

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

**Superior Court Department
No. _____**

BERKSHIRE CONCRETE CORP.

Plaintiff-Appellant,

v.

THE TOWN OF DALTON; THE DALTON
PLANNING BOARD; ZACH R. MCCAIN,
III, JARRED MONGEON, DONALD A.
DAVIS, JR., DENNIS T. CROUGHWELL,
and ROBERT COLLINS, solely in their
capacities as members of THE DALTON
PLANNING BOARD,

Defendant-Respondents,

COMES NOW Berkshire Concrete Corp. (“BCC”) (i) appealing to this Court the decision of the Town of Dalton Planning Board dated March 24, 2026 (a certified copy is attached as **Ex. A**) denying the renewal of a special permit issued to BCC every year since 1992 and (ii) bringing affirmative claims against the Town of Dalton, the Dalton Planning Board, and the individual members of the Dalton Planning Board as follows.

PARTIES AND JURISDICTION

1. Plaintiff-Appellant BCC is a corporation existing and organized pursuant to the laws of the Commonwealth of Massachusetts with a principal place of business of 550 Cheshire Road, Pittsfield, Massachusetts.

2. Defendant-Respondent the Town of Dalton (“the Town”) is a municipality located in Berkshire County, Massachusetts.

3. Defendant-Respondent The Dalton Planning Board (the “Planning Board”) is a duly constituted municipal board established pursuant to M.G.L. ch. 41 § 81A, with a usual place of business at 462 Main Street, Dalton, Massachusetts, 01226.

4. Defendant-Respondent Zach R. McCain III is the Chairman of the Planning Board having a business address of 462 Main Street, Dalton, Massachusetts 01226.

5. Defendant-Respondent Jarred Mongeon is a member of the Planning Board, having a business address of 462 Main Street, Dalton, Massachusetts 01226.

6. Defendant-Respondent Donald A. Davis, Jr. is a member of the Planning Board, having a business address of 462 Main Street, Dalton, Massachusetts 01226.

7. Defendant-Respondent Dennis T. Croughwell is the Clerk of the Planning Board, having a business address of 462 Main Street, Dalton, Massachusetts 01226.

8. Defendant-Respondent Robert Collins is the Vice-Chairperson of the Planning Board, having a business address of 462 Main Street, Dalton, Massachusetts 01226.

9. Venue and jurisdiction are proper in this Court pursuant to M.G.L. ch. 212, §§ 3 & 4, M.G.L. ch. 231A, and M.G.L. ch. 40A § 17.

FACTUAL BACKGROUND

10. BCC or its predecessors in interest (collectively referred to hereafter as “BCC”) have been continuously engaged in gravel extraction and processing operations, including processing of gravel brought in from other locations, (the “Operations”) on parcels of land then owned by Theron and Edna Warren (“the Property”) within the Town since at least 1947.

11. In December 1951, the Town adopted zoning bylaws (“the 1951 Bylaws”) that required special permits as a precondition of certain uses of land, including, without limitation, the removal of gravel, loam, sand, or stone from parcels located in the Town.

12. The 1951 Bylaws also provided in pertinent part that use of property that did not conform with its provisions but that was legal at the time the bylaws were adopted would remain a permissible non-conforming use.

13. At all times following the adoption of the 1951 Bylaws by the Town, BCC's Operations were and remain a permissible, non-conforming use.

14. BCC continued its permissible, non-conforming use over the next 41 years.

15. In July of 1992, the Town issued a cease-and-desist letter to BCC requiring BCC to terminate its Operations as being violative of the Town's then-applicable zoning bylaws.

16. BCC appealed on the basis that the Operations were grandfathered as a permissible, non-conforming use pursuant to the 1951 Bylaws.

17. To resolve the legal proceedings and avoid the substantial cost and risks of ill-will associated with the same, BCC and the Town agreed that BCC would simply apply for a one-year, renewable special permit for its Operations ("the Special Permit") that would include conditions with respect to hours of operation, installation of a lockable gate to the Property, routes of access to the Property for construction vehicles, and notice with regard to what area(s) of the Property would be restored during the next calendar year.

