

ZONING BOARD OF APPEALS MEETING WEDNESDAY, FEBRUARY 16, 2022

MEMBERS PRESENT: CINDY KELLEN, BOB WESTFALL, DIANE ATTEA, JEFF PASSARELL

ABSENT: JEFF MULLIGAN

OTHERS: CEO BRIAN GLISE,

VISITORS: KAREN & RICK CRATER, DEBRA SALMON, ERIC HUPPERT, CAROLYN & BOB MCKEE, LISA ARNOLD, RANDY ARNOLD, TOM MCGOVERN, JILL FORMELLA, KATHY COLE, DENNY REGAN, MARILYN REGAN, BRIDGET O'TOOLE, ESQ, ASHLEY CHAMPION, STEVE FANTUZZO, BRANDON PICCURETO, ANDREA KRAJKA, JACALYN EDDY, ROGER VANDERBROOK, KAREN SCHIEDEL, DEB NUPP, KARL MITCHELL

CLERK: KIM MCDOWELL

MOTION TO OPEN THE MEETING WAS MADE BY BOB; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - ABSENT
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 4-0.

MOTION TO APPROVE THE MINUTES FROM THE FEBRUARY 2, 2022 MEETING SUBMITTED WAS MADE BY DIANE; SECONDED BY BOB.

JEFF MULLIGAN - ABSENT
CINDY KELLEN - AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 4-0.

OAK OPENINGS LLC/1392 OAK OPENINGS ROAD/TAX PARCEL#26.-1-22.1
- SPECIAL USE PERMIT MODIFICATION - PUBLIC HEARING

Cindy Kellen read the rules and regulations for tonight's public hearing and they are as follows:

The Purpose of tonight's Public Hearing is to facilitate public comment either in favor of or against the application of Oak Openings LLC to amend its Special Use Permit to expand its operations.

All persons are asked to sign in on the sign-in sheet so that we can have an accurate record of who attended.

Anyone wishing to comment will have 3 minutes to express their opinion.

Each person shall have one opportunity to speak. After everyone has had an opportunity to speak, the Board may, at its discretion allow people to have an additional opportunity to comment.

Before commenting, please state your name and address for the record.

No questions will be answered by the Board. This is your opportunity to either express your opposition to or support of the application and why.

Please direct all comments to the Board and not to other audience members or the applicant.

Everyone is expected to act civilly toward one another and to be courteous when others are speaking.

If you have supporting documentation you would like to be placed in the record, please provide to Kim McDowell.

With those guidelines, if you would like to speak, please raise your hand.

WRITTEN COMMENTS RECEIVED PRIOR TO MEETING:

Tamar Eisenberg, 1173 Oak Openings Road, Honeoye Falls, NY 14472:

Dear Members of the Avon zoning board,

I'm sorry to say that all the years of attempting to explain the impact of expansion of mine operations have fallen on deaf ears. While the current schedule is inconvenient to live with as illustrated in community objection letters, myself included, the proposed changes will cause extreme adverse living conditions to our neighborhood. Yes, neighborhood! That is because Oak Openings Rd. is a residential area.

I will only have 1 day out of 7 that I can take a walk or bike ride down my street. There are many retirees here who selected this place to enjoy their properties with gardening, workshop activities, relaxing and/or entertaining outside. This will hardly be enjoyable with up to 3 trucks per minute plummeting up and down the road.

I don't understand how almost tripling the number of trucks doesn't increase the noise factor according to your studies. Some of our neighbors measured the decibels. You can't have a conversation with anyone outside as a truck is passing by and with 3 per minute, we all better learn sign language.

We feel discounted and frankly invisible to the Town of Avon, the zoning commission and DEC in this matter. As you stated in your letter you are open to hearing from the public. I hope my feelings will be acknowledged.

Tamar Eisenberg, 1173 Oak Openings Rd, Honeoye Falls, NY 14472

Sharon Oyer, 1150 Oak Openings Road, Honeoye Falls, NY 14472:

To: Town of Avon ZBA Board.

My name is Sharon Oyer; I have owned property at 1150 Oak Openings Rd for almost 40 years. I object to the gravel pit's request to increase truck traffic, extend hours of operation, and expand size of mine. I urge the board to prohibit importation of C & D material and mining below water table. I was shocked to discover that all trucks were required to use the northern route. I was never informed of this decision or given an opportunity to voice my opinion. This is unfair to owners and residents of property north of the gravel pit. I strongly urge the board to allow trucks to use the southern route or find another route of ingress/egress. I am also concerned with the noise, dust, my well and property value. Please consider how this expansion effects the people who live on Oak Openings Rd. Thank you.

Eric Hubbert & Debra Salmon, 1160 Oak Openings Road, Honeoye Falls, NY 14472:

Attention Avon ZBA Members:

This missive addresses public comments relative to Rochester Gravel Products.

