

RESOURCE EXTRACTION PERMIT RENEWAL
PHOENIX PINELANDS CORP.
Block 3, Lot 9.01

Application No. P85-17AA

RESOLUTION OF APPROVAL 2016 - 12
PLANNING BOARD, TOWNSHIP OF LITTLE EGG HARBOR

WHEREAS, an application has been made by **PHOENIX PINELANDS CORP.** for the renewal of a Resource Extraction Permit for Block 3, Lot 9.01 as set forth on the Tax Maps of the Township of Little Egg Harbor; and

WHEREAS, the Planning Board, after carefully considering the evidence presented by the applicant, and the report from its professional staff, hereby makes the following findings of fact:

1. The applicant was represented by Howard Butensky, Esq.
2. The site in question is located along the western side of Route 539 in the Preservation Area (PA) and Pinelands Village (PV) Zones.
3. The applicant has submitted the following:
 - Resource Extraction Plans prepared by Bryan Luoma, PE, dated January 7, 2016;
 - Standard Planning Board application package;
 - Addendum List of Required Permits (as required by Ordinance § 290-6L);
 - Addendum Statement of Operations and Acknowledgement (as required by Ordinance § 290-6X) dated January 20, 2016;
 - Addendum List of relief requested;
 - 2/23/2016 Pinelands Commission Certificate of Filing.
4. The applicant has a propriety interest in the property.
5. The applicant has requested approval in accordance with the Ordinances of the Township of Little Egg Harbor.
6. T&M Associates, the Board engineers, prepared a report dated February 24, 2016. The Board hereby adopts the findings in said report and incorporates them into this Resolution by reference.
7. The applicant is seeking a two-year renewal permit for a dredge-mining operation in the northern portion of the Township. The current permit, granted pursuant to Resolution 2014-11, will expire on June 30, 2016.

8. The applicant requires the following relief from the requirements of Chapter 290 (Soil Removal, Excavation and Mining) of the Township Ordinance:
- Section 290-7G(1) limits the size of mined lakes to 20 acres. The applicant proposes a lake size of 199.6 acres. This relief was previously approved in the 2014 & the 2012 approvals of the Board.
 - The applicant is requesting a waiver from the requirements of § 290-7G(3), which limit the depth of the water in the pond to a maximum of 35 feet. The applicant is proposing to continue the previously-approved water depth of 84.0 feet in Resource Extraction Areas 1 & 3; and a depth of 122 feet in Resource Extraction Areas 2 and 4 thru 10. This relief was previously approved in the 2014 & the 2012 approvals of the Board.
 - Section 290-7G states that in no case shall any excavation have a depth exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated a greater depth will result in no significant adverse impact to the proposed final use or off-site areas. The ground elevation in the area prior to excavation was approximately 100 feet; therefore the applicant is continuing to propose an excavation depth of 135 feet (except Areas 1 and 3 where 97 feet continues to be proposed). This relief was previously approved in the 2014 & the 2012 approvals of the Board.
 - Relief from § 290-7A(1), which requires no area of operation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 200 feet to any property line, stating these are existing conditions. Condition No. 25 of Resolution 2010-18 required the applicant to restore the required 200-foot buffer along the northeastern boundary nearest the existing residences. This restoration work has essentially been completed. The insufficient buffer remains primarily along the northern lines, although the applicant has indicated no resource extraction work will occur within the 200-foot buffer. The existing lake edge is within 26 feet of the Simms Place Road right-of-way. This relief was previously approved in the 2014 & the 2012 approvals of the Board.
 - Relief from § 290-7A(3), which requires a wetlands buffer of 300 feet, is also being requested. The applicant is proposing a buffer of 150 feet, again indicating it is an existing condition. This relief was previously approved in the 2014 & the 2012 approvals of the Board.
 - Relief from § 290-7A(2), which requires no area of excavation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 1,500 feet to any residential or non-resource extraction-related commercial use in existence on the date the permit is issued. The applicant is proposing a 1,100 foot buffer for “stationary or fixed land-based machinery”, based upon this being an existing condition. The applicant further notes the floating dredge will maintain a minimum of 200 feet to any property line (300 feet to Route 539), provided it is operating within an approved resource extraction area. This relief was previously approved in the 2014 & the 2012 approvals of the Board.