18. The agreement between BCC and the Town was memorialized in a proposed Memorandum of Decision that was submitted to the special permit granting authority at the time, the Board of Selectmen, who unanimously approved it on October 26, 1992. **Exs. B and C.**

19. BCC applied for the Special Permit to continue its Operations on the Property on December 29, 1992, and the application was granted on November 2, 1992 (though not recorded until 1999). **Ex. D.**

20. In February 1994, further conditions were appended to the Special Permit by agreement between BCC, the Town, and Crane Company, who had appealed the November 2, 1992 grant of the Special Permit by the Town. **Ex. E.**

21. All renewals of the Special Permit since that time have contained those conditions.

22. The annual renewal of the Special Permit is subject to compliance with the Special Permit conditions.

23. The Town's zoning bylaws—though not what governs the Operations, which are a permissible non-conforming use subject only to the conditions BCC voluntarily submitted to in 1992 and 1994—distinguish between the requirements for applications for new permits and applications for the renewal of an existing permit and, in case of renewals, provide that a renewal may be denied only upon a finding of a violation:

- a. The Zoning By-law of the Town of Dalton, § 11.2.9, Earth Removal, F. (formerly Section 11.27F) provides “Prior to renewal, inspection of the premises shall be made by the zoning enforcement officer to determine that the conditions of the permit and the provisions of this By-law are being complied with. The planning board may, *after* hearing and *proof of violation of* this By-Law, or *the conditions of the permit*, decline to renew the permit” (emphases added).

24. There was no finding by the Building Commissioner in the years 2024 or 2025 of any violation of the Special Permit's conditions by BCC or any proof of such a violation provided to the Town Planning Board.

25. Nevertheless, on March 24, 2026, the Town's Planning Board denied BCC's application for renewal of the Special Permit.

26. The basis provided for the denial was that the application was incomplete based upon the now-applicable Town zoning bylaws which include requirements not found in the Special Permit conditions.

27. BCC's Operations on the Property are grandfathered as a permissible, non-conforming use under the 1951 Bylaws and subsequent amendments and are permitted whether or not BCC obtains a renewal of the Special Permit

FOR A FIRST CAUSE OF ACTION
(Appeal of Denial – Planning Board and Individual Defendants)

28. All facts previously alleged are incorporated as if fully restated herein.

29. The Dalton Planning Board is the permit granting authority with respect to the Special Permit and BCC's gravel operations.

30. The Planning Board exceeded its authority in denying BCC's application for renewal of the Special Permit because:

- a. BCC is entitled to continue its gravel Operations subject only to the conditions set forth in the Special Permit;
- b. Absent a violation of those conditions, the Special Permit is to be renewed by the Planning Board;
- c. The Town has not identified or submitted to the Planning Board any alleged violations of the conditions of the Special Permit by BCC; because
- d. BCC has not violated any of the conditions of the Special Permit.

31. The Planning Board's denial of BCC's application has caused and will continue to cause measurable injury to BCC in the form of lost profits as a result of the discontinuation of its Operations and due to costs associated with reclamation that would be unnecessary but for the Planning Board's denial.

32. The Planning Board's denial of BCC's application to renew the Special Permit was arbitrary and capricious in light of its failure to abide by the historical agreements between BCC and the Town or even to follow the Town's own well-defined procedures regarding permit renewal applications.

33. Upon information and belief, the Planning Board denied the renewal application in order to create leverage to impose additional conditions upon BCC's gravel Operations, further rendering the denial arbitrary and capricious.

34. The denial of BCC's application for renewal of the Special Permit should be annulled and the application granted.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – Town)

35. All facts previously alleged are incorporated as if fully restated herein.

36. BCC voluntarily entered a valid and enforceable contract with the Town in 1992 providing that, in exchange for dismissal by the Town of a legal challenge to BCC's continued right to perform its gravel Operations, certain mutually-agreeable conditions would be placed thereon.

37. The agreement was confirmed by the Town when the Board of Selectmen, then the permit granting authority, unanimously voted to approve the terms of the proposed memorandum of settlement on November 2, 1992.

38. BCC has abided by the conditions imposed as part of the agreement.

39. The Town was obligated by the agreements (and its own bylaws) to grant BCC's applications to renew the Special Permit unless the conditions of the same had been violated.

40. No violation of those conditions has occurred or been presented as the basis for denying any application for renewal of the Special Permit, including the September 17, 2025 application for renewal.

41. The Town breached the contract by denying BCC's September 17, 2025 application to renew the Special Permit.

42. As the direct and proximate result of the Town's breach, BCC has suffered damages of no less than \$1.9mm and will continue to incur additional damages.