As a twenty-year resident of Oak Openings Road, I'm very concerned about our once quiet rural neighborhood. We always had to put up with the noise and explosions occurring at the Hanson facility, which now is expanding its footprint to within a few yards of the town line, amplifying its obnoxious presence in the community. That being said:

Oak Openings Road has traditionally been posted 10 tons to ensure Hanson truck traffic used other roads to access the Hanson facility.

Things changed dramatically 3 ½ years ago when Mr. Twardokus began to operate the LONG DORMANT gravel pit at the south end of our road. Due to the routing decision by the Avon ZBA, we've had truck traffic, noise, VIBRATION and potentially dangerous situations (involving garbage trucks, farm vehicles and school bus traffic) arise at unprecedented levels. I would like to refer Avon officials to Article 41 of the New York State Vehicle and Traffic Law, specifically section 1660. Clearly states a TOWN BOARD has the authority to create truck routes on county roads outside of villages WITHIN THE TOWN (ONLY). What legal authority does Avon have to route trucks to and from Monroe County? This would seem to put a potential liability issue on Avon when an accident occurs outside of Avon. Has anyone thought that out?

Mr. Twardokus has exceeded established limits on vehicle levels day after day for years. The number of trucks has included giant tractor trailers, dump trucks with pup trailers and huge lowboy trailer trucks. The noise (especially by careless drivers employing jake brakes) is insufferable, on calm days, the stench of diesel exhaust blankets my property. This is on a road with residences on both sides, and an unrealistically high 55 mile per hour speed limit (north section above North Avon Road). Ironically, the most obnoxious offensive trucks are the derelict yellow trucks bearing the livery of Victor Excavating and Landscaping, one of Mr. Twardokus' other enterprises.

Addressing the entire traffic issue must be addressed and reasoned out by the ZBA. Our health, safety and property values are at stake here.

Next, I have concerns about the Rochester Gravel Facility itself. Dormant for many years, we now have to suffer dust and noise from grinding, scraping, banging and beeping that was never an issue until Mr. Twardokus set up shop. Among his endless list of violations, Mr. Twardokus has imported hundreds of tons of contaminated materials into his pit two years ago. There is simply no well conceived, properly monitored mechanism in place to safely DUMP C and D materials here without endangering the local aquifer. Annual inspections by the DEC are inadequate, mine owners are not qualified to monitor and analyze materials, nor is it in their financial interests to scrutinize whatever is dumped there. WE ARE ALL ON WELLS HERE. There are some 45 residences in the area, Twardokus should post a bond to indemnify homeowners for the full value of their properties in the event of contamination. This would run into millions of dollars.

This is not the neighborhood I moved into twenty years ago. Our quality of life is deteriorating, property values are likely being compromised based on the unbridled avarice of two corporations. The turnover of residences on the road seems profound. I implore the Avon ZBA to exercise every possible authority it has to hold mining operations, particularly Rochester Gravel Products, to the most restricted levels, strictest limitations on operations and highest socially conscious and environmental standards within the ZBA's authority.

Eric Huppert and Debra Salmon, 1160 Oak Openings Road

Bruce & Anne Bristol, 1605 Oak Openings Road, Avon, NY 14414:

Re. Feb. 16 Zoning Board of Appeals Meeting.

Would suggest a provision should be made requiring the gravel pit owners to cover the cost of having the homeowners' wells checked periodically.

Bruce and Anne Bristol, 1605 Oak Openings Road, Avon, NY 14414

Rick & Karen Crater, 1177 Oak Openings Road, Avon, NY 14414:

Notes taken from Oak Openings LLC's Special Use Permit Application to the ZBA meeting on 2/2/2022
Responses Submitted by Rick and Karen Crater 1177 Oak Openings Rd.

Points Dale presented at the meeting:

