From: Sydney C Ludvigson
To: wiig@optonline.net; planningandzoning@morrisct.gov
Cc: townclerk@morrisct.gov; 1stselectman@morrisct.gov; adamrkozakct@gmail.com
Subject: Minutes of October 1 and the November 5 packet
Date: Friday, October 16, 2026 8:52:58 PM

Dear Chairman Wiig,

Thank you for your note of October 12, and for confirming that my correspondence will be in the packet posted before the November 5 meeting. I have four short requests.

First, the minutes of the October 1 meeting. Connecticut General Statutes Section 1-225(a) provides that the minutes of a public agency shall be available for public inspection not later than seven days after the date of the session, and that the votes of each member on any issue shall be reduced to writing and made available for public inspection within forty-eight hours. I asked for the October 1 minutes on October 2 and have not yet received them. I would be grateful for a copy sent to me here on email.

Second, I would appreciate knowing when the November 5 packet is posted to the Town website. Since I will be in California and unable to attend, reading what is submitted in advance is the only way I can follow the discussion.

Third, may I confirm that my letter of October 2 will be in the packet along with the letter of October 4. The October 2 letter contains the four requests concerning permits under Section 63, hours of operation, measures to control noise at its source, and inspections and reporting, and I would not want it to be the one that is missing.

Fourth, I renew my request of October 2 for a copy of Attorney Byrne's earlier opinion concerning the gravel mine at 120 Burgess Road, which he refers to on the first page of the September 30 opinion. That earlier opinion addressed whether the operation was a nonconforming use and whether it had impermissibly expanded, which is close to what the Commission will be considering on November 5.

Thank you again for keeping me informed.

Respectfully,

Sydney C. Ludvigson
424 West Morris Road
Morris, CT 06763
917-846-9142
sydney.ludvigson@nyu.edu

On Mon, Oct 12, 2026 12:08 AM, "David R. Wiig" <wiig@optonline.net> wrote:

> Sydney
>
> Thank you for your update on the activities at the gravel mines in your neighborhood. Since you have read the opinion from Attorney Steve Byrne, you know that he has provided clear guidelines on what the board's powers are in this situation. Regardless, the board did not want to make a snap decision on a matter that requires careful consideration and decided to wait until November 5th to start discussing our options.
>
> Your questions, concerns and thoughts on the matter have been noted. This letter will be shared with the

board and will be in the packet that will be posted to the Town of Morris CT website before our November meeting. Therefore, the board should have ample time to review this letter and take it into consideration when we discuss our next steps on November 5th.

Dave

---------- **Original Message** ----------

From: Sydney C Ludvigson <sydney.ludvigson@nyu.edu>
To: planningandzoning@morrisct.gov, wiig@optonline.net
Date: Sun, 4 Oct 2026 15:27:07 -0400
Subject: **Supplement to my letter of October 2: weekend operations and the conditions in force**

Dear Chairman Wiig and Members of the Commission,

A quick follow up.Â I heard operations running on Saturday, October 3, and again today. I cannot see any of the three sites from where I live, though neighbors have said that it is likely coming from Deacon.Â

Condition 1 of the Special Exception granted to Deacon Sand and Gravel on March 2, 1994, recorded at Volume 60, Page 236, limits operations at 261 Stoddard Road to 7:30 a.m. to 4:00 p.m., Monday through Friday, excluding six named holidays, and permits the removal of one load between 9:00 a.m. and 12 noon on Saturdays in emergency situations. It permits nothing on a Sunday.

Whether that Special Exception remains in force is a question I raised on October 2 and have not had answered. If it is in force, Condition 1 restricts work to weekdays, and in answer to question 3 Attorney Byrne states that the Commission may continue to enforce the conditions it has historically imposed. If it has lapsed, the operation continues as a nonconforming use, but with no condition of record governing the days on which work may be done. Supplying such conditions is what Section 63 provides for, and in answer to questions 2 and 3 Attorney Byrne states that the Commission may require a special exception and may modify or add conditions. I ask that a condition be set restricting operations to Monday through Friday.Â Â

I therefore ask the Commission to establish which operation was running on October 3 and 4, and either to enforce the conditions that apply to that site or, if none is on record, to set them.

For the other two sites I do not know what conditions are in force. Mr. Adili wrote on August 5 that he has "not been able to locate any other approvals even though the minutes and timeline consistent[ly] talk about yearly renewals." Where no condition on days of operation is on record, I ask that one be set, restricting work to Monday through Friday.

Respectfully,

Sydney C. Ludvigson
424 West Morris Road
Morris, CT 06763
917-846-9142
sydney.ludvigson@nyu.edu

On Fri, Oct 02, 2026 07:24 PM, Sydney C Ludvigson <sydney.ludvigson@nyu.edu> wrote:

> Dear Chairman Wiig and Members of the Commission,

Thank you for providing Attorney Byrne's opinion of September 30, 2026, which Mr. Adili circulated on October 2. I write about two matters. The first is the set of conditions the opinion confirms the Commission may impose on all three operations. The second is rock crushing, and in particular the request made in Deacon Excavating's letter of July 7, 2026.

