

PLANNING, ZBA & TOWN MEETING

MONDAY, MARCH 21, 2022

MEMBERS PRESENT: PLANNING: KATHY COLE, CLARA MULLIGAN, BRIAN THORN, THOMAS MCGOVERN, KATHY MANNIX, CHRISTOPHER STERNER

ZBA: JEFF MULLIGAN, JEFF PASSARELL, BOB WESTFALL, DIANE ATTEA, CINDY KELLEN

ABSENT:

OTHERS: BRIAN GLISE (CEO, AVON), LANCE BRABANT (MRB ENGINEER), JIM CAMPBELL (TOWN ATTORNEY)

VISITORS: JOYCE BLOWERS, RON BLOWERS. JASON ARMBREWSTER, JANET WARD, NICK WALSH, BRYAN BAYER, DEBRA SALMON, ERIC HUPPERT, STEVE FANTUZZO, ASHLEY CHAMPION, KAREN CRATER, GARY HYDE, KEVIN OVERTON, JEFF SWAN, KARL MITCHELL, DALE TWARDOKUS, BRIAN KEYES, GARY T. WHEAT, DENNIS REGAN, MARILYN REGAN, CAROLYN MCKEE, ROBERT MCKEE, KAREN SCHIEDEL, GLENN THORNTON, ANDREA KRAJKA, JACKIE EDDY, GERALD TURK, STEPHANIE WILLIAMS, MARK FURIA

CLERK: KIM MCDOWELL

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

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

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
VACANT -
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

ZBA & PLANNING MOTION TO APPROVE THE MINUTES FROM THE FEBRUARY 21, 2021, MEETING SUBMITTED WAS MADE BY KATHY MANNIX; SECONDED BY KATHY COLE.

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

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
VACANT -
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Jeff Mulligan started the meeting by reading the following procedures for public hearing comments to all present.

The Purpose of tonight's Public Hearing are to facilitate public comment either in favor of or against and 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.

If you would like to speak, please raise your hand. 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.

Jeff Mulligan also stated that some of the public hearings tonight have been open for several meetings. If you have something new to add to what has already been said that would be helpful and please keep that in mind when commenting. Lance Brabant added that all previous comments are already in the record and unless it is something new, it would just be repeating what we already have heard.

HYDE, GARY & KIMBERLY/5729 NORTH AVON ROAD/TAX PARCEL#
25.-1-3.2 - ZBA - VARIANCE FOR SIDE SETBACK FOR POLE BARN

Mr. Hyde was present for this application and public hearing.

ZBA MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY BOB; SECONDED BY
DIANE.

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

CARRIED 5-0.

Jeff Mulligan asked if there were any comments.

Diane Attea asked if this was being used as a business and Mr. Hyde stated it is just for personal storage of his boat and equipment.

Jeff Mulligan stated this application is for a side variance and this is a very simple and straight forward request.

There were no other comments.

ZBA MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY BOB.

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

CARRIED 5-0.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
GARY & KIMBERLY HYDE - 5729 NORTH AVON ROAD
AGRICULTURAL ZONING DISTRICT - TM# 25.-1-3.2
AREA VARIANCE APPLICATION - SIDE SETBACK FOR POLE BARN
CONSTRUCTION

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Board of Appeals) is considering an Area Variance Application for a side setback of 15' where 35' is required (variance of 10') for the proposed pole barn located at 5729 North Avon Road within the Agricultural zoning district; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Appeals does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

BE IT FINALLY RESOLVED THAT, the Board of Appeals in making this classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Jeff Passarell and seconded by Jeff Mulligan at a meeting of the Zoning Board of Appeals held on Monday, March 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Jeff Passarell - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Zoning Board of Appeals for the March 21, 2022 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

Jeff Mulligan asked if the Board had any questions regarding Mr. Hyde's answers to the questions on the Tests for Granting Area Variance sheet and there were none.

TOWN OF AVON
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23 GENESEE STREET
AVON, NEW YORK 14414
 PHONE: (585) 226-2425 • FAX: (585) 226-9299
http://www.avon-ny.org/index_town.html

BUILDING AND ZONING DEPARTMENT

ZONING BOARD OF APPEALS DECISION SHEET

Hearing Date: March 21, 2021

Project Name/Number: Gary & Kimberly Hyde
 • Area Variance for side setback for a pole barn

Subject Property Address: 5729 North Avon Road

Tax Account #: 25.-1-3.2 Zoning District: AG District

Agenda Item: Area Variance – for side setback of 15' where 35' is required (10' variance).

Motion made by: Bob Westfall Seconded by: Diane Attea

Board Members	Present	Motion		Recusal
		Aye	Nye	
1. Jeffery Mulligan, Chairman	X	X		
2. Jeff Passarell	X	X		
3. Cindy Kellen	X	X		
4. Bob Westfall	X	X		
5. Diane Attea	X	X		
Alternate: _____				

Approved: Denied:

Conditions:

1. Commencement of the project is to occur within one (1) year from the approval date or the variance will be deemed null and void.
2. Any modification to the plans, variance, and/or project will require the application to be re-reviewed by the Zoning Board of Appeals and any prior approvals granted be deemed null and void.

Kim will get in contact with Mr. Hyde once his permit application has been approved, processed, and ready for pick up.

FURIA, MICHEAL/6019 NORTH AVON ROAD/TAX PARCEL#25.-1-6.112
- ZBA -VARIANCE FOR 2 PRIMARY STRUCTURES ON A SINGLE PARCEL

Mr. Armbrewster was here to discuss this application and he stated Mike Furia Jr. owns the property, and his father would like to live on the parcel as well but not in an in-law apartment.

They would like to build a pole barn that will serve as half garage and half apartment for his father to live in and then build the primary residency for Mike Furia Jr.

Bob Westfall asked how many acres the parcel is, and it is approximately sixty acres.

They would have a shared septic system and would need to have a deed restriction in place for the Health Department to issue any permits. They will also have a shared driveway.

James Campbell stated the Zoning Board would not want to approve this application or issue any building permits without having the deed restrictions in place as well. The deed restriction would also have to be approved by the Town of Avon.

Jeff Mulligan asked if there is enough road frontage and there is.

Jeff Mulligan also asked if this accessory pole barn would be behind the primary structure, and it will be.

ZBA MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY DIANE.

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

CARRIED 5-0.

Jeff Mulligan asked if there were any comments.

Karl Mitchell, 6555 North Avon Road, Honeoye Falls, NY is against having multiple structures on a single property. He feels that in the future that could potentially become a rental property and what would stop them from building a third structure.

Bob Westfall stated they would need to come back in to the ZBA for another variance to build any other structures on the parcel and he doesn't foresee that being approved.

Jeff Mulligan asked Jim Campbell his opinion regarding this application.

James Campbell stated he believes there is a trend currently in zoning and planning where multiply residential structures are on the same parcel. He said families are moving closer to one another and more in-law apartments are being built. The Avon Town Code doesn't yet provide for that without a variance, but he suspects that if we undertook a comprehensive plan review this would be discussed.

Jeff Mulligan feels it is a positive thing for families and it is an opportunity for families to be closer together.

James Campbell stated the deed restriction is there to avoid creating a non-compliant situation within the Code in the future. The deed is intended to be a constrictive measure.

Cindy Kellen stated this variance is strictly just for this application, it is not a blanket change to our Code.

Clara Mulligan asked about the layout of the pole barn. Mr. Armbrewster stated that there will be an apartment in the back and garage in the front.

Jeff Mulligan asked if this would be a two-story pole barn and it will be a single story with attic space.

This building will be 260 feet back from the road.

Clara Mulligan asked if there was any code that they should know for this application and Brian Glise stated this is only for a variance. The plan will be looked at during the building permit process.

Tom McGovern asked if the standard checklists for a house will pertain to this, and Brian Glise stated it will.

Lance Brabant stated it will be treated like a residential structure.

Jeff Mulligan asked if there were any additional comments and there were none.

ZBA MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY BOB; SECONDED BY CINDY.

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

CARRIED 5-0.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
MICHAEL FURIA - NORTH AVON ROAD
AGRICULTURAL ZONING DISTRICT - TM# 25.-1-6.112
AREA VARIANCE APPLICATION - TWO (2) PRIMARY STRUCTURES ON SINGLE
PARCEL & ACCESSORY STRUCTURE IN FRONT OF PRIMARY BUILDING

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Board of Appeals) is considering an Area Variance Application for two (2) primary structures located on the same parcel and for an accessory structure to be located in front of the primary structure located North Avon Road within the Agricultural zoning district; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Appeals does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

BE IT FINALLY RESOLVED THAT, the Board of Appeals in making this classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Jeff Passarell and seconded by Cindy Kellen at a meeting of the Zoning Board of Appeals held on Monday, March 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Jeff Passarell - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Zoning Board of Appeals for the March 21, 2022 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

Jeff Mulligan read the Tests for Granting Area Variance questions and stated this is the only option other than subdividing the property which the owner doesn't want to do.

