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**CITY OF PEQUOT LAKES**

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**SPECIAL MEETING AGENDA  
PLANNING AND ZONING COMMISSION**

September 7, 2005 at 6:30 PM

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1. Call to Order
2. Roll Call
3. Public Hearing

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Conditional Use Permit for an Extractive Use  
Bauerly Brothers, Inc.  
Application 05-105

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4. Adjournment

## STAFF REPORT

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**Application:** Conditional Use Permit for an Extractive Use

**Applicant:** Bauerly Brothers, Inc.

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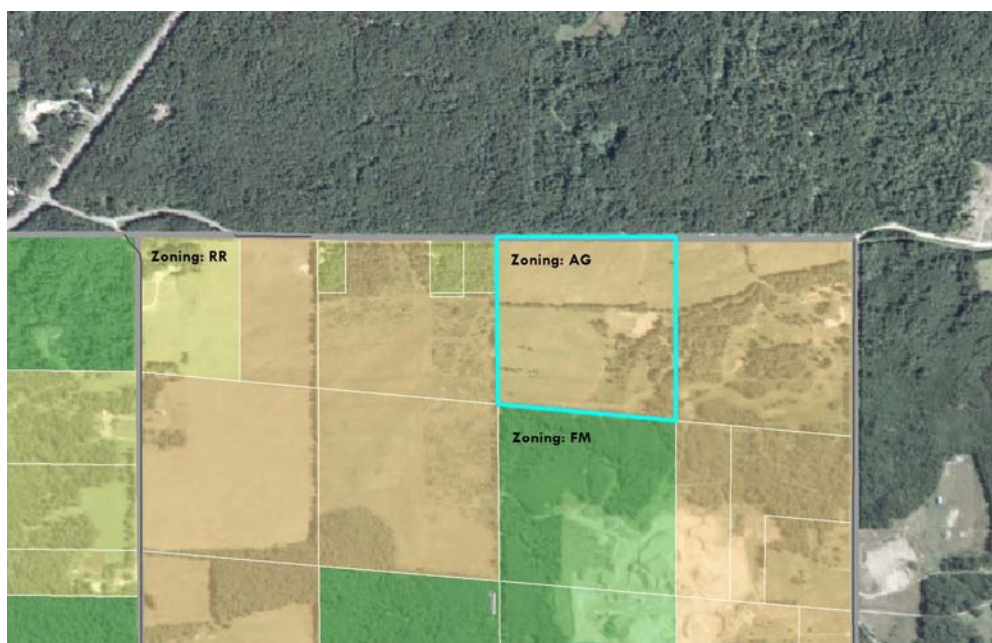
**Background:** The property in question is located in the northeastern part of the City on Wild Acres Road and is currently zoned Agriculture. The lot is approximately forty (40) acres in size and currently has several structures on the property.

The applicant proposes to use approximately 3.0 acres of the site to excavate approximately 40,000 cubic yards of Class V material and to process gravel materials for the construction of local, state, and township roadways, specifically for the County Road 1 project. The applicant proposes to remove the material through excavation, without using blasting or explosives. The operation will include the use of portable aggregate crushing equipment, screens, feed, and stacking conveyors. Dump trucks and belly dumps will be used to haul the material.

The topsoil removed to excavate the needed material will be stored as berms around the excavation site and in the stockpile area indicated on the plans. After excavation is complete, the bermed soil will be replaced at 3 to 4 inches over the site after sloping has been completed and the site will be reseeded with pasture mix. The applicant proposes to remove all excavation equipment and remove, bury, or burn all natural waste material in accordance with fire warden and local solid waste requirements. No hazardous will be handled with the proposed use and chemical substances will not be a part of the excavation or mining process.

The applicant proposes to use Wild Acres Road, bordering on the north, as the primary haul route for this project. The applicant is also requesting to operate 24 hours per day, with no operations on Sundays or holidays.

At this time, the applicant does not have long-term plans for excavation operations and has indicated that the excavation operations would specifically be for the County Road 1 project. The



applicant anticipates that excavation operations for this project will last approximately 3 weeks and does not expect that excavation operations will extend beyond this time period unless another project in the area is started.

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**Applicable Statutes:** The property is zoned Agriculture and must adhere to the lot, use, and density requirements for this zone, as described in Section 5.5. These provisions include the following:

- Lot Width.....500 feet
- Total Minimum Lot Area..... 20 acres
- Setback, all streets and roads..... 50 feet
- Setback, side ..... 25 feet
- Non-Agricultural Use Structure Height, max..... 25 feet

Extractive uses are listed as a conditional use in the Agriculture zone. Section 8.5 governs extractive uses and includes the following provisions:

