

**Village of Fort Edward
Zoning Board of Appeals
Date: May 21, 2026**

Roll Call: Bernie Taylor, Nasrene Haj, Doreen Rabine, Samantha Walker, Tabitha Fish

Absent:

Present: See attached list

Approval of Minutes from April 14, 2026

Motion by:

Seconded by:

All ayes. Motion carried.

Summary

The board first handled a mobile food trailer proposal for Slickfin Brewing and then moved into a series of hearings and records reviews concerning the historical approval and current operations of the Fort Edward soil-recycling facility. Much of the discussion focused on whether the 1991 village approval and June 1, 1995, DEC permit limited the facility to petroleum-contaminated soil or later expanded to other waste streams, including PCBs, coal tar, and PFAS-related materials, while participants repeatedly requested full permit records, FOIL documents, and witness testimony. The board also addressed related administrative matters, including county referral, hearing dates, site-plan review for fencing, gray-water disposal questions, and the need to correct meeting minutes and motions.

Meeting opening and attendance

The meeting was called to order at 07:15 by Janelle Rose, and attendance was recorded for board members and attendees. The Pledge of Allegiance was recited at the start of the meeting.

Approval of prior meeting minutes

The board confirmed that everyone had read last month's minutes and moved to approve them. A motion was made by Tabitha Fish, seconded by Bernie Taylor. All ayes. Motion carried.

NEW BUSINESS

Slickfin Brewing - Food trailer proposal

Heather presented a proposal on behalf of Slickfin Brewing Company to place a food trailer behind the brewery in the beer garden to expand the business. The trailer will be a permanent structure. The menu is expected to be eclectic, with rotating items and a few staple dishes, not just standard burgers and hot dogs. The applicant expects the trailer's hours to generally align with brewery hours, though it may open earlier on weekends for lunch; final hours were still undecided. The trailer is being designed for food service use and is expected to be completed by the end of June.

Food trailer utilities, lighting, signage, and wastewater

The trailer will be located inside the existing beer garden and will rely on existing perimeter lighting, though the board raised concerns about nighttime visibility and trip or fall hazards. The applicant said the trailer design includes potable water and graywater containment in 50-gallon tanks, based on the environmental survey. The board asked the applicant to confirm how graywater will be emptied or disposed of and whether the trailer will connect to the brewery sewer system. The applicant currently plans no additional signage changes and intends to leave the trailer appearance as-is.

Motion to accept application and refer it to the county and set the public hearing

The board moved to accept the food trailer application and refer it to the county for review. Janelle was expected to forward the referral materials. A motion to accept the application and refer to the county and set a public

hearing for June 30, 2026, at 6:00 p.m. was made by **Tabitha Fish**, seconded by **Samantha Walker**. All ayes. Motion carried.

PUBLIC HEARING Cont. - ESMI

Reopening the public hearing and outlining the process

The public hearing was formally reopened to continue the matter before the board. The board explained the expected order of presentations, including testimony from a subpoenaed witness, representatives from the county, the appellant, and public comment. The motion to open the public hearing was made by **Tabitha Fish**, seconded by **Samantha Walker**. All ayes. Motion carried.

TESTIMONY

Introduction: Bill Nikas

Bill Nikas was introduced as a member of Energy Park Associates and as a witness present to clarify historical facts about the original 1991 application and related approvals. The board asked him to explain his role and address gaps between village records and the appellant's application.

Historical application authorship and documentation

Bill stated that the original application for the petroleum-contaminated soil facility was prepared by D.A. Collins' engineer and submitted on behalf of Energy Park Associates. He identified Exhibit B in the appellate record as the application document and confirmed the engineering firm's source by tracing a listed fax or phone number. Bill confirmed that the application language and the later DEC permit described treatment only of petroleum-contaminated soil and did not authorize processing of other materials.

95' permit scope and limitations

Bill located and summarized the June 1, 1995, DEC permit, which authorized treatment of up to 1,400 tons per day of non-hazardous petroleum-contaminated soil. The permit's acceptable waste streams section limited accepted material to non-hazardous PCS contaminated by listed petroleum products such as gasoline, diesel, kerosene, fuel oils, and lubricating oils. He emphasized that neither the permit nor the application referenced authorization to process materials beyond petroleum-contaminated soil.