PART ONE: CONDITIONS THE COMMISSION MAY IMPOSE ON ALL THREE OPERATIONS

Attorney Byrne states that nonconforming gravel mines may be regulated under the municipal police power, that the authority to do so comes from Conn. Gen. Stat. Sec. 7-148 rather than Sec. 8-2, and that this preserves the Commission's authority to require a special exception for gravel mine operations. He states that the Commission may continue to enforce the conditions it has historically imposed and may modify or add conditions in subsequent years, subject only to the requirements that a condition serve the public welfare or public convenience, be reasonably necessary to accomplish its purpose, and not be unduly oppressive. He concludes that Section 63 of the Zoning Regulations presently provides that authority, and that these mines appear to pass the reasonableness standard expressed in Farmington River Co. On that basis I ask the Commission to take four steps.

First, require each of the three operations to apply for a permit under Section 63. In answer to question 9, Attorney Byrne states that Section 63.3 calls for an application accompanied by a certified map of the area for which permission to excavate is sought, and in answer to question 10, that a permit is valid for two years and that an application to renew it is needed. Mr. Adili reported on August 5 that he has not been able to locate any approval after 2008. Current applications would establish what is permitted at each site, which serves the operators as much as their neighbors.

Second, apply the hours condition to all operations. In answer to question 6, Attorney Byrne states that if the regulations and prior approvals are silent on when trucks may be started, warmed or moved, those activities are probably not controlled, and that they may nonetheless be made part of future approvals if required for the public welfare. The activity I reported to Mr. Adili before 7:30 in the morning, on July 10, July 21, July 24 and July 31, was digging, machinery and trucks. Condition 1 of the 1994 Special Exception for 261 Stoddard Road excludes equipment maintenance from the hours limits, and that exclusion is wide enough to cover almost any engine running at any hour. I ask that the hours apply to all activity on the site, including the starting and warming of engines, the movement of vehicles, and loading. If an exception is needed for a repair required to make equipment safe or to remove it from service, I ask that it be defined in those terms and reported to the Zoning Enforcement Officer. Hours have applied at 261 Stoddard Road since the permit of 1985, which set them at 8:00 a.m. to 4:30 p.m.

Third, give practical content to Section 63.5(g), which requires that proper measures be taken to minimize nuisance of noise, dust, vibration and flying debris. No approval at any of the three sites appears to have specified what those measures are. I ask the Commission to require all reasonable measures to control noise at its source. The following are ordinary practice in the aggregate industry, and several of them cost very little.

On the equipment: acoustic enclosure or screening of crushers, screening decks and conveyor transfer points; lining of chutes, hoppers, screen decks and truck beds with

rubber or urethane; a limit on the height from which material is dropped into trucks, hoppers and stockpiles, since material falling onto steel produces the sudden reports that carry farthest from a site; broadband reversing alarms in place of tonal alarms on all mobile equipment, including loaders and haul trucks; and silencers, mufflers and engine enclosures maintained to the manufacturer's specification, with crushers and screens mounted on vibration isolators.

On the site: siting of fixed plant in the lowest practicable part of the property, at the greatest practicable distance from dwellings, with discharge points oriented away from them; permanent perimeter berms and vegetative screening between the working area and neighboring dwellings; placement of stockpiles and interim berms so as to interrupt the line of sight to nearby homes, relocated as the work moves; haul roads maintained smooth, routed away from property boundaries and subject to a speed limit; and staging and queuing of trucks away from boundaries, with the site laid out to reduce reversing.

On operating practice: engines shut down rather than left idling; a limit on the number of major noise sources running at one time; and hydraulic breaking or hammering confined to a defined window of the day. The Commission has imposed the last of these before. Its approval of July 10, 2002 permitted crushing for fifteen days between 9:00 a.m. and 4:00 p.m. and required that hammering be done between noon and 2:00 p.m.

Of these measures, the reversing alarms are the most persistent and carry the farthest. I am not asking that they be removed. Federal regulation requires a reverse signal alarm audible above the surrounding noise level, 29 C.F.R. Sec. 1926.601(b)(4), but it does not require that the alarm be of the single-tone type, and the Occupational Safety and Health Administration has stated that alternative devices comply where they give adequate warning. Broadband alarms meet the requirement, are a bolt-on replacement, and dissipate far more quickly with distance than tonal alarms do. Substituting them would reduce what reaches neighboring property without reducing safety on the site.

