

# Questions surface over sand mining bylaw

By Doreen Leggett, The Cape Codder

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BREWSTER, MA: Planning board member William Henchy's pronouncement this week that a proposed bylaw would bring sand mining in town to an end took most everybody by surprise, perhaps no one more so than Jay Merchant, who owns such a business and helped draft the new regulation.

Merchant, the owner of Cape Sand & Recycling, purchased the former Brewster Sand and Gravel property seven months ago with his wife, Wendy, and had spent a lot of time making sure his huge investment would be worth it. He knew that when he purchased the property the owners had received a litany of complaints from the town and enforcement orders from the state. Merchant also knew that one of the reasons why the bylaw was being drafted, as part of a host of new regulations to protect the town's groundwater, was because of contamination at the site.

The article, which took two years to draft, would have amended and replaced the town's current sand and gravel removal bylaw, which still remains in effect. To be placed on the Nov. 17 special town meeting warrant, the article needed two-thirds approval from the planning board. At its Sept. 24 meeting, the board voted 3-3-1 not to place the article on the warrant. A group of concerned citizens resurrected the proposal via a citizens petition.

Standing before the board of selectmen Monday, Merchant reiterated his support for a bylaw, and his desire to work with the town, but his frustration was clear. They have done everything the town wanted them to do, and more, he said. They have trucked out hundreds of yards of demolition material, continue to excavate all unsuitable material and take it off site, removed all the fuel storage tanks and spend \$40,000 a year in water quality monitoring.

"I want this place cleaned up," he says. "I am not the bad guy."

If town officials think he can continue the expensive cleanup if he is only allowed to sell mulch, they are wrong. He did his due diligence before he bought the property, but says that it's hard to believe he is talking to the same people that encouraged him to sign on the dotted line.

"I think this could work," he said. "But don't tie my hands."

Selectman Ed Lewis, who was the impetus behind the ambitious plans to protect water quality through a town-wide District of Critical Planning Concern – a regional planning tool, was also a bit taken aback by Henchy's statement.

He understood the bylaw to read that if a company had purchased property for mining that it could continue, provided it met a list of criteria, such as only working one 5-acre parcel at a time. Looking at the lengthy verbiage again, he agreed the proposed bylaw seemed to say that if the land wasn't currently being used, it couldn't be mined in the future. (*continued...*)

Selectman James Foley considered that a taking. He didn't have a problem with that if the town considered sand and gravel mining to be too harmful an activity for the land that sits right above the "zone of contribution," the most critical area for drinking water wells. But if that's the case, the town should purchase it.

"Let's not set up a process to regulate it; let's set up a process to buy it," Foley said, giving the town's purchase of the Punkhorn Parklands through eminent domain as an example.

Town Administrator Charlie Sumner cautioned that including the other mining operations in the area off Freeman's Way, there were more than 200 acres. He said buying up all the land would be "very hard to accomplish financially."

Henchy said that the pricetag would be "immeasurably cheaper" than the loss of the groundwater. He also added that the consultant the town hired to help the board in the process had said the bylaw raised no legal red flags as the property could be sold and used as a resort or golf course.

"An open window to the water table after the ground has been stripped creates a very dangerous situation," said Henchy.

Resident Peter Johnson, sitting with Merchant, didn't believe the town needed to purchase the property. He had galvanized a number of citizens to get the bylaw on the special town meeting warrant as a citizen petition after the planning board essentially derailed the proposal.

Town counsel has not yet given an opinion on the language in the proposed bylaw, and there appears to be some reticence on the part of the board to support it if it hurts business owners, particularly since they were told at the beginning of the process that as long as they followed the rules and regulations the town would work with them.

Both Lewis and Foley called Merchant a "model citizen," but town officials are deeply concerned about the open pits and how easy it is for pollutants to get into the aquifer. Arsenic and benzene were already detected in test wells in the area, and the town hasn't had the regulations in place to protect the water supply.

In a letter to officials, Merchant said that if he cleans up, re-vegetates and stops mining 10 feet above the groundwater, which he says is 2 1/2 times the state limit, there will be no harm to the water table if the mining is done to code.

There needs to be some balance, said Selectmen Chairman Peter Norton. "This needs more discussion," he said.

The planning board will have a hearing on the proposed bylaw Oct. 22.