- We are seasonal.
My response: Seasonal to me is that it operates from April 1st to November 30th. We have seen 12 or more trucks exiting the mine in December-January. Unfortunately, his peak months of operation coincide with the resident's peak times to enjoy what we invested our hard-earned money and lives to create in our homes and property. There have been studies done that found excessive noise causes stress and hearing loss. Diesel fumes and dust can cause health issues as well.
- There won't be 30 trucks all day long. There will be peak times.
My response: We see trucks exiting the mine loaded before 7AM and running past 4 PM. They run all day long and usually wind down around 3:30PM. Residents on the road could barely tolerate the 12 trucks per hour exiting the mine and can't even imagine how they could tolerate 30 trucks. More than 12 trucks per hour exiting the mine is the point that many complaints are filed.
- He talked about the traffic study and that the road can handle much more than the 30 trucks exiting the mine per hour.
My Response: The SRF traffic study has many errors and uses traffic data from 2016. From the Livingston County Highway department traffic studies done in 2021 that I requested; the numbers are higher. Covid has not decreased the traffic on our road. I do not believe that Honeoye Falls #6 road is constructed from the same materials as Oak Openings Rd., as we were told that Hanson maintains the road for the Town of Rush in order to haul on that road. The traffic study says that their will be no increased noise. It might be true that the highest DB level reading they calculated is what it actually will be, but reality is different and it is the constant DB level of noise that damages the ears.
- He said he wants to be in compliance with his permits with the number of trucks and hours of operation.
My Response: He hasn't been in compliance numerous times in the past three plus years. So, with all the complaints filed with the Town Code Office, he hasn't lived up to the resolutions he gave the Code Officer. Trucks are using N. Avon Rd., speeding, still using jake brakes, and are not fully maintained. He is loading trucks before 7AM.
- He commented that the trucks were not going to be all day and that after 4PM you shouldn't see more than a couple if the hours are changed to 6PM. He said he is not going to make his employees work 11 hours. He said he needs those extended hours to work within the mine and there might be an occasional truck come in, but he doesn't want to be in violation if one does.
My Response: Shut the gate at 4PM and that won't happen. Develop your processes to prevent opportunities for violations.
- He said he would respect the business across the street for events and try not to impact any events.
My Response: He didn't think anything about this before, why now? Do you really think if he has a big job, he is going to tell them he can't work because there is a wedding going on?
- He said he had developed a rapport with some neighbors and built a berm, so they didn't have to look at the mine. He said no one told him to do that, he just did it on his own.
My Response: Is this just like he said back at the first ZBA meeting, that he sent a letter to all the neighbors, which was untrue?
- Brian Glise commented that it was not fair that residents north or south of the mine should have to deal with all the trucks passing their houses.
My Response: Dale had said he explored a way to keep the truck traffic off our road. Where is the proof he actually did that?
- Dale said he only has two trucks for Rochester Gravel Corp.
My Response: Yes, this may be true, but trucks from his other businesses (Victor Excavating Inc. and Victor Gravel Corp.) get or dump materials at the Oak Openings Pit.

- Dale was asked a question about the trucks being piled at the entrance of the mine by a ZBA member. He responded, no, the mine could accommodate around 150 trucks.

My Response: If the mine can accommodate 150 trucks and if you allowed traffic to go both ways, potentially he could send 30 or more trucks both ways. I think there should be a set route of ingress/egress in order to control and enforce his permit.

- When asked by a ZBA member about the C & D material and how do you know the material is not contaminated, he responded we have a form that states how much they are bringing in and from where.

My Response: In my opinion, no one is trained to recognize contaminated material and the material is not tested, so there is no way to ensure that our wells will not be contaminated. I suggest that importing C & D material is not an excavating activity and be prohibited in the Town of Avon. The explanation of a mining operation from the DEC website:

In New York, regulated mining operations have an approved mining plan that specifies how mining will take place, and an approved reclamation plan that provided for return to productive use. Financial security submitted by the mining permit applicant ensures that the land will be reclaimed.

C & D material is classified by the DEC as Solid Waste. It can be recycled, and reused. It is not an excavating/mining activity. Therefore, it should not be allowed to occur in the Town of Avon as a part of an excavation operation, especially because there is no municipal water available to the residents in case contamination did occur. There aren't any other C & D operations in Livingston County.

The definition of excavation according to the Merriam-Webster dictionary is Definition of *excavation*

1: the action or process of excavating

2: a cavity formed by cutting, digging, or scooping

Dale indicated a project on 390 where he was hauling in the asphalt as they repaved the road. The ground down materials will be used to re-pave the South going lane of 390 next year. This material will be sitting in the mine for a year. The location of the pile is fairly close to the area with the pond and the stone washing station. I don't know much about asphalt, but it would make sense that it would contaminate the soil and possibly water if it sat for a long time and dust from breaking it up got into the soil and water.

- A ZBA member asked about DEC inspections. Dale indicated that the DEC is in there all the time.

My comments: The DEC website indicates the last inspection was 2/24/2021. So, if the DEC is really in there, even for a complaint, it should be part of their inspection record and information available to the public.

- A ZBA member asked about water testing. Dale commented that he has a monitoring well. He tests the water and sends the report to the DEC once per year.

My Response: Shouldn't this be more frequent due to the potential of our wells being contaminated? This well was to monitor the gas and diesel tanks located on the property, as well as the level of ground water, not contamination seeping into ground water from C & D material.

- Dale said he could reduce the trucks on Saturdays and after 4 PM, but needs the additional hours in case a truck comes in late to finish a job.

My Response: He is asking for everything that he possibly could get to reduce the number of complaints and possible fines. He isn't really looking to help out the mine's neighbors. He says that no other mines are restricted to the number of trucks. He talked about Hanson not being restricted. Fact, his Victor pit is restricted to 10 trucks per hour.