Fourth, require regular inspections and reporting. Question 2 asked whether the Commission may require periodic inspections or compliance certifications, and Attorney Byrne answered yes. The Commission has required both at 261 Stoddard Road before. Condition 10 of the 1994 Special Exception provides that "All Commission Members will make an annual inspection as a group with advance notice to the Deacons by the ZEO," and Condition 12 that "The permittee agrees to submit yearly reports to the ZEO of the quantity and types of materials removed from the site." The minutes Mr. Adili compiled record inspections at all three mines each year through the 1990s and into the 2000s. I ask that annual inspections and yearly reports be resumed and made conditions of any approval, and that the inspection cover the noise measures in use as well as the extent of the excavation. I would ask further that any approval require the operator to measure noise at the property boundary on receipt of a complaint, to keep a log of complaints and of the measures in use, and to respond in writing. A condition that is never inspected or measured cannot be enforced.

PART TWO: ROCK CRUSHING, AND THE DEACON OPERATION IN PARTICULAR

I asked at the meeting of August 6 whether rock crushing was within the scope of the use as it existed on January 15, 1979, and I understood that the Commission would put the

question to its attorney. In answer to question 5 Attorney Byrne supplies the legal test but does not apply it. He states that rock crushing, screening, processing and stockpiling "may be part of the excavation and mining operation," and then qualifies that: "However, only to the extent that these accessory uses do not change the nonconforming use and there are no substantial effects upon the neighborhood." He does not say whether either condition is satisfied at any of the three sites. The question therefore remains open, and the determination is the Commission's to make.

I ask the Commission to make it, site by site, and to require the operators to produce the evidence on which it rests. In Connecticut Resources Recovery Authority v. Planning and Zoning Commission, 225 Conn. 731 (1993), the decision Attorney Byrne cites in answer to question 8, the party claiming the benefit of a nonconforming use bears the burden of proving that the use is valid. That burden rests on the operator rather than on the Town or on neighboring owners. The evidence is documentary: photographs, aerial imagery, site plans, surveys, equipment records and production records showing what was operating on or before January 15, 1979, and in particular whether crushing or screening equipment was then on the site, how often it ran, and for how many days a year. Aerial photography covering Connecticut in the 1970s is publicly available. I would note that the record Mr. Adili assembled dates the first crushing approval at 261 Stoddard Road to January 2, 1992, which is thirteen years after zoning took effect.

The second limb of Attorney Byrne's answer bears on the same question. Crushing falls within the protected use only where there are "no substantial effects upon the neighborhood," and the third of the factors he cites from Zachs v. Zoning Board of Appeals is "any substantial differences in effect upon the neighborhood resulting from differences in the activities conducted on the property." Noise is such an effect, and the Commission cannot reach the scope question without weighing it.

There is also a question about the prior approvals at 261 Stoddard Road that the opinion does not reach. On August 7 Mr. Adili wrote to me that he would "take your input when crafting these questions." Condition 5 of the Special Exception granted to Deacon Sand and Gravel on March 2, 1994, recorded in the Morris Land Records at Volume 60, Page 236, provides that "[n]o crushing operations shall be undertaken without prior notice to and approval by the Commission of the conditions of the proposed crushing operation, including the proposed duration of the operation, proposed hours of operation, etc." Deacon Excavating's letter of July 7, 2026 asks this Commission for approval to undertake stone crushing at that parcel, and states a proposed duration of 10 to 15 working days and proposed hours of 7:30 a.m. to 4:00 p.m., Monday through Friday, no weekends. The opinion does not address whether Condition 5 presently requires the Commission's approval before crushing may be undertaken, whether the July 7 request required such approval, or whether the Commission has acted on it. I ask the Commission to answer those three questions, or to put them to Attorney Byrne.

I have two requests for records. The opinion refers at page 1 to a prior opinion by Attorney Byrne concerning the gravel mine at 120 Burgess Road, addressing whether that operation was a nonconforming use and whether it had impermissibly expanded. I have not seen that opinion and would be grateful for a copy. I would also be grateful for the minutes of the October 1 meeting at which the opinion was presented.

Finally, I would welcome written word of what the Commission decided on October 1 and

what it intends to do next.

Respectfully,

Sydney C. Ludvigson
424 West Morris Road
Morris, CT 06763
917-846-9142
sydney.ludvigson@nyu.edu

LAW OFFICES

BYRNE & BYRNE, LLC

2-B FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

STEVEN E. BYRNE
THOMAS P. BYRNE, IN MEMORIUM

TELEPHONE
(860) 677-7355
attysbyrne@gmail.com

July 21, 2023

David Wiig, Chairman
Morris Planning & Zoning Commission
3 East Street
Morris CT 06763

Re: 120 Burgess Road – Nonconforming Status of Excavation Business

Dear David:

On behalf of the Morris Planning & Zoning Commission, you sent to me information and related questions concerning the current and past use of a parcel of property. The property consists of 10.21 aces fronting on Burgess Road. The property is located within the R-60 residential zone and was recently conveyed to a business entity known as Green Acres of Morris LLC and is used by Green & Sons LLC in connection with an excavation business. Evidence received by the Commission, in the form of town documents, photographs, letters and testimony showed that prior to the adoption of zoning in Morris, gravel was mined at the property. Less clear was whether an excavation business took place from the property since before the adoption of zoning. I was also provided with a copy of a letter from the Morris zoning enforcement officer to Quentin Green which states in part that "120 Burgess Rd has a preexisting nonconforming use previously as an excavating company."

