

**Guilford County  
Planning Board  
SEPTEMBER 13, 2017**

The Guilford County Planning Board met in regular session on Wednesday, September 13, 2017 at 6:00 p.m. in the County Commissioners Meeting Room, Second Floor, Old Guilford County Courthouse, 301 West Market Street.

**Members Present:** Mr. Jones, Chair; Mr. Leonard; Mr. Collins, Mr. Alexander; Mr. Geter; Ms. Hayworth; Mr. Mann, Mr. Apple, and Ms. Burnett.

**Members Absent:** None.

**Staff Present:** Les Eger and Tonya Hodgin, Planning Department. Also present was J. Leslie Bell, Planning Director, and Mark Payne, County Attorney.

Chair Jones asked the Board for a motion to recuse him from these proceedings due to a conflict of interest. The law firm he is associated with, Smith Moore Leatherwood, Attorneys at Law, is representing the applicant in respect to this request. Chair Jones stated that he has not spoken with any Planning Board members about this request.

Mr. Geter moved approval to recuse Chair Jones from this matter, seconded by Mr. Collins. The Board voted unanimously in favor of the motion.

Chair Jones left the proceedings for the remainder of the meeting. Mr. Leonard, Vice-Chair, will be serving as Acting-Chair for the remainder of the meeting.

Mark Payne, County Attorney, gave an overview of the procedure for this meeting. He described the two matters before the Board and explained that the first is an underlying zoning case which is a legislative decision. Depending on the results of that case, there may be a quasi-judicial Special Use Permit hearing. The timing of these cases is within the discretion of the Planning Board.

**APPROVAL OF MINUTES**

**August 9, 2017 Regular Meeting Minutes:**

Ms. Hayworth moved approval of the August 9, 2017 regular meeting minutes as written, seconded by Mr. Collins. The Board voted 8-0-1 in favor of the motion. (Ayes: Leonard, Alexander, Hayworth, Collins, Geter, Apple, Mann, Burnett. Nays: None. Recused: Chairman Jones.)

Acting Chair Leonard explained the rules and procedures of the Guilford County Planning Board.

**CONTINUANCE REQUESTS**

Lynn Gullick, Attorney representing the Pleasant Garden community, resides at 569 Hodgin Valley Road in Pleasant Garden, North Carolina. She asked that the two proceedings be split with the focus tonight being only on the rezoning request in order to give the community an opportunity to have what they consider to be a full and fair hearing. She stated that the continuance request was made earlier to Les Eger and Mark Payne with a copy of the request sent to Tom Terrell. This property was rezoned in 2000 and the community has significant concerns about some of the statements that were made during that process. Community members have shown up at this hearing in mass but unfortunately over 200 citizens have been turned away. She expressed concern that Guilford County failed to make

any overflow rooms available to allow citizens to hear these public proceedings. They were told earlier today that overflow room would be made available both in the hallway and in the Blue Conference Room and she has not been given any adequate reason to address why this accommodation was not provided. For the record, she renewed her request for a continuance and filed an objection over the lack of accommodation made for the citizens of Guilford County.

Ms. Gullick confirmed that the request being made is to continue only the Special Use Permit request to another night.

Ms. Hayworth asked staff to comment on why people were turned away and why no overflow facilities were made available for tonight's meeting.

Leslie Bell, Planning Director, stated that staff spoke with both security and the Fire Marshall to look at what resources would be needed and the number of people that could be accommodated. He noted that overflow accommodations are not a typical request at Planning Board meetings and it was uncertain how many people would be in attendance. The decision was made to accommodate as many people as possible up to the capacity of the County Commissioners meeting room. They have done what was possible to accommodate what was anticipated for tonight's meeting. Mr. Bell stated that he never spoke with anyone in regards to whether or not the Blue Room would be made available. They did consider having the Blue Room available but based on feasibility, the decision was made to move forward with meeting the capacity in the County Commissioners meeting room. Mr. Payne commented that in the eight years he has been with the County, he was unaware of overflow from any board or commission meeting.

Mr. Payne said that the request to continue the Special Use Permit case is within the discretion of the Board; however, if there is to be a motion, the other side should be asked to comment on the continuance request.

Tom Terrell, Smith Moore Leatherwood, Attorneys at Law, 300 North Greene Street, was representing Hanson Aggregate Southeast, LLC and Lehigh Hanson, Inc. Affiliate. Although he could not speak to what happened in 2000, he noted that the rezoning followed every statute regarding notice for rezoning. Anyone with legal standing who had concerns over the process had an opportunity to challenge that and nobody did. The statute of limitations ran out seventeen years ago.