- He said no other mine is restricted to truck traffic. He mentioned Hanson.
My Response: He can't compare himself to Hanson, as Hanson is the biggest supplier of aggregates in the U.S. They listen and make concessions to the neighboring properties. Hanson is an approved NYS supplier of Concrete and Hot Mix materials and is not restricted to truck traffic as they do projects in the evening as to not interfere with traffic. Currently, there are 4 residences to the East of the Hanson haul road to the nearest State Highway (Rt. 15A) and 20 houses to the West of the Hanson haul road to the nearest State Highway (Rt. 15). Most of these houses are well vegetated between the house and the road or set back quite a distance from the road. He is restricted to 10 trucks per hour exiting the mine he owns in Victor. There must be a reason that he is restricted there too. What is it? Maybe it is the location, which is very similar to the location here, rural with many residences. He also lives very close to the location and has to deal with his neighbors. We could FOIL other mining permits in the area to see if they are restricted.
- Federal Holidays were talked about. He really didn't commit to changing them.
My Response: He really hasn't made any concessions to free the neighbors from the noisy trucks and mining operations.
- Road Dust and Road condition was mentioned. Dale said he bought equipment to keep the road clear.
My Response: Every DEC permit states that the permittee is responsible for dust control and road condition. Here are two clauses from his current DEC permit:
5. Dust Control Water or other approved dust palliatives must be applied to haulage ways and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property.
9. Keep Mine Access Roads Clean All mine access roads intersecting paved or public roads shall be kept free of any spilled and/or tracked materials

He only obtained this equipment as a result of the DEC fining him. There was a second incident after the first, so he didn't learn or address the issue the first time.

Tom & Karen Schiedel, 1188 Oak Openings Road, Honeoye Falls, NY 14472:

To: Town of Avon Zoning Board
From: Tom and Karen Schiedel
1188 Oak Openings Road
Honeoye Falls, N.Y. 14472

Re: Oak Openings, LLC - Special Use Permit Modification Public Comments - Page One for Zoning Board Meeting on February 16, 2022

We live at 1188 Oak Openings Road and we have lived here for 45 years. We have attended Avon Town Board meetings many times regarding operations at Oak Openings, LLC and how the mining operation has affected us as residents on Oak Openings Road and our neighbors on North Avon Road. We have presented our concerns over and over to the Town Board. **They are:**

The number of trucks going past our homes daily – traffic/speed/road condition/diesel fumes

**NOTE* this was with up to 12 trucks per hour exiting the mine*

Noise levels from the big trucks – repetitive noise stresses and its' effect on neurological and hearing health (for those living closest to the road it is particularly bad) **with up to 12 trucks per hour exiting**

Air pollution from diesel emissions – what are acceptable levels to maintain health?

Road safety for everyone with trucks passing by so frequently – busses, children, people walking, trash collectors, lawn mowing companies, etc. **Safety when exiting our own driveways**

Their current permit to allow importation of C & D debris materials after their initial permit was revoked when contaminated materials were found at the site

Our wells – possible contamination, well water quality, well water quantity or wells going dry

Home and property values negatively affected

Stipulations of Oak Openings LLC's current permit being violated on too many occasions

When we learned of a new Special Use Permit Modification application to the DEC, many of us wrote to document our concerns to the DEC during the public comment period. Much to our dismay and with none of our concerns validated, the DEC approved **all** their requested changes to their Special Use Permit including an **unbelievable** increase in trucks exiting the mine from 12 trucks per hour to 30 trucks per hour!

It seems we may be forced to live with the consequences of the DEC's determination, but **we are asking the Town of Avon Zoning Board to use their authority to regulate and limit the *stipulations of the new special use permit that drastically and negatively affect us and our neighbors – Town of Avon residents and taxpayers! *These are:**

***The increase from 12 to 30! trucks per hour exiting the mine.** This **150%** increase is a **huge** issue to residents on Oak Openings Road. Why is such a large increase needed? How could that not negatively affect traffic patterns, safety, etc. on our road? What number per hour is too many for the environment or for our neighborhood or for people's health? **We ask that you maintain the current Town of Avon Special Use Permit number of 12 trucks per hour exiting the mine.** If 30 trucks per hour exiting were allowed – that would mean at maximum there could be potentially 60 trucks per hour going past our home in one direction or another (**one truck per minute!**) if truck traffic is still directed north as it is now. It is just plain unacceptable! How could any entity (DEC or otherwise) come to any different conclusion?

From: Tom and Karen Schiedel, 1188 Oak Openings Road

Re: Oak Openings LLC – Special Use Permit Modification Public Comments - **Page 2**
for Town of Avon Zoning Board meeting on February 16, 2022

Question? Could there be another route of ingress/egress that could alleviate the large number of trucks travelling one way or another on Oak Openings Road or other side roads?

