

**TOWN OF RANDOLPH, VERMONT**  
**DEVELOPMENT REVIEW BOARD**  
**MEMORANDUM OF DECISION**  
(Findings of Facts, Conclusions, and Decision)

**PERMIT NO.:** Z10-5

**Property address:** Peth Road

**PROPERTY OWNERS:** Warren and Beatrice Blaisdell  
304 Peth Road  
Randolph, VT 05060

**Parcel no.:** 102035  
**Parcel size:** 149 acres

**APPLICANTS:** Larry and Martha Pickett  
264 East Randolph Road  
Chelsea, VT 05038-8901

## **I. INTRODUCTION**

On February 1, 2010, **Larry and Martha Pickett** ("Applicant") filed an application for a zoning permit for a project generally described as the expansion of an existing gravel pit with crushing. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on February 8, 2010.

Under the Randolph Zoning Regulations ("Regulations"), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Also under the Regulations, the Board is authorized to undertake local Act 250 review of Criteria 6, 7 and 10 for all projects that require a new land use permit or an amendment to an existing land use permit under 10 VSA Chapter 151 ("Act 250").

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the first and final public hearing held on March 31, 2010;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on March 31, 2010 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supersedes the oral decision.

## **II. BACKGROUND**

The following relevant zoning permits and/or approvals were issued and/or granted for the subject property:

1. In July of 2000, the Board granted site plan approval and approval pursuant to §5.15 for the gravel pit. (permit #Z00-59)

2. In May of 2004, the Board granted site plan approval and approval pursuant to §5.15 for the inclusion of crushing operations at the gravel pit. (permit #Z04-25).

### **III. DETERMINATIONS BY THE ADMINISTRATOR**

The Administrator has made the following determinations:

1. The subject property is in the Rural Use-5 acre (RU5) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The use of the property for a gravel pit was approved pursuant to §5.15 in 2000.
4. The use of the property for stone crushing was approved pursuant to §5.15 in 2004. However, such a use is listed as conditional on the Chart of Permitted and Conditional Uses and should have received such approval in 2004. Since it did not, conditional use approval is required now for the expansion of the stone crushing operation.

The applicant has requested local Act 250 review. On February 8, 2010, the Administrator referred the application to the Board for review and approval as determined and requested.

### **IV. PARTICIPANTS**

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The attached Service List for this project includes the Applicant, his representatives and persons<sup>1</sup> who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, Trini Brassard, Thomas Malanchuk<sup>2</sup>, Christopher Recchia, Frank Reed, Krista Rumrill and Joel Tillberg.

### **V. FINDINGS OF FACTS**

*The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact.*

#### **Project Description**

1. The applicant has filed an application for the expansion of and changes to an existing gravel pit with crushing operations as indicated and shown on Exhs. #1 and 3 and described below. (application)
2. The proposed operational changes are:
  - A. Increase the window of operating time from May 1 – November 1 to April 1 – December 1. It is not anticipated that all this time will consist of actual extraction and trucking but will allow for work in the pit in anticipation of trucking when road conditions allow (i.e. after mud season).

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<sup>1</sup> By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as "interested persons" as defined in the above-referenced state statute.

<sup>2</sup> Capt. Malanchuk is an alternate member of the Board who was sitting in place of Member Samuel Lincoln pursuant to Section 206D of the Board's Rules of Procedure. Mr. Lincoln did not participate in this decision

- B. Increase the annual yardage of extraction from 10,000 cubic yards (CY) to 20,000 CY.
  - C. Increase the operating time of the crushing and screening operations from just in July to two months.
  - D. To allow for the removal of topsoil instead of just sand and gravel.
  - E. Authorization to discharge stormwater from the pit to Ayers Brook.
- 3. The proposed physical change is to enlarge the pit area from 10 acres to approximately 20 acres. However, the boundary of the pit has not changed since the last approval, just the acreage has been accurately calculated. (testimony of R. Townsend)
  - 4. Only employees will be on-site. (testimony of L. Pickett)
  - 5. The pit will continue to operate in 2-acre phases. (application and testimony of L. Pickett)
  - 6. Existing pit has been in operation for 8 – 9 years in same pit area (phase 2 as shown on Exh. #3). In that time, about 30-40% of the annual yield is crushed. (testimony of L. Pickett)

**Consistency and compliance with Town Plan and ordinances. (SP criterion A, CU criteria A, D and K, and Act 250 criterion10)**

- 7. The minimum lot size for the RU5 District is 5 acres. The subject property is 149 acres and the actual pit is proposed to be 20 acres. (Regulations, application and Exh. #3)
- 8. The development standards for setbacks and building coverage are not applicable as there are no buildings proposed. (Regulations, application and testimony of R. Townsend)
- 9. The development standards for setbacks and coverages are not affected by this project as no increase in building footprint is proposed. (application)
- 10. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
- 11. The proposed project does not involve any new roads to be adopted by the Town. (application – only for CU)

**Character of the area (SP criteria B)**

- 12. No changes to the boundaries of the existing pit are proposed, although some work for the stormwater discharge system will need to be done beyond those boundaries. (Exh. #3)

**Traffic and pedestrian considerations (SP criterion C)**

- 13. No changes to the existing access are proposed. (application)
- 14. No pedestrian traffic is anticipated. (application)

**Traffic and nuisance considerations (CU criteria B, C and E)**

- 15. The pit has been in operation for almost 9 years and the applicant is not aware of any complaints. (testimony of L. Pickett)
- 16. The closest neighbor other than the property owner has not had a problem with the crushing operations or truck traffic. (testimony of L. Davignon)
- 17. A noise test was performed at the Davignon residence and it found that birds make more noise than the crushing. (testimony of L. Pickett)

