

**TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION**

Applicant: SB Lands Partnership, LLC
142 Aiken Rd., Putney, VT 05346
Agent: Stevens & Associates, Cory Freshee
122 Birge St., PO Box 1586, Brattleboro, VT 05301
Owner of Record: SB Lands Partnership, LLC
Property Location: Winter Bell Dr. off Dummerston Station Rd., Dummerston, VT
Application: Conditional Use Permit, Variance and Site Plan Review
RE: Zoning Permit #3308 to amend an existing permit for gravel
pit operations (3059 issued 03/12/2007)

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on Wednesday, August 15, 2012. The DRB conducted site inspection preceding the public hearing at the Dummerston Town Community Room in the church basement, Dummerston Center, Vermont. The public hearing was continued to September 18, 2012 to allow for response to DRB questions, written testimony and final comments, then adjourned, followed by deliberations and motions.

Present and participating were the following members of the DRB: Herb Rest, Chair, Cynthia Wilcox, Jack Lilly, Lew Sorenson and alternate Hugh Worden as a voting member. DRB member John Warren participated in the August 15th hearing but recused himself after offering written testimony following that meeting. Alternate Steve Jarosak recused himself and did not sit on this case. Present and representing the applicants at the initial and continued hearing were Tim Severance & David Baxendale, and Cory Freshee of Stevens & Associates. Also present at the August 15th hearing were Mike Renuad, Renaud Gravel Inc., Dummerston Selectboard member Tom Bodett, Cynthia Stoddard representing the Town of Putney, Dummerston Road Foreman Lee Chamberlin, Steve Casabona representing the Poplar Commons Owners Association, Peter Siegel, Cathy Casabona, David Blocher, Mike Faher from Brattleboro Reformer, and Zoning Administrator Charlotte Annis. Also present at the September 18th continued hearing were Mike Renuad, Renaud Gravel Inc., Dummerston Selectboard member Tom Bodett, Dummerston Road Foreman Lee Chamberlin, Steve Casabona representing the Poplar Commons Owners Association, Jeff Unsicker, Cathy Casabona, Mike Faher from Brattleboro Reformer and Zoning Administrator Charlotte Annis.

FINDINGS OF FACT

1. On July 3, 2012 the applicant applied for a zoning permit to expand an existing gravel pit commonly known as the SB Lands gravel pit (formerly the Moore pit) at the end of Winter Bell Drive, off of Dummerston Station Road. On July 5, 2012 the Zoning Administrator denied the Land Development application and referred it to the DRB, finding that the proposal requires a Conditional Use Permit, Site Plan Approval and Variance.
2. Concurrent with the Zoning Permit the applicant on July 3, 2012 applied for a Conditional Use Permit under Sections 225 & 650 of the Dummerston Zoning Bylaw, Site Plan Review approval under Sections 724-726, and a Variance under Sections 650 & 728.
2. The application requests an amendment to Dummerston Zoning Permit #3059 issued to the applicant on March 12, 2007. The permit included DRB approval of a Conditional Use Permit, Site Plan Review and Variance for the current gravel pit. The DRB retained jurisdiction. The 2007 approval was followed by tardy 2-year review on March 16, 2010 which revealed several issues: reclamation plans, roadway & easement documentation, and the lack of filing of the required performance bond. A follow-up review on these issues was held on August 10, 2010 at which time the DRB accepted the applicant's request to substitute an irrevocable letter of credit for the required bond. The DRB accepted this substitution and on February 17, 2011 the Dummerston Selectboard accepted an agreement with a \$40,000 reclamation cost guarantee. A 5-year review was held on May 15, 2012 with no outstanding issues noted. These prior DRB decisions are included here by reference as Exhibit 9. The final reclamation plan is now due no later than March 12, 2015 and the next comprehensive review will be March 2017.
2. The property and surrounding area remain as described in the 2007 DRB decision on zoning permit #3059.
2. The application requests amendment approval to allow excavation to the site's southern property line where the pit adjoins land owned by Renaud Gravel Inc. (Renaud Gravel) who has concurrently applied for permits to establish a new pit for gravel and sand extraction. The two applicants have proposed to cooperate in the excavation of material along their common property line during an initial 5-year period, have common application materials and are represented by the same agent. The DRB has considered the applications concurrently.
2. While most aspects of the subject pit remain unchanged from the 2007 approval, the amendment proposes a significant additional quantity of material extraction, total time length of pit operations, blasting of bedrock material and a new truck access into the pit from Renaud Gravel property for the exclusive use for the Renaud pit's