Mr. Terrell said that Lehigh Hanson has followed every rule that the County has and they have the right to present their case. They have brought in nine experts tonight from four states to meet their burden of proof and answer questions. He asked the Board to allow the case to be heard as scheduled.

Ms. Gullick stated that at the time of the original hearing in 2000, Boren Clay Products had already been purchased by Lehigh Hanson. They were fully aware when they bought the property that it was zoned AG and at the hearing there were numerous statements made that Boren Clay Products was the owner. It was as if Boren Clay Products was the reason the property was rezoned. There was no mention made of Lehigh Hanson and at the time of the 2000 rezoning, Lehigh Hanson owned the property. She asked the Board to separate the two proceedings and allow the rezoning to go to the County Commissioners as a legislative matter and then the Special Use Permit case can be brought back to the Planning Board at a later date.

Mr. Collins moved to deny the request to separate the rezoning case and the Special Use Permit case, seconded by Ms. Hayworth. The Commission voted 8-0 in favor of the motion. (Ayes: Leonard, Collins, Hayworth, Apple, Geter, Mann, Alexander, Burnett. Nays: None. Recused: Chairman Jones.)

## **NEW BUSINESS**

### **Public Hearing Items:**

#### **REZONING CASE #17-07-GCPL-03453: CU-HI-SP to Amended CZ-HI-SP**

Located approximately 1,590 feet northwest of the intersection of McClellan Road and Racine Road in Fentress Township. Being Guilford County Tax Parcel #: 0132396, 0132538 and 0132537. Approximately 351.98 acres owned by Hanson Aggregates Southeast, LLC. **(Approved with less than 5/7s (71.4%) majority vote from the Planning Board members present, therefore, constitutes a favorable recommendation of the application and forwarded to the Board of Commissioners.)**

Les Eger said that this case is a request to rezone from Conditional Use – Heavy Industrial – Special Use (CU-HI-SP) to Amended Conditional Zoning – Heavy Industrial – Special Use (Amended CZ-HI-SP). This request involves approximately 352 acres currently zoned Conditional Use with a Special Use Permit. Members are in receipt of a long list of conditions that are applied to this request dealing with access to the property and the property itself. The new conditions added into this include the following: (1) increased buffer sizes around the perimeter of the property from 50' to 100'; (2) blasting is now added for the rock quarry; and (3) they are asking that it is a rock quarry and that it be approved that way. He noted that previously it was just a clay quarry. The property is located on County Tax Maps #0132396, #0132538 and #0132537. This request is in an area that is low-density residential and farm uses. The existing land use on the property is vacant. To the north the property is vacant, farm and low-density residential. To the south the property is vacant, farm and low-density residential. To the east the property is vacant, farm and low-density residential and to the west the property is vacant and wooded. There are no historic properties on this property. It was determined that this request is consistent with the adopted land use plan for the area and that it can be compatible with surrounding areas through the increased buffers that are being proposed for it. Staff recommends approval of this request. In making this determination staff took into consideration surrounding uses, what is being proposed, the fact that it is already zoned for Heavy Industrial and the fact there is a land use plan that recommends for the Heavy Industrial uses on the property. However, staff does feel that truck traffic and noise should be considered in any recommendation for approval from the Board.

### **In Support:**

Tom Terrell, Attorney, 330 North Greene Street, distributed packets of information to Board members. He was representing Lehigh Hanson, one of the leading companies in aggregate production in North America. The proposed quarry is midway between US 73 and US 421 in the lower part of the county. There have been four occasions where the County has voted to recommend or to rezone the subject property to a Heavy Industrial Use. The site is large, sparsely populated, has excellent highway access and is one of the few places in the southern part of the county for industrial use. It was first zoned Heavy Industrial in 2000 when it was used for clay mining and not granite mining. In 2002, the County adopted the Southern Area Plan and a Future Land Use Map. At that time there was a recommendation that the subject 352 acres should be used for either mining or a landfill. The Southern Area Plan was updated in 2008 and 2016 when it was adopted unanimously for Heavy Industrial use. Mr. Terrell commented that no evidence can be found that the community came out to oppose these Heavy Industrial designations for this site.