Availability and production of records

The permit and application materials were identified as FOIL records, and the clerk was to provide copies to the board. Bill said he did not possess the final planning board approval minutes from the 1991 proceedings and that his involvement ended in 1995 when he deeded his interest. The board acknowledged that the planning board had conditioned local approval on obtaining the DEC permit and that the DEC permit's special conditions must be reconciled with local approvals.

Historical process and board conditions

Bill explained that Energy Park Associates applied to include the PCS use in the industrial zone and that D.A. Collins later supplied the technical details needed to obtain the DEC permit. The planning board granted permission to locate the facility in the park subject to the condition that the applicant obtain the DEC permit before commencing operations. He said there was strong local interest in industrial development at the time and that the approval process involved a limited number of meetings culminating in conditional approval.

Permit special conditions and village code definitions

The special conditions of June 1, 1995, DEC permit are located at the top of pages 1 through 4, and paragraph six was specifically identified as central to interpretation. The written permit language limits the facility to treating non-hazardous petroleum contaminated soil. The village code contains broader categories for hazardous chemicals and hazardous waste than just EPA-listed substances, creating a legal question about whether PFAS contamination falls within those local definitions. Counsel argued that PFAS components were designated

hazardous by EPA in 2022 and that the board should interpret the permit text itself rather than rely on later practice or assumptions.

PFAS public awareness and litigation timeline

PFAS awareness increased substantially after litigation that began in 1999, including the DuPont case, when internal documents showed contamination and health impacts. The discussion noted that major PFAS claims and damages arose in the 2000s, so PFAS was not a widely recognized public concern during the 1991 to 1995 application and permitting period. That historical lack of awareness was cited to explain why the original applications would not have explicitly contemplated PFAS processing.

Requested list of materials processed and authorization dates

The appellant provided a non-exhaustive summary, based on ESMI, DEC, and public records, of categories of non-hazardous soil contaminants authorized by DEC and the approximate dates of authorization. The board asked which of the 18 listed materials were included in the original village approval and which were later authorized by DEC. The board noted a discrepancy between relying on DEC-issued permits for additional materials and whether the village planning board or ZBA should have reapproved material changes.

Document provenance and signatures

A submitted document, Exhibit B, was prepared by D.A. Collins but bears the signature of an attorney who served as lead real estate counsel for the industrial park owners. The signer explained that he signed to obtain planning board approval for industrial uses, not because he personally drafted the technical content. The provenance of the document and who is responsible for its representations remained relevant to interpreting the historical approvals.

DEC permits versus village approval and waiver arguments

The appellant argued that DEC issued subsequent permits for additional substances and that the village effectively accepted that permitting without further review. Objectors responded that DEC permits do not replace required village planning board or ZBA approvals and that prior village inaction does not waive the municipality's right to regulate current or new hazards. The board needed to decide whether DEC permit activity alone is sufficient to allow processing of new hazardous or potentially hazardous materials within village zoning and code constraints.

PCB limits and original approvals

Paragraph 8 of the special condition's limits acceptance of petroleum-contaminated soil containing more than one part per million PCBs unless otherwise approved in writing by DEC. Counsel for objectors argued that the 1995 permit limited PCB processing to 1 ppm and did not broadly authorize PCB treatment as a separate permitted waste stream. Appellant representatives argued that PCBs were listed and handled beginning in 1995 and that the facility evolved under DEC oversight rather than needing separate village approvals for each material.

Code Enforcement Officer interpretation and site-plan review

The Code Enforcement Officer issued an opinion on the facility's current plan to process PFAS-contaminated soil under today's village code and concluded that site-plan review is appropriate. Counsel for objectors supported that decision and recommended requiring the applicant to prove safety through site-plan review and possibly other review processes before approval to process PFAS. The board needed to decide what evidence and safeguards would be necessary to demonstrate community safety.

