

A Work Session of the Town of Avon was held on Monday June 21, 2021, at 4:00 P.M. at the Avon Opera Block/Town Hall, 23 Genesee Street, Avon, New York 14414, and Via Zoom Meeting ID: 89886485180 Passcode: 687551. The following members participated:

PRESENT: Supervisor David LeFeber, Deputy Supervisor Thomas Mairs, Councilmen James Harrington, and Malachy Coyne

ABSENT: Councilman Paul Drozdziel

OTHERS: Code Enforcement Officer Brian Glise, Attorney James Campbell, and Sharon M. Knight, MMC/RMC Town Clerk

VISITORS: Craig R. Welch and Dale Twardokus

Zoom Visitor: None – There was no power to connect to zoom.

Supervisor LeFeber called the meeting to order at 4:00 P.M. by reading the following legal notice and mentioning there was no zoom as we did not have power.

TOWN OF AVON
LEGAL NOTICE

A work session has been scheduled by the Town Board on Monday, June 21st at 4:00 P.M. for discussion on a personnel issue and the moratorium of mining and excavation at the Avon Town Hall/Opera Block, located at 23 Genesee Street, Avon, New York **AND** using ZOOM, a remote video and/or telephone conferencing tool that will allow the public to participate remotely by telephone or video connection. Join Zoom Meeting on your computer or smart device:

<https://us02web.zoom.us/j/89886485180?pwd=RXpkV3VtQ1c5MFFVOUcrZmh5L2E5QT09>

Meeting ID: 6888256879

Passcode: 920643

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+1 253 215 8782 US (Tacoma)

Meeting ID: 898 8648 5180

Passcode: 687551

Dated: June 10, 2021

By Order of the Town Board of the Town of Avon
Sharon Knight - Town Clerk, MMC/RMC

Attorney Campbell welcomed, Dale Twardokus owner of Victor Sand and Gravel and his legal representative Craig R. Welch to the work session and explained that they would be providing documentation for the Board to review relative to their hardship application. This includes financial information regarding jobs that they were unable to accept because of the Special Use Permit requirements and the financial consequences thereof.

Their position is that with the restrictions that are in today they cannot be viable with the operation of the quarry. Recently there has been some concerns over potential violations, specifically truck count in the past few weeks. It has been maintained by the quarry that it is difficult to stop and monitor trucks coming and going from the mine.

The hardship variance process that is in the moratorium requires you to have a public hearing and then it is coming down to weighing the alleged charge the applicant says they are facing versus the consequences of living near the quarry and their situation.

If the Board grants the hardship variance it does not give them more trucks per hour it allows them to go to the ZBA and to ask them to modify their Special Use Permit before the moratorium is lifted or expires.

Supervisor LeFeber asked if it is acceptable to receive their statement of finances before the public hearing? Attorney Campbell stated it is normal to accept these materials in advance and hear public comments at the public hearing.

There was discussion about public records and what can be FOILED. Attorney Campbell stated that if the information is given or emailed to you then it is a public record. Some records might not be FOILED if it contains data that is excepted from the law. He would rather the financial information given not become a record because then it may become FOILABLE. If he tells you the information and about the economic aspects of the business and shows that to you as opposed to delivering it then I think it does not become a record.

Some of the economic records of the hardship should be public record, for example some of the jobs that may have been bid that would have been gotten but could not be taken because the delivery of product could not be met.

Mr. Twardokus stated that he did not feel comfortable making his records public due to client lists and negativity from surrounding landowners. Mr. Welch stated he is willing to show all the information he has now but is leery of making the information a public record that is FOILABLE. They are afraid that certain individuals will start tracking customers and then there is a scenario with a lot of drama.

Mr. Welch stated that the mine on Oak Openings Road generates ninety nine percent of the company's income. The victor mine only provides two percent.

Councilman Harrington stated he is interested in seeing documentation showing how many jobs are from the Avon mine versus the Victor mine. The Victor mine is where they stage materials if there is a project closer to that mine. The gravel is hauled from Avon to there for pickup. All our jobs and employees are based out of Avon. The number of trucks is more financial than job loss and the reason is that whether we sell more product or less product the number of people is going to stay relatively the same. We employ approximately 13 people. The number of other people employed by trucking companies would be impacted.

It was questioned how many years are left in the life of the mine?

Mr. Welch stated that at the current rate that the trucks run now it would probably be over twenty years. If the number of trucks increases, it would probably be eight to ten years.

There was discussion regarding changes the DEC will possibly make. All their decisions are based on facts.

Most local businesses and municipalities will not work with the company because they do want to get caught up in the drama. Many of the operations are driven on the weather and seasonality, like stoning roads. They need to have a certain number of trucks that follow the spay rigs and we cannot give it to them. They are not going to take material from us and then take material from someone else and mix different material. If there is a problem, then they would not know who is at fault. So, unless they have a small section of a road, we cannot help them including the streets here. He is willing to sharing the customer list with the Board if it is not FOILABLE and its common sense that if you drive one mile its better than driving more. Pricing must come into this and there are standards.