43. BCC is entitled to recover all damages resulting from the Town's breach of the contract in an amount ultimately to be determined by the finder of fact.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel - Town)

44. All facts previously alleged are incorporated as if fully restated herein.

45. BCC's resolution of the 1992 cease-and-desist matter was conditioned upon the Town's clear and unambiguous promise that it would cease its challenge, and not challenge in the future, BCC's right to continue its Operations if certain conditions were followed.

46. That promise is evidenced by, *inter alia*:

- a. The conditions set forth in the 1992 Special Permit;
- b. The subsequent conditions resulting from the 1994 settlement between BCC, the Town, and Crane Company; and
- c. Minutes of various meetings of the Town Selectmen from 1992.

47. Relying on that promise, BCC agreed to the conditions.

48. Relying on that promise, BCC abided by the conditions and expected the Town to do so as well and renew the Special Permit unless there was a violation of the conditions.

49. BCC's reliance was both reasonable and foreseeable.

50. The Town reneged on that promise when it denied the September 17, 2025 renewal application for the Special Permit.

51. As the direct and proximate result, BCC has already suffered damages of no less than \$1.9mm and will continue to incur additional damages.

52. BCC is entitled to recover all damages resulting from the Town's reneging on its promise in an amount ultimately to be determined by the finder of fact.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment – All Defendants)

53. All facts previously alleged are incorporated as if fully restated herein.

54. BCC asks that the Court consider the merits of the allegations herein and declare:

- a. BCC's Operations are grandfathered under the 1951 Bylaws as a permissible, non-conforming use which may continue on the entire Property with or without any special permit or agreement by the Town or conditions or limitations in the Town's zoning bylaws.
- b. In the event BCC chooses to seek a special permit in the future or renew the existing Special Permit, the Town shall be required to grant future applications for renewal of the Special Permit without the addition of any further conditions on the Operations, unless:
 - i. a violation of the conditions set forth in the previous renewal has occurred and not been cured following receipt by BCC of formal written notice; setting forth in detail the nature and extent of the claimed violation;
 - ii. there is a finding of a danger to public health by the Mine Safety and Health Administration that necessitates additional conditions on BCC's gravel operations to safeguard public health.
- c. In the event a renewal is denied based upon a violation that BCC disputes or contends it was not given sufficient opportunity to cure, BCC may continue its gravel operations pending a final adjudication of its entitlement to the renewal.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the reversal and annulment of the denial of its application for renewal of the Special Permit, for judgment on its additional causes of action, for all direct, consequential, and special damages, including an award of costs and attorneys' fees, for prejudgment interest, and for a declaration that BCC's Operations constitute a permissible non-conforming use and may continue as such on the entire Property with or without the consent or approval of the Defendants.

Respectfully submitted,

BERKSHIRE CONCRETE CORP.

Plaintiff,
By its attorney

/s/ Jaan G. Rannik

Jaan G. Rannik (BBO#718028)
COHEN KINNE VALICENTI & COOK LLP
66 West Street, Suite 201
Pittsfield, Massachusetts 01201
Telephone: (413) 443-9399
Facsimile: (413) 553-0336
Email: jrannik@cohenkinne.com

Date: April 13, 2026

EXHIBIT A



TOWN OF DALTON

Janko Tomasic
Town Planner
Town of Dalton

462 Main St. Dalton, MA 01226
413-684-6111 X 304 | jtomasia@dalton-ma.gov

APR 13 2026 10:09

DALTON PLANNING BOARD

NOTICE OF DECISION

PETITION OF: Berkshire Concrete Corporation ("BCC")

PREMISES AFFECTED: 41 Off High St (Assessors' map #217 lot #3 zoned R-1), 40 Bridle Road (Assessors' map #106 lot #55.1 zoned R-1), Off High Street (Assessors' map #105 lot #12 zoned R-1), Off Pleasant Street (Assessors' map #105 lot #16 zoned R-1), and Off Bruce & Renee Drive (Assessors' map #101 lot #25 split-zoned R-1 and R-2)

