

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

ABSENT:

OTHERS: CEO BRIAN GLISE, JAMES CAMPBELL, TOWN ATTORNEY

VISITORS: KAREN & RICK CRATER, DEBRA SALMON, ERIC HUPPERT, CAROLYN & ROBERT MCKEE, BRIAN THORN, KATHY COLE, TOM MCGOVERN, DENNY REGAN, MARILYN REGAN, ASHLEY CHAMPION, DALE TWARDOKUS, ANDREA KRAJKA, JACALYN EDDY, GERALD TURK, KAREN SCHIEDEL, KEVIN LILLIS,

CLERK: KIM MCDOWELL

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

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

CARRIED 5-0.

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

Jeff Mulligan stated the Applicant has modified its Special Use Permit Amendment request by proposing some concessions relating to the proposed truck volume being requested.

The original application asked to modify the Special Use Permit to increase the Life of Mine by 18 acres and to increase the allowable volume of trucks leaving the facility from 12 trucks per hour to 30 trucks per hour. The Applicant was also seeking to increase the hours of operation to 7:00 a.m. to 6:00 p.m. on Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturday.

On March 22, 2022, Applicant supplemented its application with regard to truck volume offering to have 30 trucks per hour Monday through Friday from 7:00 a.m. - 4:00 p.m. and reduce it to 15 trucks per hour from 4:00 p.m. - 6:00 p.m.

They also indicated a willingness to reduce the truck volume to 12 trucks per hour on Saturdays from 8:00 a.m. - 2:00 p.m.

On April 1, 2022, Applicant supplemented and further changed its application to again reduce the requested allowable truck volume by indicating that it would be willing to consent to no truck traffic entering or leaving the mine after 12:00 noon on Saturdays.

Jeff then asked Jim to lead the Board through a discussion regarding SEQR.

Jim Campbell gave the Board an overview of the SEQR process and how this maybe a little different from other applications that have come before the Board.

Jim stated ordinarily, including some applications for a Special Use Permit, the ZBA Board acts as lead agency in the SEQR process, reviews documentation, makes findings, and makes a determination from an environmental impact standpoint. However, this situation is different, because the NYS DEC has the underlying application from Oak Openings to modify its permit for mining, they initiated a coordinated SEQR review, which means there is a need between multiple jurisdictions or agencies to cooperate in the SEQR review and as part of that process the DEC indicated its intent to be lead agency. The NYS DEC sent a notice to all the involved and interested agencies, including the Town of Avon, because of the need to amend our Special Use Permit, asking for input on the consent to allow the NYS DEC to be lead agency as well as the proposed application for the mining permit. There were letters written by myself as Attorney for the Town on behalf of the Town Board and the ZBA, with information received during the last couple of years on this particular use and area. The neighbors' comments and concerns were put into correspondence that went to NYS DEC as part of the coordinated review. At that time the Town did not object to the NYS DEC being the lead agency and it wouldn't have been appropriate for the Town to seek lead agency status because the underlying mining permit was under the NYS DEC's sole jurisdiction and was really the biggest part of things. If they hadn't gotten permission from the NYS DEC to expand the life of the mine and to increase the volume of truck traffic it wouldn't have come before the Town to modify the special use permit if it wasn't allowed through the NYS DEC mining permit.

Jim also stated that it isn't appropriate for this Board to do their own SEQR review. The findings that were made that resulted in a negative declaration by the NYS DEC is an official statement that during the year long review, the NYS DEC determined, looking at all the information that was provided by the applicant, the Town of Avon, and by the neighbor's submission and comments. NYS DEC determined there was not any likelihood there would be a negative environmental impact because of the proposed action, not the proposed action of mining but the proposed action of modifying the mining permit in those three regards, the life of mine to expand by 18 acres, increase truck traffic, and hours of operation.

Jim said from a preliminary standpoint the Board needs to make sure we recognize that the NYS DEC rightfully took that process as lead agency. Jim and the Board have meet in the context of legal questions and legal advice and discussed at great length some of the SEQR determinations that were made, and it should be on record that these discussions have occurred.