They are looking for costumers that have long term trucks like a concrete manufacture and right now local landscape companies, farmers and others local people that need small quantities are not being serviced as they are using small trucks and a truck is counted as a truck and it does not matter if the size is 40 ton or 2 ton. The greatest number of business that we can help support. will increase. We have offered to deliver larger quantities but that would require them to stage the materials. A lot of the projects such as oil and stoning the roads.

Their operation stops at four o'clock the reality is that other businesses are not stopping their businesses, but we stop because this is the time people are coming home and people want to walk the streets. We do this for our neighbors. In our permit application we do have request for extended hours into Saturday to perform maintenance and would be fine to say that we would not run any trucks. The DEC has approved within the permits.

He grew up near a mine and shared what that was like, and they also closed at four o'clock. All the competition are working within those hours.

Supervisor LeFeber described his visits to Hanson and the open and closing time of summer and winter hours. Mr. Welch stated that is related to overtime and they are union and that has an impact. Running 24 hours would be approved and it happens all the time.

Attorney Welch stated, and Mr. Twardokus answered that Hanson does not have a limit on hours or truck traffic.

Supervisor LeFeber asked about the ability to load trucks and scale per hour. Mr. Welch responded stating the according to the traffic study it could be sixty or more trucks per hour, and he is picking thirty so that the DEC and Code Enforcement Officer does not have to sit out there and count to see if he is 2, 3 or 4 trucks over. It is a seasonal business, including rain versus sunny.

Supervisor LeFeber talked about the procedure he follows at Hanson. Mr. Welch stated that ninety-five percent of the time they would be under 10 trucks per hour. And during the winter season they will be under two, then a sunny day and would have more. In the morning, people usually pick up their materials.

Mr. Welch continued describing when the Town Code Enforcement Officer was counting trucks and they were in violation. The Town of Canandaigua does not use that type of sand because the limestone sand will eat the water lines faster, so they do not want to buy from Hanson or Dolomites. They sent all their trucks at the same time to purchase materials to have the materials for the project. The numbers will be higher at the peak times.

Councilman Coyne stated that he is following the explanation and logic, but he wanted to go back to go forward and asked Mr. Welch when you purchased the mine, why didn't you question that arbitrary number of twelve trucks? You must have had some prior knowledge of the potential and why was that not a stipulation or was that something you would do later.

Mr. Twardokus stated that is a good question and that is why we are here today. The reason is when there is a change in ownership you need to have it re-evaluated. He requested Attorney Campbell correct him if his explanation is wrong. The property owner passed away and the property transferred to his children. There was nothing brought up about the special use permit. Mr. Welch then purchased the business that included all the permits, and he did not have to start over again. So, he purchased the company not the land. Then two things happened. One they had a consultant put down twelve trucks and had a small piece of land bonded. He communicated with the DEC and was told it was going to be a problem in the future. Another thing that the consultant did not include was washing the gravel. He had two years' worth of decisions at that time. The truck traffic was one of those, they applied to increase the truck traffic, then the neighbors complained, and the Town of Avon told us to cease all operations. The land was not purchased. He then agreed to a solution that was provided by the Town to cease operations and did not include the financials for that year, but it was ten times worse that year. He inherited financial lost by ceasing the operation and working with the Town of Avon to catch up on the legal operations.

Supervisor LeFeber questioned what he meant by cease the operation. Mr. Welch replied stating that he agreed to load out things that were above ground that were not his. He had all the equipment there. Supervisor LeFeber stated that he personally got some of the things that were previously ground out.

Mr. Twardokus stated they stopped producing and he carried all his employees. Then went for the special use permit and there were a lot of things that needed to be addressed.

Councilman Harrington stated that back when all those people were complaining that all this equipment was coming in and out. He is on his point.

He then worked with the Zoning Board for the Use Permit. At the meeting there were approximately ten things and the last one was the truck traffic. The neighbors were upset, and he dropped the truck traffic.

Councilman Coyne then you went into this with the idea that the truck traffic would be allowed to increase.

Mr. Twardokus responded stating the DEC has traffic studies.

Attorney Campbell stated we are talking about suspending the moratorium for this applicant so they can do what they might want to do per their application whatever it looks like. A part of the hardship is not to consider how many trucks, but it could help determine the hardship. I am just trying to keep the board separated from the site plan and special use permit aspect, which are the jurisdiction of the Planning Board and Zoning Board of Appeals.

Mr. Twardokus stated that he is aware of the process and rather than having his Attorney speak and give very little information he is willing to provide this Board will all the information.

Attorney Campbell stated that he is reiterating the kind of limited scope this Board is considering.

Councilman Harrington he does not think the tax dollars are the hardship but what is important is providing service to the small people and businesses in our community. He feels bad for him on that part.