***The increase in daily and Saturday business hours.** The Town of Avon's initial Special Use Permit stipulated 7 AM - 4 PM Monday through Friday and no Saturday or Sunday hours. The new special use permit from DEC names 7 AM – 6 PM Monday through Friday and Saturday 8 AM – 2 PM.

We ask that you maintain the 7 AM – 4 PM Monday through Friday and no Saturday hours.

The weekday repetitive noise levels from current truck traffic already is an issue for residents – particularly those whose homes and front yards are closest to Oak Openings Road. With the current permitted number of 12 trucks per hour exiting the mine – 12 must also enter, so the residents could potentially be exposed to 24 trucks per hour passing their homes. Some whose homes are closest to the road have had diesel fumes “lingering” in the air in their front yards. Extending any business hours for Oak Openings LLC will only make this situation worse. One neighbor almost across from the mine entry is a business owner. She has a wedding venue. Saturday hours for Oak Openings LLC could have a profound negative effect on her business and her clients or potential clients.

Other matters of high concern for our residential neighborhood:

***The DEC permit for Oak Openings LLC to import C & D materials** is a big concern to us. Once in 2018, their permit was revoked because they imported materials that were contaminated. They re-applied and got the permit reinstated. Our homes and property values could be severely and negatively affected by contamination of our water supply.

***No other water sources available if our wells become affected by mine operations in any manner**

***Oak Openings LLC's further expansion plans**

In the DEC's SEQR Determination, it describes the 18-acre Life of Mine (LOM) that was also approved in Oak Openings LLC's DEC Special Permit Modification. **From the SEQR Full Environmental Assessment Form, dated September 02, 2021 - Part 3 – Evaluation of the Magnitude and Importance of Project Impacts under “Impact on Land”:**

“The 18-acre modification area will be added to the northeastern end of the existing LOM and is divided into 2 phases. Phase 1 will be worked only with an excavator and truck until a 30-foot depression and room for a processing plant are developed. **The 2nd phase will not begin until Phase 1 has been completed. At that time, a processing plant may move into the Phase 1 area.**

I think we all know what “may” means in that sentence. The 18-acre expansion of the LOM is to be added to the **“northeastern”** end of the existing LOM. What kinds of noise or dust levels might your Town of Avon residents (us and our neighbors) experience if this Phase 2 happens? Further mine expansion in the Town of Avon needs to be addressed!

We ask that you seriously consider all of our concerns and that you act to protect our rights as homeowners and tax payers in the Town of Avon.

Sincerely,
Karen and Tom Schiedel

John Company, 916 Works Road:

To Whom it may concern.

My name is John Company and I reside at 916 Works Rd. I am writing to express my opposition to the special use permit modification being applied for by Rochester Gravel. I am specifically opposed to the increased truck amount from 12 to 30 trucks an hour and the increased hours of operation including Saturdays. Ever since the original special use permit was put in place to force all truck traffic in a single direction, I have had to endure way to much every day in terms of noise and pollution caused by the excessive truck traffic past my house. When I bought my house in 2004 there was zero truck traffic from the mine. At 12 trucks an hour it is nearly unbearable, and I cannot enjoy my own house, I can't even fathom what 30 trucks would be like. Please keep in mind as a round trip I am being asked to live with 60 trucks in any given hour going in either direction past my house. In the fair weather times, I can no longer open my road facing windows due to all the additional noise and pollution which usually starts at 6:30 am given my proximity along this route. I also endure the speed up and speed down (including the wonderful jack breaks) as the trucks approach the stop sign at the intersection of Works Rd and Honeoye Falls 6 Road.

If truck traffic needs to be increased, I asked that the burden be shared with all people to the north and south of the gravel operation which would allow truck traffic to come in from 5/20 side as well. As it sits currently, I feel the town is placing an undue burden upon a select subset of the town population. If you have any follow on questions please feel free to contact me at my cell or email.

Thank You - John Company, 916 Works Rd, 585.738.8223

**MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY JEFF PASSARELL;
SECONDED BY DIANE ATTEA.**

**JEFF MULLIGAN - ABSENT
CINDY KELLEN - AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE**

CARRIED 4-0.

Ashley Champion, Attorney with Nixon Peabody, representing Oak Openings, LLC, stated that everyone has received the modification to the special use permit application and at the February 2, 2022, meeting discussed this application as well.

She briefly gave some points of the application; mining operation are different than other uses as in that they are regulated not only by local zoning but also by State of New York and specifically by the DEC. In the Town of Avon, mining is an appropriate and special permitted use in this area where this mining operation is located and has been located for decades along with the other mining operation that is down the road. There was a mining/excavation moratorium in the Town of Avon during 2021 and the Town Board didn't make any changes or deemed this inappropriate for the area when the moratorium expired. The provisions in the code current allows hours of operation for mining consistent with the request in this application along with the hours in the DEC permit.