Jim asked the Board if there were any questions regarding the SEQR process so far.

Jeff Mulligan stated the NYS DEC wrote the SEQR law in the first place and they were the obvious ones to take the lead agency meaning the Town would not have the option to be lead agency.

Jim Campbell stated if the ZBA tried to become lead agency it would have likely been rejected due to the fact NYS DEC has control over the mining permit that regulates this particular use. Jim also stated this Board is constrained by the Environmental Conservation Law specifically the Mine Land Reclamation Law that supersedes the ZBA Board's ability to regulate extractive mining practices.

Also, the SEQR in general lies within the NYS DEC, and they constantly monitor the statute and provisions for the SEQR review process; they are experts in the process known as SEQR. Ultimately, the ZBA can not undertake its own SEQR review process and we can't undo or invalidate the NYS DEC SEQR findings.

Jeff Mulligan stated now that we have discussed SEQR, I want to make a brief statement on behalf of the Board. Since the submission of this application and going back to 2018, this Board has been very aware of the concerns raised by the neighbors on Oak Openings Road. You have repeatedly shared your experiences of what it is like to live near a gravel mine. You have expressed concerns on truck traffic, noise, dust, water contamination and many other areas. This Board does not doubt the sincerity of your concerns, nor have they gone unheard.

Unfortunately, under the laws of the State of New York, this Board has very limited ability to address those concerns. The State has preempted our ability as a local Zoning Board to place any regulations on many of the areas that impact you the most. We sincerely wish that was not the case, but we are confident that those limitations apply with this application.

We have discussed this matter with our legal counsel, having met with him for many hours, seeking legal advice and sharing our thoughts. We have asked Jim to prepare a document of proposed Findings and Decisions to incorporate those discussions. I am going to ask that Jim read the proposed Findings and Decision. I ask that all of you please refrain from comment so that everyone can hear what is being read. At the end of the Findings, I will ask for a motion and second to adopt those findings. After adoption of those findings, Jim will read our intended Decision and I will ask for a motion and second on the decision.

Thank you for your patience and cooperation.

Jim Campbell read the following to all present.

FINDINGS AND DECISION  
Town of Avon Zoning Board of Appeals  
April 4, 2022

Matter of the application for amendment to the Special Use Permit of Oak Openings, LLC

Property Address: 1392 Oak Openings Road, Town of Avon,  
Livingston County, New York  
Tax Id. #: 26.-1-22.1

BACKGROUND SUMMARY

The Applicant, Oak Openings, LLC (hereafter "the Applicant") has made application for approval of an amendment to its existing Special Use Permit (issued September 17, 2018) relating to its Excavation Operation on property it owns at 1392 Oak Openings Road. The property is approximately 121 acres in size and is located on the west side of Oak Openings Road, north of NYS Routes 5 & 20.

The proposed amendments requested by Applicant would allow Applicant to: i) expand its current Life of Mine Area and Permit Term Area (as defined by the Mined Land Reclamation Law) by approximately 18 acres (from 68.7 acres to 86.7 acres); ii) increase the maximum permitted truck traffic from 12 trucks per hour to 30 trucks per hour; and iii) increase the allowed hours of operation so that Excavation Operations can occur Monday through Friday from 7:00 a.m. until 6:00 p.m. and on Saturdays from 8:00 a.m. until 2:00 p.m., all as permitted by the modified Mining Permit issued by the New York State Department of Environmental Conservation (hereafter "DEC") on January 3, 2022.

The subject property is zoned Agricultural District (A) and is initially governed by section 130-11 of the Code of the Town of Avon (hereafter "Town Code"). Section 130-11 D. (4) provides that Excavation Operations are a permitted use subject to an applicant obtaining a Special Use Permit from the Town of Avon Zoning Board of Appeals (hereafter "ZBA"). The Special Use Permit process is governed by section 130-35 of the Town Code.

