

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

PLANNING: TOM MCGOVERN, CLARA MULLIGAN, KATHY MANNIX, MICHAEL MILES, RANDY KOZLOWSKI, BRIAN THORN, KATHY COLE

OTHERS: CEO BRIAN GLISE, MRB ENGINEER LANCE BRABANT, TOWN ATTORNEY JAMES CAMPBELL

VISITORS: MICHAEL FOGEL, MICHAEL LEWIS, MICHAEL CLARK, ERIC HUPPERT, KAREN CRATER, KARL MITCHELL, KAREN SCHIEDEL, JANET MANKO, JUDY FALZOI, CHUCK MORGAN, KEVIN O'DONOGHUE, RONALD THEW, ROBERT DOCHERTY, MERCEDES BRIAN, KENNETH WARREN, LORRAINE RIETZ, WOFGANG RIETZ, DEBRA SALMON, ANTHONY SPADE, JOHN SCIARABBA

CLERK: KIM MCDOWELL

ZBA & PLANNING BOARD MOTION TO OPEN THE MEETING WAS MADE BY TOM, SECONDED BY CLARA.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE
BRIAN THORN - AYE

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

CARRIED 12-0.

ZBA & PLANNING BOARD MOTION TO APPROVE THE MINUTES FROM THE JOINT MEETING ON AUGUST 19, 2019 WAS MADE BY JEFF, SECONDED BY RANDY

KATHLEEN COLE -ABSTAIN
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE
BRIAN THORN - AYE

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

CARRIED 11-0.

Kathy welcomed our two new board members, Jeff Passarell on the Zoning Board of Appeals and Brian Thorn on the Planning Board.

HEEN, HELGE/ROUTE 39 & ASHANTEE LANE/TAX PARCEL#34.-1-3.113 -
PLANNING - SUBDIVISION APPLICATION - CONCEPTUAL DISCUSSION

Mr. O'Donoghue was present to represent Mr. Heen for this subdivision application. Mr. O'Donoghue said there are no changes to the map submitted. He stated Mr. McFadden, who is purchasing the divided parcel, wants to do a subdivision instead of a lot line adjustment.

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY TOM; SECONDED BY CLARA.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE
BRIAN THORN - AYE

CARRIED 7-0.

Kathy Cole asked if there were any questions or comments from those present and there were none.

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY MIKE; SECONDED BY KATHY MANNIX.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE
BRIAN THORN - AYE

CARRIED 7-0.

Lance stated this is an unlisted action for SEQR. He drafted SEQR - Determination of Significance, Short EAF Part 2, and Subdivision Plan Approval Resolution for this application.

TOWN OF AVON PLANNING BOARD RESOLUTION
HELGE HEEN & LESLIE HEEN - 2 LOT SUBDIVISION
RESUBDIVISION OF LOT 13 OF THE ASHANTEE SUBDIVISION, PHASE 2
ASHANTEE LANE & ROUTE 39 - AGRICULTURAL ZONING DISTRICT
TM# 34.00-1-3.113

SEQR - DETERMINATION OF SIGNIFICANCE

WHEREAS, the Town of Avon Planning Board, (hereinafter referred to as Planning Board) is considering Final Subdivision Plan Approval for the proposed 2 lot subdivision of Lot 13 of the Ashantee Subdivision, Phase 2 with the parent parcel consisting of 74.3 acres creating Lot 13R at 4.606 acres with the remaining 69.694 acres remaining with Lot 13 with no new development proposed as shown on the Final Subdivision Plan titled "Resubdivision of Lot 13 of the Ashantee Subdivision, Phase 2" prepared by Welch & O'Donoghue Land Surveyors, P.C., dated July 18, 2019 and all other relevant information submitted as of September 23, 2019 (the current application); and

WHEREAS, the Planning Board has determined the above referenced application (hereinafter referred to as Action) to be an Unlisted

Action under Part 617 of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has determined that the proposed development is subject to a single agency review pursuant to Part 617.6(b) (4) of the SEQR Regulations; and

WHEREAS, the Planning Board determines that it is the most appropriate agency for making the determination of significance thereon under the SEQR Regulations; and

WHEREAS, the Planning Board has given consideration to the criteria for determining significance as set forth in Section 617.7(c) (1) of the SEQR Regulations and the information contained in the Short Environmental Assessment Form Part 1; and

WHEREAS, the Planning Board has completed Part 2 and Part 3 of the Short Environmental Assessment Form; and

NOW, THEREFORE BE IT RESOLVED that the Planning Board does hereby designate itself as lead agency for the proposed development above herein; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board has reasonably concluded the following impacts are expected to result from the proposed Action, when compared against the criteria in Section 617.7 (c):

- (i) there will not be a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- (ii) there will not be large quantities of vegetation or fauna removed from the site or destroyed as the result of the proposed action; there will not be substantial interference with the movement of any resident or migratory fish or wildlife species as the result of the proposed action; there will not be a significant impact upon habitat areas on the site; there are no known threatened or endangered species of animal or plant, or the habitat of such species; or, are there any other significant adverse impacts to natural resources on the site;
- (iii) there are no known Critical Environmental Area(s) on the site which will be impaired as the result of the proposed action;
- (iv) the overall density of the site is consistent with the Town's Comprehensive Plan land use recommendations;
- (v) there are no known important historical, archeological, architectural, or aesthetic resources on the site, or will the proposed action impair the existing community or neighborhood character;
- (vi) there will not be a major change in the use of either the quantity or type of energy resulting from the proposed action;
- (vii) there will not be any hazard created to human health;
- (viii) there will not be a substantial change in the use, or intensity of use, of land including open space or recreational resources, or in its capacity to support existing uses;
- (ix) there will not be a large number of persons attracted to the site for more than a few days when compared to the number of persons who would come to such a place absent the action;
- (x) there will not be created a material demand for other actions that would result in one of the above consequences;
- (xi) there will not be changes in two or more of the elements of the environment that when considered together result in a substantial adverse impact; and
- (xii) there are not two or more related actions which would have a significant impact upon the environment.