Complaints have been received by the Commission that the prior nonconforming use of the property has increased since the conveyance of the property to the current owner and that this increased use is in violation of the zoning regulations. The complaints have mostly identified the early starting of trucks, storage and use of equipment, noise and the removal of a landscape buffer as well as traffic safety. The Commission seeks legal guidance on what would constitute a permissible intensification of a nonconforming use as opposed to an impermissible expansion.

What is the Nonconforming Use(s)

The first issue to be addressed is what is the nonconforming use of the property. I have reviewed various meeting minutes of the Commission dating back to 1978. The minutes continuously address the use of this property, which was regularly identified as Mosimann nonconforming gravel mine with the additional identifier of Burgess Road. The nonconforming use was regulated pursuant to Sec. 63 of the 1979 zoning regulations which contained the following provision:

"Sec. 63.7 Existing Operations – Excavations in active operation prior to the effective date of these regulations may be renewed in accordance with the provisions of Sec. 63.6.

The Commission's minutes provide evidence that as of the date zoning was adopted in Morris, this property was used for excavation purposes, namely the mining of gravel. Other evidence suggests that Mr. Mosimann also did excavation work in addition to the mining of gravel and that this work occurred off-site. Thus, it is clear that the gravel mining business was a nonconforming use. What is less evident is the status of the excavation business.

Expansion or Intensification

The second issue is whether the current use of the property as the location for an excavation business is a lawful intensification or an unlawful expansion of the nonconforming gravel mining and excavation use. The business' website [www.greenandsonsct.com] states that this business includes residential site development, home improvement and large estate property management. There is no mention of mining gravel. The evidence suggests the nonconforming use was limited to an owner and the use of a dump truck with the owner also engaged in other activities such as farming. The current use of the property involves two owners, employees and several dump trucks and other equipment and is the full-time use of the property.

The courts have attempted to provide guidance as to what constitutes an intensification [which is allowed] versus what is an expansion [which is not allowed]. "It is the intent of building zone regulations generally that nonconforming uses should not be allowed to increase, and an extension of that nonconforming use is inconsistent with the policy and comprehensive plan of the regulations."[1]

"While a mere increase in the amount of business done pursuant to a nonconforming use is not an illegal expansion of the original use, a change in the character of a use . . . does constitute an unlawful extension."[2]

"In this regard, we note that the holding of the Appellate Court in *Hall v. Brazzale*, *supra*, 31 Conn.App. 349 . . . That '[m]ore of the same . . . cannot be the basis for a finding of an unlawful expansion of a prior existing nonconforming use' . . . can only be read to apply where it is more of the same use, **not more of the same in the physical sense.**"[3] Thus, the occupation of additional space by a nonconforming use is an expansion. However, when local zoning regulations, allow for such a physical expansion, then it is permitted.[4]

Thus, the focus is on whether any changes to the nonconforming use indicate 'more of the same' or do they indicate a 'change in the character of the use'. "In deciding whether the current activity is within the scope of a nonconforming use consideration should be given to three factors:

---

[1] Raffaele v. Planning & Zoning Board of Appeals, 157 Conn. 454, (1969).
[2] Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221 (1995).
[3] Munroe v. Zoning Board of Appeals, 75 Conn. App. 796 (2003).
[4] Section 10 of the zoning regulations does allow for the expansion of a nonconforming use within a building or structure.

1. The extent to which the current use reflects the nature and purpose of the original use;
2. Any differences in the character, nature and kind of use involved; and
3. Any substantial differences in effect upon the neighborhood resulting from differences in the activities conducted on the property."[5]

With these factors in mind, your questions will be addressed.

More and Bigger Trucks

In the case entitled Zachs v. Zoning Board of Appeals, the mere increase in the amount of antennas and associated equipment used by a commercial tower operator on his property did not amount to an expansion of the nonconforming use, the court finding it to be 'more of the same' and thus a permitted intensification of the nonconforming use. The court based its decision on whether the additional antennas and equipment reflected the original nature and purpose of the nonconforming use and whether the changes resulted in a change in character of the use. Thus, a dramatic increase in the amount of equipment used could result in an unlawful expansion. Such was the case where a nonconforming gravel business run by two brothers using two trucks and a front-end loader was transformed by a subsequent business owner to an operation using two front end loaders, a tracked excavator, a bulldozer, a screening plant as well as other equipment and an office trailer and occupied a larger portion of the property.[6] The Commission should focus on the purpose and nature of Mr. Mosimane's business as it existed prior to the adoption of zoning and then determine how the current use differs in character from the 1979 use as well as the differences in its effects on the neighborhood.