Jeff Passarell asked if the three-bedroom apartment could be altered in the future to become three apartments and Mr. Armbruster stated that would change the use and they would need to come back for approval.

Jeff Mulligan asked how big the building would be and it is 40x60. Jeff asked what percentage the garage is, and it will be no more than half of the building.

James Campbell stated this variance is for two primary structures on a single parcel and if they were to change it to 2 units in the same building, they would have to come back to the Zoning Board of Appeals.

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BUILDING AND ZONING DEPARTMENT

ZONING BOARD OF APPEALS DECISION SHEET

Hearing Date: March 21, 2021

Project Name/Number: Michael Furia

- Area Variance two (2) primary structures on single parcel and Accessory Structure in front of Primary
-

Subject Property Address: 6019 North Avon Road

Tax Account #: 25.-1-6.112

Zoning District: AG District

Agenda Item: Area Variance – Accessory Structure located in front of the existing primary structure. Two (2) primary structures on same parcel.

Motion made by: Cindy Kellen

Seconded by: Bob Westfall

Board Members	Present	Motion		Recusal
		Aye	Nye	
1. Jeffery Mulligan, Chairman	X	X		
2. Jeff Passarell	X	X		
3. Cindy Kellen	X	X		
4. Bob Westfall	X	X		
5. Diane Attea	X	X		
Alternate:				

Approved:

Denied:

Conditions:

1. Commencement of the project is to occur within one (1) year from the approval date or the variance will be deemed null and void.
2. Any modification to the plans, variance, and/or project will require the application to be re-reviewed by the Zoning Board of Appeals and any prior approvals granted be deemed null and void.
3. The deed restriction language is to be prepared by the applicant and forwarded to the Town Attorney for review and approval. The deed restrictions are to be approved and filed prior to the issuance of a permit.

James Campbell stated he will need to review the deed restriction before it is registered with the County, Mr. Furia will have his attorney send it over.

SWAN, JEFF/SWAN PROPERTY HOLDINGS, LLC/1839 LAKEVILLE ROAD/TAX PARCEL#35.-1-33.1/SPECIAL USE PERMIT

Mr. Swan was present to discuss this application, he the property at 1823 Lakeville Road and recently purchased the property at 1839 Lakeville Road. There is already a special use permit in place for 1823 Lakeville Road and he is looking for approval for one at 1839 Lakeville Road where he will be repairing construction trucks and equipment.

The equipment will be parked in the back of the building at 1839 Lakeville Road. He has cleaned up the building as well as the back property for equipment storage while they are being worked on.

Jeff Mulligan stated the property looks a lot better than it has in years. He also stated Mr. Swan needs a Special Use Permit for this parcel and that requires a public hearing be scheduled at next month's meeting.

Lance Brabant stated tonight is for any questions or comments and to schedule a public hearing for this application.

James Campbell stated this application needs to be sent to the County as well.

James Campbell also stated Mr. Swan has requested the Town Board rezone part of the parcel since it is currently zoned in the front half as General Business and the back as Agriculture. Mr. Swan would like it all to be zoned General Business.

The Town Board has asked him to draft a change in the zoning local law and it will be presented to the Town Board at their March 24, 2022 meeting.

Jeff Mulligan asked if there were any landscaping plans to hide the equipment in the back and Mr. Swan has no plans presently to do any landscaping.

Christopher Sterner asked if there would be any changes to the driveway and there will not be.

Clara Mulligan asked if the driveway would stay gravel, or will it be paved, and Mr. Swan has no plans to pave it.

Lance Brabant asked because this is a special use permit application will there be any changes to the site that you presented to the Board tonight, Mr. Swan stated there is only a plan to pour a concrete apron near the building.

Lance Brabant stated Mr. Swan needs to update the plan to show all parking locations (customer, employee & equipment) and the dimensions of that parking.

Lance Brabant also asked about signage because that is a different permit. Brian Glise stated there is a new sign on the building that was completed without a permit. Mr. Swan didn't realize he needed a permit for that and will take care of it.

Kathy Cole asked if there would be trucks sitting in the parking lot for an extended period and Mr. Swan doesn't foresee that.

Lance Brabant also asked for a detailed statement of operations to be submitted, he suggested any operations Mr. Swan plans or possibly foresees happening at this site be included.

Jeff Mulligan stated we need to schedule a public hearing for next month's meeting on April 18, 2022.

ZBA MOTION TO SCHEDULE A PUBLIC HEARING ON APRIL 18, 2022 WAS MADE BY CINDY; SECONDED BY BOB.

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

CARRIED 5-0.

Mr. Swan will submit everything requested tonight to Kim by Monday, March 28th for her to send over to the County.

AVON CSG 1 LLC ACTING AGENT FOR STARKEY DRIVE HOLDINGS LLC & PHILIP SILVAROLE/5530 WOLCOTT DRIVE/TAX PARCEL #44.-1-36.4 - SOLAR FARM-PUBLIC HEARING

Mr. Nick Walsh and Mr. Bryan Bayer were present to continue discussions on this application.

Mr. Walsh stated there were three items that needed additional attention for this application. The first item was a sign off by the Fire Chief on the emergency plan which was received and submitted. The second item was the list of native vegetation we compared with our plan and seventy percent of the trees we suggested are on that list. The other thirty percent we will change out to match ones on the list. The third item is the visual simulations to show the screening at planting height, 5 years, and 10 years which we submitted as well.

Clara Mulligan asked what a level spreader is, and Lance Brabant stated it helps take a concentrated flow and spread it evenly across the contours, so you are not creating any erosion, etc.

Jeff Mulligan asked if there were any public comments for this application.

Mr. Ron Blowers, Lake Road, Avon, NY asked how tall the trees will be in ten years. Lance Brabant stated at planting they are 6-8 feet and will be approximately 10 feet tall. Mr. Blowers stated if the trees get too tall, they will shade the solar panels which defeats the purpose. Lance also stated the landscaping is on the outside and the trees won't get tall enough to shade it.

Nick Walsh showed the visual renderings from his laptop to the Board members.

Clara Mulligan wondered how low to the ground the fence will be, and Mr. Bayer stated the fence will have smaller openings for animals to pass through at the bottom.

Clara Mulligan also asked what kind of mix they are using within the fence, and they are using northeast solar pollinator mix but they are not positive if it is native to our area.

Lance Brabant stated the Operations & Maintenance plan will specify what kind of seed mix is being proposed and they will propose a mix that isn't going to require frequent maintenance. MRB Group's comments are asking for more specifics on this item, but the plan is compliant with the Town's solar law.

Tom McGovern wondered what recourse is there if trees die or things change and Lance Brabant stated the Operations & Maintenance plan, site plan, and approvals all have language in them to rectify these situations.

Lance Brabant asked if they could show everyone exactly where the landscape will be on the parcel. The trees are along the front, 3 rows staggered, evergreens are shown, and they are getting native shrubs in the mix, but the applicant is concerned with the deer eating them. At planting the trees will be six feet tall and they are currently looking at the availability of the trees.

Lance Brabant stated that most of his comments are being addressed and if the Board wanted to grant approval, he has supplied site plan and special use permit resolutions for the Board's consideration.

Lance Brabant also stated the public hearing is still open and will need to be closed to continue with this application if they choose.

ZBA & PLANNING MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY BRIAN THORN; SECONDED BY CHRISTOPHER STERNER.

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

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
VACANT -
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Kathy Cole stated the site plan approval resolution needs to go first and asked Lance Brabant to read the conditions to all present.

Lance Brabant stated that due to the location of this application, the Town Board has also approved the use in a PDD by resolution at the meeting on February 21, 2022, along with some variances from our solar law. The Boards also completed SEQR.

TOWN OF AVON PLANNING BOARD RESOLUTION
AVON CSG 1 LLC SOLAR PROJECT
STARKEY DRIVE, AVON, NY
TAX MAP ID: 44.-1-36.12 & 44.-1-36.4
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), has received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the Avon CSG 1 LLC Solar Project (Project), a proposed 4.37-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located on ± 27-acres site within the Town of Avon as described in the Site Plans dated October 2021, last revised January 3, 2022 (the current application) and all other relevant information submitted and discussed at the March 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, this application was required to be forwarded to Livingston County Planning Board for review and provided a response of "No Action"; and

WHEREAS, the Town of Avon Planning Board has classified the above referenced Action to be a Type I Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQRA), a determination of significance and a negative declaration was adopted by the Town of Avon Planning Board on Monday, February 21, 2022; and

WHEREAS, on January 17, 2022, February 21, 2022, and on March 21, 2022, in compliance with NYS Town Law, the Planning Board & Zoning Board held Joint public hearings on the current application and completed a formal review of the application; and

WHEREAS, on February 21, 2022 the Town Board pursuant to §130-18 of the Town Code, authorized a Special Permit to be issued to the Applicant by the Code Department to the following extent and upon the following conditions:

1. Any construction and operation of the proposed Solar Energy System shall be fully compliant with the requirements and regulations as set forth in Article XV of the Code of the Town of Avon, excepting that the Town Board does hereby approve of the following deviations from that which would otherwise be required by Article XV, sections 130-80 E. and 130-80 E. (2) (b):
 - That the Solar Energy System proposed by Applicant be allowed on the Subject Property within the PDD (Solar Energy Systems are only allowed within the Agricultural District)
 - That the front setback be 100' from Starkey Drive (instead of 200' as required pursuant to §130-80 E.(2)(b) of the Town's Solar Energy System regulations
 - That the side and rear setbacks be 50' from the side and rear boundaries of the Subject Property (instead of 100' as required pursuant to the Town's Solar Energy System regulations
2. Should Applicant or his successors and/or assigns wish to utilize any portion of the Subject Property or the improvements thereon for a use other than what is provided for above, or in any way inconsistent with the provisions made herein, Applicant or its successors and/or assigns shall be required to make application for approval and issuance of a Special Permit from the Town Board, which such approval and Special Permit may be granted or denied at the sole discretion of the Town Board, and the Town Board shall have the right to refer any such application to the Planning Board for its comments prior to making a determination on the special permit request;
3. As a condition of the limited approvals granted herein, Applicant, its successors and/or assigns shall append, affix and maintain a copy of this Resolution to the abstract of titles relating to the Subject Property, also known as 5530 Starkey Drive, Avon New York, and being Tax Identifier Map Parcel Nos.: 44.-1-36.4 and 44.-1-36.12;
4. Any failure of Applicant or its successors and/or assigns to comply with the provisions of the Special Permit approved hereby shall subject the violator to enforcement proceedings set forth under Article XI of Chapter 130 of the Code and/or revocation of such special permit by the Town Board; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby approves the requested Site Plan with the following conditions:

1. The Applicant shall obtain a Building Permit within six (6) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twelve (12) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law.

2. No signage associated with this project has been approved. Separate approval by the Planning Board is required for all signage.
3. The Town Engineer review letter dated March 18, 2022 is to be addressed prior to the site plans being signed by the Planning Board Chair.
4. Site Plan Approval is conditioned on the Operations & Maintenance Plan for the Avon CSG 1 Solar Project, dated February 2022 and as discussed with the Zoning Board and Planning Board and revised per the Town Engineers letter dated March 18, 2022.
5. Site Plan Approval is conditioned on the Decommissioning Plan for the Avon CSG 1 Solar Project dated January 2022 and as discussed with the Zoning Board and Planning Board and revised per the Town Engineers letter dated March 18, 2022.
6. Site Plan Approval is conditioned on the Stormwater Pollution Prevention Plan (SWPPP) for Avon CSG 1 Solar Project dated October 2021 and revised per the Town Engineers letter dated March 18, 2022.
7. No permits shall be issued until the NYSDEC Acknowledgement letter from NYSDEC has been received by the Town Building & Zoning Department.
8. Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its discretion) for the decommissioning of the site and for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount to be approved by the Town Engineer based on their review of the Decommissioning Cost Estimate.
9. The Decommissioning bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal.
10. Each year after the Avon CSG 1 Solar Project has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Avon Building & Zoning Department & Town Clerk with written confirmation that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
11. After completion, the Applicant shall provide to the Town of Avon Building & Zoning Department a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
12. Prior to issuance of a permit the applicant shall enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9. (a).
13. Prior to any permits for any portion of the Project being issued, the Applicant shall enter into an Agreement/Plan for Decommissioning of the Project, in a form acceptable to the Town Board of the Town of Avon.
14. A Special Use Permit granted by the ZBA is required prior to signatures being affixed to the site plans.

15. All consultants' fees for review of application are to be reimbursed by the applicant to the Town prior to the issuance of permits.
16. The owner/operator is responsible for maintaining and replacement of all trees and landscaping as depicted on the approved site plans for the life of the project. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.
17. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a community benefit agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System.
18. Prior to issuance of any permit, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town of Avon and in a format acceptable to the Town of Avon at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, the Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
19. All contact information for the applicants, developers, and landowners are to be provided to the Town of Avon CEO prior to issuance of a permit.
20. A preconstruction meeting with the Town of Avon, once all conditions of approval have been met, is required to be held prior to issuance of any permit.
21. Battery Storage and associated site improvements are NOT approved for this project will require separate approval from the Town if requested.

The above resolution was offered by Tom McGovern and seconded by Brian Thorn at a meeting of the Planning Board held on Monday, March 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE
Vacant -
Kathy Mannix - AYE
Christopher Sterner - AYE
Clara Mulligan - AYE
Brian Thorn - AYE
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the March 21, 2022 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

Jeff Mulligan stated the next step is the Special Use Permit resolution and he asked Lance to read the conditions to everyone present.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
AVON CSG 1 LLC SOLAR PROJECT
STARKEY DRIVE, AVON, NY
TAX MAP ID: 44.-1-36.12 & 44.-1-36.4
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SUP APPROVAL RESOLUTION

WHEREAS, the Town of Avon Zoning Board of Appeals (hereinafter referred to as Zoning Board) has received an application for Special Use Permit Approval to allow for the development of the Avon CSG 1 LLC Solar Project (Project), a proposed 4.37-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located on ± 27-acres site within the Town of Avon as described in the Site Plans dated October 2021, last revised January 3, 2022 (the current application) and all other relevant information submitted and discussed at the March 21, 2022 Joint Planning Board and Zoning Board of Appeals meeting; and

WHEREAS, this application was required to be forwarded to Livingston County Planning Board for review and provided a response of "No Action"; and

WHEREAS, the Town of Avon Planning Board has classified the above referenced Action to be a Type I Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQRA), a determination of significance and a negative declaration was adopted by the Town of Avon Planning Board on Monday, February 21, 2022; and

WHEREAS, on January 17, 2022, February 21, 2022, and on March 21, 2022, in compliance with NYS Town Law, the Planning Board & Zoning Board held Joint public hearings on the current application and completed a formal review of the application; and

WHEREAS, on February 21, 2022 the Town Board pursuant to §130-18 of the Town Code, authorized a Special Permit to be issued to the Applicant by the Code Department to the following extent and upon the following conditions:

1. Any construction and operation of the proposed Solar Energy System shall be fully compliant with the requirements and regulations as set forth in Article XV of the Code of the Town of Avon, excepting that the Town Board does hereby approve of the following deviations from that which would otherwise be required by Article XV, sections 130-80 E. and 130-80 E. (2) (b):

- That the Solar Energy System proposed by Applicant be allowed on the Subject Property within the PDD (Solar Energy Systems are only allowed within the Agricultural District)
 - That the front setback be 100' from Starkey Drive (instead of 200' as required pursuant to §130-80 E.(2)(b) of the Town's Solar Energy System regulations
 - That the side and rear setbacks be 50' from the side and rear boundaries of the Subject Property (instead of 100' as required pursuant to the Town's Solar Energy System regulations
2. Should Applicant or his successors and/or assigns wish to utilize any portion of the Subject Property or the improvements thereon for a use other than what is provided for above, or in any way inconsistent with the provisions made herein, Applicant or its successors and/or assigns shall be required to make application for approval and issuance of a Special Permit from the Town Board, which such approval and Special Permit may be granted or denied at the sole discretion of the Town Board, and the Town Board shall have the right to refer any such application to the Planning Board for its comments prior to making a determination on the special permit request;
 3. As a condition of the limited approvals granted herein, Applicant, its successors and/or assigns shall append, affix and maintain a copy of this Resolution to the abstract of titles relating to the Subject Property, also known as 5530 Starkey Drive, Avon New York, and being Tax Identifier Map Parcel Nos.: 44.-1-36.4 and 44.-1-36.12;
 4. Any failure of Applicant or its successors and/or assigns to comply with the provisions of the Special Permit approved hereby shall subject the violator to enforcement proceedings set forth under Article XI of Chapter 130 of the Code and/or revocation of such special permit by the Town Board; and

WHEREAS, on March 21, 2022, in compliance with the Town of Avon Town Code, and Local Law No. 3 of the Year 2021 the Planning Board completed a formal review on the current application and granted site plan approval; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board does hereby approves the requested special use permit with the following conditions:

22. The special use permit shall remain in effect for the current owner of the premises with no requirement for renewal, provided the use remains in compliance with the conditions of approval, Town Code §130-11 and §130-35, and Local Law No. 3 of 2021.
23. The Town Code Enforcement Officer may make an on-site visit at least once over the course of the year, or as may be necessary to ensure that the Special Use Permit is being operated in accordance with the conditions specified by the Zoning Board.
24. In the event of any complaints about the Special Use Permit being filed with the Code Enforcement Officer and failure to take corrective action by the applicant shall be brought to the attention of the Zoning Board.

25. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer to determine compliance with Town Code requirements and conditions of this approval.
26. No signage associated with the Special Use Permit has been approved. Separate approval by the Planning Board is required for all signage.
27. All conditions as required by the Planning Board as part of Site Plan approval are required to be addressed prior to the issuance of permits.
28. Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its discretion) for the decommissioning of the site and for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount to be approved by the Town Engineer based on their review of the Decommissioning Cost Estimate.
29. The Decommissioning bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal.
30. Each year after the Avon CSG 1 Solar Project has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Avon Building & Zoning Department & Town Clerk with written confirmation that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
31. After completion, the Applicant shall provide to the Town of Avon Building & Zoning Department a post-construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
32. Prior to issuance of a permit the applicant shall enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a).
33. Prior to any permits for any portion of the Project being issued, the Applicant shall enter into an Agreement/Plan for Decommissioning of the Project, in a form acceptable to the Town Board of the Town of Avon.
34. If the use of an approved Solar Energy System is discontinued, the owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. In any case, Solar Energy Systems are considered inoperative and abandoned after 180 days without electrical energy generation which is consumed onsite (or credit for onsite consumption is received) for Type 1 Solar Energy Systems or without production of energy and offsite sale to and consumption by one or more customers for Type 2 Solar Energy Systems.

35. If the Applicant violates any of the conditions of its Special Use Permit, Site Plan approval or violates any other local, state or federal laws, rules or regulations, such violation shall be grounds for revocation of the Special Use Permit or Site Plan Approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Avon Zoning Board of Appeals holds a hearing on same as provided for herein.
36. All consultants' fees for review of application are to be reimbursed by the applicant to the Town prior to the issuance of permits.
37. The owner/operator is responsible for maintaining and replacement of all trees and landscaping as depicted on the approved site plans for the life of the project. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.
38. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a community benefit agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System.
39. Prior to issuance of any permit, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town of Avon and in a format acceptable to the Town of Avon at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, the Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
40. All contact information for the applicants, developers, and landowners are to be provided to the Town of Avon CEO prior to issuance of a permit.
41. A preconstruction meeting with the Town of Avon, once all conditions of approval have been met, is required to be held prior to issuance of any permit.
42. Battery Storage and associated site improvements are NOT approved for this project will require separate approval from the Town if requested.

The above resolution was offered by Cindy Kellen and seconded by Diane Attea at a meeting of the Zoning Board of Appeals held on Monday, March 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Jeff Passarell - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Zoning Board of Appeals for the March 21, 2022 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

AVON STORAGE LLC/1558 & 1566 WEST HENRIETTA ROAD/TAX PARCEL#35.-
1-8.3 & 35.-1-8.112 - LOT LINE ADJUSTMENT & ADDITION OF FOUR
STORAGE UNITS

Mr. Thornton, Thornton Engineering LLC, was present to discuss this application. Mr. Thornton has changed the site plan according to the suggestions from the Board at last month's meeting. The revised site plan moved the boat/RV storage to the back and the four additional units moved to the side to help screening. The storm water pond will be in the far corner of the lot and the perimeter will be fenced.

Mr. Thornton also discussed the lot line adjustment submission which will make 1566 West Henrietta Road parcel bigger to accommodate the additional storage units and reduce the lot size of 1558 West Henrietta Road.

Kathy Cole stated the revised site plan looks so much better.

Kathy Cole asked Lance Brabant if the pond in the back is acceptable where it is, and Lance stated they are still reviewing the new site plan and will have comments later this week.

Lance Brabant also stated this application will need to be referred to the County.

Kathy Cole asked if there were any other comments.

Diane Attea asked what type of fencing will be installed and it will be a 6-foot chain link fence.

Kathy Mannix asked if there will be any new signage on the parcel and there will be no new signage and no changes to the current signage either.

Kathy Mannix also asked if the RV/boat storage is permanent storage or seasonal and it is seasonal.

Clara Mulligan suggested the applicant switch from Norway to White Spruce in the landscaping plans and they will investigate it.

Jeff Mulligan asked if there will be a berm, and there will be along with a drainage swale inside of the berm. Jeff also asked if where there is parking, does that go right up to the fence and it does.

Christopher Sterner asked if it will be paved surfaces or gravel and it will be just gravel.

Kathy Mannix asked if there is any new lighting, the existing facility doesn't have any lighting but on the new buildings there will be some new fixtures on the outside under the eaves.

Lance Brabant asked if currently there is any lighting in the storage area and there is not.

Jeff Mulligan stated no electric in the storage area either and that is correct.

Kathy Cole stated this must go to the County and no public hearing is required since this is just a site plan application.

Lance Brabant stated MRB Group will have comments on the revised site plan shortly and the Board should be ready to take action on this application at the April 18, 2022 meeting.

DG NY SOLAR CS IV, LLC, ACTING AGENT FOR GARY & EILEEN WHEAT/5406 LAKE ROAD/TAX PARCEL #44.-1-26.1 - SOLAR FARM - SITE PLAN & SPECIAL USE PERMIT APPLICATION

Jeff Mulligan stated the public hearing is still open on this application.

James Campbell stated the applicant is not prepared for approvals tonight and this is just a continuation of the application process.

Ms. Janet Ward is present to discuss this application. Ms. Ward has spoken to Livingston County and Avon Central School regarding the PILOT agreements, and they are in process.

Ms. Ward stated their engineers are still reviewing the storm water plan to investigate the comments at last month's meeting.

Ms. Ward stated that C-506 describes the seed mix that will be under the array, and it is a mix of noninvasive grasses and forbs that will be drought tolerant and minimize the maintenance. The Operation & Maintenance plan discusses all the mowing plans. The landscaping plan is discussed in C-600 and the wetland area is part of the Army Corp of Engineer and they have been consulted as well.

Ms. Ward stated that the plants will be drought tolerant and deer resistant. The visual renderings were submitted for the phases of the project.

Brian Thorn asked regarding the storm water issues what are they looking at. Ms. Ward stated the comments from the neighbor last month made her have the engineers to double check their calculations. Lance Brabant also stated they are compliant with what was submitted for storm water.

Clara Mulligan asked if it is just grasses or a mix and Ms. Ward stated it is a solar farm seed mix. Ms. Ward stated this mix will grow up and then fall over which requires less mowing.

Lance Brabant said that the Operations & Maintenance Plan will have the specifics on what will be happening on the site.

Jeff Mulligan stated it should be noted that mowing shouldn't occur when the area is wet, it would not be good for the mixture planted and Lance will make it a general note.

Christopher Sterner asked on the north buffer what size trees are being planted and Ms. Ward stated they will be 6-8 feet at planting.

Tom McGovern asked if there would be any other changes or enhancements to the overall visual buffer and Ms. Ward stated there are no changes to what has been presented.

Lance Brabant stated a previous comment regarding the visual buffering was potentially screening from the road along the driveway and if the Board does feel the need for such screening, then they should consider that now before proceeding any further. Ms. Ward showed the Boards the screening again for the array and near the access road and much discussion on this topic.

Lance Brabant stated that the public hearing is still open and will continue to be open at next month's meeting along with the review period.

Jeff Mulligan asked if there were any new comments from those presents and reiterated these are comments not questions and please state your name, address, and a limit of three minutes per person.

Mrs. Loss, 5405 Lake Road, Avon, NY stated that her driveway is across from the access road, and she is concerned about trucks turning around since that stretch of the road has a curve and it is not safe. Mrs. Loss also doesn't want any trucks in her driveway. Ms. Ward stated they will not use other residents' driveways.

Lance Brabant also stated that construction vehicles will access on a specific driveway and stay off the road for this site. This includes emergency vehicles as well and this has been approved by all parties involved.

Christopher Sterner asked during construction if they will be utilizing Mr. Wheat's personal driveway and Ms. Ward stated they will not, one of the first things they will do is put in the driveway to the site.

Jeff Mulligan asked if we could conclude this part of the discussion and move on to public comments. He also stated the public hearing will be held open to next month as well.

Stephanie Williams, 5424 Lake Road, Avon, NY she is in full support of the project and would love to see a solar array at this location.

Mrs. Williams also stated the Wheat's have been a generational family and she would hate to see them have to leave and not be her neighbors.

Mrs. Blowers, 5378 Lake Road, Avon, NY her property is the one regarding the water issues. The wetland is not inherent to the property, a broken tile caused the wetland. The plan shows a vegetative buffer already on site but that is not there anymore due to the trees dying. We are going to be able to see the whole site regardless of the barrier put in.

Mr. Blowers, 5378 Lake Road, Avon, NY has done a lot of research and solar is not living up to the expectations originally thought. He feels the Board's decision will affect him and his wife and no of this screening will do anything until they are dead considering our age. There are other neighbors who do not want to see solar panels. Other countries and companies are looking for alternative options for energy.

Mr. Gary Wheat Jr., 5410 Lake Road, Avon, NY loves living in the country and values the piece and quiet and he is happy that the Town of Avon is working on adding more renewable energy sources into the mix. This application is following the law and if they are following the law then they should be able to do what they want with their own property. To him solar panels represent progress, and he doesn't understand the reaction others have. He would rather look at a solar array than a dozen track houses. This project will afford the Wheat's the ability to keep the property and not sell to a developer.

Jeff Mulligan asked if there were any more comments and there were none. He also stated the public hearing will remain open.