Availability and completeness of DEC permit records

The appellant reported that the DEC records they obtained were incomplete and provided the board with a spreadsheet of permit activity dating back to 1991 and the most recent active permits. The board asked for copies of the current active permits and noted the distinction between a permit activity list and the actual permit documents. Incomplete public records from DEC complicated the board's ability to trace when specific materials were authorized and whether village approvals were bypassed.

TESTIMONY

Introduction: Ben Bramlage - Clarification by Ben on the 1990s application scope

Ben clarified that the application documents identify the project specifically as a petroleum contaminated soil recycling facility rather than a generic soil recycling facility. He said he would submit and discuss additional application material, including a 250-page Information in Support of Application, to show the original scope and intent. The board planned to review those materials to confirm whether the original application and DEC permit language restricted the facility to petroleum-contaminated soils only.

DEC FOIL combined document and contents

The 250-page combined document was not in village records until recently and contains many interoffice communications between DEC and D.A. Collins from early 1995, including amendments dated May 25, 1995. The document includes DEC questions and D.A. Collins' answers about the environmental impact statement for the petroleum contaminated soil recycling facility. It repeatedly uses the term soil, but it also shows that the facility's waste stream broadened later to include materials beyond petroleum-contaminated soils. The board was urged to review the document closely because many details were incorporated into the June 1, 1995, DEC permit.

PCB co-contaminant history and permit limits

Early 1995 communications between DEC and the applicant discussed adding PCB as a co-contaminant, and the applicant initially sought a 5-ppb cap. DEC issued June 1, 1995, permit with a PCB cap of 1 part per billion for that permit. The discussion noted that the federal or state hazardous waste designation for PCB-contaminated soils is 50 ppb, and that DEC later approved processing up to about 45 ppb around 2012 to stay below the hazardous waste threshold. The board was advised to note the staged regulatory changes and the internal DEC back-and-forth that may not be visible in village records.

Coal tar inclusion attempts and regulatory response

Before the 1995 permit, the applicant sought to add coal tars to the acceptable materials list, but DEC denied the addition before issuing the initial permit. The documents later describe a process for adding coal tars, which were ultimately added in 1996 after the initial permit period. Coal tar was described as a non-petroleum, hydrocarbon-based industrial waste material regulated differently than petroleum products.

Misleading use of the term clean soil and soil cleanup objectives

DEC handwritten notes in the FOIL material questioned what definition of clean soil was being used, highlighting ambiguity in terminology. The speaker argued the processed material should not be called clean soil because the post-processed product still contains residual contaminants and is an industrial product. DEC codified contaminant thresholds into Soil Cleanup Objectives, and the product has use restrictions in areas such as playgrounds, wetlands, floodplains, crop production, sensitive habitats, groundwater recharge areas, and near surface water. The village and town were urged to use precise terminology and regulatory understanding when addressing storage and reuse of processed material in local projects.

Regulatory lifespan, facility changes, and lack of local review

The combined DEC document noted an expected facility lifespan of 20 years, to 2015, yet operations and material streams continued and expanded beyond that date. The business evolved over roughly 30 years with changing waste streams, economics, DEC priorities, DEC staff, and permitting, but this evolution was not comprehensively reviewed by the village. There is no complete village record of approvals beyond the initial 1991 to 1995 actions, and the code enforcement officer has given the applicant the benefit of the doubt where records are missing. The speaker argued that past inaction does not remove the current authority or responsibility of the village and town to review present operations.

Air emissions paperwork and pre-signed forms

DEC transmission slips and air emissions forms were discussed as evidence of communications and technical details related to air permitting. Two identical air emissions forms appeared pre-signed by a DEC air engineer and the applicant, with dates altered, raising concerns about procedural handling and fast-tracking. The village has only seen air modeling for petroleum contaminated soils and not for expanded waste streams. The board was urged to request or verify full air modeling documentation from DEC for all materials currently processed or proposed.

