg Lane is about 1,000 feet away. Then using a scale to measure, he said that the current excavation is approximately 1,100 feet away from Nutmeg Lane.

Matt Vertefeuille clarified - that as it is now, there isn't any excavation within a quarter of a mile...

Mr. Boucher - just shy of a quarter of a mile - yes.

Chair Stahl asked if there is any (excavation) approved within that distance?

Mr. Boucher - no

Mr. Weldon asked about tree clearing - as they were cleared - or knocked down about 350 feet from his property - so it's opened it up, and he was concerned when they said that they're a quarter of a mile away.

Mr. Boucher explained that Mr. DeSiato just hired a logger to log the property.

Mr. DeSiato concurred that he had loggers in to harvest timber.

Mr. Weldon commented that since they did the logging, now the noise levels have increased in the past year, and the sound carries much more through the cleared area - right up the hill. He said he understood the need to do that. He said he respected that, and he was ok with that; but he was just concerned about any more activity moving closer to him. The trees buffer the noise, and sunlight that they never had before.

Mr. Clairmont - Jordan Lane asked if this is a new permit, and if they'll be hauling all year long.

Chair Stahl clarified that every gravel operator needs to come in and renew every five years. This one is up in October.

Mr. Clairmont asked if he's trying to remove the restrictions on hauling during the summer.

Chair Stahl answered that he's (DeSiato) requesting to be allowed to haul up to forty trips per day - three days a week during July and August.

Mr. Clairmont commented that neighbors were upset with the illegal operation of Mr. Peters, and they always have had a concern about noise and truck traffic. Summers off was reasonable, but still they are concerned about hauling through school year - and they also have to deal with the street being closed down from 2-3 PM with the school buses. Then in working with Mr. Branse - Mr. DeSiato's attorney, they thought they at least had a break for the summer, and that was reasonable. Another question - what phase are they in?

Chair Stahl explained that the only way that an operator can expand is to get approval from the Commission. She then asked Mr. Boucher to identify the area of excavation and the phases that have been approved.

Mr. Boucher pointed to the map and identified where the current excavation is occurring, and identified the phase lines. He said they are currently operating in phase one and have moved into phase four in 2005. He said the excavation is approximately 250 feet from the Clairmont's property line. Phase five is in the front (near Jordan Lane), and phase one is in the back, phase two is to the southwest; phase three includes the house, and phase four is towards the Metell property.

Chair Stahl - so the area that is being worked currently is in the phases one and two areas, and for them to excavate in the other phases, they would have to come back and go through the Commission to excavate in those areas.

Mr. Clairmont asked who monitors grades and excavation

Matt Vertefeuille said he checks the site at least once a year, and occasionally twice a year - or more frequently if he's in the area. He added it's a very slow process. Even going every six months, it's hard to notice a change. He explained that he and Mr. Boucher - or Mr. DeSiato have discussions on occasion.

Chair Stahl - DeSiato also provides monthly load reports to staff that details quantities that have been hauled out. If there is a complaint about anything in Town, the Zoning Officer responds to that.

Matt Vertefeuille said he hasn't had any complaints about this site since the last time they were here, which was five years ago. We did get a letter from someone on Nutmeg Lane, relating to concerns about possible expansion of the operation; and that will be read into the record. It was not so much a complaint as it was a response to the hearing notice mailed.

Mr. Clairmont reiterated his comment that the residents looked forward to summers, when the trucks stop running, and they have a couple of months when they could enjoy the summer. He said he had no qualms about Mr. DeSiato hauling his gravel, but he thought that was their concession.

Cynthia Clairmont complained about the smell of diesel, the dust, and the sound - especially the Jake braking, as it does occur. She also asked about the additional 40 plus acres that was mentioned in the hearing notice, and asked if there was another one.

Mr. Boucher answered that the additional property was added in 2005, and was presented to the Zoning Commission in the Special Permit at that time. He then pointed to the map and outlined the additional acreage.