operations & vehicles. SB Lands pit's hours of operation, extraction rate, traffic volumes and truck routing will remain unchanged. No Renaud Gravel trucks will use SB Lands access from Winter Bell Drive.

2. The application materials do not specify the increased quantity of extracted gravel this amendment will provide, but rough calculations indicate about 300,000 yards, a doubling of the original 2007 permit. The amendment will also increase the life of the pit, originally limited to 10 years with a possible 5 year extension. At the May 2012 5-year review the applicant estimated a remaining life of only 2-3 additional years due to the amount of bedrock encountered. The applicant testifies that this amendment could result in as much as 10 years (from the current application) of additional life which would necessitate the 5 year extension.

2. The cooperative operations and access are covered in a draft agreement, Exhibit 19. The DRB finds that this association has the positive effects of optimizing use of scarce gravel resources and lessening traffic impacts. It also eliminates the rationale for the required 200-foot setback for non-mutual gravel operations from neighboring property lines, although this requires a variance and associated formal DRB findings from the strict application of the Bylaw provisions. Finally, the joint gravel extraction operations mean that each operator is dependent on the other. While the DRB has received testimony supporting the viability of this association, it is rare in the permitting process; if one of the parties can not, or does not, proceed as planned for any reason the other's permits and approval become compromised and can not be utilized.

9. Applicable Dummerston Zoning Bylaw sections for this amendment include:
 - a. Section 225 Rural Commercial District: Includes general purpose statement for district including contributing to wise use of resources, provides that earth and mineral extraction is a conditional use, sets dimensional requirements including setbacks;
 - b. Section 650 Extraction of Soil, Sand or Gravel: Includes standards for earth mineral extraction including drainage, slopes, blasting, special setbacks and requires rehabilitation plan and bond approved by the DRB;
 - c. Section 660 Performance Standards: Sets noise, vibration and dust performances for commercial and industrial development to minimize adverse affects to the surrounding area;
 - d. Section 640 Erosion and Sediment Control: Sets standards for maximizing percolation into the site's soils, minimizing direct runoff and design and repair of drainage swales;
 - e. Section 645 Grading: Precludes cut slopes with a finished grade in excess of 1¹/₂:1;
 - f. Sections 721-723 Conditional Use Permits: Sets general and specific standards addressing adverse affects and provides for a 5-year review of all Conditional Use Permits. The general standards include no adverse affect to the character of