Prior to making application to the ZBA for modification of its Special Use Permit, Applicant applied for a modification to its existing Mining Permit (last dated May 16, 2018) from the DEC. The application for a modified Mining Permit was approved by the DEC on January 3, 2022 (hereafter "Current Mining Permit"). Applicant's Current Mining Permit approved the addition of 18 acres to the former Life of Mine Area and Permit Term Area, as well as approved an increase in the maximum permitted truck traffic from 12 trucks per hour to 30 trucks per hour.

Upon receiving a completed application for a Special Use Permit from the Applicant, the Town of Avon Building and Zoning Department, on behalf of the ZBA, referred the matter to the Livingston County Planning Board pursuant to New York State General Municipal Law section 239 l and m.

On March 10, 2022, the Livingston County Planning Board reviewed the referral and recommended "Approval" with certain advisory and Board comments. The written advisory comments (dated March 15, 2022) have been made a part of the file of the ZBA and such advisory comments therein have been taken into consideration as part of the deliberation process undertaken by the ZBA and in part contribute to the basis for its decisions regarding these matters.

On February 2, 2022, the ZBA met at a properly noticed special meeting for its initial review of Applicant's submissions for modification to its Special Use Permit. The Applicant, through its attorney, made a detailed presentation regarding the requested modifications to the Special Use Permit and the ZBA engaged in a detailed discussion with the Applicant about the requested modifications to the Special Use Permit. Approximately 10 neighbors attended that meeting. The ZBA determined to schedule the required Public Hearing for February 16, 2022, and directed the Clerk to publish notice thereof.

The ZBA met at a properly scheduled and noticed meeting on February 16, 2022, to hold a Public Hearing for purposes of obtaining public comment on the requested modifications to the Special Use Permit. Said Public Hearing resulted in approximately 20 residents appearing, approximately 12 of whom spoke in opposition to the Applicant's request for modifications to its Special Use Permit.

Because of a number of issues that were raised during the public comment period of the Public Hearing, the ZBA elected to hold the Public Hearing open so that the hearing could be continued at its meeting on March 21, 2022.

On March 21, 2022, the ZBA concluded and closed its Public Hearing after receiving additional public comment. However, the ZBA did determine to allow additional written comment from the public until March 28, 2022 at 4:00 p.m. The application was continued to a special meeting set for April 4, 2022 and the ZBA directed the Clerk to publish notice of the same.

The ZBA met at a duly noticed special meeting on April 4, 2022 to continue discussion and deliberation regarding Applicant's request for modifications to its Special Use Permit.

The ZBA discussed the State Environmental Quality Review Act (SEQR) process pursuant to 6 NYCRR 617 that was undertaken by the DEC as part of its review and subsequent issuance of the Current Mining Permit. The ZBA had been provided with extensive materials from the Applicant and DEC relating to the SEQR process. The SEQR materials provided and reviewed demonstrate that the DEC conducted a lengthy and thorough coordinated SEQR review, which began in September 2020 and finished on or about September 2, 2021 when the DEC concluded that the issuance of the modified Mining Permit would result in no significant adverse impacts on the environment and accordingly, issued a Negative Declaration. It is noteworthy that as an involved agency, the Town of Avon (before application was made to the ZBA for modification of the Special Use Permit) was afforded an opportunity to provide comments and/or concerns relative to the DEC's consideration of Applicant's request for a modified Mining Permit. The Attorney for the Town, at the direction of the Town Board, did submit to DEC written comments expressing concerns with the requested modification as repeatedly shared by property owners that reside in near proximity to the Applicant's mining operation. Such correspondence was shared with the ZBA, and we recognize that the concerns raised by the neighbors during the Public Hearing were issues that were raised to the DEC by the Attorney for the Town during the SEQR review process. The Full Environmental Assessment Form (Parts 2 and 3) were attached to the application materials submitted to the ZBA, along with the DEC's Part 3 evaluation of Magnitude and Importance of Project Impacts, stating the DEC's reasons supporting the SEQR determination, and its findings have been taken into consideration as part of the deliberation process undertaken by the ZBA and in part contribute to the basis for its decisions regarding these matters. The ZBA did not conduct its own, separate SEQR review, as the coordinated review conducted by the DEC has been determined by the ZBA, its legal counsel and the Town Engineer to have been appropriate and thorough. No new issues or potential negative environmental impacts relating to the proposed application have been identified which were not thoroughly analyzed and addressed during the course of the DEC's SEQR review process.