PETITION: #599

With regard to the above-referenced application for a Special Permit, submitted by BCC pursuant to G.L. c. 40A, §9 and Section 350-61 (F) of the Town of Dalton's Zoning Bylaws seeking authorization for earth removal and processing activities on portions of 41 Off High St (Assessors' map #217 lot #3 zoned R-1), 40 Bridle Road (Assessors' map #106 lot #55.1 zoned R-1), Off High Street (Assessors' map #105 lot #12 zoned R-1), Off Pleasant Street (Assessors' map #105 lot #16 zoned R-1), and Off Bruce & Renee Drive (Assessors' map #101 lot #25 split-zoned R-1 and R-2) (collectively, the "BCC Property"), all in Dalton, MA, the Dalton Planning Board (the "Board") hereby provides Notice of the following decision and findings:

SUMMARY OF PROCEEDINGS BEFORE THE BOARD

The Board held public hearings on November 19th, 2025, December 17th, 2025, January 21st, 2026, February 25th, 2026, and voted to close the public hearing on February 25th, 2026. The board held deliberations and voted unanimously to deny the special permit application without prejudice on March 18, 2026.

FACTUAL FINDINGS

1. The Board heard extensive public testimony related to unpermitted excavation activities performed by BCC on Lot 105-16 during early 2025 which resulted in nuisance conditions from sand and dust adversely impacting air quality for the abutting residential neighborhood.
2. The Board determined that to date, BCC has not prepared or implemented an adequate dust mitigation plan to prevent similar nuisance conditions going forward despite being ordered to do so by the Dalton Board of Health.
3. The Board found that BCC did not provide a detailed operating plan despite the Board's requests for same.



TOWN OF DALTON

Janko Tomasic
Town Planner
Town of Dalton

462 Main St. Dalton, MA 01226
413-684-6111 X 304 | jtomasic@dalton-ma.gov

4. The Board determined that the most recent plan set submitted by BCC did not incorporate adequate plans for dust mitigation to prevent similar nuisance conditions as were created by BCC's unpermitted excavation activities last year.
5. The Board decided that the excavation and processing activities proposed through the instant application would result in a detrimental impact on the abutting residential neighborhood.

DECISION

Following deliberations by the Board held on March 18, 2026, at the Nessacus Regional Middle School, the following Board members voted unanimously to DENY Special Permit Application Petition No. 599 without prejudice:

Votes in favor of motion to **deny** Petition No. 599 without prejudice:

Zach McCain III;
Donald A. Davis, Jr.;
Dennis T. Croughwell; and
Robert Collins

Dalton Planning Board

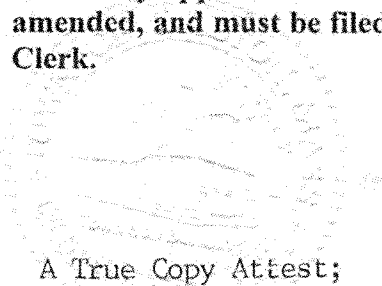


Zack McCain III, Chairman



Date

Note: Any appeal from the decision of the SPGA must be made pursuant to G.L. c. 40A, §17 as amended, and must be filed within twenty (20) days after the filing of the decision with the Town Clerk.



A True Copy Attest;

Date





Heather A. Hunt, Dalton Town Clerk

EXHIBIT B

CAIN, HIBBARD, MYERS & COOK

A PROFESSIONAL CORPORATION

COUNSELORS AT LAW

66 WEST STREET

PITTSFIELD, MASSACHUSETTS 01201

FACSIMILE 413 443-7694

413 443-4771

RONALD E. OLIVEIRA*
LEONARD H. COHEN
C. JEFFREY COOK**
BRIAN J. QUINN**
F. SYDNEY SMITHERS, IV
DAVID O. BURBANK
JOHN F. ROGERS†
MICHAEL E. MACDONALD
JOHN A. AGOSTINI
WILLIAM B. ROBERTS††

FREDERICK M. MYERS**
(SENIOR COUNSEL)

LINCOLN S. CAIN (RETIRED)
STEPHEN B. HIBBARD (907-1087)

OF COUNSEL
RICHARD L. RODGERS**
WILLIAM F. MUFATTI
MARY ANN JOHNS† ††

VIRGINIA STANTON SMITH
WILLIAM A. ROTA**
RICHARD J. O'BRIEN
DIANE M. DEGIACOMO†
STEVEN TAYLOR SMITH**
NANCY A. LYON

*ALSO ADMITTED VT
**ALSO ADMITTED N.Y.
†ALSO ADMITTED D.C.
††ALSO ADMITTED VA AND NH
‡ALSO ADMITTED WA
‡‡ALSO ADMITTED CO

October 28, 1992

VIA FACSIMILE 684-6107

Board of Selectmen
Town of Dalton
Town Hall
Dalton, MA 01226

Re: Berkshire Concrete Corp. Special Permit Application
Pursuant to Section 11.27G

Dear Boardmembers:

Enclosed, in the hope that this may prove to be of assistance to the Board in framing its decision on Berkshire Concrete Corp.'s application, is a draft Memorandum of Decision on Berkshire Concrete Corp.'s Application for a Special Permit pursuant to Section 11.27G of the Dalton Zoning By-Law.