Attorney Campbell stated we are analyzing the hardship and the numbers are a logical way to provide information to prove hardship because the business is being challenged and there are certain things the business needs to do to be competitive and rather than saying that the numbers are intended to back that up, they give you something to draw your conclusion from.

Mr. Twardokus stated that you could see there is a loss of \$250,000.00 - \$300,000.00 and that if he doubled the number of trucks that hardship is going to be reduced.

Councilman Harrington stated that he does a lot of work in Town and in the County and would love to be able to go to his place for topsoil and the price is right, but that truck is going to take one larger truck away from him. So, he will not do business with him and that is the hardship right there.

Mr. Twardokus stated that the municipalities that we do business with are greater than 15 miles away, because they want the quality and the businesses that are closer do not want to be a part of the drama. He has Irondequoit, City and Town of Canandaigua, and the Town of Bristol.

Deputy Supervisor Mairs questioned the route that is taken when coming from the Canandaigua?

Mr. Twardokus stated those municipalities are willing to travel for the quality of the product. He continued stating that he is requesting the DEC approve less than what was asked for before prior to covid. The hardship is because now is when they could bring it forward. SEQR is done by the DEC.

Attorney Campbell stated Mr. Twardokus through his Attorney is going to submit a more formal breakdown of where the challenges are, and therefore have a hardship. Now, if you want to show them. Mr. Welch stated that he has no problem sending them around to Board Members and that one is 2019 and 2020 financial loss.

Attorney Campbell stated Mr. Welch is not turning them into the Town but is allowing them to see them. Mr. Twardokus stated these are his tax returns and a generic list of jobs, but you can see they are real projects. He will provide as much information as needed if it is not FOILED so the board can see they are real and not made up. The amount of money lost this year is substantial and he is not where he would like to be to service our local municipalities, farms, and landscape businesses. These are actual jobs on the list.

Supervisor LeFeber stated that the Town of Livonia had purchased from them last year. Mr. Welch responded that he has done some, but it a small part. Last year the company was not on the State bid list, but this year they are.

Councilman Coyne wanted to know if these are gross numbers and Mr. Welch answered yes, some have not started yet. There are about ten times that we are awarded without contracts, like with the Town of Canandaigua even in big quantities. The materials from a revenue standpoint are more significant.

Supervisor LeFeber questioned how the depreciation numbers work. Mr. Welch stated it is based on the amount of product for the year. If ten percent is taken out of one hundred ton, then it would be 10 percent depreciation. A significant amount of equipment has been invested in this year.

Councilman Coyne asked about a timetable and Attorney Campbell stated that nothing can be done until after the public hearing.

It was questioned if the documentation that was seen by the Town Board Members and returned to Mr. Welch should be brought to the public hearing? Attorney Campbell responded that the public hearing is for the public to give comment. He feels that a presentation should be made, and general information should be given regarding revenues and inadequate service to your customers. A written application of sorts stating your arguments should be presented and you do not have to put all the numbers on it. The more you can put on it the better.

Supervisor LeFeber stated that whatever decision the board makes needs to be backed up and made part of the public record. If we are taken to court our decision needs to be defensible.

There was discussion about what information is given and how it is given at the public hearing. There needs to be transparency. The application should be given to the Town Clerk before the public hearing.

Right now, excavation operations can only be done in agricultural zoned areas. Is it easier to say where we do want excavation allowed? Is there an area where the board thinks this type of operation is appropriate? Supervisor LeFeber stated the northeastern side of town. The town needs to make it somewhat precise. In order to apply it, we need to identify these parcels by a legal description as to where the town thinks it is appropriate. There was further discussion as to where excavation would be allowed. Attorney Campbell suggested to get help from the county to help with an overlay map.

Mr. Twardokus will ask his geologist if he has any information on the Avon area.

RESOLUTION #114 EXECUTIVE SESSION

On motion of Supervisor LeFeber, seconded by Deputy Supervisor Mairs the following resolution was

ADOPTED AYES 4 NAYS 0 ABSENT 1 (Councilman Drozdziel)

RESOLVE to enter executive session for the purpose of the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. Attorney Campbell TIME 5:43 P.M.

Vote of the Board: Councilman Drozdziel - Absent, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #115 CLOSE EXECUTIVE SESSION

On motion of Supervisor LeFeber, seconded by Deputy Supervisor Mairs the following resolution was

ADOPTED AYES 4 NAYS 0 ABSENT 1(Councilman Drozdziel)

RESOLVE to close executive session with no action taken at 6:00 P.M.

Vote of the Board: Councilman Drozdziel – Absent, Councilman Harrington – Aye, Councilman Coyne – Aye, Deputy Supervisor Mairs – Aye, Supervisor LeFeber – Aye

On motion of Councilman Harrington, seconded by Supervisor LeFeber the meeting was adjourned at 6:00 P.M.

Respectfully submitted by:

Sharon M. Knight, MMC/RMC Town Clerk