The DEC is the permitting authority, and they preempt general operational issues with respect to mining. Towns have the authority to say whether mining is appropriately zoned in specific areas and to place certain conditions on mining operations; they don't have the authority to generally say how mining operations is going to work or operate, that is up to the NYS DEC.

The Town does have the authority once the NYS DEC permit is issued to enforce and administer that NYS DEC permit.

On January 3, 2022, we received our modified permit from the NYS DEC, and they did an environmental review and the Town signed off on for the DEC to be lead agency and that the increased truck traffic we are seeking has a negative impact. We are now back to the Town ZBA Board looking for this new modified NYS DEC permit to be referenced in the Special Use Permit that was approved in September 2018.

Ms. Champion stated that the residents here tonight are going to give testimony to the fact that they don't like living near a mining operation and probably are all the concerns that we have heard at previous meetings, while they feel that way, they are not necessarily relevant to this modified application which is an operational request to truck traffic.

Ms. Champion asked if there were any questions from the Board members before we go to public comments.

Bob Westfall stated at the last meeting the mine couldn't predict the amount of the trucks received within an hour. Bob feels that this can be controlled by a traffic controller, and this would be an appropriate solve for this issue.

Ms. Champion stated there is a need to have the ability to be able to service more than twelve trucks an hour especially during peak season. Companies that have larger projects are not doing business with Oak Openings LLC due to the restrictive truck limits per hour and that is causing a financial hardship on this operation. They do feel with the new truck traffic limits being requested they will be able to adhere to the Town's special use permit. Ms. Champion does feel efforts are made to control the number of trucks per hour but sometimes it is out of their control when trucks arrive. Again, this is a seasonal business and will not be happening daily.

Cindy opened the floor to the public for comments.

Lisa Arnold, 6516 North Avon Road, Honeoye Falls, NY, we have lived in our house for 20 years and we look right down into the mining pit. When Dolomite was there you rarely heard any noise or trucks then the mine went dormant for years. There is a financially, mentally, and socially hardship on my family with the mine, we hear the noise constantly. It is supposed to be a seasonal operation, but it is every day. There are a lot of trucks on the road, and it is scary, the mine is being a bully to the neighbors. She feels she can't go outside or open the windows due to the dust and noise. She is concerned about their wells and is nervous to drink her water. She is concerned if she wants to sell her house no one will buy it because of the mining operations.

Bridget O'Toole, Attorney with Zoghlin Group, 300 State Street, Rochester, NY 14614, here on behalf of some of the neighbors, she sent a letter to the Board members on February 11, 2022, and she wants to clarify that the Town Board didn't say that this was going to be an appropriate or continued permitted use, they didn't take any action but there was discussion to continue to evaluate this concern while allowing the moratorium to lapse. The Town Board raised concerns to the DEC about truck traffic increase and history of violations by the applicant.

She feels this Board has more authority than the applicant is allowing you to believe, you can regulate setbacks, dust control, hours of operation, and mining is not a permitted use it requires a special use permit. You are also allowed to regulate what happens on Town Roads and truck routes are local issues not state. Courts have repeatedly denied special use permits on truck traffic basis. This is an agricultural zoned area and mining is not permitted as a right. The neighbors are concerned about their quality of life, noise has a negative impact. She is requesting that the public hearing be left open so additional written comments could be submitted.

Jacalyn Eddy, 1565 Oak Openings Road, Avon, NY, she urges this Board to do what the State hasn't been willing to do and that is to act on the rights of the taxpayers in the vicinity of this mine to enjoy their properties. She encourages you to exert reasonable limits on hours of operations and route of ingress/egress. The mine owner doesn't care about us, so we appeal to this Board. The applicant has consistently shown to be a violator whether it is truck route, truck traffic, or dumping contaminated C&D material. The applicant must accept responsibility for what enters the mine, when and how it enters, and how it leaves. Eleven hours a day, 5 days a week and 8 hours on Saturday and let's say 60 trucks an hour if include both entering and exiting, that is undeniably excessive for this neighborhood. This exposes the residents to Federally acknowledged health hazards. The mine should close by 5PM when residents get home from work and want to enjoy their property. This is a completely reasonable ask, the mine should be closed on Federal Holidays and traffic shouldn't exit the mine on weekends. She urges the Board to establish a route for ingress/egress to monitor the mine owners traffic compliance.

Karen Crater, 1177 Oak Openings Road, Honeoye Falls, NY, we are asking the ZBA Board to deny the following changes to the current special use permit specifically the hours and days of operation, truck traffic, no operations on Federal Holidays, and allowing importation of C&D materials. She realizes mining is allowed in Avon and would approve the additional 18 acres requested by applicant. She would like a different route of ingress/egress possibly to Jenks Road to eliminate truck traffic on Oak Openings Road. If this is not possible, she would like the Board to determine a route that is safe and enforceable. She feels like the Town and residents were misled about this operation from the start and there has been nothing but violations including operating without a permit and bringing contaminated materials into the mine. The DEC told her that the C&D material had to be moved in and out of the mine within three days. Some residents toured the mine and there was a pile of asphalt that was going to be used next year and this pile is near the washing station and pond. The DEC changed the procedure and now requires SEQR for mining operations importing C&D material.