As I will be unable to appear on Monday night, November 2 at your deliberation meeting, I am forwarding this to you now and Perri Petricca will be present for your meeting on November 2. If there are questions which arise prior to your deliberations I will be happy to answer them and, if questions arise on the evening of November 2, you may reach me at the Windsor municipal offices at 684-3811.

Thank you for your thoughtful consideration of this matter.

Very truly yours,

CAIN, HIBBARD, MYERS & COOK

F. Sydney Smithers

FSS/klm
RLET22256

cc: Michael E. MacDonald, Esquire
Perri C. Petricca (Via Facsimile)
C. Jeffrey Cook, Esquire

COMMONWEALTH OF MASSACHUSETTS
BOARD OF SELECTMEN,
TOWN OF DALTON
Acting as a Special Permit Granting Authority "SPGA"

MEMORANDUM OF DECISION

By application dated September 16, 1992 and received by the Town Clerk and SPGA on September 16, 1992 Berkshire Concrete Corp. applied for a Special Permit for Earth Removal pursuant to Section 11.27G of the Town of Dalton Zoning By-Law.

The Applicant is Berkshire Concrete Corp. with a principal place of business at 464 Cheshire Road, Pittsfield, Massachusetts and a place of business at Park Avenue Extension, Dalton, Massachusetts.

The land owners are the Applicant (Assessor's Map 15, Parcel 226) standing of record in the name of General Sand and Stone Corp. (the Applicant is successor by merger to General Sand and Stone Corp.), Fred Warren as Trustee of Warren Nominee Trust as to Parcel 2 on Map 21 and Parcel 7 of Map 14 and Warren, Inc. as to Parcels 1 and 4 of Map 21.

The application is for the Applicant to continue an existing use at these locations, being the removal of earth, sand and gravel, the importation of earth, sand and

gravel to the site and the processing of earth, sand, stone and gravel by crushing and washing. A copy of the application is attached to this Memorandum of Decision.

Notice of a public hearing was given by publication, posting and mail to parties in interest pursuant to General Laws, Chapter 40A, Section 11. A copy of the notice as posted and published is attached to this memorandum of decision as is a list of parties in interest to whom notice was mailed.

At a public hearing held at 7:30 p.m. on October 26, 1992 in the Crane Room, Dalton Town Hall the SPGA heard evidence as contained in the transcript of the entire public hearing which is attached to this Memorandum of Decision and incorporated herein by reference. A Memorandum in Support of the Applicant's application presented by its counsel is attached to this Memorandum of Decision and incorporated herein by reference. The Affidavit of Joseph Davis entered into evidence is attached hereto and incorporated herein by reference. The Affidavit of Larry Jones entered into evidence is attached hereto and incorporated herein by reference.

Based upon the evidence the SPGA unanimously finds that:

1. The first Zoning or Protective By-Law in the Town of Dalton became effective no earlier than November 7, 1951;

2. Prior to November 7, 1951 General Sand and Stone Corporation, predecessor to the Applicant, Berkshire Concrete Corp., explored land in Dalton commonly known as the Warren farm for sand and gravel by digging test pits and established a sand, gravel and stone extraction operation at the premises described above prior to the effective date of zoning in the Town of Dalton;

3. Applicant established a sand and gravel processing and stone crushing operation, including washing sand and gravel by water from ponds and lagoons on said premises prior to the adoption of zoning;

4. Applicant imported sand, stone and gravel from pits outside of the Town of Dalton for processing at said location prior to the adoption of zoning;

5. The Applicant's use of said premises for the extraction, importation and processing of sand, stone, gravel and aggregate for use by its related business, affiliates, and sale to others, including, without limitation, Lane Construction Company, was lawfully in existence prior to the adoption of zoning in the Town of Dalton and hence is a preexisting, nonconforming use which may be continued at the premises described above pursuant to the provisions of General Laws, Chapter 40A, Section 6;

6. That the Applicant has voluntarily submitted itself, and its operations at said location, to the jurisdiction of this SPGA and the provisions of Section

11.27 of the Dalton Zoning By-Law for the purpose of agreeing to be bound by certain hours of operation, restoration and reseeded, traffic control and compensation for gravel used for municipal figures.