Larger Parking Area

The enlargement of the parking area appears to violate Section 10 of the zoning regulations. Under "Non-Conforming Use of Land", this section provides in part that "no non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than that occupied by such use at the time of the adoption of the zoning regulations." The enlargement of a parking lot for a nonconforming social club was found by our State Supreme Court to be an impermissible expansion of a nonconforming use.[7]

Change to Hours of Operation

A dramatic change in the hours of operation can be an unlawful extension of a nonconforming use. Cases have focused more on days of operation rather than hours of operation. However, a dramatic change to earlier and/or later business operations at this property could be viewed as an unlawful extension, especially if such change has an adverse effect on the neighborhood.[8]

---

[5] Zach v. Zoning Board of Appeals, 218 Conn. 324 (1991).
[6] Oakham Sand & Gravel v. town of Oakham, 54 Mass. App. Ct 80 (2002).
[7] "An extension of the space allotted to a nonconforming use is a proscribed extension of that nonconforming use and is inconsistent with the policy and comprehensive plan of the regulations". Raffaele v. Planning and Zoning Bd. of Appeals, 157 Conn. 454 (1969).
[8] Oakham Sand & Gravel v. town of Oakham, 54 Mass. App. Ct 80 (2002).

Use of Property for Larger Jobs

While larger jobs may indicate a lawful intensification of the nonconforming use, it could also lead to an unlawful expansion is these larger jobs cause a dramatic increase in the nonconforming business activity at this property. For example, the change of the use of a nonconforming airport from a limited number of about 17 flights per year to an unlimited number of flights was seen as an unlawful expansion as the airport would go from a casual airport use of the property to a fully dedicated use.[9] Neighbors have complained of the increased activity at the property. Evidence that the current owner is performing larger jobs than the original nonconforming use provides support for their testimony that the nonconforming business has expanded to the point that it no longer reflects the nature and character of the original use and has a different effect on the neighborhood.

Excavation Business as accessory to Gravel Mining

"To be an accessory use, it must be subordinate and customary to the dominant use of the property. By subordinate, it is meant that the accessory use is minor in significance as compared to the dominant use of the property. Customary is understood to mean that "it is usual to maintain the use in question in connection with the primary use of the land."[10] Thus, the Commission would need to determine whether the excavation business is the subordinate use of the property as compared to the gravel mining business and whether an excavation business is customarily part of a gravel mining business. While the second part may be true, the first part of the test may be difficult to satisfy here as it appears that what was once the dominate use has now disappeared.

Increased Visibility of the Nonconforming Use

The removal of trees from the property has resulted in the nonconforming use being more visible from the road. Testimony from neighbors implies that the state of the prior existing vegetative buffer practically obscured the business activity from view. Substantial differences in effect upon the neighborhood resulting from this change in visibility would be one of the factors for the Commission to consider in determining whether there has been an unlawful expansion.

Reliable Evidence

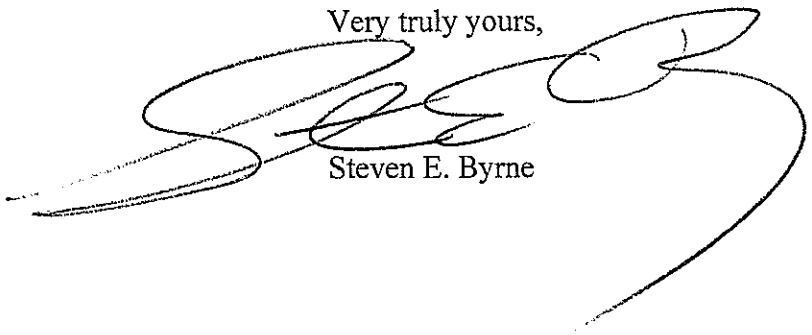
It has been held many times that it is within the Commission's authority to determine the reliability of evidence presented to it. The Commission can believe or disbelieve any witness testimony and determine what weight to assign to any evidence. In addition, the unsworn testimony of an applicant's attorney or other interested person's attorney is competent evidence for the Commission to consider. Lastly, the personal knowledge of Commission members is also considered reliable evidence. What is required that the Commission only consider the evidence presented to it at a public meeting or hearing and that this evidence can be subjected to rebuttal evidence.[11]

---

[9] Helicopter Associates Inc. v. City of Stamford, 201 Conn. 700 (1986).
[10] Lawrence v. Zoning Board of Appeals, 158 Conn. 509 (1969).
[11] See generally R. Fuller, Connecticut Land Use Law and Practice 4th Ed, Sec. 21.5.

Thank you for seeking my opinion on this matter. If further opinion or comment is needed, I would appreciate the chance of providing additional response.