97' minor modification request and testing rationale

In April 1997 the applicant requested a minor permit modification to thermally treat about 400 to 500 tons of non-hazardous PCB-contaminated soil below 50 ppm to demonstrate PCB treatment capability as part of an air permit performance test. The applicant sought to use that small-scale test to support a later major permit modification without a second performance test. Although that request foreshadowed broader PCB treatment, DEC approval to process PCBs up to about 45 ppm did not occur until around 2012.

Legal standards, burden of proof, and case law relevance

The speaker asked which party bears the burden of proof and argued that the appellant, Clean Earth, carries the burden in this civil or regulatory matter rather than the village. The Sunrise case cited by Clean Earth was discussed, and the speaker said it is distinguishable because it lacked a physical land use and environmental or public safety component, and it required SEQR review, all of which are present here. The board and Mr. Pullman were advised to review the full case law cited by Clean Earth, with the suggestion that a comprehensive reading may support the village and town position.

Discrepancies in historical recollections and submitted letters

A letter from former operator Robert Manns was submitted describing his involvement from the 1991 zoning approval process through his later years of operation, and it differs from attorney Mr. Nikas's recollection. Manns wrote that the 1991 application focused on a soil recycling facility with petroleum-contaminated soil as the most prominent contaminant but not necessarily limited to petroleum soils alone. The applicant's representative argued that the village zoning approval was for a general soil recycling facility because of local economic needs, which could explain the broader operational scope approved at the time. Board members were encouraged to read Mann's letter for historical context and to weigh the discrepancies in testimony when making decisions.

Interpretation of the 1991 Planning Board approval

The applicant's position was that the September 1991 planning board approval authorized a soil recycling facility without material-specific limitations. The applicant argued that the village deferred technical regulation to DEC, so material restrictions came from DEC rather than the 1991 village approval. The appellant also argued that the village's later decision to retroactively impose a 30-year limitation based on incomplete files was unlawful and should be reversed. The village panel noted that the 1991 minutes show different board members expressing different views, so the record contains mixed statements about limitations.

DEC permit process and pending PFAS RDD application

DEC is actively considering an RDD permit application from the facility to handle PFAS and has scheduled public hearings in June before reaching a decision. Participants emphasized that the pending DEC PFAS RDD decision is distinct from the current appeal about the scope of the 1991 village approval. The facility was described as heavily regulated by DEC and claimed to be in compliance with DEC-imposed restrictions historically.

Requests and gaps in permitting documentation

Village members said they had requested copies of DEC permits and related documentation and had not yet received the original permits they asked for. The applicant offered to provide the permit records it possessed and to email available documents to the village, while cautioning that it may not have everything DEC holds. The village explicitly requested that SMI or ESMI provide all permits and documents they can obtain from DEC in advance of the next meeting.

Clarification of historical involvement and witness scheduling

The discussion sought clarity on the role and tenure of engineer Robert Manns; one participant said he was involved from 1991 until 2018. There was a discrepancy about whether Manns remains involved and whether Bill Nikas has been involved since 1995, prompting requests for direct testimony to resolve the historical facts. The board agreed to schedule a follow-up meeting after July 1 and asked ESMI to confirm Manns and Nikas's availability for that meeting.

Public comment on the meaning of soil and current facility operations

A public commenter asked the village to have ESMI define soil, noting that ESMI's historical permits cover materials such as paper sludge and sewage sludge that may not be commonly understood as soil. The commenter said ESMI held DEC approvals for non-desorption chemical processes for PFAS removal that were not thermal and urged the village to question ESMI about those processes. The commenter also asked what is being processed now and whether truck traffic has increased recently.

Questions on historical site-plan submissions and permit scope

Shannon Gillis – Hudson Falls, however grew up on East Road in Fort Edward asked whether ESMI used the term PCS processing facility in 1991 to 1995 site-plan and DEC submissions to obtain permits without limits, implying possible misrepresentation of the intended operations. The resident asked the board to question whether PCS processing was used to secure broad operating permits that would allow unrestricted future activities. The resident wanted a formal response for the record about whether the historical wording was a deliberate tactic to permit expansive future operations.