The SPGA therefore has voted unanimously that:

1. The Applicant's use of the above location as described is a preexisting, nonconforming use which may be continued subject to the following conditions:

(i) The Applicant's hours of operations shall be restricted to 6:45 a.m. to 5:15 p.m. 5 days a week with such occasional Saturday access to the plant as may be needed on Saturday for unforeseen reasons. The Applicant shall lock the gate at Park Avenue Extension at all hours other than those stipulated above;

(ii) The Applicant shall cooperate fully with municipal officials in the implementation and enforcement of appropriate traffic regulation including speed limits and will restrict its commercial truck traffic to Park Avenue and Park Avenue Extension; and

(iii) The Applicant will work cooperatively with the Zoning Enforcement Officer to develop and implement a restoration and reseeded plan and will restore and reseed a portion of its gravel pit location each year of its operation.

Except as set forth above the Applicant's use of said premises is exempt from zoning.

As so conditioned the SPGA finds that the Applicant's use of said premises is:

- (a) In compliance with all provisions and requirements of the Dalton Zoning By-Law;
- (b) Desirable to the public convenience and welfare at the present location as described above;
- (c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- (d) Will not create undue traffic congestion or unduly impair pedestrian safety; and
- (e) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the Applicant's use of said premises or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or general welfare.

Each of the SPGA members were present throughout the proceedings and deliberations on this matter.

SIGNED

BOARD OF SELECTMEN, SPGA
DALTON, MASSACHUSETTS

By: _____
JOHN BARTELS, its Chairman

RE8981

EXHIBIT C



Office of the
SELECTMEN

TOWN OF DALTON

TOWN HALL

BERKSHIRE COUNTY, MASSACHUSETTS 01226

Special Permit

462 Main Street
(413) 684-0032

THE COMMONWEALTH OF MASSACHUSETTS

CITY/TOWN OF Dalton

DATE: November 2, 1992

CASE NO. _____

Notice is hereby given that the special permit granting authority granted/denied a special permit from section 11.27 of the city/town zoning ordinance/bylaw to permit _____

Earth Removal Operations

with/~~with~~ conditions to Berkshire Concrete Corp. whose address is

464 Merrill Road, Pittsfield, Mass.

regarding property located at Bridle Road, Dalton, Mass.

The hearing on this special permit was held on October 26, 1992

An appeal from the decision of the special permit granting authority may be made by any person aggrieved pursuant to MGL chapter 40A, section 17, as amended, within twenty (20) days after the date of filing of a notice of decision in the office of the city or town clerk.

SPECIAL PERMIT GRANTING AUTHORITY

John A. Pontale Sr.

[Signature]

Deborah L. Massa

EXHIBIT D

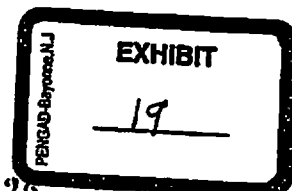


Office of the
SELECTMEN

TOWN OF DALTON

TOWN HALL

BERKSHIRE COUNTY, MASSACHUSETTS 01220



Special Permit

462 Main Street
(413) 684-0032

THE COMMONWEALTH OF MASSACHUSETTS
~~XIX~~/TOWN OF Dalton
DATE: November 2, 1992

BK 1679 PG 671
08/20/99 10:05 DOC. 523877

The special permit granting authority granted a special permit from section 11.27 of the city/town zoning ordinance/bylaw on 11/2/92 to Berkshire Concrete Corp. whose address is 464 Merrill Road, Pittsfield, and who is the lessee of property located at Bridle Road, Dalton which is the property affected by this special permit to permit Earth Removal Operations

The hearing on this special permit was held on 10/26/92
The special permit granting authority granted the special permit based on the following findings and reasons; that the use would be in harmony with the general purpose and intent of the zoning ordinance/bylaw because use is allowed by Special Permit provided Section 11.27 is complied with.

and that the proposed use will not be more detrimental than the use that has been taking place in the last 45 years.
(Insert findings required in zoning ordinance/bylaw for grant of special permit) because see above

This special permit is granted with the following conditions, safeguards, and limitations:

see Attachment A

The special permit granting authority hereby certifies that a copy of this decision and all plans referred to in the decision have been filed with the planning board and the ~~city~~ town clerk on 11/12/92

A true copy. ATTEST:

Barbara L. Surinér
Barbara L. Surinér
DALTON TOWN CLERK

SPECIAL PERMIT GRANTING AUTHORITY

John W. Bertels Jr
Devin J. Moran

I hereby certify that: 20 days have elapsed since I was notified of this decision, and no appeal has been filed/an appeal was filed, but has been dismissed or denied.