After closing the Public Hearing, the ZBA considered the comments received by the public during the Public Hearing and discussed various issues raised in the Public Hearing as well as by members of the ZBA and the Livingston County Planning Board. After due deliberation, the ZBA makes the following findings:

## GENERAL FINDINGS

1. The proposed modification of the Special Use Permit sought by Applicant to expand its Excavation Operation constitutes a permitted use with a Special Use Permit in the Agricultural District (A) zoning classification pursuant to section 130-11 D. (4) of the Town Code;
2. Special Use Permits are governed generally by section 130-35 of the Town Code and Special Use Permits for Excavation Operations are further governed by section 130-35 B. (4) (e);
3. The Applicant has properly submitted its application pursuant to section 130-45 B. of the Town Code, seeking approval from the ZBA of an amendment to its Special Use Permit under section 130-35 B. (4) (e) of the Town Code, permitting it to expand its operation of a sand and gravel Excavation Operation on the subject property;
4. The Town of Avon Code Department has properly submitted the application requesting modification of the Special Use Permit to the Livingston County Planning Board pursuant to the requirements of New York State General Municipal Law section 239 l & m;
5. On March 15, 2022, the Livingston County Planning Board issued a written statement that they had reviewed the referral and recommended "approval" with advisory comments;
6. The written statement from the Livingston County Planning Board has been reviewed by the ZBA and have been made a part of the official record concerning this application;
7. The DEC conducted a coordinated review under the New York State Environmental Quality Review Act (6 NYCRR 617) of Applicant's request for amendment to its previously issued Mining Permit (last dated May 16, 2018). The SEQR materials generated during the year-long review process, including the Full Environmental Assessment Form, especially Parts 2, 3 and the DEC's Part 3 evaluation of Magnitude and Importance of Project Impacts, demonstrate that the DEC conducted a lengthy and thorough SEQR review. Such review began in September 2020 and concluded in September 2021, when the DEC concluded that the issuance of the amended Mining Permit would result in no significant adverse impacts on the environment and accordingly, issued a Negative Declaration;
8. Part 3 of the Full Environmental Assessment Form 3 and the DEC's Part 3 evaluation of Magnitude and Importance of Project Impact demonstrates that the DEC carefully looked at potential adverse environmental impacts to land, surface water, ground water, air, plants and animals, historic and archaeological resources, transportation and noise and determined that there would be no significant adverse impacts as a result of the proposed mining and excavation for which an amended Mining Permit was being sought;
9. The ZBA concludes that it is not necessary, nor would it be appropriate, to conduct a segmented and independent review of the proposed application pursuant to SEQR.

The ZBA acknowledges that the DEC undertook an appropriate review under 6 NYCRR 617 and took the requisite "hard look" at the proposed action relative to the issuance of a mining permit for the subject property and is accordingly satisfied with such review;

10. The ZBA further finds that the current application for an amended Special Use Permit by Applicant is not seeking permission to conduct any activity that is substantively different than the permitted activities approved by the DEC in the Current Mining Permit issued to Applicant on January 3, 2022; and
11. In reaching the above findings, the ZBA has considered the following documents as well as other relevant information:
  - a. Prior Special Use Permit issued on September 17, 2018;
  - b. Special Use Permit application materials received from the Applicant dated January 3, 2022;
  - c. The Current Mining Permit (an amendment of previously issued Mining Permit), dated January 3, 2022 with permit transmittal letter;
  - d. Letter dated January 3, 2022 from Guillermo Saar, Environmental Analyst at DEC, addressing in detail the review process conducted by DEC in response to various comments and concerns raised by the Town and concerned neighbors in proximity to the site. The areas of concern responded to in this correspondence include: Truck traffic increase, hours of operation, dust, noise, surface water/stormwater, groundwater and construction and demolition material;
  - e. Air Facility Registration Certificate effective 12/30/2021 and expiring 12/29/2031;
  - f. Noise Study (2<sup>nd</sup> Supplemental) dated August 6, 2021 prepared by Adirondack Geological Services DPC;
  - g. Memorandum (additional to 2nd Supplemental) to Noise Study dated August 16, 2021, by John Hellert, Sr. Geologist, Continental Placer Inc. on behalf of Adirondack Geologic Services DPC;
  - h. Traffic Studies and supplements conducted by SRF Associates dated April 29, 2020, June 18, 2020 and May 26, 2021;
  - i. Opinion on potential groundwater and hydrologic impacts made by John Hellert of Continental Placer Inc., dated September 17, 2018;
  - j. Part 2 of the Full Environmental Assessment Form completed by the DEC on or about September 2, 2021;