18. The flat area of Peth Road between the pit and VT Route 12A is dusty. This situation could be improved by crowning of the road or better dust control. (testimony of L Davignon)
19. Proposed truck traffic would be an average of 10 round-trips per day and a maximum of 30 round-trips per day in trucks with a capacity of up to 18 CY. (application)
20. The proposed traffic will not present an unreasonable burden on the Town's ability to provide road maintenance. (Gary Champy, Town Manager)
21. No changes to the one existing access onto Peth Road are proposed. (application)

#### **Unsightly uses (CU criterion F)**

22. There are no unsightly uses associated with the proposed use. (application)

#### **Surface runoff control (CU criterion G)**

23. The applicant is proposing to implement stormwater improvements pursuant to his state general permit to discharge #3-9003. (application and Exh. #2)

#### **Continuous strip (CU criterion H)**

24. The pit is to the south of Ayers Brook which is between the pit and Peth Road. This area is not proposed to be disturbed by the crushing operation. (Exh. #3)

#### **Municipal services (CU criterion I and Act 250 criteria 6 and 7)**

25. The proposed project will not add any additional students to the school district. (Brent Kay, Superintendent)
26. The subject property is outside of the Randolph Police District therefore this service is not provided by the municipality. (Randolph municipal records)
27. The subject property is in the Randolph Village Fire District. The Randolph Village Fire Department has the capacity to provide fire protection to the subject property without undue burdens. (Jay Collette, Randolph Village Fire District Chief)
28. The subject property takes access from a town highway. The Randolph Highway Department has the capacity to provide the proposed project with road maintenance without undue burdens. (Gary Champy, Randolph Town Manager)
29. The subject property is not served by the Randolph Water and/or Sewer Districts therefore these services are not provided by the municipality. (Randolph municipal records)

#### **Character of the area (CU criteria J)**

30. The subject property is proposed to be in the Rural Agricultural District in the Randolph Town Plan. The purpose of this zone is to "encourage and promote agriculture by conserving Randolph's highest concentrations of prime and important agricultural soil and to maintain a "critical mass" of agricultural activity." The Town Plan further states that "residents in {the RA} zone should expect to encounter the sights, sounds, smells and other activities typically associated with a working landscape." (Town Plan)
31. The crushing operation has not adversely affected the abutting neighbors. (see facts #15 – 17).

#### **Affects on adjacent land (SP criterion D)**

32. No buildings, fences, walls or landscaping are proposed. (application and testimony of R. Townsend)

**Renewable energy resources (CU criterion L)**

- 33. The proposed use will not affect the utilization of renewable energy resources. (application)

**VI. CONCLUSIONS**

Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project described in the application referred to above and including the Applicant's representations at the public hearing, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the following criteria:

**1. Act 250 Criteria<sup>3</sup>**

- A. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide educational services (criterion 6).
- B. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide municipal or governmental services (criterion 7).
- C. The proposed project is not in non-compliance with the Randolph Town Plan which was adopted in accordance with 24 VSA ch. 117 on December 21, 2004 (criterion 10).

**2. Conditional Use Criteria<sup>4</sup>**

- A. The proposed use is not inconsistent with the objectives of the Town Plan and is consistent with the purposes of the Randolph Zoning Regulations.
- B. The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances.
- C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.
- D. The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed.
- E. The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic.
- F. All unsightly uses of the proposed project are properly screened.
- G. An adequate system of surface runoff control is not required.
- H. A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped.
- I. The proposed use will not result in an undue adverse affect on the capacity of existing or planned community facilities.
- J. The proposed use will not result in an undue adverse affect on the character of the area affected.

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<sup>3</sup> This conclusion/decision regarding local Act 250 review is a rebuttable presumption under the provisions of 10 VSA Ch. 151 and this presumption may be overcome in proceedings under 10 VSA Ch. 151

<sup>4</sup> Criteria A – H are from the Randolph Zoning Regulations. Criteria I – M are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- K. The proposed use will not result in an undue adverse affect on the traffic on roads and highways in the vicinity.
- L. The proposed use will not result in an undue adverse affect on the bylaws and ordinances in effect.
- M. The proposed use will not result in an undue adverse affect the utilization of renewable energy resources.

**3. Site Plan Criteria**

- A. The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and is not in non-conformance with the Town Plan.
- B. The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.
- C. The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points.
- D. The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use.

**VII. DECISIONS<sup>5</sup>**

Based upon the foregoing Findings of Facts and Conclusions, approvals are hereby granted for the site plan and conditional use as applied for in zoning permit application #Z10-5 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The site plan approval is granted with the following conditions:
  - 1. Construction/extent of the pit shall be as shown on Exh. #3.
  - 2. All conditions of previous approvals, if not directly inconsistent with this application and approval, shall continue to apply.
  - 3. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
  - 4. Any significant modifications to the approved site plan shall require re-approval by the Board pursuant to the regulations in effect at the time of re-application.
- B. The condition use approval for the stone crushing is granted with the condition that any expansion of the use shall require approval pursuant to the regulations in effect at the time of re-application.

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<sup>5</sup> An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

Dated at Randolph, Vermont this 28<sup>th</sup> day of April, 2010.

RANDOLPH DEVELOPMENT REVIEW BOARD  
**Concurring Board Members**

\_\_\_\_\_  
/s/ Joel Tillberg, Chair

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/s/ John Becker

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/s/ Trini Brassard

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/s/ Frank Reed

\_\_\_\_\_  
/s/ Thomas Malanchuk

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Krista Rumrill

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/s/ Christopher Recchia