- the area, traffic on roads and furtherance of the Town Plan;
- g. Section 726 Site Plan Review: Site Plan Review standards include safeguards to assure compatibility with adjacent uses, adequacy and safety of circulation, parking and loading, and adequacy of landscaping, screening and noise protection;
 - h. Section 727 Consolidated Permit Review: Sets procedural requirements including a provision for the consolidation of Conditional Use Permit and Site Plan Review approvals when both are required including a provision for continuing jurisdiction by the DRB.
 - i. Section 728 Variances: Sets required findings as provided by Vermont statutes for variance approvals by the DRB.
10. The applicant requests a variance from the Bylaw's 200 foot setback requirement and the elimination of the 35 foot setback approved in 2007 for their southerly property line abutting the adjacent proposed gravel pit of Renaud Gravel, resulting in a zero setback. The DRB finds that the Bylaw setback requirements do not envision the possibility of two adjoining gravel pits and the potential waste of mineral resources by leaving a plateau to separate them. A reduced setback is also indicated on the applicants grading/reclamation plan (Exhibit 2, Drawing C-5) for the southwest corner of the pit. The plan provides for the construction of a landscaped berm about 600 feet long and 25 feet high that will separate the two pits after their joint operations are completed. The applicant has presented proposed findings required for the variances. The DRB concurs with these findings.
11. The applicant has submitted a June 2012 Blasting Plan (Exhibit 10) which sets out how drilling and blasting will occur, and safety measures to be utilized. Bylaw Section 650(4) provides that no drilling or blasting shall be located within 200 feet of a street or property line. This standard is met with the coordinated operations of the Renaud and SB Lands pit.
12. The applicant has submitted a September 2012 Sound Impact Report (Exhibit 11). Bylaw Section 660(1) provides that no noise which is excessive and represents a significant increase in noise levels in the vicinity shall be permitted. The report concludes that for the most receptor locations, the gravel pit construction and processing activities would be less than current background noise levels of Route 5 and I-91 highways, and would not exceed regulatory standards. Applicant testimony indicated that maximum noise generated would come from the gravel crushing operation and trucks going down the steep grade into the pit and further states that further noise reduction will be achieved by relocating or modifying the crusher so that a maximum of 50db will be achieved at the Hodges and Bell residences to the south.
13. The DRB received several hours of testimony from the applicants for the two pits, the Town of Dummerston and neighboring property owners. Testimony primarily concerned the Renaud Gravel application. Prior to the hearing the applicant had also

met with Poplar Commons Owners and refined operational aspects of the pit in response to concerns. Neighbor concerns from the Poplar Commons residential development south of the Renaud Gravel property included hours and days of operation, crushing and blasting frequency, site reclamation, berms to buffer the pit, noise and vibration, monitoring and truck traffic. Testimony and response to questions from the DRB led to further adjustments which are reflected in this decision. Additional neighbor testimony was received in the form of an email from Brenda and Eric Hodges who live on Winter Bell Drive, the access for the subject pit (Exhibit 14). They express concern about additional truck traffic on their road if Renaud Gravel was to use that access instead of the new access road into the pit from the southeast. They also testify that the SB Lands operation is respectful of their residence, that they consider noise minimal, and that the applicant does a good job of keeping the area, maintained.

14. The proposed amendment furthers the Mineral Resources goal and policies of current 2010 Dummerston Town Plan by making fuller use of the limited gravel resource. The Plan designates this area as interim Rural Commercial pending implementation of a Route 5 corridor study which remains in progress. Long term, the two gravel pit areas have the potential for well planned residential use.
15. The applicant has submitted a plan for final grading and reclamation (Exhibit 2, Drawing C-5) that includes the addition of construction and demolition wastes and stump disposal. The applicant specifies topsoil retention for reclamation and re-vegetation. The DRB finds this reclamation plan, with conformance to the standards from Bylaw Section 602, is acceptable for the southern portion of the pit.
16. The DRB finds that Renaud Gravel, Inc., the Town of Dummerston, Town of Putney, Poplar Commons Owners Association, and Brenda and Eric Hodges meet the criteria for “interested parties” as provided in 24VSA, Section 4465(b).

CONCLUSIONS OF LAW AND DECISION

- A. This Land Use Decision and approval is based on two adjacent developments and concurrent applications. The other application is for the proposed pit of Renaud Gravel, Inc., Dummerston Zoning permit #3309. This Board has considered the two applications together and issued its decision on Renaud Gravel on October 12, 2012. Each development's approval is contingent on the other, and the other's proceeding as approved. If for any reason the Renaud Gravel project does not precede as approved, this decision will become void. Any future amendment to either project will necessitate DRB consideration of both.
- A. Dummerston Zoning Permit #3059 with its related Conditional Use Permit, Site Plan Review and Variance DRB decisions, modifications, reviews and conditions remain in

full force and effect except as specifically altered by this decision.

- A. The DRB concludes that the setback variance request for the south property line meets the Vermont statutory requirements of Chapter 117, Section 4464 and Bylaw Section 728 and is approved.