Lance Brabant stated the Board needs to approve the continuation resolution for this application.

TOWN OF AVON PLANNING BOARD RESOLUTION
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING
GARY & EILEEN WHEAT
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT
5410 LAKE ROAD
TAX MAP ID: 44.-1-26.1
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

CONTINUATION RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (7 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last revised February 15, 2022 (the current application) and all other relevant information submitted and discussed at the March 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board and Zoning Board of Appeals at their February 21, 2022 meeting requested additional information and revised plans to be submitted; and

WHEREAS, the applicant has not yet provided this information as requested by the Planning Board and Zoning Board of Appeals; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby move to continue the Public Hearing and the applications to their April 18, 2022 Joint Board Meeting.

The above resolution was offered by Christopher Sterner and seconded by Tom McGovern at a meeting of the Planning Board held on Monday, March 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - *RECUSED*

Vacant -

Kathy Mannix - AYE

Christopher Sterner - AYE

Clara Mulligan - AYE

Brian Thorn - AYE

Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the March 21, 2022 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

Tom McGovern stated that regarding the other solar that is very visual, and Brian Glise did an investigation, and the trees are in back order, and they will be installed when they can.

Lance Brabant also stated that the landscaping isn't typically done at the beginning of the construction phase incase they get damaged and during the winter months when they most likely wouldn't survive. The applicant was planning on installing the trees before winter, but the quantity wasn't available. The landscaping will be done according to plans otherwise there will not be a certificate of compliance issued.

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

Ms. Ashley Champion and Mr. Dale Twardokus were present to discuss this application.

Ms. Champion gave an overview of the last few meetings and the application details.

The applicant is seeking a modification in the hours of operation, truck traffic, and to have the Town's Special Use Permit reference the most recently approved NYS DEC permit for the property. The hours of operations they are seeking are Monday-Friday from 7AM - 6PM and Saturday from 8AM-2PM which is less than what is in the Town code and less than what is permitted at the Hanson site.

The Town Code doesn't regulate truck trips, the NYS DEC regulates that, and they have since modified the truck traffic allowed and the applicant would like that modified in the Town's Special Use Permit as well.

Since the last meeting in February, Livingston County Planning Board has reviewed this application and has issued a letter to the Board recommending approval.

Ms. Champion submitted an updated response to this Board which summarizes the comments submitted by the public in one document. She is willing to answer any comments from the Board and public if the Boards so chooses.

Ms. Champion and Mr. Twardokus have heard and understood the resident's concerns from the last few meetings and based on those concerns, Mr. Twardokus has offered to reduce the truck traffic Monday-Friday from 4PM-6PM to 15 trucks per hour instead of 30 and on Saturday's from 8AM-2PM to 12 trucks per hour instead of 30 as well.

Jeff Mulligan stated he liked the summation and makes it very clear to what has been submitted to us. He hopes the residents understand we are trying to uphold the law, but we can only do what the NYS DEC allows us to do.

Cindy Kellen asked about the hours of operations on Saturday are still 8AM-2PM with 12 trucks per hour and that is correct.

Bob Westfall asked if they would be done with their operations on Saturday at 2PM and Ms. Champion stated yes that is correct along with only 12 trucks per hour instead of the 30.

Jim Campbell stated that there was an issue that was presented to him this afternoon from the attorney's that represent some of the neighbors. They submitted a FOIL request late last week and we are in the process of submitted the documents they requested. They allow emailed Jim asking if the applicant submitted anything since the last meeting and he sent the March 16, 2022 summation letter to them and in response Attorney O'Toole didn't send additional information because she understood they were all due by March 1, 2022.

There was discussion regarding the deadline for comments that was given and who that pertained to. Jim stated that Mrs. McKee did send a 17-page letter with information and that was accepted and provided to the Board. Jim would like to know how the Board would like him to respond to Ms. O'Toole and if the Board will allow additional comments.

Jeff Mulligan stated he has no issue with what has been submitted and having other comments submitted. Jeff Mulligan feels we could keep the public hearing opening.

Ms. Champion has offered to withdrawal her letter from March 16, 2022, and they can resubmit if the Board agrees.

Jeff Mulligan asked does this mean we have to keep the public hearing open until that attorney has a chance to comment. Jim Campbell stated you can either leave the public hearing open or you can say the comments from Mrs. McKee are acceptable.

Brian Glise stated the March 1, 2022 deadline was written comments couldn't turn them in today to have the Board to rule on them. He feels it was so the Board could read and digest the information in advance of the meeting.

Jeff Mulligan asked what exactly what Ms. Champion is rescinding and she stated she gave a synopsis of what the March 16, 2022 letter said and if need be she will read the letter during the public comment period if the Board chooses.

Ms. Champion also feels that this application has been dragging on for a year and months and now the new construction season is coming, and they would like to move forward and not get hung up on the process. She feels Mr. Twardokus's offer is very generous and should be decided on.

Mrs. Caroline McKee, 1665 Oak Openings Road, Avon, NY handed Kim McDowell her comments and they are as follows:

I'll start out by answering Bob Westfall's question "Why are we here?"

A statement in the document provided to the ZBA by Ms. Champion states "it is our interpretation that the applicant will be permitted to modify its operations accordingly without any further action from the Town." is without merit.

Contrary to Ms. Champion's interpretation, we are here because BOTH the ZBA, in its 2018 Special Use Permit conditions, AND the DEC require an applicant to "obtain any other permits...that are required to carry out the activities that are authorized by this permit." (Item C in the DEC's January 3, 2022 permit). This is on the cover sheet of the Permit letter from the DEC sent to Dale and is in ALL CAPITAL LETTERS.....hard to miss.

Most of the following information was taken from either the DEC or the EPA's websites or direct contact from both agencies.

Town Law 274-b4) allows reasonable conditions and restrictions that are directly related to the Special Use Permit.

Denial of a permit cannot be based on the "generalized objections and concerns "of neighbors.

Our objections to this expansion are not "generalized objections." We have accumulated and documented a great deal of specific information which legally supports our cause, specifically the emissions from 30 trucks per hour and the noise they produce.

Based on the information we have acquired; we feel there is sufficient evidence to rescind the Negative Declaration issued by the DEC and revoke this modification permit.

The DEC, as the lead agency, is required to look at ALL relevant impacts of the WHOLE action, not just those within its jurisdiction.

The DEC failed to accurately determine the significance of the "adverse impact on the environment" based on the criteria listed in 617.7 (c) as is required before a neg dec is issued.

These "criteria are considered indicators of significant adverse impacts", one of which is an "**substantial adverse change in existing air quality** "and "**traffic and noise**".

An additional criterion that was not considered was "**the creation of a hazard to human health**"

Amending or rescinding a neg dec is based, in part, upon newly discovered information and/or circumstances that were not previously considered.

A permit can be revoked if there are inaccurate statements in the permit application or supporting papers, there is newly discovered information or a change in environmental conditions or there is noncompliance with previously issued permit conditions.

In the past, no one could/would verify if the trucking of mined material was considered part of a mining operation. The DEC refused to include it in their jurisdiction and the town constantly deferred back to the DEC.

We now know, based on the Anschutz. case, that the courts "considered traffic volume required to operate to be a direct part of the mining process." Therefore, traffic volume and TRANSPORT impact should have been considered in every aspect of the application process beginning with the applicant's responses in Part 1, the DEC's responses in Part 2 and the DEC's Reasons to Support their Determination in Part 3.

Neither the DEC nor the Town have considered the adverse impacts to the residents related to the increased number of trucks along the haulage routes because truck volume and transport were never considered to be part of the mining operation at the time the permits were approved.

Road capability was the only thing both the DEC and the Town considered prior to approving any permits and this was based on the findings of SRF Associates.

Neither the DEC, the Town nor SRF Associates ever analyzed the negative impact that truck volume and transport have on the health, safety and welfare of the residents living along the haulage routes.

Since truck volume impact was never considered in any of the permit applications, much of the information provided by the applicant, SRF Associates and AGS to the DEC and the Town is incomplete and at times erroneous.

PART 1 of the application process is filled out by the applicant. The applicant's responses are part of the approval process and "may be subject to further verification".

The applicant has checked "Yes" in section **f.** that delivery vehicles will be a source of air emissions.

The applicant checked "NO" in section **g.** that an Air Facility Registration is required. However, an AFR can be required for "small operations which use equipment that create emissions."

The application for this current modification was initially reviewed by the DEC on 1/21/2021 with an AFR requested in March 2021. The applicant knew an AFR would be required when his application was being reviewed 3 months before he filled it out.

However, he chose to check "NO" because that meant he did not need to further explain the amount of emissions the modification would produce.

40 CFR Part 60, Subpart 000 includes "rock, gravel, sand processing". The applicant's AFR was approved on 12/30/2021.

Because the applicant checked "NO" in section **g.** he did not have to complete part **ii.** which calculates how much emissions the project will generate.

Section **g.ii.** asks for the "Tons/year of Carbon Dioxide" and is blank.

According to the US Energy Information Administration, 22.38 pounds of CO2 are produced in 1 gallon of diesel fuel.