- k. Part 3 of the Full Environmental Assessment Form with Attachment for Evaluation of the Magnitude and Importance of Project Impacts Completed by the DEC on or about September 2, 2021;
  - l. NYS Environmental Conservation Law section 23-2701;
  - m. NYS Environmental Conservation Law section 23-2703
  - n. NYS Environmental Conservation Law section 23-2711;
  - o. NYS DEC Technical Guidance Memo MLR92-#2 Mining Permit application to DEC from Oak Openings LLC;
  - p. Written correspondence from Bridget O'Toole, Esq. of the Zoghlin Group (attorneys for a number of neighbors in proximity to site), dated February 11, 2022;
  - q. Written correspondence from Ashley E. Champion, Esq. of Nixon Peabody, LLP (attorneys for Applicant), dated March 22, 2022;
  - r. Numerous written correspondence from neighboring property owners, including but not limited to:
    - Tom McGovern - email dated 2/2/2022
    - Tammy Eisenberg - email dated 2/8/2022
    - Sharon Oyer - email dated 2/11/2022
    - Eric Huppert & Debra Salmon - letters dated 2/11/2022 and 3/22/2022
    - Bruce Bristol - email dated 2/13/2022
    - Karen & Rick Crater - letters dated 2/14/2022 and 3/27/2022
    - Tom & Karen Scheidel - emails dated 2/14/2022 and 3/1/2022
    - John Company - email dated 2/14/2022
    - Jacalyn Eddy & Gerald Turk - emails dated 2/16/2022 and 3/1/2022
    - Roger Vanderbrook - email dated 2/16/2022
    - Caroline & Robert McKee - letters dated 2/16/2022, 3/21/2022 and 3/28/22
12. The proposed use of the subject property for an Excavation Operation does not in and of itself constitute a use pursuant to Town Code section 130-27 A. (2) that is "...noxious or offensive by reason of refuse, matter, dust, odor, smoke, gas, fumes, noise, vibration, unreasonable use of lights or nighttime operation." Such concerns can be properly mitigated by conditions made a part of any approved Special Use Permit utilizing the general criteria of section 130-35 of the Town Code and the use specific criteria of 130-35 B. (4) (e) of the Town Code, as well as regulatory restrictions and mitigation measures established by the DEC pursuant to the Mined Land Reclamation Law, which preempts and supersedes most local municipal regulations relating to the mining industry;



FINDINGS FOR THE SPECIAL USE PERMIT UNDER SECTION 130-35

1. The Applicant's January 3, 2022 application proposes an amendment to its current Special Use Permit to increase the Life of Mine by 18 acres and to increase the allowable volume of trucks leaving the facility from 12 trucks per hour to 30 trucks per hour. Additionally, the January 3, 2022 application sought to increase the hours of operation to 7:00 a.m. to 6:00 p.m. on Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturday;
2. By submission dated March 22, 2022, Applicant supplemented and amended its application with regard to the allowable volume of trucks leaving the facility, requesting the following, which is less than the truck volume authorized by the Current Mining Permit:  
  
Monday through Friday from 7:00 a.m. - 4:00 p.m.: Thirty (30) trucks per hour maximum leaving the facility  
  
