

Memo

To: Chairman Tony Capon and Members of the Ledyard Planning and Zoning Commission and Elizabeth Burdick, Director of Land Use & Planning

From: Harry B. Heller, Esquire

Re: Text Amendment Application PZ #24-7ZRA

Date: September 12, 2024

The Ledyard Planning and Zoning Commission (the “Commission”) is currently reviewing a text amendment application, Application PZ #24-7ZRA, submitted by Eric Treaster, which proposes changes to the Ledyard Zoning Regulations (the “Zoning Regulations”) that: i) would modify the mass, height, and population density of multifamily developments; ii) would prohibit mining and quarrying and impose constraints on large-scale excavation; and iii) require a public hearing for 8-30g affordable housing applications. The Commission has continued the public hearing for this application to its September 12, 2024 meeting.

This firm represents Gales Ferry Intermodal, LLC, owner of properties at 1721, 1737 and 1761 Connecticut Route 12 in the Town of Ledyard, which currently is the applicant in an application before the Commission for special permit, site plan and coastal site plan review and approval in conjunction with a component of the comprehensive repurposing of the former Dow Chemical property. The application seeks, inter alia, approval of the industrial regrading of approximately 40 acres of the application parcels to provide 26 acres of new, clean industrial land; and in conjunction therewith, modification of the existing special permit extant with respect to the property at 1761 Connecticut Route 12 for mixed commercial – industrial use to allow excavation as an additional permitted use.

We are cognizant of the opposition of C.R. Klewin LLC to certain aspects of the proposed text amendment as memorialized in a memorandum submitted for the record dated September 11, 2024. Gales Ferry Intermodal, LLC supports the rationale and arguments of Attorney Smith contained in that memorandum. With that being said, our client’s opposition to the proposed text amendment, as stated in this memorandum, is targeted explicitly at the proposed regulation amendments which would prohibit extraction of stone and effectively eliminate excavation as a land use in the Town of Ledyard.

The application submitted by Mr. Treaster is reactionary to two (2) pending permit applications before the Ledyard land use commissions. Reactionary legislation is often shortsighted and has far-reaching and long-lasting unintended consequences. For the reasons hereinafter stated, it is our client's position that the proposed text amendment should be denied, in toto, as it does not further the best interests of the Town of Ledyard. In enunciating our position on this application, we are cognizant of the fact that municipal zoning commissions have broad discretion in exercising their legislative authority. However, that discretion is not unlimited and must be consistent with the municipality's comprehensive plan and the Commission must take into consideration the recommendations contained in the municipal Plan of Conservation and Development.

Earth products and aggregate are the foundation of every aspect of the local, regional and national economy. Aggregate is used in highways, paints, plastics, glass, driveways, concrete walks, bridges, wallboard, vinyl, brick, stone, buildings and homes, concrete blocks, roofing tile, asphalt shingles and minerals for agricultural. Every year more than 2 billion tons of aggregate are used in the United States; i.e. approximately 8 tons of aggregate for every American. An average of 120 tons of aggregate are used in the construction of a new house. More than 2,300 tons of aggregate are used for the construction of one mile of four lane highway. Structural earth product and aggregate are essential to support the everyday economic activity and commerce of the Town of Ledyard. If every town were to take the stance proposed in the proposed text amendment being considered by the Commission, all development activity would come to a grinding halt.

The proposal being considered only allows future excavations associated with an independent economic activity; and, even then, proposes a limit of 5,000 cubic yards of material to be removed from the application site. This effectively thwarts all potential development activity in the municipality other than the construction of residences. 5,000 cubic yards of structural material is a de minimis amount. Profitable excavations require certain critical mass in order to justify the fixed cost associated with the endeavor; i.e. permitting costs, bonding, insurance costs and reclamation costs. The marketplace generally does not support excavations smaller than several hundred thousand cubic yards of extracted material and often millions of cubic yards.

Section VII of the Ledyard POCD defines certain economic development goals of the municipality. While the recommendations contained therein are extraneous to excavation and/or aggregate production, they do evidence a recognition that economic development is essential to the vitality of a community. Without the production of both structural earth product material and aggregate, development does not occur.

The Commission has in place, in its existing regulations, performance standards for excavations (which are allowed by special permit in all zoning districts). The empirical standards for excavations contained in Section 8.16 of the Zoning Regulations provide a regulatory framework for excavations, including the excavation of stone, to be conducted in a manner which is consistent with community standards.

Since these uses are special permit uses, an excavation applicant, including an applicant for the extraction of stone, must satisfy the special permit general evaluation criteria contained in Section 11.3.4 of the Zoning Regulations. The regulatory standards contained in Ledyard Zoning Regulations, which are substantially similar to those contained in the Zoning Regulations of most Connecticut municipalities, provide a coherent and workable legal framework for the permitting of an essential economic activity in a manner which is protective of the community's health, safety and welfare.

It is our opinion that the proposal is shortsighted, and, if approved, will have long term adverse impacts on both the Ledyard and regional economies. Removing the source of a product essential to all development activity from the municipality will require importation of those materials from more remote sources further exacerbating the high cost of living, including housing, in the Town of Ledyard.