This request is an incremental change to allow granite mining instead of clay mining and to allow blasting. He described the blasting process and said that each blast would last approximately one second and would occur on the average of two to four times a month. He described the negative impact of blasting at other quarries in Guilford County. Up to 30 jobs will be created if this request is approved. There will be a \$30 million investment over the first ten years and every year the economic impact will be \$11.4 million.

There will be strong buffers to the north, east and south of the quarry resulting in a minimal impact to the community. The quarry operation will not be visible due to the berm barriers. Mr. Terrell said that quarries are good neighbors and that neighborhoods tend to locate by quarries in many instances.

Approximately 200 property owners were sent letters and 140 people attended a community meeting in mid-June. A quarry tour was offered to those attending the community meeting but only five people indicated they would like to come. The attendees recommended that a second meeting should be held with key people and that meeting occurred on June 29, 2017.

A Traffic Impact Analysis was conducted by Davenport and Associates. It was estimated that approximately 287 new truck trips will occur over the course of a day on more than one road. Mr. Terrell noted that McClellan Road currently is only operating at 7 percent of its maximum capacity, Racine Road is operating at 6.6 percent capacity, and Highway 62 is operating at 23 percent of its maximum capacity. The level of service at the surrounding intersections will remain essentially the same and statistically this is not a significant amount of new traffic. Any roads surrounding the site that have to be widened will be built up to NCDOT (North Carolina Department of Transportation) standards.

Mr. Terrell said that a study of economic impact was made by an unbiased appraiser who did extensive studies of quarries from five different North Carolina counties. Her study was unambiguous that this request will not impact adjoining or abutting properties.

Mr. Terrell presented additional studies in his presentation showing that there will be zero impact to wells as a result of dewatering and all the noise that will occur at the site will fall well below levels set by local, state and federal standards. Addressing blasting concerns, he explained that blasting is precise, computer driven and without damaging vibrations. "Fly rock" occurrences where rock leaves the site are statistically very rare. In addition, there will be rigorous dust suppression at the site and air quality will not be affected.

Responding to questions, Mr. Terrell said that truck drivers leaving the site will not be employees of the quarry. They will be employees of construction companies needing a supply of aggregates.

Matt Pilz, 149 Stargrass Way, Grayson, Georgia is with Fibertech. He addressed a question from Ms. Hayworth concerning detonators and clarified that all detonators are accounted for following a blast. A cap can be located and retrieved if it does not detonate. He was not aware of any residue around a cap after it is detonated.

Mr. Geter asked about the presence of airborne particles following a blast. Mr. Terrell said that the state of North Carolina does not require that airborne particles be measured after a blast. Addressing the issue of airborne particles was David Buff, 78 Red Cedar Court, Sapphire, North Carolina. He is an engineer with Golder Associates doing air quality studies. In his analysis, they looked at all air emissions that would be created by the proposed mine and determined that the particles of interest would be considered an extremely small source by the State. They do not expect any of the particles to be a health concern offsite.

Mr. Collins asked if any chemicals were used in the process. Mr. Terrell answered in the affirmative and called on Chuck Jaworski, 495 Quail Run Drive, Moscow, Idaho to address the question. Mr. Jaworski said that the explosives in the blast get consumed at the time of detonation so that there are no more chemicals as a result of the blast once the detonation is over. In the case of a misfire, the blasting cap gets removed from the explosive. If there is any chemical in the ground, it is diluted with water and becomes neutralized.

Randy Kath, 3997 Oak Hill Road, Douglasville, Georgia, is a professor of Geology. He addressed a question from Ms. Hayworth concerning the possibility of a chemical that is not burned up during the explosion process getting into the rock and seeping into the water system causing contamination. He

explained that any chemicals would be going into the sump in the quarry. Pumping in the quarry would capture any kind of contaminant before it could leave the site. The probability of chemicals getting offsite is almost nil.

**In Opposition:**

Chuck Winfrey, Attorney, 100 South Elm Street, was representing Pleasant Garden and the surrounding areas. He distributed packets of information to Board members and presented petitions in opposition to this request signed by 1683 residents and affidavits that were signed by 726 residents. Every adjoining landowner signed an affidavit and petition.

Mr. Winfrey stated that there are many small tracts surrounding the quarry and the roads close to the site are very small and narrow with almost no shoulder on the road. These roads are not built to accommodate dump truck traffic.

There was an agreement in 2000 when this property came up for rezoning that there would be no blasting on this site. The community views this current request as an attempt to change the agreement that was made. The commitment made to residents should be kept. The community's main concerns include incompatibility with the surrounding community, the effect on nearby water wells, diminished property values in the community and the effect of traffic in a traditionally rural area.