Very truly yours,



Steven E. Byrne

LAW OFFICES
BYRNE & BYRNE LLC

P.O. Box 1065, 270 Farmington Ave., Suite 365
Farmington, CT 06034
(860) 677-7355

Attorney Steven E. Byrne attysbyrne@gmail.com
Attorney Nicole L. Byrne attynbyrne@gmail.com

ADDITIONAL QUESTIONS FROM MORRIS PLANNING & ZONING COMMISSION Regarding Nonconforming Use at 120 Burgess Road August 8, 2023

1. Implications of the sale of equipment, dissolution of the business and cessation of the business.

    a. Does the sale of equipment, dissolution of the business and cessation of business amount to an abandonment of the nonconforming use?

Connecticut General Statutes Sec. 8-2 provides that a nonconforming use can be considered abandoned or terminated only when such abandonment or termination was voluntary and there is no intent to reestablish the use. Thus, the fact that a business has been ceased and equipment sold is a factor for the Commission to consider. However, the Commission would still need to make a finding that there was no intent to reestablish the use.

    b. Is the death of the property/business owner a significant factor in finding abandonment?

The death of a business owner, by itself, is not proof of abandonment or termination of a nonconforming use as the nonconforming use attaches to the land and not the landowner.

    c. Do we need to make a finding of an intent to abandon the nonconforming use?

The Commission must make a finding on the issue of whether there is an intent to abandon the nonconforming use. This intent cannot be inferred solely based upon the passage of time where the nonconforming use had ceased.

2. Is the signing of a tax document, under oath, in connection with the subsequent conveyance of the property as a residence with no mention of the nonconforming use evidence to support the finding that the nonconforming use was abandoned?

Such a tax document could be considered as one piece of evidence relating to an intent to abandon. However, its relevance would be rely partly on why the tax document was filled out the way it was. For example, was this declaration based upon the owner's understanding that only an active use needed to be mentioned on the tax form and that she need not mention any intention to reestablish the nonconforming use.

LAW OFFICES
BYRNE & BYRNE LLC

P.O. Box 1065, 270 Farmington Ave., Suite 365
Farmington, CT 06034
(860) 677-7355

Attorney Steven E. Byrne attysbyrne@gmail.com
Attorney Nicole L. Byrne attynbyrne@gmail.com

3. Implications of the subdivision of a large property over time and the movement and apparent consolidation of the [nonconforming] use.

    a. If a larger property was used in part for a nonconforming use and the nonconforming use was moved to a different part of the property after the enactment of zoning, is this a permissible expansion or extension of the nonconforming use?

It has been held that the migration or movement of a nonconforming use from one portion of a lot to another porting is an impermissible expansion or extension of the nonconformity. There is an exception for gravel mining operations. The reason for the mining exception is that the nature of the use is to consume the land by removing all useful material

    b. How would this be affected by the subdivision history of what was a larger property prior to the enactment of zoning?

If the removed/split off portion of the larger property does not contain the nonconforming use, then it could not be used in the future for that use. This would apply to gravel mining operations as well.

4. What inference may the commission make if there is no evidence about activities prior to the enactment of zoning? Is the Commission required to make inferences against the party claiming the preexisting nonconforming use when there is simply no evidence one way or another?

The burden of proof is on the property owner to prove there is a nonconforming use. If he/she presents no evidence, then the burden of proof has not been carried and the Commission must find there is no nonconforming use.

Section 10 of the Zoning Regulations contains valid limitations on the migration and movement of nonconforming uses around a parcel of land. The question is what portion of Sec. 10 can be used for enforcement.

After reviewing Sec. 10, I find most of it complies with state law and thus is enforceable except for those portions discussed below:

Restoration of Damaged Structure

The one-year time requirement for starting work, as well as provisions for extending this one-year period, are likely not enforceable as they are contrary to the language found in Connecticut General Statute Sec. 8-2 which provides that a nonconforming use cannot be terminated solely due to the passage of time without regard to the intent of the property owner.

LAW OFFICES
BYRNE & BYRNE LLC
P.O. BOX 1065
FARMINGTON, CONNECTICUT 06034-1065

TELEPHONE
(860) 677-7355

STEVEN E. BYRNE
NICOLE L. BYRNE

attysbyrne@gmail.com
attynbyrne@gmail.com

September 30, 2026

David Wiig, Chairman
Morris Planning & Zoning Commission
3 East Street
Morris CT 06763

Re: Regulation of Gravel Mines

Dear David:

I have reviewed the questions submitted to me regarding three active gravel mine operations in Morris. All of them are located in residential areas and all appear to have been in existence prior to the adoption of zoning in Morris. The gravel mine located at 120 Burgess Road was the subject of a prior opinion by me concerning whether the gravel mine operation was a nonconforming use and if it was, whether it had impermissibly expanded. Parts of this prior opinion may be applicable to this analysis. In connection with the preparation of my response to your questions, I reviewed the research complied by Jeton Adili. The questions will be responded to in the order they are presented.

1. **Q.** Based on the historical Planning and Zoning Commission minutes, Board of Selectmen minutes, permits, and other records provided, do the three gravel operations appear to have been lawfully established and operating prior to January 15, 1979 [the effective date of the Morris zoning regulations]?

