

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

Applicant: Town of Dummerston, 1523 Middle Rd., Dummerston, VT 05346
 and Town of Putney, 127 Main St., PO Box 233, Putney, VT 05346

Agent: Stevens & Associates
 122 Birge St., PO Box 1586, Brattleboro, VT 05301

Owner of Record: Ken Carpenter, 209 Green Mt. Camp Rd., Dummerston, VT 05346

Location of Property: Clark Road abutting I-91, Dummerston, Vermont
 Book 69, Page 204 Dummerston Land Records (Map #8, parcel #837)

Application: Conditional Use Permit, Site Plan Review & Variance
 Re: Application for Zoning Permit #3027, May 15, 2006

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on June 20, 2006. The DRB conducted site inspection preceding the public hearing at the Dummerston Town Offices, Dummerston Center, Vermont. The public hearing was then adjourned, followed by deliberations and motions.

Present and participating were the following members of the Development Review Board: Patricia Jaquith, Andrew MacFarland, Regina Rockefeller, Cynthia Wilcox and Lew Sorenson. Present, but not participating in the decision, were DRB Alternates Herb Rest and Rick Sullivan. Present and representing the applicants were Dummerston Selectboard members Tom Bodett and Paul Normandeau, and applicant's agent, Robert K. Stevens of Stevens & Associates, P.C. Also present at the hearing were citizens Ruth and Merrill Barton, Saul Blocher, Dennis Baker and Sam Garland. Several other citizens attended the site inspection but did not attend the public hearing.

FINDINGS OF FACT

The Board finds as follows:

1. The applicants request approval for construction of a new municipal gravel pit for the exclusive use of Towns of Dummerston and Putney including a new access road to be constructed to the site.
2. The applicants applied for a Zoning Permit on May 15, 2006 for a sand and gravel pit, including the establishment of a temporary employee building and small toilet facility. The zoning permit application was not found to meet the provisions of the Zoning

Regulations and therefore on May 22, 2006 was “Not Approved” by the Zoning Administrator. The Administrator found that earth and mineral extraction requires a conditional use permit in the Rural Commercial District where the property is located. The applicants also applied to the DRB for the subject Conditional Use, Site Plan and Variance approvals.

3. Accompanying, and a part of the application, is a set of drawings with sheets C-1 through C-13 and a May 11, 2006 letter of Cory Frehsee, P.E. of Stevens and Associates that includes a brief description of the project. These applications materials are Exhibit 2.
4. The requested permits would allow the Towns to extract sand and gravel and carry out reclamation during the term of the lease only, which is 20 years, with two five year extensions possible. The current estimates of the amount of material that could be extracted, given the reclamation as proposed, would be approximately 10,000 yards of gravel and 10,000 yards of sand per year. This would provide gravel material for the Towns for 5 years, and sand for up to 20 years.
5. An unusually large numbers of Dummerston Zoning Bylaw sections are applicable to this development:
 - 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 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 635 Landscaping Requirements: Requires a landscaped buffer strip of land at least 15 feet in width for commercial and industrial uses unless waived by the DRB;
 - e. 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;
 - f. Section 645 Grading: Precludes cut slopes with a finished grade in excess of 1-1/2:1;
 - g. 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;
 - h. Section 727 Site Plan Review: Sets standards and procedural requirements including a provision for the consolidation of Conditional Use Permit and Site Plan Review approvals when both are required;
 - i. Section 728 Variances: Sets required findings as provided by Vermont statutes for variance approvals by the Board.
6. The proposed 7.5-acre sand and gravel pit is part of a 36-acre parcel being leased by the applicants; the property owner has also signed the application. The property is

unimproved, the pit portion of the parcel being recently logged in anticipation of the new use, although a considerable amount of slash and stumps remain.