9. The applicant requested and was granted waivers from the requirements to submit the following as completeness items:
 - Cultural Resource Study
 - Resource Capability Map
 - Vegetation Map
 - Noise Contour Map
10. A public hearing on the application held on March 3, 2016.
11. The applicant requested the Resource Extraction Permit be granted for a period of two years, in accordance with § 290-5B, through June 30, 2018. The applicant presented testimony in support of the application and that granting the two-year permit renewal would in no way be detrimental to the public good.
12. The hours of operation will be consistent with prior permit approvals: Monday through Friday from 6:00 a.m. to 7:30 p.m. and on Saturdays from 7:00 a.m. to 3:00 p.m. for sales and loading and from 7:00 a.m. to 6:00 p.m. for dredging and maintenance. There shall be no trucking or dredging beyond these hours. The number of employees (15) will also be substantially similar to prior approvals.
13. The applicant presented testimony relative to the impact of the dredging. Expert testimony was presented by Bryan Luoma, P.E., (engineer who prepared the resource extraction plans). Robert Woodington, Vice-President, Phoenix Pinelands Corporation, also presented testimony on behalf of the applicant.
14. Interested parties attended the meeting and commented on the application; the public's comments have been placed on the record and taken into consideration by this Board.

WHEREAS, the Planning Board has determined that the applicant should be granted the requested relief, as set forth below, for the following reasons:

1. The application is in substantial compliance with the Township Ordinance.
2. The application is consistent with prior approvals of the Planning Board.
3. The application presents no issues beyond those previously considered and approved by the Planning Board.
4. The safety and well-being of the immediate area will not be adversely affected by the proposed permit extension.

NOW, THEREFORE, BE IT RESOLVED, by the Little Egg Harbor Township Planning Board that the application is hereby approved subject to the following conditions:

1. The applicant must submit proof of payment of all currently due taxes to the Little Egg Harbor Township Planning Board.

2. The applicant must post all bonds and guaranties as required by Ordinance Chapter 290 and recommended by this Board and said Planning Board engineer. Moreover, the Applicant must post all required engineering inspection fees.

3. All representations and statements made by the Applicant, as well as Applicant's representatives and witnesses, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance shall be deemed a breach of this condition of approval and shall subject this application to further review of this Board's own motion.

4. In the event the Planning Board determines it reasonably relied upon any misstatement or misrepresentation, any approvals previously given may be rescinded and any improvements at the time in place on the premises in question shall not be in compliance with the ordinances of the Township of Little Egg Harbor.

5. The applicant shall comply with all enumerated conditions and recommendations of the Planning Board Engineer's report referenced above. Said conditions are incorporated herein by reference.

6. Pursuant to Ordinance § 290-9D, the applicant shall maintain liability insurance in the amount of \$5,000,000.00 for operations conducted upon and within the property in question.

7. The current hours of operations will be conditionally approved for the 2016/2018 permit period and conditioned on the Township's receipt of monthly reports on the Saturday operations and volume of truck traffic. The reports shall be open to public inspection, and further conditioned on the strict compliance with the hours of operations, limitations, and the other conditions of this approval. The hours of operation shall continue: Monday through Friday from 6:00 a.m. to 7:30 p.m. and on Saturdays from 7:00 a.m. to 3:00 p.m. for sales and loading and from 7:00 a.m. to 6:00 p.m. for dredging and maintenance. If the conditions in this resolution are violated, the hours of operation may be revoked. A sign must be posted at the entrance to the site reflecting the hours of operation as listed herein.

8. In the event the applicant is proven to have violated the limitations and conditions of this approval, either in municipal court or any other legal or administrative proceedings, the Township of Little Egg Harbor reserves the right to revoke the two-year mining permit and require the applicant to appear before the Planning Board for further review as the Planning Board may deem necessary. The applicant would further be subject to any other sanctions available by law.

9. The term "operation" in the aforementioned phrase "hours of operation" shall be defined to include any mining, removal of excavated materials, truck movement or equipment operation of any sort, which shall not be allowed outside of the specific hours of operation approved by the Planning Board.

10. The applicant shall continue to comply with all conditions contained in Resolution 2012-09 & Resolution 2014-11, which are incorporated herein by reference.

11. The terms and conditions contained herein shall be binding upon all successors, assigns, personal representatives, heirs, and all and every other person or entity taking possession or title with respect to the premises in question.

12. The applicant must obtain reports with signed certifications from the Township of Little Egg Harbor Engineer, code Enforcement Officer, and Building Department certifying that all conditions of the Resolution have been met.

13. No permit shall be issued until the Planning Board professional fees have been confirmed by the Board Secretary as paid in full. In the event a two-year permit is issued and there are outstanding Planning Board professional fees, a stop work order will be filed against the applicant/contractor until such professional fees have been paid.

14. In the event there is an existing violation, the applicant shall have thirty (30) days from the date of the Notice of Decision was published to correct the violation. Failure to correct the existing violation within the time proscribed will result in the issuance of a summons.

15. This approval is further conditioned upon the review and approval of all other agencies exercising jurisdiction in this matter, either by affirmative action by such other agency or by required passage of time in lieu thereof.