TOWN OF DALTON

Town Hall

Berkshire County, Massachusetts 01226

Berkshire Concrete Corp.
Special Permit - Earth Removal Operations

November 2, 1992

CONDITIONS

1. Hours of Operation: Monday through Friday 6:45 a.m. to 5:15 p.m.
Gate at entrance to site (off Bridle Road) to be locked Monday through Thursday from 5:15 p.m. to 6:45 a.m. and from 5:15 p.m. on Friday to 6:45 a.m. on Monday.

In addition to the above, the Town of Dalton requires a suitable gate at the entrance to the Patricia Industries operation that may be locked if deemed necessary by the Selectmen.

Key Issue will be restricted. Lock to be changed at the discretion of the Selectmen. Dalton Police to be provided a key.

Traffic:

Only via Park Avenue using largest vehicles possible to reduce traffic volume. Speed limits strictly adhered to.

Restoration:

The applicant will apply annually to renew the permit as required by Section 11.27 F of Dalton's Zoning Bylaws. Permits are granted for one year periods only.

Ninety (90) days prior to the permit renewal date, the SPGA will be provided a plan of the area to be restored during the next calendar year. The plan shall delineate the area to be restored and show appropriate finish grades within two feet.

A true copy. ATTEST:

Barbara L. Suriner
Barbara L. Suriner,
DALTON TOWN CLERK

EXHIBIT E

DTC (2)

DONOVAN & O'CONNOR

ATTORNEYS AND COUNSELLORS AT LAW
ONE COMMERCIAL PLACE
P.O. BOX 230
ADAMS, MASSACHUSETTS 01220-0230

(413) 743-3200

TELECOPIER (413) 743-5570

WALTER J. DONOVAN (1889-1976)

JOHN R. COWIE, JR.
WILLIAM W. ADAMS
CHRIS S. DODIG
JAMES R. LOUGHMAN
MICHELLE K. MANNERS

J. NORMAN O'CONNOR
JOHN I. CURTIN
PHILIP H. GRANDCHAMP
DONALD W. GOODRICH
JOHN D. LANOUE
MARK S. GOLD
J. NORMAN O'CONNOR, JR.
JANICE J. COOK
DAVID B. MONGUE
PAUL M. VRABEL

February 3, 1994

Ms. Vivian I. Mason, Chairman
Board of Selectmen
Town Hall
462 Main Street
Dalton, MA 01226

Re: Crane & Co., Inc. et al v. Berkshire Concrete Corp. et al

Dear Ms. Mason:

As was discussed and anticipated at the Board of Selectmen's meeting at which Berkshire Concrete Corp.'s application for a gravel removal permit was sought, Crane & Co. and Berkshire Concrete Corp. have reached agreement on proposed terms for the permit. A copy of the proposed terms as agreed upon between Crane & Co. and Berkshire Concrete Corp. is enclosed. It is believed that the enclosed proposed terms cover the items of concern to the Town. In order to finalize the pending application, Crane & Co. and Berkshire Concrete Corp. are willing to attend a Board of Selectmen's meeting as soon as the Board wants to meet. At that meeting Berkshire Concrete Corp. will submit the plan referenced in paragraph 2 of the enclosed proposed terms. If a permit is issued acceptable to Crane & Co., Crane & Co. will withdraw its appeal of the previously issued permit.

If you have any questions, do not hesitate to call the undersigned.

Very truly yours,

DONOVAN & O'CONNOR

Philip H. Grandchamp

PHG:djb
Enclosure

cc: Mr. Paul W. Knauth, Crane & Co.
Mr. Perri Petricca, Berkshire Concrete Corp.

