



QUASI-JUDICIAL HEARING MINUTES
PASQUOTANK COUNTY BOARD OF ADJUSTMENT
AUGUST 24, 2023

THE PASQUOTANK COUNTY BOARD OF ADJUSTMENT HELD AN IN-PERSON MEETING ON THURSDAY, AUGUST 24, 2023, AT 7:00 P.M. IN COURTROOM C

Planning Board Members Present: William Kruse, Chairman
Kevin Brickhouse, Vice-Chairman
David McGuire
Robert Phippen, Jr.
Richard Bovie

Staff Present: Michael Cox, County Attorney
Shelley Cox, Planning & Inspections Director
Adrienne Cole, Clerk to the Board

Applicants & Witnesses: Brandon P. Williams
Ken Elliott

1. Call to Order

Chairman Bill Kruse called the meeting to order at 7:00 p.m. Chairman Kruse provided the welcome.

2. Approval of Minutes from May 25, 2023

Chairman Bill Kruse addressed the first item on the agenda. A motion was made by the Vice Chairman, Kevin Brickhouse, to approve the minutes. The motion was seconded by David McGuire. Motion approved. **Vote 5-0.**

3. New Business

Chairman Bill Kruse called for new business. The first item is a public hearing for the new case SUP #23-03 and the swearing-in of witnesses.

4. Swearing-In

All parties and witnesses who chose to present evidence and testimony were sworn in and provided the oath.

5. Parties

The parties present: Brandon P. Williams, C & W Grading & Excavating, Inc.
Ken Elliott, Elliott Consulting

6. Case Overview & Staff Analysis

A case review was presented by Shelley Cox. This Special Use Permit (SUP 23-03) application request is for Brandon P. Williams, President of C & W Grading & Excavating at 141 Sand Pit Road to expand the current 5.0 acre Mary L. Sawyer Mine to 12.65 acres. The property is located 0.25 miles from 1169 Pitts Chapel Road. The parcel zoned A-1 Rural Agricultural in the Newland Township, is consistent with the classification. Section 9 of the Zoning Ordinance for mining and pouring provides extensive details regarding the requirements. This site received a SUP in 2016. During the time of operation, there were no complaints reported. The total property area is 28.14 acres, inclusive of wetlands. No disturbance is proposed in the wetland area. A fifty-foot undisturbed buffer will be adjacent to the wetlands and a street right away will be required. A 150-foot setback and a visual berm will be incorporated. Letters were mailed to adjoining property owners and a sign was posted in accordance with the NC General Statutes and the Pasquotank County Ordinance. Proposed hours of operation: Monday – Friday from 7 a.m. - 6 p.m. Drainage and sedimentary deposit methods were also addressed.

Staff Recommendation: Based upon the information presented and the application and the facts included in the analysis, staff recommended approval of this request with the recommended findings proposed in Section 1, Page 2, and Page 3 of the applicant's supplemental summary with the following conditions:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board.
2. All trucks hauling mined or poured materials shall be covered with a tarpaulin when materials extend above the raised bed of the truck.
3. No bulk waste, commercial waste, hazardous waste, garbage, construction or demolition waste shall be placed on the site.
4. The SUP shall remain valid for ten years from the date of issuance.
5. No Trespassing signs must remain posted around the site being mined or quarried indicating that a mining operation is in the area.
6. Copies of the following documents shall be provided prior to the start of

the expansion of the mine: (1) the amended mining permits from (NCDENR) Division of Energy, Mineral & Land Resources (2) the National Pollutant Discharge Elimination System permit (3) the Army Core of Engineers Jurisdictional permit. (Numbers 1 & 2 may already be filed.)

7. All provisions of the state and federal permits must remain valid and any conditions required must be upheld during the lifetime of the operation.
8. If any conditions affixed hereto or any part thereof shall be held invalid or void, then the permit shall be void and of no effect.