Carla Strickland, 100 Lord Osborne Court, Pleasant Garden, North Carolina expressed her concerns about this request. Ms. Strickland, Mayor of Pleasant Garden, indicated that she was acting as spokesperson for the Town Council and the citizens of Pleasant Garden to express their strong opposition to the approval of the rezoning request and Special Use Permit request. To learn about the operation of a rock quarry the Town Council had non-paid experts speak at public meetings over the last two months. Residents of Pleasant Garden and surrounding properties in southeast Guilford County depend only on well water. There is not access to any other water system. She discussed comments made by the experts and as a result of their comments the Town Council passed a resolution stating in part that approval of the rezoning and Special Use Permit will greatly impact the residents of Pleasant Garden in an extremely negative manner.

Mayor Strickland expressed additional concern that the trucks heavily loaded with rock will deteriorate the roadways in these areas and greatly disturb the rural environment of Pleasant Garden. The trucks will also intersect with Pleasant Garden Elementary School and unnecessarily endanger the lives of children in the area.

Billy Yow, 1429 Country Lake Drive, is a certified well builder in the State of North Carolina. He described the negative effect the quarry would have on adjacent wells of residents, the elementary school and nearby nursing home. When the water at the quarry is pumped out into the creek, the chemicals resulting from the blast that did not explode will get into the water and kill the animals. There will be a cone of depression that will affect wells. In addition, the quality of the water will be compromised by bacteria.

Dick Foster, 351 South Swing Road, Foster Appraisal Services, was asked to do a market study to determine the effects of a rock quarry on nearby properties. He used a multiple listing system and analyzed sales and resales of the same property within a 1-mile radius of numerous rock quarries. He found 15 sales and determined that they were not appreciating in value typical of the average within a ten-mile radius of each property. There was no equity buildup in these properties, there is a lack of demand for these properties and there is a loss of value. He performed a market study and not an appraisal and indicated that he is not biased in any way toward the outcome of this request. He referenced other studies that showed a loss of value in properties near rock quarries.

Mr. Winfrey showed a video of the Pleasant Garden area and the routes to be used by the dump trucks. He concluded that this request should not be allowed because it is not compatible with the

community because of the wells and the road conditions in this part of the County. It is not compatible with adjacent properties. The roads and water supply are strong factors to consider in denying the rezoning request.

Sean Fitzgerald, 3712 Brandon Drive, High Point, North Carolina, is a registered geologist who runs an environmental laboratory. He stated that he would like to see this matter further evaluated by a third-party describing what is going to happen to ground water.

Mr. Mann asked Mr. Foster to provide more detail on the 15 sales he evaluated. Mr. Foster said that the sales were all over the Triad within the last 10 years and located within one mile of a quarry. The multiple listing service provided the average price of a house within a 10-mile radius for that area. If the property resold, he referenced the average price of the house at that time. The difference told him the typical appreciation in residential prices. None of the sales and resales approached what was typical and were lower in price.

### **Rebuttal in Support:**

Mr. Terrell addressed the matter of whether or not there was a deal when the property was rezoned in 2000. He said that a rezoning is not ever a contract or deal; rather, the essence of a rezoning is to ask the appropriate Board that a previous zoning decision be changed. It is illegal to have a contract with respect to zoning and therefore, that could not have been the case in 2000.

With respect to buses, the Davenport Traffic Impact Analysis studied all the buses near the Liberty quarry which is just north of Pleasant Garden. Over a five-year period of time, there has never been an incident with a bus or with a bus and a truck on Highway 62 or surrounding areas.

Mr. Terrell referred the Board to Randy Kath's summary about dewatering. He does not dispute the fact that dewatering can happen. Dewatering can happen if the quarry is put in the wrong place. Mr. Kath knows the location of the fractures and he can explain why there will not be dewatering based upon the geology that has been tested. A 48 hour pumping test showed that there will be no dewatering.

Mr. Terrell commented on the issue of property values. Mr. Foster conducted a linear analysis of what happens over time. A bank in North Carolina will never accept a linear view. A paired analysis must be used to determine economic impact.

Mr. Terrell stated that the markets for aggregate are not in Pleasant Garden. Pleasant Garden Elementary is not a place where quarry trucks will be going. Quarry trucks will be going out Highway 62 to Highway 73 and Highway 421.

Mr. Collins asked for information about inspections at the quarry site.