Mrs. Clairmont asked how many acres it was.

Mr. Boucher said that when he prepared the application, he included all of the acreage for the properties that was listed on the Assessor's cards, instead of just the area of the approved area.

Chair Stahl commented that the plan shows that as of May (2016), there is approximately 13 1/2 acres of disturbed area.

Mr. Boucher - that's correct.

Chair Stahl then asked how many acres was in the approved area

Mr. Boucher answered 22 acres permitted for excavation. There is approximately 42 acres of the original property that Mark Peters owned, and then we added the additional 45 acres to the rear, but only a small portion of about five acres that is approved for excavation.

Chair Stahl explained that one of the things that the Commission focuses on, is to balance the needs of someone to run a business, with the needs of the neighbors - "we're very sensitive to that". But part of our purpose is to have the business get their work done as soon as possible,

so that the land can be reclaimed, and in this case - it may be more housing. Currently have about eight or nine gravel operations in Town, and we're working on not having so many open pits in Town.

Jed Larson - 377 Beaver Hill Road, asked about the property listed in the hearing notice for 329R Beaver Hill Rd, and wondered how close it was to his property.

Chair Stahl referred to an aerial photo of the site, and proximity to neighbors, but she clarified that the aerial doesn't quite line up with the property overlay; so it's not accurate, but it's a good indicator of where things fall on the land.

Mr. Boucher measured, and said it was about 850 feet away from the current excavation. Minor discussion ensued to clarify locations.

Jennifer Simoniello 33 Nutmeg Lane said she noticed sunlight coming into the yard after the tree clearing, and asked if there was going to be more trees coming down, as it's a buffer from the noise - even from Route 6. She said she understood that you couldn't stop a land owner from cutting trees, but she just wanted to know how it would affect her and her neighbors.

Janet Luberto of 160 Beacon Rd. said she is the last house on Beacon Rd., and noticed logging near her. She asked how close they will be coming to her.

Mr. Boucher - no closer than today.

Chair Stahl asked if there was anyone else, and urged people to speak as that was the purpose of the hearing.

Mr. Metell 354 North Windham Rd. said he was only here to listen to what was going on as he got the letter about the hearing.

Mr. Boucher said that he provided the Town Planner a copy of the Notice sent to the neighbors, the certificates of mailing, and he posted the four signs on the property to alert the neighbors to the hearing.

Matt Vertefeuille said he checked the signs twice, and they were still there - every two hundred feet.

Mr. Weldon asked about the hours of operation.

Chair Stahl said she would read from the permit in place - the permittee shall limit truck traffic to 56 round trips per day from November through February with a maximum of ten (10) round trips for any given hour with an average of no more than seven (7) round trips per hour. During the months of March through June, and September and October there shall be a maximum of forty (40) round trips per day Monday through Friday, with a maximum of eight (8) round trips for any given hour, and an average of five (5) round trips per hour. The permittee shall have no activity during the months of July and August during the permit period. The hours are 8 AM to 4 PM Monday through Friday with none on weekends and none on holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and the day after Thanksgiving, and Christmas Day.

Ms. Simoniello asked if there is anything in the permit that says the equipment has to be quiet, or that says that he should use that during the next five years; so if things changed and got louder, do the neighbors have to wait the five years, or can they contact someone...

Chair Stahl explained that current conditions says that they shall control noise by coordinating with the Planning Department or the Director of Code Enforcement; but she clarified - you don't have to wait five years to raise a concern.

Matt Vertefeuille concurred that she could file a complaint at anytime, and he would investigate, and if he found that it was something that was excessive, he would talk with them to address - it within reason - and in accordance with Mine Safety standards.

Planner Finger added that you could call anytime you have a question, you don't have to file a complaint.

Mrs. Clairmont asked - when is this going to end, as this has been going on for almost twenty years, and they keep buying up more property. How much longer will they have to put up with this?

Chair Stahl the permit is only for the 25 or so acres that are currently approved, they cannot expand beyond that in the next five years. For anything beyond that, they would have to come back to the Commission for another hearing.