   A. Yes. A nonconforming use is defined as a use which lawfully existed prior to the enactment of a zoning ordinance and is maintained after the effective date of the ordinance. To maintain its status as a nonconforming use, the use must be actual and not just contemplated. *Beckish v. Planning & Zoning Commission,* 162 Conn. 11 (1971). Once a nonconforming use is established, the only way it can be lost is through abandonment. The sale of the property will not destroy the right to continue in the nonconforming use. *Taylor v. Zoning Bd. of Appeals of Town of Wallingford*, 65 Conn. App. 687 (2001). The historical record submitted to me reveals that zoning was adopted on January 15, 1979 and that the three gravel operations at

issue: 261 Stoddard Road (Deacon Excavating), 492 West Morris Road (A&T Excavating) and 120 Burgess Road (Green Brothers Excavating) were in operation at that time and were not abandoned. Thus, they appear to be lawfully established uses in regard to zoning.

2. **Q.** If these gravel operations are lawful preexisting nonconforming uses, may the Planning & Zoning Commission legally require a special exception permit, annual permits, renewals, public hearings, or Commission approval for the continued operation? Additionally, may the Commission require periodic inspections or compliance certifications?

   A. Yes. It is well established law in this state that nonconforming uses can be regulated pursuant to a municipality's police power, so long as the regulation is reasonable and it is related to legitimate police power goals. In *Taylor v. Wallingford Zoning Board of Appeals*, 65 Conn. App. 687 (2001), the Appellate Court considered a situation where the owner of a nonconforming quarry disputed whether he could be required to apply for a special permit renewal. The Appellate Court specifically found that "[N]onconforming uses are subject to regulation in the interest of public health, safety and welfare." Id. at 692. "A town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status." Id. at 698 Connecticut General Statutes Sec. 8-2 provides in part that "(d) Zoning regulations adopted pursuant to subsection (a) of this section shall not: … (B) require a special permit or special exception for any such continuance;". However, as held in *Farmington River Co. v. Plan & Zoning Commission,* 25 Conn. Supp. 125 (1963), the authority of a municipality or its zoning commission to regulate gravel mines comes for Connecticut General Statutes Sec. 7-148 and not sec. 8-2, preserving the authority to require a special exception for gravel mine operations.

3. **Q.** If the Commission historically imposed conditions on these gravel operations, including the conditions imposed on Deacon [Excavating], may the Commission continue to enforce those conditions and/or modify or add conditions in subsequent years? What limitations apply to conditions imposed on a lawful preexisting nonconforming use?

   A. Yes. The only limitations on the Commission in regard to regulating a nonconforming gravel mine pursuant to C.G.S. Sec. 7-148 are that any regulation or condition imposed is done in the interest of the public welfare or public convenience and the regulations or conditions are reasonably necessary to accomplish their purpose and are not unduly oppressive. What is to be avoided is the imposition of regulations and controls that unconstitutionally deprive a property owner of his ability to use his property. In *Farmington River Co. v. Plan & Zoning Commission,* 25 Conn. Supp. 125 (1963), requiring nonconforming gravel mine operators to submit to obtaining a special permit from the land use commission was a valid use of the commission's police power to regulate the use of land for the public welfare. Presently, Sec. 63 of the zoning regulations provides the authority for the Commission to regulate these gravel mines as they appear to pass the reasonableness standard expressed in *Farmington River Co.*

4. **Q.** If the gravel operations were already lawful preexisting nonconforming uses before zoning was adopted, what is the legal effect of the annual approvals, permits, public hearings, and conditions that the Commission subsequently required? Did these approvals create a new use, regulate the existing use, or otherwise affect the owners' underlying nonconforming rights?
A. The gravel mines do not lose their status as a nonconforming use. The only way a nonconforming use can end is if it is abandoned. The cited case authorities in this letter clearly state that a nonconforming gravel mine can be reasonably regulated in order to protect the public welfare and convenience. The validity of any annual approvals and other conditions depends on whether they conform to Sec. 63 of the regulations. For example, Sec. 63.6 imposes a 2-year time limit on approvals which would supersede any lesser time limit condition.

5. **Q.** If gravel mining is a protected preexisting nonconforming use, would rock crushing, screening, processing or stockpiling be considered part of that use or an accessory use? Under what circumstances would rock crushing constitute an expansion, enlargement or change in the nature?
A. In answering this question, the State Supreme Court has provided a framework in which to construct an answer. "In deciding whether the current activity is within the scope of a nonconforming use consideration should be given to three factors: (1) The extent to which the current use reflects the nature and purpose of the original use; (2) Any differences in the character, nature and kind of use involved; and (3) Any substantial differences in effect upon the neighborhood resulting from differences in the activities conducted on the property." *Zach v. Zoning Board of Appeals*, 218 Conn. 324 (1991). In *Zachs*, the mere increase in the amount of equipment stored by a contractor on his property did not amount to an expansion of the nonconforming business use, the court finding it to be 'more of the same' and thus a permitted intensification of the nonconforming use. Section 10 of the zoning regulations entitled "Change in Nonconforming Use" provides standards for the Commission to follow in making the determination of whether any change to a nonconforming use is a permitted intensification or an unpermitted expansion. "The new method of processing must be one that is ordinarily and reasonably adapted to make the original use available to the owner, and the original nature and purpose of the undertaking must remain unchanged." *Merriam, Connecticut Land Use Law and Practice Sec. 4.24.* Thus, the rock crushing, screening, processing and/or stockpiling may be part of the excavation and mining operation. However, only to the extent that these accessory uses do not change the nonconforming use and there are no substantial effects upon the neighborhood.