- A. The consolidated Conditional Use Permit and Site Plan Review are approved subject to the following conditions:
 - 1. This Conditional Use/Site Plan Review approval is for the application as presented, including the September 18, 2012 Act 250 application materials, except as explicitly modified in this decision's findings and conditions below. Construction, operation, trucking and reclamation shall be carried out in conformance with these provisions.
 - 2. Blasting of material shall be done in a manner to minimize impact on surrounding properties. This shall include but not be limited to minimizing occasions, notification of neighbors, and coordination of blasting events with the adjacent Renaud Gravel pit.
 - 3. The applicant shall obtain all other applicable State and local permits prior to the start of construction. Should the development change as a result of the review of these permit applications, the changed proposal shall be presented to this Board for review and determination if they are materially different from this decision and require an amendment.
 - 4. The DRB continues to retain jurisdiction on this permit and will review it after one year, two years, and then after every five years, all as measured from the month of this decision, and replace the review schedule of the original permit #3059. The DRB at these times will hear from the Applicant, Towns, neighboring property owners, Zoning Administrator, and interested parties listed in these findings. The DRB will notify all persons on the sign-in lists who attended these hearings and others who request in writing notice prior to the review.
 - 5. The reclamation plan for the site is approved as presented for the southern portion of the property. The final reclamation plan will now be due no later than the 2017 review, provided that prior to the start of final reclamation the applicants shall review the details and final plans for reclamation with the Zoning Administrator and this Board. Reclamation shall not be deemed complete until the Zoning Administrator has certified that all work has been completed and is in conformance with this permit.
 - 6. The applicant shall obtain all other applicable State and local permits prior to the start of construction. Should the development change as a result of the review of these permit applications, the changed proposal shall be presented to this Board for review and determination if they are materially different from this decision and require an amendment.

E. A copy of this Decision shall be provided to applicable State permitting agencies and the District Environmental Commission. Full consideration of the findings and incorporation the conditions of this approval is requested.

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statute.

Herb Rest, Jack Lilly, Lew Sorenson,
Cynthia Wilcox & Hugh Worden

Dated: October 15, 2012

DUMMERSTON DEVELOPMENT REVIEW



BOARD

EXHIBITS:

SB Lands Partnership, LLC (#3908) Exhibits

- 1.Zoning Permit Application and Site Plan
- 2.CUP, SPR & Variance Application w/Drawings C-1 - C-7 Attachments
- 3.Applicant Agent's 7/13/12 Memo RE: Zoning Permits for applicant & Renaud Gravel, Inc.
- 4.Applicant Agent's 7/3/12 Memo RE: Variance Request Narrative
- 5.Newspaper Legal Notice
- 6.Applicant's Public Notice & Posting Certification
- 7.DRB 8/15/12 and 9/18/12 Attendance lists
- 8.Applicant's 5/29/12 Memo RE: Project Summary of Pit Operations w/ attachments
9. DRB 3/12/2007 decision related to Zoning Permit #3059 with subsequent reviews and modifications
- 10.Applicant's Blasting Plan from Thomas Drilling & Blasting; June 2012
- 11.Final Noise Study by applicant's subcontractor, Ramsey/McLaren; received 9/25/12
- 12.Email from John Warren to Applicant, Dummerston Selectboard & DRB; 8/23/12
- 13.Email from Steve Casabona, Poplar Commons Homeowners Assoc; 8/24/12
- 14.Email from Brenda & Eric Hodges; 9/18/12
- 15.Applicant Agent's 9/7/12 Memo to DRB RE: Requested information
- 16.Applicant Agent's 9/14/12 email reply to DRB requested information
17. Applicant Agent's 9/14/12 email and memo reply to DRB RE: Requested information w/attachments

18. Email from Tom Bodett, 8/29/12 of Dummerston Selectboard RE: Poplar Commons comment of 8/24/12 (#19 above)
19. Draft Agreement (9/12) between SB Lands & Renaud Gravel addressing joint pit operations and access with Towns as Third Party Beneficiaries, w/Attachments
20. Draft Sound Impact (9/1/12) of Ramsey/McLaren
21. Applicant's (w/Renaud Gravel) Draft 250 Application materials (9/18/12)
22. Applicant agent's Power Point presentation from 8/15/12 hearing