Based upon this information.....

If a loaded dump truck averages 6 miles per gallon of diesel fuel..... In one mile, a loaded dump truck would release 3.73 lbs. of CO2 into the air.

If 30 loaded trucks are operating per hour, in the 5-hour peak operating time, that equals 150 loaded trucks. This equals 150 trucks x 3.73 lbs. of CO2 per truck, totaling 559.5 lbs. of CO2 **PER DAY**. During a 6-day operating week, this equals 3357 lbs. of CO2 **PER WEEK**.

In one year (52 weeks), 174,564 lbs. of CO2 will be released into the air, or 87.28 TONS.

If an empty dump truck averages 10 miles per gallon of diesel fuel..... In one mile, an empty truck would release 2.24 lbs. of CO2 into the air.

If 30 empty trucks are operating per hour, in the 5-hour peak operating time, that equals 150 empty trucks. This equals 150 trucks x 2.24 lbs. per truck, totaling 336 lbs. of CO2 **PER DAY**. During a 6-day operating week, this equals 2016 lbs. of CO2 **PER WEEK**.

In one year (52 weeks), 104,832 lbs. of CO2 will be released into the air or 52.42 TONS.

Combining loaded trucks with empty trucks, this equals 139.7 TONS of CO2 being released into the air each year for every ONE MILE.

IN ONLY 8 MILES, THE CO2 TOTAL WILL BE 1117.6 TONS AND WILL EXCEED THE 1000 TON QUESTION IN THE APPLICANT'S RESPONSE.

In the Environmental Assessment form filled out by the DEC **6. Impacts on Air was** checked "NO" and all subsequent questions were left blank.

These include.. "the action may emit one or more gases at or above the following levels:"

- a.i.** More than 1000 tons/year of CO2.
- b.** 10 tons/year or more of any one hazardous air pollutant or 25 tons/year or more of any combination of hazardous air pollutants.
- c.** an emission rate or total contaminants exceeding 5 pounds per hour.

At only 4 hours per day of truck volume, it is clear that emissions from 30 trucks per hour is WAY over 1000 tons per year. I realize that I have calculated for 6 days/week and 52 weeks/year, however, this is why I only calculated for 4 hours/day.

This is ONLY for the CO2 emissions.

I have included the list of hazardous contaminants that are contained in diesel exhaust and will be calculating those amounts also.

- g.** "Will any air emissions sources named in **D.2.f** (delivery vehicles were named) require an Air Facility Registration.."
The applicant checked "NO" so no further information was provided.

However, the applicant stated in a side note that he applied for an AFR in March 2021.

According to DEC records an AFR was issued to the applicant on 12/30/2021.

Since the applicant checked "NO" no further emissions questions were answered,

including the amount of CO2 and Hazardous Air Pollutants.

6 CRR-NY 201-4.2 (f) states that the DEC may revoke any registration where the activity poses the potential for a significant adverse impact to the public health, safety, welfare, or the environment.

g.i "Will the proposed action result in the release of air pollutants...?" Applicant checked "YES" with diesel exhaust listed.

j. "Will the proposed action result in a substantial increase in traffic above **PRESENT** levels?" Applicant checked "YES".

i. Peak hours are listed here from 7 am to 12 noon, not 7-8am as previously listed. This is a substantial increase from 1 hour to 5 hours of peak operation. In addition, the applicant did NOT check "weekends" but did include Saturday hours in his application.

ii. ".....projected number of **SEMI TRUCKS** trips/day...?" Applicant states "trailer and dump trucks 30/hour"

m. "Will the proposed action produce noise that will exceed **EXISTING** ambient noise levels during....operation?" Applicant checked "NO". More on this in my comments on the AGS Noise Study.

o. "Does the proposed action have the **POTENTIAL** to produce odors for more than one hour per day?" Applicant checked "NO", so no further questions were answered as to the "sources, frequency, duration, and proximity to nearest occupied structures."

E.1 Land Uses on and surrounding the project site

a. Existing land uses

i. "Check ALL uses that occur...near the project site"

Applicant ONLY checked Agriculture, Rural and Gravel pit even though RESIDENTIAL was listed as a choice. This question is NOT referring to zoning, but rather to LAND USES".

There is ONE farm near the gravel pit. There are 27+ residences within one mile to the south of the pit and 35+ residences within 4 miles of the pit.

h. Surface Water Features

1. "Is the project site located over, or adjoining a ...sole source aquifer?" Applicant checked "No".

Aquifers are designated by the EPA as "Sole Source" if there is no other water source available or an alternative water source is not economically or physically feasible.

Both qualifications apply to the residents along Oak Openings Rd.

THE DEC RELIES, IN PART, ON THE ACCURACY OF THE INFORMATION PROVIDED BY THE APPLICANT BEFORE ISSUING A NEG DEC. ALL OF THE ABOVE COMMENTS INDICATE THAT THE DEC DID NOT RECEIVE ACCURATE INFORMATION BEFORE ISSUING THEIR NEG DEC.

PART 2 is completed by the DEC as the lead agency and identifies all potential resources that could be affected by a proposed project "using the information found in Part 1, which is answered by the applicant."

ALL of the questions the DEC responded to in Part 2, Identification of Potential Project Impacts, were either checked "no impact" or "small impact". Since truck transport and volume is considered to be part of a mining operation (per the **Anschutz** case) the increase in the number of trucks should have been part of every impact question.

The data supplied to the DEC prior to issuing the neg dec and the subsequent permit was based upon Part 1's incomplete and erroneous information.

A project can also be denied even after a neg dec is issued for reasons other than environmental impacts and the permit revoked.

There are numerous cases where the DEC has rescinded its Neg Dec with the most recent one (Feb 2022) for Cortlandville Sand and Gravel. The DEC's reasoning for rescinding the NEG DEC was based, in part, on the applicant "not properly responding to concerns".

The Town of Avon sent a letter dated 10/6/21 to Will Saar outlining the concerns the town and the residents have concerning the gravel pit operations. It is unclear whether or not the Town received any response to this letter, however, when I questioned Will Saar about his lack of response, he stated that he never received any such letter.

EXHIBIT D is the **Full Environmental Assessment Form, Part 2**, completed by the DEC prior to issuing the Neg Dec.

Included in Part 2 are the directions for the lead agency for answering the questions listed. Any time the "NO" impact box is checked, there is no further review. Even if the box is checked "Yes" with the next "No or little impact" box checked, there is no further review.

However, there are numerous instances where the impact is based upon the information provided by the applicant and is not accurate.

For example:

1. Impact on Land (d) (removing more than 1000 tons of material) states that "no or little impact" may occur".

A dump truck can load 13 tons. In only ONE 4-hour period 30 trucks would be removing 1560 tons of material. Multiply this by more hours, more days, more weeks and you are WAY over 1000 tons.

4. Impact on Groundwater states that the proposed action may have the POTENTIAL to introduce contaminants to ground water or an aquifer. The DEC checked "NO" so no further review was done.

The modification request is to allow 30 trucks per hour. These trucks are not only allowed to haul gravel out, but are also allowed to bring C&D material in.

Based on past history of the pit owner, both in the Avon pit and the Victor pit, it has been established that contaminants were brought in, and in the instance of the Victor pit, the water supply was contaminated resulting in the Town of Victor having to obtain a new water supply.

There is no record to date of any of the Avon pit's employees responsible for accepting C&D material receiving the necessary training as required by the DEC.

4. (c) states that the proposed action may result in residential uses in areas without water.

Because the DEC checked "NO", there was no further review, however, we now know this is a very real possibility as was the case in Victor.

6. Impacts on Air states that the proposed action may include a state regulated air emission source. The DEC checked "NO" so no further review was done.

An Air Facility Registration "may be required for smaller operations that release emissions to the air or other operations which use equipment that can create emissions."

Based on the **Anschutz** case, trucks and truck transport would be considered equipment as part of a mining operation.

In addition, an Air Facility Registration Certificate WAS issued 12/30/2021, even though the DEC said there would be "NO" impact. The General Requirements for an AFR (201-4.2) f. state that "The department may withdraw or revoke any registration upon a determination that the registered activity poses the potential for a significant adverse impact to the public health, safety welfare or the environment."

The World Health Organization has classified benzene, which is present in **diesel exhaust** AND in **asphalt**, as carcinogenic. WHO states that there is **NO** safe level of exposure for airborne benzene.

Asphalt is one of the C&D materials the DEC allowed to be imported into the gravel pit.

9. Impact on Aesthetic Resources

d. "The situation or activity in which viewers are engaged while viewing the proposed action

is:

i. Routine travel by residents, including travel to and from work

ii. Recreational or tourism based activities

The DEC checked "NO" impact.

11. Impact on Open Space and Recreation

d. The proposed action may result in loss of an area now used informally by the

community.

The DEC checked "NO" impact.

13. Impact on Transportation

e. The proposed action may alter the present pattern of movement of people or goods.

The DEC checked "YES", but "no or small impact may occur".