Monday through Friday from 4:00 p.m. - 6:00 p.m.: Fifteen (15) trucks per hour maximum leaving the facility  
  
Saturday from 8:00 a.m. - 2:00 p.m.: Twelve (12) trucks per hour maximum leaving the facility between 8:00 a.m. and 2:00 p.m.
3. By email submission dated April 1, 2022, Applicant supplemented and further amended its application with regard to the allowable volume of trucks leaving the facility, requesting the following, which is again less than the truck volume authorized by the Current Mining Permit:  
  
Saturday from 8:00 a.m. - 2:00 p.m.: Twelve (12) trucks per hour maximum leaving the facility between 8:00 a.m. and 12:00 noon and no trucks entering or leaving the facility after 12:00 noon.
4. The underlying proposed use of the subject property for Excavation Operations is determined to be a permitted use within the Agricultural District (A) with the issuance of a Special Use Permit pursuant to section 130-35 B. (4) (e) of the Town Code and a Special Use Permit has previously been issued to this Applicant by this Board on September 17, 2018;
5. The ZBA, in making its findings, has taken into consideration the existing conditions of the proposed site and the surrounding area;
6. The ZBA, in making its findings, has taken into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents in the immediate area in particular;
7. Pursuant to 130-35 B. (1) of the Avon Town Code, the ZBA finds that:

- a. With the conditions of use imposed by this determination, the proposed use as reflected in the application, supplement to the application dated March 22, 2022 and further supplement to the application dated April 1, 2022, the requested amendment to the Special Use Permit will not have an adverse effect on the orderly development and character of the neighborhood or upon the development and conduct of other lawful uses in the vicinity. The existing use as an Excavation Operation was previously approved by Special Use Permit on September 17, 2018 and Excavation Operations have been occurring at the site for approximately 45 years, with the exception of an approximately 8 year period between 2010 and 2018. The amendments to the Special Use Permit sought by the Applicant are in keeping with the current Excavation Operation, were deemed not to have an adverse environmental impact by the DEC as part of its SEQR review (and issuance of a Negative Declaration) and are consistent with the Current Mining Permit. In fact, in response to certain comments and concerns expressed by neighbors, the Applicant has modified its application seeking to operate with less truck volume than allowed by the Current Mining Permit;
- b. With the conditions of use imposed by this determination, the proposed amendment to the Special Use Permit will be in harmony with the existing and probable future development of the vicinity in which the premises are situated. The surrounding neighborhood currently includes longstanding Excavation Operations performed by Applicant and prior operators (on the subject site) as well as another and more significant Excavation Operation a short distance to the north of the subject site. The ZBA has been presented with no information to suggest that the existing Excavation Operations will not continue, nor has the ZBA been presented with any evidence to suggest that the residential aspects of the area near the site will not continue unabated should the amendment to the Special Use Permit be granted;
- c. With the conditions of use imposed by this determination, the proposed amendment to the Special Use Permit 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, nor will it contaminate waters. All of these potential environmental impacts have been thoroughly reviewed by the DEC as part of its year-long SEQR process and have resulted in specific findings that concluded with the issuance of a Negative Declaration;

- d. With the conditions of use imposed by this determination and the restrictions issued by DEC as part of the Current Mining Permit, the proposed amendment to the Special Use Permit will not create hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking or automobiles or other causes;
- e. With the conditions of use imposed by this determination and the restrictions issued by DEC as part of the Current Mining Permit, the property values in the vicinity of the proposed use and the health, safety, morals, peace and general welfare of the community and the public can be adequately protected;
- f. The proposed amendment of the Special Use Permit is consistent with the zoning classification and appurtenant permitted uses of such classification and is in general conformance with the Comprehensive Plan and any other applicable community plans; and

FINDINGS FOR SPECIFIC REVIEW STANDARDS FOR ISSUANCE OF SPECIAL USE PERMIT FOR EXCAVATION OPERATIONS UNDER SECTION 130-35 B. (4) (e)

