

July 9, 2021

Dear Members of the Board,

This letter is in reference to the application of Isaac Frye Holdings and Kenneth Lehtonen to allow a gravel excavation, Lot F-3-2. I am Chris Owen, 634 Isaac Frye. While I was able to attend your meeting in June, I will be away visiting family next week.

The application should be rejected for several reasons:

1. The Supreme Court's decision in Brandt, as outlined in Silas Little's letter of June 3.

I confess to having difficulty following Attorney Tilsey's reasoning, but his contention that the proposed application is materially different in nature from the 2006 application is enough to make a cat laugh. There are large gravel pits and small gravel pits, and both are gravel pits. We've all seen the site. I also wonder about the math. As this application is submitted in order to be a remediation of the violation notices of last December and February, do the calculations of material to be removed include the amounts already illegally removed?

For this reason alone, the application should be rejected, the applicant should pay his fines of \$36,225 for his violations, and the applicant should begin to restore the property to its prior condition and contours as outlined in the December 31 Notice of Violation and re-stated in the February 10 Second Notice of Violation.

2. Incidental

The applicant states that he is seeking a variance to excavate outside the Gravel Excavation District due to the excavation being incidental to the construction of a single family dwelling.

It's worth the thought experiment to consider what conditions might hold for a single family dwelling to be incidental to a gravel operation—the inverse of what the applicant claims. If the house construction were incidental to the gravel operation, then you might see material being removed before any building permit is issued. You might see all the excavated material being moved off-site, for other commercial construction projects the owner is involved in. You might see that the builder of the house has no interest in living in the house, but is rather a commercial operation interested in extracting monetary value.

The facts of the case do not support that the excavation is incidental to the construction of the house. The facts of the case support the inverse: the house construction is incidental to the gravel operation.

For this reason alone, the application should be rejected, the applicant should pay his fines of \$36,225 for his violations, and the applicant should begin to restore the property to its prior condition and contours as outlined in the December 31 Notice of Violation and re-stated in the February 10 Second Notice of Violation.

3. Spirit of the Ordinance

The applicant states, in Section 5 of his application (p.8), that the “spirit of the ordinance is to prevent gravel pits being permitted in residential areas as long term [sic] hauling sites.” In another part of his application (Section 1, p.6) he says the excavation “is extremely limited and will only take a short amount of time to complete.”

The duration of the extraction has nothing to do with its permissibility. By making this argument, the applicant demonstrates that he does not understand the ordinance, let alone the spirit of it.

For this reason alone, the application should be rejected, the applicant should pay his fines of \$36,225 for his violations, and the applicant should begin to restore the property to its prior condition and contours as outlined in the December 31 Notice of Violation and re-stated in the February 10 Second Notice of Violation.

4. Substantial Justice

This application comes in the context of two notices of violation, in which the applicant was given two options for corrective action. This application is part of fulfilling the conditions for one of those options for corrective action.

In that context, substantial justice would require, in this application, some justification for the removal of the materials *that have ALREADY been removed, and which gives rise to the corrective action required*. Otherwise, the applicant is rewarded for his violations, by being allowed to use the new “facts on the ground” that he illegally created, as his starting point.

This application does not address the material that has already been removed. How was removing *that* material incidental to constructing a house on this site? Might some portion of that material been used on-site to create a suitable building area? A site walk prior to the illegal excavation might have shed light on these questions. That the applicant now seeks to use his new facts on the ground as a starting point is a gross injustice, an insult and a harm, to the town of Wilton’s zoning laws and the public interest.

For this reason alone, the application should be rejected, the applicant should pay his fines of \$36,225 for his violations, and the applicant should begin to restore the property to its prior condition and contours as outlined in the December 31 Notice of Violation and re-stated in the February 10 Second Notice of Violation.

5. Hardship

The applicant states that “the property is unique in the area given its... steep slopes that need to be eliminated in order to make the land a more usable site location for a single-family home.” (Section 5, p.8)

This is demonstrably false.

My wife and I own 6.4 acres, Lot C-68 on Scott Road, perhaps a half-mile from the applicant's property. It is steep, so the applicant's property is not unique. Within the last 3 months, we also have had an architect do conceptual drawings for building a single-family home on that property. No slopes need to be eliminated in order to do this.

The applicant's property is not unique. Slopes do not need to be eliminated to build single-family homes. Therefore, no hardship exists.

For this reason alone, the application should be rejected, the applicant should pay his fines of \$36,225 for his violations, and the applicant should begin to restore the property to its prior condition and contours as outlined in the December 31 Notice of Violation and re-stated in the February 10 Second Notice of Violation.

This application fails on all counts.

Respectfully submitted, and in thanks for your time and attention to these matters,

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