7. The project is proposed to have access from US Route 5 via Carpenter and Wheeler Roads and then Class IV Clark Road, which currently provides only farm and woods access to the adjacent properties. Clark Road would be improved as part of the project for about 1100 feet. Final access would be a new alignment into the property to the proposed pit area, a distance of about 500 feet. The southeasterly boundary of the proposed pit area and the 36-acre parcel abut the interstate highway, which divided the originally larger property.
8. The surrounding area has mixed low intensity uses including agriculture, woods, and several active and former mineral extraction areas. The closest two residences are approximately 1200 feet to the north and 1300 feet to the west.
9. The applicants have also applied for a State Act 250 Land Use Permit. The applicants agreed that the April 28, 2006 Act 250 application materials, including a May 31, 2006 follow-up letter, be incorporated and become part of the application materials for this proceeding (Exhibit 5). The following information from those application materials further describe the project and is incorporated into these findings as follows:
 - The annual extraction of both sand and gravel from the pit is not expected to exceed a total of 20,000 cubic yards. It is anticipated that 10,000 cubic yards of gravel and 10,000 cubic yards of sand will be extracted annually.
 - Water will be utilized for dust abatement during construction of the access road as necessary. During operation of the gravel pit, water will be utilized to manage dust from the crushing and screening, as necessary.
 - Construction of the access road will occur Monday through Saturday, from 7 AM to 6 PM. After construction is complete the gravel pit itself is anticipated to operate periodically between 7:00 AM and 5:00 PM weekdays from April through November of each year. Crushing and screening operations will generally each take place for 4-6 weeks during the summer and fall months. The project will be closed in the winter (December through March) and on weekends, unless there is an emergency need for sand or gravel.
 - There will be no exterior lighting. The project will operate only during daylight hours.
 - Water is not required for the project operations. Water required for dust control or other uses shall be supplied by water delivery trucks.
 - The project will use a temporary building (8 ft x 12 ft) that will be present during the months of operation and will not be heated or cooled.
 - No domestic water will be utilized for the project. The on-site restroom facilities will consist of a pre-cast concrete holding vault and a pre-fabricated restroom structure, which does not require water. An on-site holding tank will be utilized.
 - The operation of gravel pit will generate some noise associated with the gravel extraction equipment and the screening/crushing operations. Noise off-site is mitigated by the relative isolation of the project site, the location of the excavation and phasing of the extraction (gravel will be extracted from the south heading toward the north, over time resulting in the excavation occurring within a hole on the southern side of the gravel pit, with a crest along the northern limits to buffer noise off site to the north).
 - For periods of time during the summer and fall, crushing and screening operations will occur at

the gravel pit. These activities will generate the loudest noises and therefore were considered with regard to the surrounding properties. Primary Jaw Crushers used in crushing operations generate approximately 116 decibels.

- The project results in less than 1 acre of new and rehabilitated impervious area. Stormwater mitigation measures have been proposed for the access road to protect water quality. These include a grit separator and dry swale for stormwater treatment and a detention structure to mitigate the post construction peak runoff. Stormwater runoff from the gravel pit area will ultimately be infiltrated into the floor of the gravel pit. The applicants have determined that an Underground Injection Control Permit is required for the infiltration.
- The project does not include the storage of chemicals, fuels or hazardous materials. Equipment will be refilled with a truck delivering fuel to the site.
- Stumps will be buried onsite within the side slopes of the pit during the reclamation process.
- The applicants have determined that the wetlands are Class III. The design includes erosion prevention, sediment control, stormwater treatment and maintenance of stream buffers in order to maintain the values of the wetland. Impacts to the wetland areas have been limited to that necessary for the access road crossings. The edge of the gravel pit is approximately 50 to 100 feet from the edge of the Class III wetlands.
- Erosion control during construction will be handled by the installation of silt fences, stone check dams, stabilized construction entrance and the use of geotextile fabrics or riprap on steep slopes. Specific construction sequencing and site preparation plans have also been developed to minimize erosion. Permanent erosion control will be achieved through vegetative plantings and grasses, riprapped embankments, and grassed and riprapped swales.
- Traffic during peak pit operations is not expected to exceed approximately 20-24 one-way trips per hour. Trucks hauling sand and gravel will access the pit via Clark Road. The trucks primary route of travel will be from Clark Road to Carpenter Road, another local road, then to U.S. Route 5, approximately 0.25 miles west of the project.
- Clark Road has a stone arch culvert that is believed to be historically significant. A riprap buttress is proposed to support the headwall and preserve the integrity of the structure.
- The road and gravel pit will disturb approximately 6.55 acres of deer wintering yard. To mitigate these direct impacts, the application proposes to protect approximately 14.5 acres of remaining deer wintering yard on the 36 acre parcel. In accordance with the Vermont Fish & Wildlife recommendations regarding the critical deer yard located on the site, the gravel pit will be closed in winter months, vegetative cover will be incorporated right to the edge of the roadway to link deer yard sections, and plantings will be made in an effort to restore the deer yard during final reclamation of the site.
- Landscaping is proposed in accordance with the Vermont Department of Fish & Wildlife's recommendations for replanting the deer yard habitat which existed in the vicinity of the gravel pit. Evergreen plantings are proposed. All disturbed surfaces will be reclaimed with a minimum of four inches of topsoil and reseeded.

10. The applicants testified that truck trips to and from the site would be by the use of two municipalities' 7-yard capacity trucks. The truck trips would be dispersed equally to Dummerston and Putney from the intersection of Carpenter Road and Route 5.

11. The applicants testified that maximum traffic volumes of 24 one-way trips per hour and 95 round trips per day would occur during the fall transfer of sand from the pit to the two Towns' road yards where it would then be dispersed during the winter months. This period of more intense annual trucking of sand will occur during an approximately 6-