15. Impact on Noise, Odor and Light

a. The proposed action may produce sound above noise levels established by local regulation. (See Avon Town code 130-27)

c. the proposed action may result in routine odors for more than one hour per day.

The DEC checked "YES", but "no or small impact may occur".

16. Impact on Human Health was checked "NO"

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See list of contaminants found in diesel exhaust)

IF TRUCK VOLUME AND TRANSPORT ARE CONSIDERED A DIRECT PART OF A MINING OPERATION, AS INDICATED IN THE ANSCHUTZ COURT CASE, THEN ALL OF THE ABOVE IMPACTS SHOULD HAVE REFLECTED THE ADVERSE IMPACTS TRUCK VOLUME AND TRANSPORT HAVE ON RESIDENTS AND THEY DID NOT.

The DEC, as the lead agency, is required in **Part 3** to provide reasons to support the determination of significance, but ONLY where the impact was identified as potentially moderate or large or where there is a need to explain why a particular element will not result in a significant adverse environmental impact.

The DEC is required to "Assess the importance of the impact."
"Importance relates to the duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur."

Since the DEC checked either "No" impact or "small" impact, **NO** review was ever done on **ANY** of the above potential impacts.

The DEC's website states..."Decisions based on Neg Decs may be challenged in court if an agency fails to thoroughly analyze the potential of environmental impacts.

PART 3 outlines the DEC's "Reasons Supporting the SEQOR Determination".

2. Impact on Traffic only referred to "the existing transportation network...can adequately accommodate the increased truck traffic". There is **NO** mention of the emissions or noise produced from the increased truck volume.

SRF's Conclusion is that **OPERATIONALLY** "additional truck traffic will not significantly impact Oak Openings".

3. Impact on Surface Water and Groundwater

The DEC states that "Negative impacts to groundwater and nearby surface waters are not expected as a result of this modification".

This was based on the **applicant's** determination that the nearby Federal wetlands will not be affected by this modification. These wetlands are downhill from the pit operations.

What are the applicant's qualifications to determine this?

Continental Placer Inc. (Exhibit G) states that they reviewed the potential impacts to the groundwater as a result of mining. One of the "major points" they considered was the fact that no adverse groundwater impacts have been indicated when TCG or Dolomite operated the mine.

Just because there have been no adverse impacts in the past (all under different pit operators), does **NOT** mean there will be no potential future adverse impacts. Just because I've never had a car crash does not mean I will never have one.

The report from CPI, dated Sept 17, 2018, was based on a report from H&A of New York.

The H&A report was done in 1992, **30 YEARS AGO**, and was done when Dolomite requested a DEC permit to wash gravel, not mine. This report discusses the aquifers and wells **TO THE SOUTH** of the pit **ONLY**. **NO** study was done on any well's downhill from the pit or to the north or west of the pit. In fact, the one house well that would be the most vulnerable to contamination was not even built when the H&A report was done.

All CPI did was lift the 30-year-old H&A report and include it in their "analysis".

Dolomite did not have a C&D registration so well contamination was not a concern at that time.

Furthermore, the CPI report states that "many residences along Oak Openings have wells drawing from the shale aquifer." This, again, is misleading since the report CPI is basing this statement on is from the H&A report which only covered the depth of the wells to the south, not what type of material they were in.

CPI also states that many wells are in different groundwater systems. Neither CPI or H&A did any report on where each of our wells were located or if they were in sand/gravel or shale. According to the DEC, the well installation company would have a record of this in their well logs.

CPI also states "a groundwater monitoring well will be installed between the operation and the residences along the roadway to alert the operator of any anomalous groundwater conditions."

CPI and the DEC state that groundwater flows east to west, downhill from the pit. A monitoring well between the pit and the road therefore is useless to detect well contamination.

The DEC prefers to have "a monitoring well between the mine going into the water table and the active residence."

Lastly, Continental Placer states "that there is no correlation between mining sand and gravel and adverse impacts to local groundwater systems."

This statement contradicts the DEC's website statement that "the most productive aquifers in **UPSTATE NY** consist of deposits of sand and gravel. Ground water in these aquifers occurs under the water table. The high permeability of these deposits and the shallow depth of the water table make **these aquifers particularly susceptible to contamination...**"

The pit operator is already mining below the water table and has dumped contaminated material in the past.

CPI's report is another indication of the deceptive information the applicant has provided to the DEC and the Town of Avon.

6. Impact on Noise

All of the noise readings were taken either inside the mine or at 2 locations outside at 2 residences. NO readings were taken along the haulage route.

According to the Noise Study by AGS....."The cumulative adding truck sound levels with mining noise is only germane to the residence across the street from the entrance."

The noise readings do not reflect the accurate dB(A) of diesel trucks accelerating, decelerating or braking. Many times all 3 are happening at the same time, as seen in the photo presented at the last meeting. Many residences are less than 100 feet from the road.

The noise level is increased near steep downgrades, highway exits and curves (Vehicle Noise Levels and Compression Engine Breaking, Jacobs Vehicle Systems Manual)

The noise level for Heavy Duty Vehicles is between **80-96 dB(A)** with acceleration and **83-101 dB(A)** with deceleration.
(See graph)

The CDC states that "hearing loss can result over time from damage caused by repeated exposure to loud sounds." "The longer the exposure, the greater risk for hearing loss".

Both the CDC and the National Institute for Deafness state that noise levels between 80-85 dBA's can cause damage to hearing after 2 hours of exposure. At 95 dBA's can cause damage to hearing after 50 minutes. At 100 dBA's damage can occur after 15 minutes.

The DEC's response to **6. Impact on Noise** states that "increases in noise levels may have potential for adverse impacts only in cases where the most sensitive receptors are present."

Such receptors are usually considered to be places like churches..."

The business directly across from the pit's entrance holds events such as wedding ceremonies and was in business BEFORE the pit reopened. This business originated when the pit had been already closed and was in the process of reclamation.

Is a wedding ceremony not unlike a church where quiet is expected????

The DEC also mentions that all equipment would not be operating at the same time or 30 trucks exiting the mine at the same time. This statement does not reflect the fact that 60 trucks could easily be on the haulage route at the same time with 30 on their way to the entrance and another 30 exiting the pit...easily 1 truck every minute or two.

SRF's noise level was calculated using a one-hour L for 30 trucks.

Their conclusion that "a truck increase of 18 has little impact on noise on **surrounding noise receptors.**" and that most receptors for truck traffic are a distance from the mine noise level.

The SRF noise receptors only record noise in a single moment of time and do not accurately reflect the cumulative adverse effects of noise pollution.

There is no mention of truck traffic noise effects on residents living along the haulage routes.

AGS also states "What difference does it make if 18 is used..." in their noise analysis??

THE DIFFERENCE IS A 150 PERCENT INCREASE IN TRUCK TRAFFIC NOISE FOR THE RESIDENTS LIVING ON THE HAULAGE ROUTE.

The Federal Clean Air Act Title IV "classifies noise as an **EMISSION**, ie. *unwanted sound* from a known source which is passed into the atmosphere" and is legally "actionable".

"Sound becomes *unwanted* when it either interferes with normal activities...or diminishes one's quality of life".

The EPA states that "research has shown that exposure to constant noise can cause countless adverse health effects."

In the directions for Part 2, it states that the "lead agency's reviewers will not necessarily be environmental professionals." The DEC's responses have relied upon the applicant and outside organizations to provide information that was at times incomplete or erroneous.

The DEC's responses to the potential impact on air quality was NEVER based on any world recognized authorities, but rather only on the applicant's statements.

Numerous organizations have declared diesel exhaust to be hazardous to human health...

CDC American Cancer Society OSHA World Health Organization
NYS Dept of Health

International Agency for Research on Cancer

Not once did anyone responsible for responding to the application questions refer to any of these professional organizations to respond accurately to the impact diesel exhaust has on human health and safety.

There have also been several Exhibits included in the applicant's packet to the ZBA that are not relevant to this modification request.

EXHIBIT H discusses the financial hardship the applicant faces as a result of not obtaining the modification to the SUP. According to this document, the hardship would be reduced with the granting of the SUP modification request.

This reasoning cannot be used to secure a NEG DEC or a Permit based on the DEC's requirements, which state..." A negative declaration cannot balance whether the beneficial aspects of a proposed action will outweigh its adverse impacts."

It must ONLY consider "probable significant adverse environmental impacts."

Economic gain would be considered beneficial.

Since the Town follows the guidelines from the DEC, any financial statements or letters implying a financial hardship should be disregarded by both the Town and the DEC.

EXHIBIT D is the SUP obtained by Hanson presented by the applicant to the ZBA to support their current modification request.

The Hanson permit issued in 2019 does not contain hours of operations limitations or truck volume limitations because these 2 conditions pre-date DEC permit requirements.

Only the mine expansion was requested and permitted. This is explained in detail on the September 23, 2019 SUP issued to Hanson.

It is illogical to compare the two-gravel pit (OO LLC and Hanson) permits because they are governed under two different time periods with two different requirements.