7. Evidence

The following information was submitted into evidence:

- (7A) Exhibit 1: SUP Application
- (7B) Exhibit 2: Project Permit Considerations
- (7C) Exhibit 3: Mining Permit Maps
- (7D) Exhibit 4: NC DEQ Documents
- (7E) Exhibit 5: Staff Report and Analysis (Added)

The case hearing for SUP 23-03 procedures:

- a. The appellant or his attorney was called to present his case.
- b. The floor was opened for any objections or support.
- c. A call was made for rebuttals by the appellant and then objectors.
- d. The chairman summarized the evidence.
- e. Consideration and determination of the case were heard.
- f. Parties were informed about the decision process and the board's stance.

(7F) Testimony

Mr. Ken Elliott with Elliott Consulting located in Currituck County, North Carolina, provided the expert testimony inclusive of the history of the Mary L. Sawyer Mine. Ken Elliott stated the application submittal process. The corporation contacted each of the four landowners providing details and information about the proposed SUP request. Mr. Elliott's testimony addressed: undisturbed buffers for the wetlands, property line setbacks, unexcavated buffers, surveys, and required reports. The final project will include the 12.65 acre single pond, which will be incorporated into the main pond. Required permits were requested per regulation. Plans were submitted to address water operations and how the water will be monitored. This mine will include a dewatered system that is required by the state to address sedimentation, ponding, overflows, turbidity, PH balance, and solidity of the water. Extra precautions were also addressed per state

requirements, including slopes, and mowing around the pond. The current bond with the state will be increased to more than \$15,000 per this request.

(7G) Cross-examination or Questions from the Board of Adjustment

The Board asked evidence-based questions for fact-finding purposes after the appellants' and the witnesses' testimonies:

- Bill Kruse wanted to know how sand mining and dewatering can impact water systems including aquifers.
- Shelley Cox and Michael Cox explained how the Water Department's water comes from wells that are much deeper.
- Ken Elliott shared state mandates that regulate needed adjustments for water supplies, water pressure, dewatering systems, and any impact on groundwater levels related to neighboring properties. If required, a monitoring well will be installed to measure the groundwater levels.
- Rich Bovie asked if the water tables dropped, what would be available.
- Shelley Cox explained the provisions that are in place.
- Ken Elliott stated that he would not work with a company that did not do things legally and spoke highly of C & W.

Findings

1. That the use will not materially endanger the public health or safety if located where proposed and approved: **Yes, the use will not materially endanger public health per what is described on page 2 of the application. Approval vote 5-0.**
2. That the use meets all required conditions and specifications of the Zoning Ordinance: **Yes, as per the zone, this area is zoned (in the) Agricultural district, this proposal is allowed by the County Ordinance as described. Approval vote 5-0.**
3. That the use will not substantially injure the value of adjoining or abutting property, or that; the use is a public necessity: **Yes, the use will not substantially injure the adjoining or abutting property as described. The sand mining operation is a necessity for local development. Approval vote 5-0.**
4. That the location and character of the use, if developed according to the plan as submitted; and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for Pasquotank County. **Yes, it is agreed that if developed according to the plan using the conditional requirements proposed by the Board of Adjustments and the Staff Analysis, the site will be in harmony with the area and in general conformity with the plan of development for Pasquotank County. Approval vote 5-0.**

8. Motion

Board's Conditional Approval Statement: The Board approved with the conditions of the applicant's application, the evidence presented, the witness testimony, Ms. Cox's staff analysis and recommendations, and the Board's responses to the four findings.

Based on the evidence presented, Mr. David McGuire made a motion to approve with the conditions addressed. Per the County Attorney, pages 3-7 of the applicant's application file and the staff analysis will be entered as evidence. Mr. Kevin Brickhouse provided the second motion. The motion was approved. **Vote 5-0.**

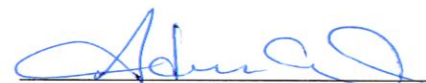
9. Staff Report

Shelley Cox provided the staff report. The Board of Commissioners approved the new Land Use Plan. The Land Use Plan is now adopted locally. The Board of Commissioners addressed the text amendment to the zoning ordinance. Shelley Cox addressed a grant for a resiliency plan for the Newland area.

Chairman Kruse requested a motion to adjourn the meeting. Kevin Brickhouse motioned to adjourn the meeting, which was seconded by David McGuire (**Vote 5-0**). The motion carried. The meeting adjourned.



Planning Board Chair



Planning Board Staff