

2019 JUN 14 PM 3:06
Decision on Administrative Appeal

Date: June 12, 2019
Appellants: Chicopee Concrete Services, Inc.; Leo Concrete Services, Inc., and J&L realty Management, LLC
Address: Off Hadley Street, Assessor's Map 54, Parcels 15 and 20 (the "Property")

Procedural History

1. On March 13, 2019, the South Hadley Building Commissioner issued a cease and desist order with respect to the Property (the "Order"). The Order required that all gravel mining and earth removal operations cease because of the lack of a valid permit or approval for such activities. Such Order was amended on April 23, 2019.
2. The Appellants appealed the Order to the Board on or about April 10, 2019.
3. The Board opened its hearing on the appeal on May 9, 2019 and continued it to June 6, 2019. The hearing was closed on June 6th.
4. The Board deliberated and voted to uphold the Building Commissioner's Order on June 6th.
5. The Board was represented by Town Counsel and the Appellants were represented by Attorney Patrick Markey. Attorney Markey submitted a memorandum summarizing the Appellants' position.
6. Members of the public attended the hearing and offered testimony and documentary evidence.
7. The Board received a number of documents into evidence.

Findings

1. The Appellants' predecessor received approval from the South Hadley Planning Board for earth removal for Parcel 15 on or about February 26, 1981. Such approval had a termination date of September 1, 1981. There is no evidence of any renewal or extension of such approval.
2. The Appellants' predecessor received approval from the Planning Board for earth removal for Parcel 20 on or about September 26, 2000.
3. The 2000 approval contained a number of conditions. Among the conditions was an initial five-year term of the approval with the possibility of an extension of an additional five years but, in all respects, the approval would terminate no later than September 25, 2010.
4. Other conditions of approval included: (1) required annual review by the Planning Board; (2) required annual payments to the Town; (3) a restriction against transferability of the approval.

5. The 2000 permit was not appealed.
6. The last annual review and payment under the 2000 approval was 2006.
7. The 2000 approval was never transferred and the Appellants' predecessor is deceased.
8. The 2000 approval was never affirmatively extended or renewed beyond its original maximum term.
9. Based upon the foregoing, the Board finds that the both the 1981 and 2000 approvals have expired.
10. There is no evidence that the Appellants have any vested or grandfathered rights to conduct earth removal or gravel mining activities on the Property

Decision

Accordingly, based upon the foregoing, the Board moved and unanimously voted to deny the Appellants' appeal and uphold the cease and desist order of the Building Commissioner due to the fact that the approvals for earth removal and gravel mining operations terminated many years ago.

SOUTH HADLEY ZONING BOARD OF APPEALS

By: Martha P. Terry
Martha Terry, Chairperson

This decision may be appealed in accordance with G.L. c. 40A, §17