Caroline McKee, 1665 Oak Openings Road, Avon, NY, she brought some of this information up when this first started. There is a new law in NYS that guarantees clean air, and we have a legal right to clean air. Dump trucks of a certain size don't require any emissions standards, there have been several court cases where factories were emitting Benzene which is included in diesel exhaust. The WHO (World Health Organization) has classified Benzene as a Group 1 Carcinogen.

The NYS State Health Department recommendations that heavy truck traffic be 650 feet away from homes, this has been proved twice in court. The only recourse we have is to contact the troopers to ask for spontaneous emission testing. There was a picture she submitted with the residue on homes from diesel that you need to take into consideration when approving 30 trucks an hour.

Roger Vanderbrook, 1533 Oak Openings Road, Avon, NY, he is opposed to the modifications to the special use permit which is an increase in the truck capacity and increase in operation hours. Under the current special use permit that works out to a maximum of 540 loads a week, under the proposal it goes up to 1830 loads a week possible which is a 240% increase. The pit owner says that won't happen, but it could happen and there is no way to restrict that. There is a traffic study associated with this permit, but it looks at bigger picture issues, it doesn't look at the impact on the people who live along those roads. The modified application doesn't specify changing the truck routes which already are defined in the special use permit so that is not on the table.

Debbie Nupp, 6555 North Avon Road, Honeoye Falls, NY, we have a small farm, and I am concerned about the increase in traffic, safety and our water and the dust that comes out of that pit. The health hazard is not something I don't want as a two-time cancer survivor.

Tom McGovern, 6429 North Avon Road, Honeoye Falls, NY, there are three registrations for importation of materials, and he would like to ask the applicant if he would please give up one of those, the one for uncontaminated soil, sand, gravel, and rock, maybe have that moved to the Victor pit. That is the one that already came into the mine, those are well destroying carcinogenic chemicals and we all have wells and there is no municipality water available.

Eric Huppert, 1160 Oak Openings Road, Honeoye Falls, NY, in addition to the many comments that I have made and written, the gravel pit has a couple of customers who would like to do business with them but feel they can't get a competitive price, or they can't get the supply they need, let them go down the road to Hanson were we already must deal with the noise from them. I am surrounded by Hanson to the North and Oak Openings to the South and why do we need gravel wars with us neighbors sandwiched in the middle. He is appealing to this Board to exercise the strongest control possible and minimize the footprint and the operation of Oak Openings.

Randy Arnold, 6516 North Avon Road, Honeoye Falls, NY, the only comment I would like to make is that legal counsel's only concern is about the law but today she stated it is not relevant or informative on anything but what is in the application. Mr. Arnold feels that water supplies are relevant to our way of life and that shouldn't be discounted. I am concerned with the noise and dust, I know you can put up with that, but you don't want to, but if I don't have water or contaminated water, I am done, I can't live without that. Who would be liable then??

Debbie Salmon, 1160 Oak Openings Road, Honeoye Falls, NY, we have written many things to the Board as well and I want to remind everyone that we keep referencing Hanson, but Hanson trucks don't go down Oak Openings Road.

Tom McGovern, 6429 North Avon Road, Honeoye Falls, NY, wanted everyone to know that that registration he was discussing previously, Hanson doesn't have the registration as far as he could tell. No one else in Livingston County has that registration either.

Caroline McKee, 1665 Oak Openings Road, Avon, NY, one of the things on the C&D registration is the DEC requires that anyone who works in the pit have training. The last time I contacted the training facility there is no record of anyone from Rochester Gravel or other alias having gone through the training to be able to pinpoint the contaminated material. The only reason Dale knew it was contaminated last time was because of the company it came from, and he knew he wasn't allowed to import from them. No employee knew what the contaminated materials looked like; they only knew they were not allowed to accept from that company. She feels that should be an imperative requirement from this Board to the applicant.

Lisa Arnold, 6516 North Avon Road, Honeoye Falls, NY, our home is the first well that will be affected because the water flows North and that is where our house is.

Karen Crater, 1177 Oak Openings Road, Honeoye Falls, NY, the DEC isn't always right, there are problems here and there.

Cindy asked if there were any other public comments and wanted everyone to know that the Board is very concerned, and we have read all your letters.

Diane wanted to make a motion to hold the public hearing open until next month's meeting.

Ms. Champion asked if this is to gather additional comments and Cindy stated it will give this Board time to consult with the Town Attorney, James Campbell.