6. **Q.** When an approval establishes specific hours of operation, do those hours include activities such as starting trucks and equipment, warming engines, moving trucks on the property?

A. Zoning regulations are interpreted in favor of the property owner. In other words, they are to be applied in the least restrictive manner. If the regulations and prior approvals are silent in regard to when trucks can be started, warmed up or moved, then such activities probably are not controlled. This does not mean that these activities cannot be made part of future approvals if required for the public welfare.

7. **Q.** Based on the historical record and current Connecticut law, what is the legally appropriate way for the Commission to regulate these three gravel operations going forward while protecting any vested preexisting nonconforming right? In particular, what types of inspections, conditions, operational restrictions, or approvals may the Commission legally require?

   A. The Commission's authority to regulate these three gravel mine operations comes from Sec. 63 of the zoning regulations. It is well established law in Connecticut that a nonconforming gravel mine can be regulated by the enactment of a zoning regulation, so long as the regulations does not result in an unconstitutional taking of the use. As stated earlier, Sec. 63 compares favorably to the Farmington zoning regulations in effect when *Farmington River Co.* was decided.

8. **Q.** Given that these are large properties and that only small sections of the property are mined at onetime, can the mining move to other sections of the property given what the zoning regulations state in Section 10-Nonconforming Uses of Land – bullet point 2.?

   A. Yes. The Connecticut Supreme Court recognizes the expansion doctrine which holds that a valid nonconforming use can be expanded beyond the area of a tract that it occupied when zoning was adopted. *Connecticut Resources Recovery Authority v, Planning & Zoning Commission,* 225 Conn. 731 (1993). This doctrine applies without exception to extraction uses, such as gravel and sand mining. "The very nature of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed." *Kovacs v. Zoning Board of Appeals,* 33 Conn. L. Rptr. 573 (2003).

9. **Q.** Regardless of the answer to question 8, is it correct that one of the next steps would be to request a site plan for each gravel mine? This would be to establish the active section of the property and to define the restoration plan.

   A. Yes. Sec. 63.3 of the Zoning Regulations states in part that an application for a zoning permit shall be accompanied by "a map, certified by the applicant to be correct, of the area for which permission to excavate is sought

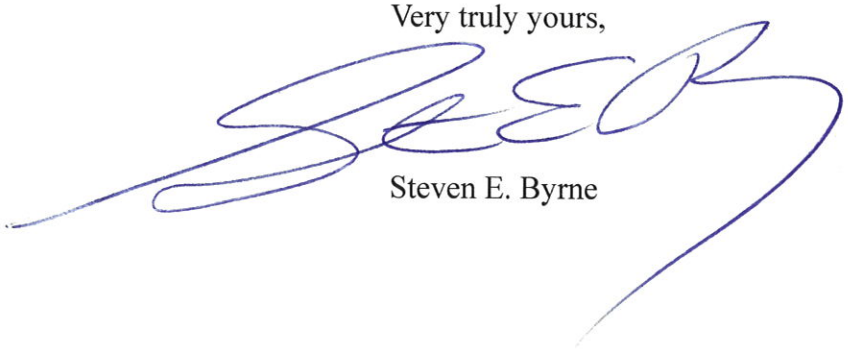
10. **Q.** Additionally, if question 8 establishes that the area being mined can navigate to other parts of the property after the earlier parts of the property are mined and restored, is it correct that additional site plans will be required when this happens?

A. Yes. Pursuant to Sec. 63.6, a permit to excavate earth materials is valid for 2 years. An application to renew the permit is needed. Any migration of the gravel operation can be shown on the required map which accompanies the permit application. In addition, Sec.63.9 provides a process for amending a permit.

11. **Q.** If it is determined that the contractor shop and storage use does not predate zoning or if the contractor shop and storage use has expanded beyond a reasonable level of activity since zoning was enacted in Morris, is it correct that the Commission can require a contractor shop and storage special exception and impose conditions on the approval, if approval is given?
A. If the contractor shop and storage use does not predate zoning and is thus not a nonconforming use, then the Commission can require a special exception and impose conditions on it.

This concludes my responses to the Commission's questions. Please let me know if further comments are needed on this challenging situation.

Very truly yours,



Steven E. Byrne