16. The terms and conditions imposed upon the applicant are an integral and material part of the approval granted by this Board. This Board would not have voted affirmatively for said approval without the imposition of the terms and conditions contained in this Resolution.

17. The applicant shall remain in continuous compliance with the conditions delineated in this Resolution. A hearing to renew the resource extraction permit granted by the Resolution beyond its expiration date of June 30, 2018 will not be scheduled by this Board unless the applicant is deemed in compliance with the conditions set forth in this Resolution.

18. **The following conditions shall continue for the 2016-2018 licensing period:**

- a. The applicant shall create and maintain shoreline slopes at a ratio of five feet horizontal to one foot vertical both three feet above and three feet below the water surface elevation.
- b. The applicant shall comply with and stipulate to all terms and conditions as set forth in Resolution 2005-14, with the exception of those items specifically superseded by the terms of this Resolution.
- c. The water line to be created from any new dredging will not be any closer than 200 feet from the property line; in all locations where the water's edge is within 200 feet of the property line, shall not be reduced from the existing buffer.

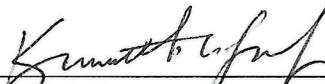
- d. The applicant further agrees to bonding of equipment removal and equivalent of three years testing of water quality after abandonment.
19. The water quality testing parameters and detection limits established in the Planning Board Engineer's October 6, 1999 correspondence are made a part of the 2016-2018 Mining Permit. In an effort to clarify a timeframe for notification to the appropriate parties whenever a detection limit is exceeded, the applicant is required to notify the Township within a forty-eight (48) hour period of receipt of the test results, and retest results should be submitted within ten (10) days of the original submission. The applicant is required to submit copies of all quarterly water quality testing results to the Township of Little Egg Harbor, Attn: Code Enforcement Officer or Zoning Officer. Water quality testing results shall be maintained on file for review by any interested parties. Strict adherence to and compliance with this condition will be required.
20. The applicant's request to continue the Resource Extraction operation is approved, contingent upon four inspections being conducted annually by the Township Engineer. The applicant is required to escrow the appropriate funds to allow for the inspections over the course of the two-year permit period.
21. For resource extraction areas 1 and 3 (those in closest proximity to residential areas), the maximum depth of the excavation shall not exceed a water depth of 84 feet (bottom elevation: +3.0 feet NGVD 1988), which depth is consistent with the prior mining permit approval. If the applicant desires at any time to increase the depth beyond the maximum permitted, the applicant must come back before this Board for review and approval.
22. For resource extractions areas 2 and 4 through 10, the applicant is permitted to proceed with the proposed depth of excavation (-35.0 feet NGVD 1988, or a water depth of 122 feet) subject to compliance with all applicable conditions of this Resolution. This is consistent with the prior permit renewal.
23. The applicant is required to submit an annual hydrographic survey of the entire lake bottom so the excavation progress and the extent of material removal may be monitored. The hydrographic survey must be signed and sealed by a New Jersey-licensed surveyor.
24. The applicant must provide a map depicting stormwater drainage patterns, along with appropriate calculations, delineating how stormwater runoff will be handled.
25. The applicant agreed to comply with the requirements of Section 290-7M regarding the maintenance of roadways, dust control access to public highways, traffic safety, and the clean-up of any materials spilled as a result of mining operations. The applicant also agreed to comply with the requirements of Section 290-8 with regard to Restoration Standards, as applicable. All affected areas need to be depicted and clearly labeled on the plans. The applicant further agreed to topsoil and reseed the area previously restored along the site's northeastern boundary nearest the existing residences.

26. The applicant agreed to continue to maintain the access road along the northerly portion of the site.
27. The applicant agreed to submit to the Board Engineer documentation providing the approximate volume of material mined/removed from the site since the last renewal.
28. The applicant will follow-up with the NJ Pinelands Commission with respect to the wetlands buffer requirement noted in the Certificate of Approval.

BE IT FURTHER RESOLVED that the applicant's request for a two-year Resource Extraction Permit, valid through June 30, 2018, and limited to the terms and conditions as set forth more fully in the preamble of this Resolution, be and hereby is approved.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant, the Building Department, and the Township Clerk by the Planning Board secretary.

BE IT FURTHER RESOLVED that notification of this favorable Resolution shall be published in an official newspaper of Little Egg Harbor Township within ten (10) days of its passage.



KENNETH LANEY, Board Chair

I, **ROBIN SCHILLING**, Secretary of the Little Egg Harbor Township Planning Board, certify that the foregoing Resolution was duly adopted at a meeting held on 4/7/16 memorializing the vote of the Little Egg Harbor Township Planning Board at a meeting previously held on March 3, 2016, a quorum being present and voting in the majority.



ROBIN SCHILLING, BOARD SECRETARY