1. In all districts where permitted, mining shall be permitted only by C.U.P. Such permit shall include as a condition: site plan, a completion plan, and a haul route plan with provisions for road restoration as provided below.
2. All excavation and extraction shall conform to the following:
  - a. Distance from property lines. No quarrying shall be carried on or any stock pile placed closer than 50 feet from any property line, unless a greater distance is specified by the C.U.P. where such is deemed necessary for the protection of adjacent property, provided that this distance requirement may be reduced to 25 feet only with written consent of the owners of the affected adjacent non-residence property.
  - b. Distance from public right-of-way. In the event that the site of the mining or quarrying operation is adjacent to the right-of-way of any public street or road; no part of such operation shall take place closer than 50 feet to the nearest line of such right-of-way.
  - c. Fencing. Fencing shall be erected and maintained around the entire site or excavated portions thereof and shall be of a type specified in the C.U.P.
  - d. Equipment. All equipment and machinery shall be operated and maintained in such a manner as to minimize dust, noise, and vibration. Power drives or power producing machinery, not including vehicles, shall not be housed or operated less than 1,000 feet from a residential use district.
  - e. Processing. Crushing, washing, refining, or other similar processing may be authorized by the C.U.P. as an accessory use; provided, however, that such accessory processing shall not be in conflict with the regulations of the district in which the operation is located. Processing shall not be permitted in the residential districts. All processing equipment shall be located at least 1,000 feet from any residence, 200 feet from the OHW of any lake or stream, and outside of the wellhead protection area.
3. Rehabilitation. To guarantee the restoration, rehabilitation, and reclamation of mined-out areas, every applicant granted an extraction/mining permit as herein provided shall furnish a performance bond running to the City in an amount to be determined by the City Engineer and acceptable to the Planning Commission as a guarantee that such applicant, in restoring, reclaiming, and rehabilitating such land and haul roads shall, within a reasonable time and to the satisfaction of the City, meet the following minimum requirements:
  - a. Surface rehabilitation. All excavation shall be made either to a water producing depth, with a water depth of not less than five (5) feet or the surface of such area which is not permanently submerged shall be graded or backfilled to contour and

shape the peaks and depressions thereof, so as to produce a gently drained surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area. Four (4) inches of black topsoil shall be placed on all areas, except beaches, that will remain above water level. Haul roads will be restored to their condition prior to the beginning of the extraction operation.

- b. Vegetation. Vegetation shall be restored by appropriate seeds of grasses or planting of shrubs or trees in all parts of said mining area where such area is not to be submerged under water as herein above provided.
- c. Banks of excavation not backfilled. The banks of all excavation not backfilled shall be sloped not steeper than three (3) horizontal feet to one (1) vertical foot and said bank shall be seeded.

Section 11.6 also directs the Planning Commission to decide the application, indicating that the following must be met:

1. The use or development is an appropriate conditional use in the land use zone.
2. The use or development, with conditions, conforms to the Comprehensive Land Use Plan.
3. The use with conditions is compatible with the existing neighborhood.
4. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance, or prosperity of the City.

Section 11.6 all direct the Planning Commission to consider the following when deciding on an application:

1. The conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminish or impair values in the immediate vicinity.
2. The conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. The conditional use requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
4. The conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or an indifference with traffic on surrounding public thoroughfares.
5. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use.
6. Adequate measures have been taken, or will be taken, to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and signs in such a manner that no disturbance to neighboring properties will result.
7. The conditional use will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major significance.
8. The conditional use will promote the prevention and control of pollution of the ground and surface waters, including sedimentation and control of nutrients.

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**Staff Findings:** The Staff proposes the following findings of fact for consideration by the Planning Commission:

1. The property meets the minimum lot, size, and use standards for the Agriculture zone, being 40 acres in size, more than 500 feet wide, and having ample space within the building envelope for the proposed operation.

2. The applicant has supplied the required information including a site plan and a completion plan, and has indicated that Wild Acres Road will serve as the primary haul route.
3. The applicant has proposed to excavate a 3.0 ± portion of the property. This excavation area is more than 50 feet from all property lines. The edge of the proposed berm around the area to be excavated is 80 feet from the western property line at its closest point.
4. The proposed excavation area is more than 50 feet from the right-of-way of Wild Acres Road, being approximately 530 feet from the right-of-way.
5. The applicant has not indicated what type of fencing, if any, will be erected around the excavation site. The applicant has proposed to use vegetated berms and stockpiles as a means of screening of the excavation site and associated machinery.
6. The applicant has proposed that haul roads and site entrances will be regularly watered to control dust, indicating that calcium chloride will be placed if necessary. The applicant has obtained a Nonmetallic Mineral Processing Air Emission General Permit that limits the production of air emissions and sets conditions for operation. The applicant has indicated that all equipment to be used has been tested and meets EPA noise level requirements.
7. The processing area is more than 1200 feet from the nearest residence, located on a property to the west of this property. There is also a residence on the property to the east that is approximately 1900 feet from the excavation area. The nearest lake, Island Lake to the north, is more than 3,000 feet from the processing area, and the nearest stream is more than one mile to the north of the site. The processing area is also more than one mile outside of the wellhead protection area.
8. Excavation will not occur at a water-producing depth as approximately 12 to 15 feet from the existing elevation will be excavated. The applicant has indicated that drilling of 20 feet in depth did not encounter groundwater and proposes that excavation activities will maintain not less than five (5) feet of distance between the excavation base and the water table.
9. Stormwater drainage and management will occur on the site with little change in drainage patterns over the majority of the site. Stormwater in the excavation area will drain to the base of the excavation area and be maintained therein and it does not appear likely that stormwater would drain from that area as that area will be approximately 4 to 24 feet lower than the surrounding area.
10. The applicant has proposed that stormwater above the edge of the extraction area will be maintained with vegetative berms and proposes to install silt fences to control erosion where no natural grass waterways exist to filter water that could potentially leave the site, if needed. The applicant has obtained a National Pollution Discharge and Elimination Systems (NPDES) permit that provides limitations and controls for stormwater management.
11. The applicant has submitted a restoration plan for the extraction area, indicating that the topsoil that will be stored as berms during excavation will be spread at a depth of 3 to 4 inches over the site after sloping has been completed. The Ordinance requires a minimum of 4 inches of black topsoil be placed on all areas.
12. The applicant has proposed to re-seed the excavation area with a pasture mix, which is similar to what currently exists in the area.
13. The applicant has proposed to restore the excavation area with slopes having a grade of approximately 32% at the steepest area.
14. The proposed extractive use is an appropriate use in the Agriculture zone; extractive uses are listed as conditional uses in the Agriculture zone.
15. The Comprehensive Plan identifies the intersection of Wild Acres Road and County Highway 16 as being in need of realignment to meet City Road Standards and in need of a maintenance agreement with Jenkins Township. Wild Acres Road is currently being used as a haul route for other excavation operations in the area. The applicant has