Ms. Champion stated that she sympathizes with the Board with this matter at hand. She wanted to remind the Board that the NYS DEC looked at all the concerns presented tonight, and the Town of Avon agreed that the NYS DEC was the lead agency. The NYS DEC took on the roll and found a negative declaration which is binging on this Town. If you look in our application under exhibits E, F, and G you will see the results of these studies performed.

Bob Westfall wondered why this Board is here if the NYS DEC is the authority. Ms. Champion stated the applicant could just go with the conditions in the NYS DEC permit which would have the neighbors call and complain to the Code Enforcement Officer. The NYS DEC trumps and governs over the Town but the applicant wanted to make sure things are clear as possible and not have any violations brought against him.

Bob Westfall also wanted to let everyone know as a Board we have addressed everything commented here tonight in our original special use permit, hours of operation, truck route, and truck traffic. The applicant is coming back to us now to increase their business and if the NYS DEC makes the final ruling, why are here.

Ms. Champion stated she is not saying you don't have power in deciding this application, but it is limited as to what the roll of this Board is. The applicant wants clarity moving forward and avoiding any litigation.

The Town shouldn't be favoring one business over the other. The business down the road has hours of operations consistent with what is in your Town code and Hanson has no restriction on truck traffic. The restrictions in place for this applicant is causing a financial burden.

Debbie Nuff, 6555 North Avon Road, Honeoye Falls, NY, feels the counsel and pit owner are being very disrespectful to the neighbors.

Caroline McKee, 1665 Oak Openings Road, Avon, NY, Hanson is grandfathered in according to the DEC and none of the existing rules applies to them. She feels there is competition all over the place and that is not a good analogy. The DEC according to the noise, traffic, dust jurisdiction stops at the mine entrance and after that is the Town's responsibility. It is misleading when the DEC found no negative impact.

Jacalyn Eddy, 1565 Oak Openings Road, Avon, NY, feels the counsel for the applicant gets more time to speak than the residents. She is in favor of keeping the public hearing open until next month's meeting and there may be more comments to be submitted.

Bridget O'Toole, Attorney with Zoghlin Group, 300 State Street, Rochester, NY 14614, a couple of procedural points with regards to the state environmental quality review act, the decision of the DEC is not binding on this Board. The Town can do its own SEQR findings and I can submit something on that if the public hearing is held open. Regarding the mitigation, this Board found in the original special use permit back in 2018 that there were impacts and they limited the truck route and truck traffic and hours of operation. Even though the NYS DEC found no significant impact with the increased truck traffic doesn't mean there weren't existing issues which required mitigation when there was limited hour of operation.

Ms. Champion pointed out without being disrespectful to anybody, her job is to be appropriately representing this application and its legal framework. She feels Ms. O'Toole's referencing this Board can make their own findings, that is only when there is a positive declaration not when there is a negative declaration. The NYS DEC issued a negative declaration and that is binding by all involved agencies including this agency.

Ms. O'Toole stated that if this hearing is held open, she will supply additional comment on that point to the Board.

Ms. Champion also stated that the comment the DEC only looks within the mine is incorrect, the whole point of an environmental review is looking at the impacts on the surrounding areas outside of the mine. She also wanted to let the Board know that the Hanson permit was issued in 2019 from the Town after the Oak Openings permit was issued.

Cindy Kellen stated that permit was only for the expansion of mining area. Ms. Champion stated the permit issued in 2019 includes their current conditions which doesn't have any limitations on hours of operation or truck traffic.

Eric Huppert, 1160 Oak Openings Road, Honeoye Falls, NY, stated we keep referring to Hanson, but the bulk of Hanson's operations are within the Towns of Mendon, Lima, and possibly Rush. The small portion in Avon is essentially being developed.

Regarding the noise issue, whether made by a facility or truck traffic, I have been here for 20 years, and the mine has been dormant for a decade, so I am going from no noise to significant industrial operations. To state there is not going to be an increase in noise is ridiculous, it is just common sense regardless of what a noise study says.

Randy Arnold, 6516 North Avon Road, Honeoye Falls, NY, there seemed to be implied that the applicant is willing to talk about a compromise to make everyone is happy, he is wondering how much you are really willing to do. What assurances can we come up for us to know that things are being controlled, monitored that will be adhered too.

MOTION TO CONTINUE THE PUBLIC HEARING AT THE MARCH 21, 2022 MEETING WAS MADE BY DIANE; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - ABSENT
CINDY KELLEN - AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 4-0.

Cindy stated that any other public comments need to be submitted to Kim by March 1, 2022 at 4:00PM.

MOTION TO CLOSE THE MEETING WAS MADE BY JEFF PASSARELL; SECONDED BY BOB.

JEFF MULLIGAN - ABSENT
CINDY KELLEN - AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 4-0.

MEETING CLOSED.