- 1. The ZBA finds that the proposed amendment to the Special Use Permit complies with all of the applicable Special Use Permit standards for Excavation Operations set forth in 130-35 B. (4) (e) of the Town Code and makes the following specific findings:
  - a. The proposed use will not have an effect or impact on waters of the State of New York;
  - b. The subject property exceeds the minimum 10 acre lot area prescribed by section 130-35 B. (4) (e) [1];
  - c. The proposed hours of operation sought with the amendment to the Special Use Permit are within the parameters specified under 130-35 B. (4) (e) [4]; and
  - c. Section 130-35 B. (4) (e) [6] of the Town Code states that "The Zoning Board of Appeals shall not grant a special use permit for an excavation operation when the area in which the operation is proposed exhibits a residential character. The Zoning Board of Appeals shall consider an area to have a residential character when a circle (radius of 2,980 feet) drawn around the center of the proposed use contains 1/3 of the homes the area (approximately one square mile) of the circle would have if developed to the density allowed by this chapter".

The ZBA finds that approximately 213 homes (using 3 acres as the minimum) would be permitted in an area encompassing 640 acres of land (one square mile) and that the area drawn around the center of the proposed use does not contain 71 or more homes and therefore does not "exhibit a residential character" as defined by the Town Code.

Based upon a thorough review of all information submitted by the Applicant (including with respect to the environmental review conducted by the DEC and the issuance of a Negative Declaration), information and input from the Livingston County Planning Board, as well as all information and comments made by the public at the Public Hearing, and after due deliberation by the Town of Avon Zoning Board of Appeals, I hereby make a motion to adopt the above Findings.

Motion made by Jeff Mulligan, seconded by Jeff Passarell

All in favor? All opposed?

Ayes 5 Nays 0

APPROVAL OF AMENDED SPECIAL USE PERMIT WITH CONDITIONS

Based upon the foregoing adopted Findings of the Town of Avon Zoning Board of Appeals, I make a motion to approve the requested amendment to the Special Use Permit of Applicant pursuant to sections 130-35 and 130-35 B. (4) (e) of the Avon Town Code, subject to the following conditions:

1. All buildings and excavation operations shall be located or shall occur not less than 100 feet from any street or property lines, excepting that the portable crushing and screening plant shall not be placed closer than 900 feet from any residence on Oak Openings Road. Additionally, the dump truck, hydraulic excavator and front end loader are not to be used simultaneously within 500 feet of any residence on Oak Openings Road;
2. The subject property is to be fenced or have some similarly effective barrier of six (6) feet in height to prevent unauthorized access to areas where excavations are to exceed a depth of four feet;
3. All buildings and structures used in such excavation operations shall be dismantled and removed at the expense of the Applicant within 12 months following the termination of operations authorized by this amended Special Use Permit;
4. All buildings, structures and plants used for the processing of excavated materials shall be maintained so as to assure that such buildings, structures and plants shall not become dangerously dilapidated;
5. All equipment used for the excavation of sand and gravel and processing thereof shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noises and vibrations and such conditions which are injurious or substantially annoying to all persons living in the vicinity. All diesel engines shall be equipped with mufflers and will be maintained.

No trucks entering or leaving the subject property shall use "jake breaks" or other form of engine break or exhaust break;

6. No blasting shall be permitted as part of the Excavation Operation;
7. There shall be no major repair of heavy equipment performed at the subject property;
8. Bulk fuel storage shall be limited to one on-site tank of not more than 1,000 gallons, which such tank shall be double walled or dyked;
9. The volume of trucks leaving the subject property shall be as permitted by the Current Mining Permit dated January 3, 2022, excepting for the following:

Monday through Friday from 7:00 a.m. - 4:00 p.m.: Thirty (30) trucks per hour maximum leaving the facility

Monday through Friday from 4:00 p.m. - 6:00 p.m.: Fifteen (15) trucks per hour maximum leaving the facility

Saturday from 8:00 a.m. - 2:00 p.m.: Twelve (12) trucks per hour maximum leaving the facility between 8:00 a.m. and 12:00 noon and no trucks entering or leaving the facility after 12:00 noon.