indicated that there will be approximately 10 to 15 trucks continuously hauling on this road associated with their operation. The applicant has also proposed to maintain the haul route, but has not provided details on how that will be done.

16. The proposed use is compatible with the surrounding neighborhood. There are several extractive uses in the surrounding area, including in Pequot Lakes, Breezy Point, and Ideal Township. There is a large extractive use on the adjacent properties to the south of the subject property.
17. The proposed use will not be injurious to the public as necessary permits for stormwater and pollution control were obtained, as well as permits for noise and air emissions. The proposed use will be temporary and also will not pose a threat to groundwater quality.
18. The proposed use will not be injurious to the use and enjoyment of property in the immediate vicinity. There are few homes in the area that are located more than 1000 feet from the proposed extraction area and other neighboring properties are either undeveloped or contain extractive uses themselves.
19. The proposed use will not impede the normal and orderly development of surrounding vacant properties for uses predominant in the area as this is a temporary use and the neighborhood is largely zoned for agriculture and forestry uses.
20. The proposed use will not require public facilities or services at public cost as the applicant has indicated that they will maintain their haul route. Section 8.5, Subdivision 3 of the Ordinance does contain a provision requiring the applicant to furnish a bond to guarantee that rehabilitation, reclamation, and restoration are completed to the satisfaction of the City.
21. The proposed use will not create traffic congestion on Wild Acres Road as the road does not have a high traffic volume and the addition of ten to fifteen trucks is unlikely to create congestion.
22. The applicant has indicated that no parking changes will take place at this site, but has not indicated where employees will be parking. However, given the size of the site, there is more than ample space for off-street employee parking.
23. The applicant has obtained a permit from the Environmental Protection Agency regulating air emissions and noise levels. The applicant has also indicated that they intend to meet all EPA noise level requirements and do not plan to use blasting or other explosives at the site. In addition, the applicant has indicated that dust will be controlled with regular watering of the haul road and site entrance, with application of calcium chloride if needed.
24. There are not any significant historic, natural, or scenic features located on the property that would be damaged or destroyed by the proposed use.
25. The proposed use will not contaminate groundwater as the proposed extraction shall take place at least five (5) feet above the water table, if not more. In addition, the necessary stormwater management permits have been obtained to control stormwater onsite and prevent erosion. There nearest surface water body, Island Lake, is more than 3,000 feet to the north of the property, so it is unlikely that the proposed use will pollute surface waters.

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**Planning Commission Direction:** The Planning Commission can decide to approve or deny the conditional use permit application. The Commission can also choose to table the application if additional information is needed to make a decision.

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**Staff Recommendation:** Based on the findings of fact presented in this report, the Staff recommends that the conditional use permit application be approved with consideration given to the following conditions:

1. The berms shall be vegetated in such a way as to screen the excavation area from view and to serve as a noise buffer for area residences.
2. The excavation area shall not extend closer than 80 feet from any property line, as proposed, so as to minimize any disturbance to residences in the area.
3. The applicant shall furnish a bond in an amount that is acceptable to the City Engineer and the Planning Commission to serve as a guarantee that the restoration and rehabilitation requirements are met to the satisfaction of the City.
4. The slopes surrounding the excavation area shall be reshaped to more closely resemble existing, pre-excavation slopes, with grades not to exceed 25%.
5. In restoration, the excavation and operations area shall be re-vegetated as soon as possible and shall have appropriate erosion control measures installed until the vegetation has been established.
6. Extraction operations shall occur only during regular daylight hours, with no operations on Sundays or holidays.
7. The conditional use permit for extraction operation shall be valid only for the duration of the County Road 1 project or 12 months, whichever time period ends first.
8. No less than four (4) inches of topsoil shall be placed on all areas on the excavation site as part of the restoration process.