Comments Specifically Relating to the Special Use Permit

Issued by the Avon ZBA September 17, 2018

And the Current Modification Request to the ZBA

When the original SUP was issued to Rochester Gravel, the ZBA included the statement "...the proposed use will not have an adverse effect on the ...conduct of other lawful uses in the vicinity ."

In the current modification request, the applicant has included 8am - 2pm on Saturdays in which to operate.

The business directly across from the pit's entrance holds Saturday events, which would include wedding ceremonies, graduations, etc.

This business originated when the gravel pit was closed and in the process of being reclaimed, well BEFORE Rochester Gravel started operating.

How do you justify the inclusion of Saturday hours as having no adverse effects on other "uses in the vicinity"?

The original SUP also states "the proposed use will not be a nuisance in law or in fact and the use will not be noxious, offensive or injurious by reason of production of or **emission** of dust, smoke, refuse, **poisonous substances, odors, fumes, noise**, radiation, vibration, unsightliness or similar conditions, or **will contaminate waters; Avon town code 130-27 PROHIBITS the above conditions in an Agricultural Zone.**

It goes on to state "the proposed use will not create hazards or dangers to the public or to **persons in the vicinity from...traffic congestion..**"

When this original SUP was issued, it was not known that truck volume and transport were considered to be a direct part of mining operations by the courts (Anschutz).

If approved, the inclusion of Saturday hours greatly intensifies the adverse effects on the business across from the pit entrance.

If approved, increasing truck volume from 12 trucks per hour to 30 trucks per hour greatly intensifies the adverse effects residents will face by **150%**.

So, in essence, with peak operating times, 7-12 every day...5 hours minimum, 6 days/week...

The emission of POISONOUS SUBSTANCES will increase by 150% EVERY HOUR.

The emission of ODORS will increase by 150% EVERY HOUR.

The emission of FUMES will increase by 150% EVERY HOUR.

The emission of NOISE will increase by 150% EVERY HOUR.

TRUCK TRAFFIC will increase by 150% EVERY HOUR of operation.

We have given this board numerous facts and research to support the **denial** of the modification to the SUP based, in part, on the court's inclusion of truck volume and transport in a mining operation.

Including Avon code 130-27 in the SUP as having no adverse effects means nothing without supporting reasons.

This board has provided **NO** evidence to support the approval of this modification.

The negative impact of truck volume and transport was NEVER considered in any of the responses from the DEC (Parts 2-3) or in any of the applicant's responses (Part 1) in the permit process.

If this board must ensure that every decision, they make is DEFENSIBLE as Supervisor LeFeber has required of ALL board decisions, how do you justify approving this modification?

If you have no proof that increasing truck volume by 150% will not be injurious, offensive or create a public hazard, how will you defend your decision?

Something else to consider...

EVERY document I've checked where the DEC's NEG DEC was rescinded was initiated by the TOWN BOARD, NOT the residents, because the town determined the NEG DEC created a health and safety hazard for the residents.

Mr. Kevin Lillis, 1623 Oak Openings Road, Avon, NY he wants to make sure that everyone on this Board got the letter his Attorney mailed them. He also stated that there are 10 different towns east of New York and that took the NYS DEC to court, and it was decided NYS DEC doesn't have power over the ZBA Board. He also stated 30 trucks an hour is 60 trucks which is one truck a minute. He is concerned for the roads, houses, and real estate value going down.

Mr. Eric Huppert, 1160 Oak Openings Road, Avon, NY he lives on the Northern part of the road, and he is concerned about traffic levels. He has done some research and is looking at a copy of Article 41 of NYS Vehicle and Traffic Law Section 1660 subsection 10, it is clear that a Town Board does have the right to regulate truck traffic and truck routes. However, the extent and jurisdiction end within that Town. Trucks have been going into Monroe County and this could lead to liability issues with other Towns. Also, the system shall provide suitable connection with all state routes entering or leaving such a town. The Board needs to consider dedicated routing for this traffic. On the North section of Oak Openings Road there are two culverts under the road, the County must give approval to run heavy duty trucks over the culverts and the trucks Mr. Twardokus runs are up to 100,000 pounds and this is not legal nor approved by the county. One of the competitors' hours of operation are 7:30AM-3:30PM Monday-Friday.

Jeffrey Cook, Cook Properties located in Rochester New York. He is here to place his support for the Oak Openings LLC. He continually runs into supply and cost issues; we are routinely waiting for concrete and by having more gravel and more trucks that may elevate those obstacles.

Debra Salmon, 1160 Oak Openings Road, Avon, NY she would ask the Board to not consider the Hanson piece, they do not go on Oak Openings Road.

Ashley Champion stated currently there is a restriction in place with the Town of Avon for the trucks to only exit North, that is not a restriction with the NYS DEC. The applicant is fine with whatever truck route the Board deems acceptable. She stated the comment about the truck routes and culvert shows this is not just a local issue and that is why the NYS DEC and Livingston County are involved. They both have determined that the modification request is appropriate and is permitted at the State and County level.

Mrs. Caroline McKee, 1665 Oak Openings Road, Avon, NY feels the problem is when the NYS DEC issued their negative declaration that was based on answers the applicant put on the application and a lot was missing, incomplete, or incorrect. The NYS DEC Part 2 is based on those answers and if the applicant says there is no impact, then there is no further review done. There are numerous times when a review should have been done, for example the water study that was referenced is 30 years old and it didn't include any homes or wells north of the pit.

The application process is riddled with incomplete information and the Board probably didn't even see the original application. She would encourage the Board members to look at what she wrote.

Jackie Eddy, 1565 Oak Openings Road, Avon, NY is asking the Board to establish a distinct route because without a route compliance becomes immeasurable.

Jeff Mulligan asked Jim Campbell to clarify what is being offered by the applicant.

Jim Campbell stated his interpretation is the applicant is willing to make some concessions and is willing to take something less than the NYS DEC permit allows with regards to hours during the week after 4PM and hours between 8AM-2PM on Saturday. Instead of 30 trucks he is willing to limit it to 15 trucks per hours and 12 trucks per hour on Saturday along with lesser hours.

Jim Campbell asked if the Board had any questions about the SEQOR process since it is confusing. Jim stated that sometimes the Boards will do SEQOR but this application you didn't do SEQOR because the coordinator review involves multiple agencies and NYS DEC declared itself lead agency. In doing that they sent a notice to all involved agencies stating they wanted to be lead agency for this application and asked for comments or concerns that they would use as part of their review process. The Town did send letters stating the neighbor's concerns that we have been hearing for this application to the NYS DEC. The lead agency is the only agency able to do a SEQOR review so there is not a lot of inconsistencies with the review. From a legal perspective, Jim disagrees with statements that the NYS DEC goes off the answers that are provided, Part 1 is an informational section about the application prepared by the applicant and Part 2 is done by the reviewing agency and they don't just go by what is answered in Part 1. Jim's opinion is the NYS DEC didn't give it a quick pass but investigated it thoroughly.

Jim also stated that he did send Mrs. McKee's comments to the NYS DEC persons in charge of this application, and they replied that the question period is over, and no response is needed, and they stand by their review.

Ashley Champion stated the NYS DEC took well over a year and she believes that everyone had a chance to comment and recalls seeing comments from most of those present tonight.

Jeff Mulligan asked if the ZBA Board could meet with Council in the other room for more clarification and Jim stated they could.

Mrs. McKee asked before the Board goes into the other room that one of the comments sent to the NYS DEC was about the water situation and their wells and the NYS DEC response was the report said there was no problem. That report is over 30 years old, and it doesn't take in account any newer wells or homes on Oak Openings Road.

The ZBA Board and James Campbell left to go into the other room for council privately.

The ZBA Board and James Campbell returned.

Jeff Mulligan stated the floor is open for any person who has not spoken already tonight and there were none.

Jeff Mulligan stated they are closing the public hearing for oral comments only and written will be accepted until Monday, March 28th, 2022 at 4PM. Jim Campbell stated that is for public, council, and everyone else.

ZBA MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY BOB WESTFALL;
SECONDED BY CINDY KELLEN.

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

CARRIED 5-0.

Jim Campbell stated the Board will meet again on March 29, 2022 for legal council again. Jim stated the Board is going to schedule a special meeting for this application.

Jeff Mulligan stated that Monday, April 4, 2022 at 7:00PM will be a special meeting for this application and it will be the final determination.

Jim Campbell stated this meeting will be open to the public but there will be no public comment at the meeting. Jim also stated any written comments must be received by the Town on Monday, March 28th at 4:00PM.

Ashley Champion asked if there is any additional information needed by the Board from the applicant and Bob Westfall asked for the concessions in writing that the applicant is offering.

Tom McGovern asked if his comments about the C&D material has been discussed with Mr. Twardokus and she stated he will speak with Tom after the meeting.

ZBA & PLANNING MOTION TO CLOSE THE MEETING WAS MADE BY CLARA MULLIGAN;
SECONDED BY JEFF MULLIGAN.

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

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
VACANT -
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

MEETING CLOSED.