Corporate ownership and hazardous-waste consolidation concerns

Katy DeGroot from the Town of Fort Edward reported that Clean Earth was acquired by Veolia and integrated into a larger global company, arguing that industry consolidation can indicate capacity and intent to move more hazardous waste to local facilities. The resident cited company materials describing strong demand in hazardous-waste treatment and noted that Clean Earth operates multiple EPA-permitted locations. The board was urged to consider corporate motivation and local control over what waste is processed in the community.

Neighborhood health concerns and permit complaints

A long-term neighbor, Therese Gillis testified that past facility leadership did not intend for current activities and that community members would not have supported the present operations if they had known the health risks. Therese said she has filed multiple DEC complaints over time about oil spotting on her property and believes DEC responded to those complaints. She also said she was not aware PCBs were being burned at the facility and emphasized that she would have attended hearings had they been held in the past. The board and DEC were asked to confirm historic permit processes and public notification.

Questions about current materials and the code determination

Amanda Durkee from Seminary Street asked the zoning board to ask Clean Earth three specific questions about the period since the December code determination: what materials they have been processing, how much, and where those materials originated. The resident asked Clean Earth to confirm whether it treated the code determination as non-binding when processing materials that may not be PCS-contaminated. The resident also asked the board to inquire whether Veolia, as the prospective purchaser, is aware of the ongoing legal and zoning situation related to the acquisition and operations. A public-source note said Robert Manns is linked to D.A. Collins and ESMI leadership, and the board was urged to consider corporate and operator relationships in its oversight.

Decision to keep the public hearing open and schedule the next meeting

The board voted to leave the public hearing open and scheduled the next meeting for July 15 at 6:00 p.m. so testimony could continue and requested information could be gathered. Robert Manns and Bill Nikas were identified as people who should be available to appear or provide information at that meeting. One member noted they would be out of the country on that date, and the board acknowledged that the date might need to continue if necessary. Janelle Rose was expected to distribute the notice.

Request for DEC permits and document delivery timeline

The board requested copies of DEC permits related to the facility and set a target of receiving them about one week before the July 15 meeting. The board asked parties to notify them by July 8 whether the witnesses referred to in the transcript would be present at the July 15 meeting.

Enforcement issues and administrative follow-ups

The enforcement officer or assigned member will review minutes and records regarding the property at 128 Broadway to determine whether further action is required after six months have passed. Board members discussed ongoing enforcement matters unrelated to the public hearing and invited interested parties to remain for those items.

Proposed fencing and requirement for site-plan review

A property owner proposed a three-foot split-rail fence in front and a four-foot chain-link fence in the rear where cones are currently placed and offered to straighten an existing split-rail fence that crosses village property. The board advised that the proposed fencing would require site-plan review and that minutes and previous approvals will be reviewed to determine what was already authorized. The enforcement officer noted an existing chain-link fence on the south side and will confirm boundaries and ownership before any approvals are considered.

Gray water disposal question

A participant asked where gray water from sinks or showers will be disposed of when using the site. The participant clarified that the question was about the gray tank rather than solid waste, indicating concern about plumbing and sewer connections. The question shows that site infrastructure details for gray water management still need to be confirmed.

Motion to adjourn and vote

A motion to adjourn the meeting was made by **Doreen Rabine** and seconded by **Tabitha Fish**, and the group voted in favor with verbal aye responses. There was immediate confusion afterward about who had seconded the motion. The exchange showed the need to record motions and votes clearly in the minutes to prevent future uncertainty.

Respectfully submitted,

Janelle Rose
ZBA Clerk

Meeting attendance

Bill Nikas, Ben Bramlage, Jeanie Mullen, Louis Palmer, Phoebe Jackson, Rob Martin, Matthew Rimkunas, Jacob Brown, Heather March, Sarah Bramlage, Michelle Muller, Diane Collins, John Godfrey, Melissa Wilkins, Denise Mayer, Shannon Gillis, David Mathis, Luke Mosseau, Therese Gillis, Katie DeGroot, Steve Davie, Bob Henke, Mike Dickinson, Amanda Durkee, Devin Lander, Sheryl Volpe, Mike Volpe, Heidi Brownell, Amy Burns, Martha Winsten, Tracy Frisch, Marlene LeClair