Toby Lee, 2101 Gateway Center, Cary, North Carolina is the General Manager of Lehigh Hanson of the Carolinas and works with the inspectors. He said that each of the sites is governed by the state. The state does inspections on regular intervals and the Federal Mine Health and Safety Administration also does inspections for safety and health purposes.

### **Rebuttal in Opposition:**

Lynn Gullick referred to a map of school bus routes that will occur along the truck routes of the independent contractors that will be driving to the Lehigh Hanson quarries. They have already made it clear they will be bringing their aggregate to the markets in Greensboro and therefore, they will be coming down Pleasant Garden Road onto Neely Road passing a medical clinic and the elementary school.

Addressing other concerns, Ms. Gullick said that the area along Fuzzy Hollow Road is between 40 to 100 percent minority. This quarry is abutting their property and will impact that community in a way that it does not impact any other community with any other quarry. There is an economic justice argument that should be made when a quarry has an effect on a minority population. It is a thriving population that has been there for 100 years.

Ms. Gullick noted that there has already been a violation of well water rules that occurred with a Lehigh Hanson subcontractor who came onto the property to dig the wells. They ran a pipe across the road and used water from the lakes as fluid to go into the wells. Some contamination has already gone into the wells that they have dug. A letter was sent on September 1, 2017 and delivered to the State of North Carolina Water Wells Division regarding the violation. In addition, she presented a photograph of the fly rock incident that occurred at the Marietta Quarry on Kivett Drive. The fly rock hit a car and two houses that were 1,500 feet away from where the incident occurred.

Responding to a question from Ms. Hayworth, Sean Fitzgerald said that a truck fully loaded with aggregate weighs 20 tons including the weight of the truck. Mr. Fitzgerald stated his opinion that there is potential for hazards to air and water quality.

There being no other speakers, Acting Chair Leonard closed the public hearing portion of the meeting.

Moving forward, Mr. Collins asked about the process when the project comes to the County for construction review and approval.

Mr. Eger said that if the Special Use Permit is approved, they would look at any conditions applied to the Special Use Permit and the rezoning case to make sure all conditions are followed. The conditions would also need to be met in the approval of a site plan. If a permit was issued by the State to actually construct the site following approval of the site plan, the County and the State would be working together to make sure there was compliance with the site plan. Mr. Eger confirmed for Mr. Collins that the roads near the quarry are all NDCOT maintained roads.

In the matter of **Rezoning Case #17-07-GCPL-03453**, Mr. Collins moved that the Guilford County Planning Board believes that its action to approve this zoning amendment located on Guilford County Tax Map Parcel numbers 0132396, 0132538 and 0132537 from CU-HI-SP to Amended CZ-HI-SP, to be compatible with the surrounding land uses and zoning and considers the action to be reasonable and in the public interest because it is generally consistent with the land use category indicated for the property on the Southern Guilford Area Plan Future Land Use Map. The motion was seconded by Mr. Mann. The Board voted 5-3 in favor of the motion. (Ayes: Collins, Mann, Alexander, Apple, Burnett. Nays: Geter, Haywood, Leonard. Recused: Chairman Jones.)

Mr. Eger explained that the motion failed and the request for rezoning was denied. **[Clarification: Because a favorable majority vote occurred, the vote is forwarded to the Commissioners for a final decision with a favorable recommendation. A 5/7s vote would have been required for the request to receive final approval by the Planning Board. No appeal to this decision to the County Commissioners is required.]**

**SPECIAL USE PERMIT CASE # 17-07-GCPL-03454: Quarry**

Located approximately 1,590 feet northwest of the intersection of McClellan Road and Racine Road in Fentress Township. Being Guilford County Tax Parcel #s: 0132396, 0132538 and 0132537. Approximately 351.98 acres owned by Hanson Aggregates Southeast, LLC. The petitioner is seeking a Special Use Permit to operate a quarry.

This item was not heard because Rezoning Case #17-07-GCPL-03453 failed and the request was denied. **[Clarification: Rezoning Case # 17-07-GCPL-03453 decision did not receive 5/7s vote for final approval, therefore, will be forwarded to the County Commissioners with a favorable**

**recommendation from the Planning Board. Until the rezoning decision is approved, the Special Use Permit Case # 17-07-GCPL-03453 cannot be heard or acted upon].**

**ADJOURNMENT**

There being no further business before the Board, the meeting adjourned at 7:46 p.m.

Respectfully submitted,

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Al Leonard, Acting Chairman

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Leslie P. Eger, Secretary to the Board

AL:sm/jd