10. The Applicant and all future operators at the subject property shall perform regular dust abatement as necessary to prevent dust from truck traffic on the pit access road from leaving the site;
11. The hours of operation for the Excavation Operation at the subject property shall be limited to:

Monday - Friday

No on-site activities will commence before 7:00 a.m. and all on-site activities will stop at 6:00 p.m. (including loading of trucks or hauling operations and/or truck-traffic or product leaving site). All haulage trucks must leave the site by or before 6:00 p.m.

Saturday

No on-site activities will commence before 8:00 a.m. and all on-site activities will stop at 2:00 p.m. No trucks for hauling will enter or leave the facility after 12:00 noon

Sunday

No operations of any kind

Federal Holidays

No operations of any kind as set forth in the Current Mining Permit.

12. Due to the lower residential home density to the north on Oak Openings Road and that homes are set back further and have better existing buffering from road traffic, all trucks entering the subject property shall come from the north on Oak Openings Road and shall not access Oak Openings Road from New York State Routes 5 & 20. Applicant shall regularly notify all haulage providers and truck drivers of the above restriction and Applicant shall be responsible for the same as a condition to the approved Special Use Permit as amended hereby;
13. Due to the lower residential home density to the north on Oak Openings Road and that homes are set back further and have better existing buffering from road traffic, all trucks leaving the subject property shall turn left out of the access road, heading north on Oak Openings Road. Applicant shall be required to utilize load tickets/material slips that provide written notice to all haulage providers and truck drivers of the above restriction, which shall be signed by each hauler and/or truck driver and Applicant shall be responsible for the same as a condition to the approved Special Use Permit, as amended hereby. Applicant shall maintain adequate and visible signage at the site exit of not less than 16 square feet in size, indicating "Left Turn Only";
14. All other terms, conditions and restrictions of the Current Mining Permit and not otherwise modified by these conditions shall be deemed to be conditions of this conditioned approval for Special Use Permit, as amended hereby. Notwithstanding the above, any modification of the current DEC Mining Permit may require applicant to seek and obtain modification to its Special Use Permit and/or modification to the Site Plan approved by the Planning Board;
15. All land which has been excavated must be rehabilitated in accordance with standards set by the DEC within one year after the termination of operations, at the expense of the Applicant or any future operator of the site. Where an Excavation Operation has lasted longer than one year, rehabilitation of land in accordance with standards set must be begun and completed within one year's time. Rehabilitation provided for herein shall require the following in addition to any requirements set forth in any Mining Permit issued by the DEC:
  - a. All excavations must either be made to a water-producing depth or graded and backfilled;
  - b. Excavations made to a water-producing depth shall be properly sloped to the waterline, with banks sodded or surfaced with soil of an equal quality to adjacent land area topsoil; such topsoil required under this section shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible;

c. Excavations not made to a water-producing depth must be graded or backfilled with non-noxious, non-flammable, non-combustible solid material and in a topographic character which will result in substantial general conformity to adjacent lands; such grading or backfilling shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to that of adjacent land area and planted with trees, shrubs, legumes or grasses upon the parts of such areas where revegetation is possible;

16. Any expansion of the Current Mining Permit (issued January 3, 2022) shall require Applicant to seek modification of the amended Special Use Permit granted hereby;

17. At all times during the operation of any excavation and/or mining activities pursuant to this Amended Special Use Permit, Applicant (or any subsequent owner) shall maintain a water monitoring well which shall be monitored on at least a semi-annual basis for water depth and the water quality tested for presence of petroleum products. The monitoring for water depth and testing for presence of petroleum products shall be performed by an independent lab that is certified and licensed to provide such services. The Town of Avon shall be regularly provided written results from such monitoring, which shall be made a part of the Special Use Permit file for the Applicant as maintained by the Town.

Motion made by Cindy Kellen, seconded by Jeff Passarell

All in favor? All opposed?

Ayes 5 Nays 0

Jeff Mulligan stated this concludes our special meeting tonight.

MOTION TO CLOSE THE MEETING 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.

MEETING CLOSED.