Mr. Boucher agreed, and said that they are asking for approval of what they currently have, but to allow hauling during the summer months. He explained that there is a finite gravel resource in Connecticut, and we'll all regret the day when its gone.

Commissioner Chaine said the for the benefit of the public that's here, there were thirteen conditions that were instituted when they originally began - which was hammered out through the course of a public hearing, and the neighbors that showed up. So the conditions reflected the accommodation for the neighbors at that time, and would not have been added if not for the neighbors input.

Chair Stahl said that the Commission also received a letter from someone who could not attend the hearing... and she asked the Zoning Officer to read it into the record.

Matt Vertefeuille read in a letter from Richard and Linda Vailancourt of 41 Nutmeg Lane requesting the Commission to deny the Special Permit for DeSiato Sand & Gravel as they objected to the operation - especially towards Nutmeg Lane, and any expansion of hours.

Mr. Boucher - answered that the Vailancourts were misinformed as they are not expanding over to Nutmeg Lane. He said he wished they were here so he could reassure them that this application is just to continue the operation - and not to expand towards their property.

Planner Finger explained that it may have been due to the hearing notice which identified the property by address, and Assessor's maps.

Matt Vertefeuille said he tried to call the Vailancourts, but they were not available.

Chair Stahl spoke to Mr. Boucher, and said that with all gravel operations, the Commission would like to have a five year reclamation plan.

Mr. Boucher responded that he hadn't given a lot of thought to that as the operation is market driven. He explained that with all gravel operations, the types of materials are not homogeneous. There's rock, fine or coarse sand - and the operator has to fill his orders - which means they have to chase the material. So they have to keep a large portion of the site open to provide the products needed for customers. Test holes were initially dug, but Mr. DeSiato has found different materials in those areas - and he said he couldn't explain that. Mr. Boucher said that he imagined that the northerly and southerly sides will reach final grades within the next five years, but he will need to confer with Mr. DeSiato to ask him where he expects to be in five years.

Mrs. Clairmont commented that this is the same story they were told almost twenty years ago, and it doesn't sound like it's changed a bit. We're told the same thing every five years, but they keep buying more land and expanding. She added that there is plenty of land behind them, and it's for sale. She said she hopes that the restrictions will be upheld.

Chair Stahl responded that she wasn't sure it was a blessing or curse, but the glaciers left a lot of sand and gravel deposits all along the rivers, and here. So that's why it's not (where we would prefer it) in other parts of Town.

Chair Stahl asked if any Commission members had any comments or questions.

Michael Graf announced that he is an abutter, and so he recused himself from voting or any discussion on the application.

Chair Stahl appointed alternate Scott Lambeck as a voting member.

Chair Stahl asked the Zoning Officer if he had anything that he could tell the Commission from his visits to the site.

Matt Vertefeuille said the site is as it's always been as presented. Of the nine sites we have in Town, this is the one site that has no surprises when he goes in to inspect. It's always as Mr. Boucher or Mr. DeSiato has presented. He said he would argue in favor of granting the additional hauling in the summertime. He said he hoped that the Commission would consider what they're asking for - even if it would be for fewer trips than they are asking. But he urged that some kind of modification be given so they could haul in July and August as this is the only operation that we restrict during summer months. He added that we recently approved another pit in a residential area, and we didn't restrict summertime hours there. In the case of Mr. DeSiato, his trucks go out to route 203 to route 6, and out of Town. He said he's not aware of them going up Beaver Hill Rd.

Planner Finger offered to answer Mrs. Clairmont's question, and explained the history of the site. He said that the previous owner came in with a landscaping plan to create a paddock for his horses. But when he found out how much gravel was there, he had trucks lined up along Labarre Drive, and we had a lot of complaints from residents. As a result of this loophole in the old rules, we changed the regulations to restrict landscaping operations. Mr. DeSiato bought the property in 1999, and came in with the first application for an earth excavation permit for the property. The Zoning Commission heard the neighbors' complaints about the previous owner, and imposed conditions and restrictions on Mr. DeSiato's operation.

