

Minutes of a meeting of the Plaquemines Parish Borrow Pit Advisory Committee held in the Belle Chasse Council Building, Council Chambers, 333 F. Edward Hebert Blvd., Bldg. 203, Belle Chasse, Louisiana on Thursday, April 8, 2021, at 1:00 p.m. pursuant to notice to all members with a quorum present as follows:

PRESENT: Council Member Carlton M. LaFrance, Sr., Chairman
Council Member John L. Barthelemy, Jr.
Council Member Mark Cognevich
Council Member Benedict Rousselle
Mr. Will Wilcox
Mr. Donald Vallee

Kim M. Touns, Secretary

ABSENT: Mr. Jacque Touzet

The meeting was called to order, roll call was taken and the pledge was recited.

Chairman LaFrance moved to Agenda Item 2, "Discussion of Uniform Locals Sales Tax Code". Without objection, so ordered. The floor was given to Mr. Patrick Amadee.

Mr. Amadee stated he represents local governments, including Plaquemines, pertaining to sales tax matters. He enforces collection of sales tax and defunds refund claims. He gave a brief history of borrow pit litigation throughout the State stating most litigation took place between 2014 and 2015. At this time audits of borrow pits were taking place in all different parishes subsequently the USACE levee work being done. Many dirt and clay pits applied to become pre-certified by the CORPS to use their borrow material on levees. Mr. Amadee discussed case law and state statutes relative to collection of sales tax from borrow pits and the contractors. Ultimately, based on regulations set forth in state litigation and legislation, he advises against auditing borrow pits which are operating properly. He further stated it is not a wise use of funds.

Chairman LaFrance moved to Agenda Item 3, "Discussion of Borrow Pit Ordinance". Without objection, so ordered. The floor was given to Council Member Rousselle who provided a brief time line of the history of borrow pit legislation based on documents provided to the Committee. The timeline is as follows:

- 1992 the first borrow pit moratorium was adopted.
- 1993 the first ordinance, 93-331, regulation pits was adopted.
- 1995 first case regarding borrow pit legislation: PPG vs. Frank Adolph and B&A Materials wherein the Judge Kirby ruled that Ord No. 93-31 was never validly adopted because it was not published in the official journal.
- 1995 was the first amendment to Ord No. 93-31 which added bond and backfill requirements (this continues to be the main issue for years to come).
- 2009 was the second amendment to Ord No. 93-31 amending the amount of the bond in favor of PPG, requiring backfill of pits, surety bond for personal injury and property damage and set \$1.50 minimum per cubic yards of material. It also created a requirement to apply to the CZM Board.
- 10-22-2009 Amendment to the borrow pit ordinance setting policies and procedures for obtaining permits from PPG, CZM and the State, USACE, as well as, updating rules and regulations on pit oversight. The ordinance was vetoed by the President; however it was overridden by the Council.
- 2010 another moratorium is adopted.
- 2010 amendments made to current borrow pit ordinance due to litigation initiated by Scarsdale Lands, LLC. Extensive amendments were made to the Borrow Pit Section of the Code of Ordinances, Section 18-1.
- May 2012 another moratorium.
- December 13, 2012, Ord No. 12-238 was adopted to supersede all previous pit ordinances, including issues such as bonds and backfill. This is the ordinance we are working under today. It is made very clear in this ordinance that the materials dug must be utilized for Parish, State or local levees or the pits must be backfilled.
- 2013 legislation for another moratorium was voted on but failed.
- 2013 settlement of litigation relative to Ord No. 13-343 wherein Citrus Lands pit was

bought by Woodland Borrow Pits.

- 2014 Ord No. 14-123 provides for the hiring of different firms for enforcement of Ord No. 12-238.
- June 2014 more litigation including two cases where the Parish was sued for not issuing permits.
- Ord No. 14-177 adopted wherein funds collected from borrow pits are earmarked for hiring a lawyer, engineering and auditor to monitor the pits.
- Recommendations made on who will provide the above monitoring.
- Ord No. 15-66 the current law firm is let go and in its place the Parish President will assign a member of the Legal Department to be the project manager. (This has not been done to date)
- Ord No. 15-108 amends Ord No. 12-238 in an attempt to give it “teeth” by providing for commencement of enforcement action upon providing credible evidence of any violation.

Council Member Rousselle and members of the committee then held a discussion regarding enforcement of borrow pits and the next step in their plan of action. Council Member Rousselle pointed out that the above timeline provides a history of attempts to enforce the borrow pit ordinance. He further stated that at his last meeting with the Parish President and attorneys to discuss the enforcement of the borrow pit ordinance, President Lepine stated he was not “chasing pennies”. Council Member Rousselle said that it is his opinion President Lepine will not appoint a project manager as provided by Ord No. 15-66. Therefore, it was suggested by Council Member Rousselle that we utilize the fees collected and assign someone to enforce the pits. It was further discussed that we need legal counsel to make sure both sides of settlement agreements made between pit operators and the parish are being carried out. It was also pointed out that all five of the active borrow pits are operating under settlement agreements. Council Member Rousselle suggested that the Council Attorney and the Parish’s Internal Auditor take a look at borrow pit matters.

The following Motion was offered by Mr. Donald Vallee and seconded by Council Member Cognevich. “A motion authorizing the Plaquemines Parish Borrow Pit Advisory Committee to move forward with the actions necessary to utilize the Parish’s current resources of the Council Attorney, Dannie Garrett and the Parish Internal Auditor, Randy Duke to handle borrow pit matters”. Upon roll call, all members present voting “YES”, except Mr. Jacque Touzet, who was “ABSENT”, the motion was adopted by a vote of 6-0.

Mr. Paul Hogan addressed the Committee regarding Woodland Borrow Pits documents provided to the Committee and its attempt to get a new permit. There were discussions regarding their settlement agreements and litigation. Mr. Hogan stated he would provide more documents to the Committee for review.

There being no further business to come before the Committee, on motion of Council Member Cognevich, seconded by Donald Vallee, and on roll call all members present voting “YES”, except Jacque Touzet who was “ABSENT”, the meeting was adjourned at 2:43 p.m. with a vote of 5-0.

CHAIRMAN

SECRETARY

This meeting can be viewed on the Parish website: www.plaqueminesparish.com Select “Agenda and Minutes” on the main page and then click the “Borrow Pit Advisory Committee” link. Click the media link for the April 8, 2021 meeting.