TOWN OF DALTON

FEB 7 1994

SECRETARY OF DALTON

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**TO BE ATTACHED TO TOWN OF DALTON
STANDARD FORM OF SPECIAL PERMIT**

A special permit is granted with the following emission safeguards and limitations:

1. Topographical map of land in Dalton, Massachusetts, compiled by Photogrammetric Methods by Col-East, Inc., North Adams, Massachusetts, controlled by Petricca Industries, Pittsfield, Massachusetts, CE Project No. 13814, compilation date January 19, 1993, photo date December 30, 1988, negative no. 11760, submitted by Berkshire Concrete Corp. December 20, 1993, as a reclamation plan and signed by Perri C. Petricca is approved as a plan of reclamation on the following conditions:

a. All land shown on said plan to be reclaimed shall be reclaimed in good and workman like manner in calendar year 1994.

b. There shall be a continuing obligation to replant pine trees and other vegetative cover where and if necessary in the spring of 1995. Replanting and hydroseeding, if advisable, shall continue periodically thereafter with each planting season until there is established a proper permanent vegetative cover.

c. There shall be no extraction of any materials from any of the area shown on the plan.

d. In succeeding years, reclamation is to progressively proceed on the remainder of the land shown on the reclamation plan in order that there be established a proper permanent vegetative cover on all of the land shown on the reclamation plan by no later than one year following the cessation of the removal of materials from the premises.

2. Topographical map of land in Dalton, Massachusetts, submitted by Berkshire Concrete Corp. as an earth removal and reclamation plan bearing the handwritten legend "1994 Earth Removal Plan Submitted by Berkshire Concrete Corp. Scale 1" = 100" is approved as a plan of earth removal and reclamation on the following conditions:

a. All land shown on said plan to be reclaimed shall be reclaimed in good and workman like manner in calendar year 1994.

b. There shall be a continuing obligation to replant vegetative cover where and if necessary in the spring of 1995. Replanting and hydroseeding, if advisable, shall continue periodically thereafter with each planting season until there is established a proper permanent vegetative cover.

c. In succeeding years, reclamation is to progressively proceed on the remainder of the land shown on the plan in order that there be established a proper permanent vegetative cover on all of the land shown on the plan excluding land used for processing by no later than one year following the cessation of the removal of materials from the premises.

d. There shall be extraction of materials only from within the area designated "Removal."

e. There shall be processing of materials only within the area designated "Processing."

3. No excavation or removal of any material or processing of material shall occur below an elevation which is six feet above the seasonal ten-year high ground water table level. The seasonal ten-year high ground water table level shall be determined from information to be obtained from the Comprehensive Site Assessment to be undertaken in connection within the Dalton/Warren Landfill Closure. Pending receipt of such information, which is expected to be received during 1994, extraction and removal of material shall continue at elevations which do not reasonably appear, based on information presently known, and as developed, such as though test pits, to be below an elevation which is six feet above the seasonal ten year high ground water table.

4. Berkshire Concrete Corp. shall take such action as is necessary to try to prevent the recreational use of motorized off road vehicles on the premises.

5. Monday through Friday, 6:45 a.m. until 5:15 p.m. are the approved hours of operation. The gate to the site (off Bridle Road) shall be locked Monday through Thursday from 5:15 p.m. until 6:45 a.m. and from 5:15 p.m. until 6:45 a.m. on Monday.

In addition to the above, the Town of Dalton requires a suitable gate at the entrance to Berkshire Concrete Corporation operation that may be locked if deemed necessary by the Selectmen.

Key issue will be restricted. Lock to be changed at the discretion of the Selectmen. Dalton Police to be provided a key.

6. Traffic shall be only via Park Avenue using the largest vehicles possible to reduce traffic volume. Speed limits to be strictly adhered to.

7. The following is prohibited on the premises:

a. Storage of petroleum products in underground tanks.

b. Washing of equipment.

c. Storage or disposal of hazardous material and waste except that this shall not prohibit the storage of reasonable amounts of lubricants and other materials necessary for use in the earth excavation and processing business conducted.

8. This permit shall expire one year from the date hereof but may be renewed as provided by Section 11.27F of the Dalton Zoning Bylaw except that prior to any such renewal persons and entities who request notice at any meeting of the Board of Selectmen to discuss

such renewal shall be given notice of such meeting. Permittee shall submit a written report on the status of previously restored areas and such other plans delineating "Reclamation", "Removal" and "Processing" areas and containing such information as is required by the Board of Selectmen.

**PHG:djb
cmepmt.att**