Mr. Finger continued - explaining that Mr. DeSiato appealed the restrictions in Superior Court, as he felt the restrictions were unfair. The attorneys for both sides came up with a stipulated agreement modifying the conditions on the operation that were imposed in 1999. As part of the stipulated agreement, the Town had to acknowledge that it was unlikely that Mr. DeSiato would complete the excavation within twenty years.

Mr. Finger added that he supported the request for modifying the restrictions on summer hauling as this is the only pit with these restrictions. Also, if the Commission were to restrict him to just twenty trips per day, that the Zoning Officer should be authorized to grant exceptions on an occasional basis, where there may be an unusual need for a higher number of trips. He added that Mr. DeSiato has been very faithful in providing monthly load counts to us. We keep these load counts on file, so if anyone has any questions, they're welcome to come in and see our files in the Building Office, and we would be happy to sit down with anyone to review them.

Chair Stahl acknowledged Mr. Clairmont who asked if any of the other pits were in residential areas.

Matt Vertefeuille responded that we have two: the Manning pit, and Edelman pit - which is on a dead end road and goes by several homes through a residential neighborhood.

Chair Stahl asked if there were any other comments; since no one spoke she closed the hearing.

**New Business:** *(DISCUSSION & POSSIBLE ACTION)*

**DeSiato Sand & Gravel Corp. - 64 Jordan Lane, & 329R Beaver Hill Road, North Windham** - renewal of Special Permit for the continuation of an existing earth excavation operation.

Commission members discussed the application and neighbors concerns.

Commission members also asked about load counts from previous years to gauge the number of loads hauled over time. Planner Finger provided the older file with all the load counts of the operation.

Commissioner Chaine said he was willing to consider the request for modifying the hauling restriction, but not fully as requested.

Commissioner Pelletier commented that it's good that there isn't any processing or heavy equipment operating there.

Matt Vertefeuille said that the operation is sitting in a bowl, so the noise is fairly well contained.

Commissioner Claire Lary commented that sound travels, so she understood the neighbors' concerns.

Matt Vertefeuille said that the loudest sound came from the wood chippers a mile away on Beaver Hill Rd.

Commissioner Chaine said he doesn't agree that the noise would be contained in a bowl. It depends on air currents, and the intensity of the operation and humidity. Also, the backup alarms, and he asked about the Jake braking.

Matt Vertefeuille responded that he did not believe it was happening at this site.

Commissioner Scott Lambeck asked about the 40 trips per week that is being requested through July and August. Much discussion ensued.

Commissioner Chaine said he was willing to consider twenty trips per day - three days per week. More discussion ensued.

Paula Stahl - MOTION to approve the application of DeSiato Sand & Gravel Corp. at 64 Jordan Lane, & 329R Beaver Hill Road, North Windham - renewal of Special Permit for the continuation of an existing earth excavation operation with conditions as previously imposed in 2011 permit with exception that permittee may haul during months of July and August, limited to not more than twenty (20) trips during the days of Tuesday, Wednesday, and Thursdays limited to the hours of 8 AM to 4 PM. In addition, permittee shall present a five year reclamation plan to the Commission at its October 27, 2016 meeting. Jean Chaine SECONDED the motion, and Paula Stahl-Chair, Jean Chaine-Vice Chair, Claire Lary, Edward Pelletier, and Scott Lambeck all voted 5-0 in favor.

**Other Business - (DISCUSSION POSSIBLE ACTION)**

Town Plan of Conservation and Development - The Chair briefed the Commission on the final recommendations that were discussed at the last work session meeting, and she sent them to the Consultant.

**Report from Zoning Enforcement Officer - none**

**Routine Business**

- a) Correspondence - none
- b) Miscellaneous - **none**

The meeting ADJOURNED at 8:58 PM

Respectfully submitted - James Finger, Town Planner