- week period from mid September to the first of November. Trucking of gravel from the site would occur during the remaining periods of operation (April through November).
12. Testimony from area residents expressed concern about truck traffic, noise, and hours of operation.
 13. In response to resident concerns, the applicants proposed that the hours of morning trucking operations to and from the site be changed from the originally proposed start time of 7:00 AM to 8:00 AM, with an exception for a maximum of 10 days per year when the 7:00 AM time would be allowed. Further, the applicants proposed that the DRB retain jurisdiction on the trucking hours issue with a five-year review at which time adjustments to the limits could be adjusted. Finally, the applicants reported that noise from the crusher operation could not be reasonably further mitigated.
 14. The Board finds that the applicants' offer of continuing jurisdiction on hours of trucking operation is a useful method of mitigating adverse impacts to area properties. The Board further finds, however, that a two-year review would be more suitable as two years will be sufficient to gauge the severity of impacts and potentially avoid further or inordinate impacts before the projected 5-year end of gravel availability.
 15. The Board finds that due to the use and low intensity of adjoining properties and the area generally, the landscaped buffer strip required by Section 635 of the Bylaw is not appropriate and is therefore waived.
 16. The Board finds that the bonding provided by Bylaw Section 650 and 722 to insure reclamation should not be required for this project. The Towns will be using the sand and gravel for its own purposes only, and the Town would be both the grantor and the grantee of the bond and therefore bonding would provide little if any purpose. The reclamation bond requirement is therefore waived.
 17. The applicants testified to the variance criteria contained in Section 728 and Vermont Statute 24 VSA Section 4464. The applicants submitted a letter to the Board specifically addressing the variance, which is attached as Exhibit 6.
 18. The Board finds that there are unique physical conditions of the subject property including the fact that the property is located adjacent to the Interstate 91 right-of-way to the southeast and an existing gravel pit to the northwest. These are the two property lines for which the setback variance is being requested. In addition, the long, narrow usable area of the proposed gravel pit parallels the Interstate 91 property line.
 19. The physical condition of the long, narrow area, which parallels the Interstate 91 property line, could not be developed for this use utilizing a 200-foot setback specified for the use. Furthermore, other future uses of this property are enhanced by the development of the gravel pit in this fashion. The resulting embankment will provide a visual and sound buffer to the Interstate.

20. Public agencies, when acquiring a portion of this original property and constructing the Interstate highway, left this parcel and its access in its current situation. The applicants did not create the adjacent conditions of the Interstate to the southeast and the existing gravel pit to the northwest. Also, the applicants did not cause the limitation of minimal useable land area, such as it is.
21. The character of the neighborhood will not be changed due to the development of the gravel pit. The current condition of the area is rural undeveloped land and includes gravel pits in the vicinity. The town plan encourages extraction of mineral resources before a land is used for other purposes.
22. The variance will represent the least deviation possible in order to maintain a reasonable use for the land and provide for the most useable area for future development. Adhering to a 200-foot setback would split the flat, usable land and create two awkward plateaus.

CONCLUSIONS OF LAW AND DECISION

- A. The requirements of 24 VSA 4464 and the Zoning Bylaw are met. The requested variance to the setback requirements of Sections 225 and 650 is approved.
- B. The consolidated Conditional Use Permit and Site Plan Review is approved subject to the following conditions:
 1. This Conditional Use/Site Plan Review approval is for the application as presented, including the April 28, 2006 Act 250 Application materials, except as explicitly modified in findings numbered 9, 10 and 12 and condition number 3 below. Construction, operation, trucking and reclamation shall be carried out in conformance with these provisions.
 2. This permit shall be issued for a period not to exceed 20 years, with an option for the applicants to renew the permit for a maximum of an additional ten years with the approval of this Board after a noticed public hearing. All reclamation of the site shall be completed before the end of the permit period.
 3. The applicants 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. Hours of operation of the gravel pit shall be limited to the period from 7:00 AM to 5:00 PM. Hours of trucking operations to and from the site shall be limited to the

period from 8:00 AM to 4:00 PM, except that the applicants may extend these hours to 7:00 AM to 5:00 PM for up to 10 days per year to meet unusual needs.

5. The Board retains jurisdiction on this permit and will review it after two years, June 2008. The Board at that time will hear from the Applicants, property owner, Zoning Administrator, and other interested persons. The Board will notify all persons on the service list who attended this hearing and others who request in writing notice during the two-year period.
 6. The reclamation plan for the site is approved as presented. Prior to the start of reclamation the applicants shall review the details of reclamation with the Zoning Administrator. 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.
- C. A copy of this Decision shall be provided to applicable State permitting agencies and the District Environmental Commission. Full consideration and incorporation of the findings and 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.

Pat Jaquith, Andrew MacFarland, Regina
Rockefeller, Cynthia Wilcox and Lew Sorenson

Dated: July 5, 2006

DUMMERSTON DEVELOPMENT REVIEW
BOARD

Lew Sorenson, Chair
For the Board

EXHIBITS:

1. Application for Zoning Permit #3027
2. DRB Conditional Use Permit, Site Plan Review and Variance application including May 11, 2006 letter and Drawings C-1 through C-13 with cover sheet
3. Newspaper Public Hearing Legal Notice
4. Applicants' Posting and Adjoining Property Owner Notice Certification
5. Act 250 Application materials including May 31, 2006 letter
6. Applicants agent June 20, 2006 letter addressing variance
7. DRB June 20, 2006 Attendance Sign-in Sheet
8. Interested Persons Record and Service List