

December 4, 2024

The Cedarville Steering Committee by a vote of 5-0, recommends that the Landers LLC project off Hedges Pond Road be denied a special permit for earth removal.

The Cedarville Steering Committee by a vote of 5-0, recommends that the proposed A.J. Pontiff development at 71 Hedges Pond Road be required to obtain a special permit for earth removal.

After multiple meetings at which proponents for each project presented their proposals and members of the community offered their feedback; and after visiting the sites themselves and reviewing relevant documentation, the Cedarville Steering Committee has made the following determinations:

71 Hedges Pond Road:

The proponents claim they do not need a special permit to remove 350,000 cubic yards of sand from the property because such removal is “incidental” to the overall project and thus, under the bylaws, is allowed in the Light Industrial and Commercial District. Their development, they insist, is “as of right.” However, the proponents’ understanding of “incidental” is mistaken.

The Massachusetts Supreme Court has, however, offered guidance.

In *Old Colony Council v. Zoning Board of Appeals of Plymouth*, 31 Mass. App. Ct. 46, 48, 574 N.E.2d 1014 (1991), the Court found that the gravel removal in that case was not incidental “considering the amount of gravel to be removed, the duration of the excavation and the monies to be realized from the excavation” (about 400,000 cubic yards, over two and a half years for a “substantial profit”).

The Pontiff project proposes the removal of 350,000 cubic yards of sand over an 18-month period generating (according to the Wall Street Journal’s \$12.20 per metric ton estimate) a value of over \$5,750,000. It is not, as the by-law requires “minor in its net effect to the principle use, based on the amount of material to be removed and the time period over which it is to be removed and/or the amount of money to be derived from the earth removal operations.” And it does not include any mining activities that may be undertaken under a permit extension, which residents had noted had happened with other A.J. Pontiff projects in Plymouth.

Further, the sand removal will require 80 truck trips per day (about one every five or six minutes) through the heart of the village of Cedarville across a road system that is, and has been for some time, already experiencing traffic issues.

Significantly, the proponents’ presentation to the committee was somewhat nebulous about the final project: An ice-skating rink? A lumber yard? Assuming the project ever got built once the sand had been mined, one of the proposed buildings was a warehouse, 20% larger than the Amazon warehouse at Exit 17, which, with its attendant truck traffic, did not seem to Cedarville residents appropriate for our village and was not in keeping with what the town suggested would be built in Cedarville’s Light Industrial and Commercial District when the district was proposed to and approved by Town Meeting in 2018.

How this project would integrate with the potentially overlapping Sagamore bridge project and the traffic round-about proposed for the same area was never really addressed. The impacts of the projects on the already problematic traffic issues in Cedarville, the traffic maelstrom, as one of our residents called it, was not addressed, and has not seemed to Cedarville residents to be a concern of the town. Rather, the proponents (including The Plymouth Foundation, which seems to be an arm of the Planning Department) tied needed safety improvements to the sale of a piece of land, a backward approach. Smart economic development should be considered independently.

The Bylaws provide that in order to be considered incidental, the project cannot be of "[s]uch scale or other characteristics as to require special conditioning in order to avoid possible objectionable negative effects (such as heavy equipment noise, vibration, dust or vehicular traffic)" As another resident points out, this project fails under those criteria.

The Landers, LLC Hedges Pond Rd. Proposal:

The proponents of this project lacked credibility. Mr. Landers presented himself as a cranberry farmer, when anyone who has lived on the South Shore for any period of time knows, or when any quick google search would reveal, that P.A. Landers is an aggregate miner and dealer.

As the Planning Board itself has noted, Mr. Landers has removed enormous quantities of sand under other permit applications, never to complete the ostensible underlying project.

Landers LLC proposes a sand mining operation that would remove 2,000,000 cubic yards of sand, or about 2,709,566 metric tons requiring 40 truckloads per day, or 80 truck trips, through the center of Cedarville.

Mr. Landers testified to our committee that his cranberry operation generated under \$100,000 annually. His sand removal proposal will generate, (using the \$12.20 per metric ton figure of the WSJ) \$48,922,646.60 over the 8-10 year course of the project. That's about \$5 or \$6 million per year to improve a \$100,000 operation. By no one's measure is that incidental.

Again, this proponent insists that it can proceed as of right, this time because of MGL c. 40A's agricultural exemption.

But the Supreme Court was clear about the limits of that exemption,

"The magnitude of the plaintiff's mining operation, if permitted, would be "a de facto quarry operation to be carried on in violation of the zoning [by-law]. ... To hold otherwise would be to allow the statutory exemption to be manipulated and twisted into a protection for virtually any use of the land as long as some agricultural activity was maintained on the property. The [town's] zoning power would thus be rendered meaningless. The Legislature cannot have intended such a result when it created a protected status for agricultural purposes." Henry v. Board of Appeals of Dunstable 418 Mass. 841 (1994), quoting *County of Kendall v. Aurora Nat'l Bank Trust No. 1107* 170 Ill. App.3d 212, 218 (1988).

The Court went on to say, “In our view, the Appeals Court in *Old Colony Council*, correctly considered the "net effect" that the proposed cranberry bog would have had in the rural residential area and concluded that the effect was so great that the excavation could not be said to be incidental (or attendant or minor) to the cranberry bog.”

Over and over, at the several standing-room only meetings we held to discuss these proposals, residents expressed to us their dismay that the town could be considering these proposals. They pointed out the inequity and injustice of two men (from outside Plymouth, despite how they tried to portray themselves as residents) and their eponymous companies profiting enormously at the expense of thousands of town residents.

Our residents repeatedly cited the deleterious effect on the aquifer and the danger to our water supply from what are essentially strip-mining operations. That is irreversible.

The loss of home values due to the traffic, pollution, noise, and topographical destruction. Who would want to live in the midst of a truck lay-by.

Our residents were clear: Either of these projects will destroy our quality of life and the quiet enjoyment of our homes and should not be considered for approval.

It is the obligation of the town to protect its own citizens and work to improve their quality of life, not to advance the selfish personal interests of a select few.

The Cedarville Steering Committee unanimously recommends denial of the 71 Hedges Pond Rd. project and the Landers, LLC project.