BE IT FURTHER RESOLVED that based upon the information and analysis above and the supporting documentation, the Planning Board determines that the proposed action WILL NOT result in any significant adverse environmental impacts.

BE IT FURTHER RESOLVED that the Planning Board directs the Chairperson to sign and date Part 2 of the Short Environmental Assessment Form and to identify on the Form that the proposed Action will not result in any significant adverse impacts.

BE IT FINALLY RESOLVED that the Planning Board directs that copies of this determination be filed as provided for under the SEQR Regulations.

The above Resolution was offered by Kathy Cole and seconded by Clara Mulligan at a regular scheduled Planning Board meeting held on September 23, 2019. Following discussion, a voice vote was recorded:

Kathleen Cole - Aye
Thomas McGovern - Aye
Michael Miles - Aye
Randy Kozlowski - Aye
Kathy Mannix - Aye
Clara Mulligan - Aye
Brian Thorn - 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 September 23, 2019 meeting.

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

TOWN OF AVON PLANNING BOARD RESOLUTION
HELGE HEEN & LESLIE HEEN - 2 LOT SUBDIVISION
RESUBDIVISION OF LOT 13 OF THE ASHANTEE SUBDIVISION, PHASE 2
ASHANTEE LANE & ROUTE 39 - AGRICULTURAL ZONING DISTRICT
TM# 34.00-1-3.113

SUBDIVISION PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board, (hereinafter referred to as Planning Board) is considering Final Subdivision Plan Approval for the proposed 2 lot subdivision of Lot 13 of the Ashantee Subdivision, Phase 2 with the parent parcel consisting of 74.3 acres creating Lot 13R at 4.606 acres with the remaining 69.694 acres remaining with Lot 13 with no new development proposed as shown on the Final Subdivision Plan titled "Resubdivision of Lot 13 of the Ashantee Subdivision, Phase 2" prepared by Welch & O'Donoghue Land Surveyors, P.C., dated July 18, 2019 and all other relevant information submitted as of September 23, 2019 (the current application); and

WHEREAS, the Planning Board opened a Public Hearing and completed a formal review of the proposed subdivision in compliance with the implementing regulations of the State Environmental Quality Review Act (SEQR); and

WHEREAS, the Planning Board has determined the proposed development to be an Unlisted action and is subject to a single agency review pursuant to Part 617.6(b)(4) of the SEQR Regulations; and

WHEREAS, on September 23, 2019 the Planning Board, serving as lead agency, made a determination of significance and filed a

negative declaration thereby concluding review pursuant to SEQR;
and

NOW, THEREFORE, BE IT RESOLVED, the Planning Board hereby Approves without Conditions; Approves with the following Conditions; or Denies the application for the following reasons:

The above Resolution was offered by Clara Mulligan and seconded by Thomas McGovern at a regular scheduled Planning Board meeting held on September 23, 2019. Following discussion, a voice vote was recorded:

Kathleen Cole - Aye
Thomas McGovern - Aye
Michael Miles - Aye
Randy Kozlowski - Aye
Kathy Mannix - Aye
Clara Mulligan - Aye
Brian Thorn - 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 September 23, 2019 meeting.

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

Kevin will provide Kim with the Mylar and copies to be signed by Kathy Cole.

PIRANHA MILLING & PAVING CONTRACTORS LLC/TEC DRIVE/TAX PARCEL
#35.-1-13.524-SITE PLAN APPLICATION - CONCEPT DISCUSSION

Mr. Sciarabba, LandTech, and Mr. Anthony Spade, Owner, were present to discuss the concept they would like approved. They are aware the application submitted is not complete but they wanted to come and give a brief overview of the project. The site is 33 acres currently owned by Livingston County IDA. Piranha is an excavation and milling and paving company and are planning to purchase the whole parcel. The main focus currently Phase 1 which is 2 acres in size and will hold the 95 square foot office building. The building will house equipment, offices and mechanic repairs. The Village of Avon has provided a letter stating they have sufficient sewer capacity for this project to move forward. There will be some green infrastructure which will be over an acre of disturbance and will adhere to the NYS DEC guidelines.

They would like to come back with a completed application at the next Planning Board meeting. Mr. Bacon is presenting this to the County Planning Board in the next week as well.

They are a private contractor that paves roads, driveways, parking lots and some plowing. They have paving machines, milling equipment and trucking equipment. There will be trucks on site with some outside storage. The site has a grade change on Tec Drive so it will not be seen clearly from the road.

Mr. Spade would like to see Phase 1 completed fairly quickly and start construction on Phase 2 in the Spring/Summer of 2020.

Phase 2 is a unique business where they construct several buildings and each building holds suites which are rented out to other businesses for storage or operations. They may also store equipment outside. Jeff Mulligan asked if there would be overhead doors in each unit and they would have one possibly two overhead doors for drive thru.

Kathy Cole stated our goal as a Planning Board is to make sure the area looks nice and not have a lot of outside storage.

Jim Campbell stated that a main concern is the sewer capabilities. Jim thought that the letter provided by the Village of Avon only took in consideration Phase 1 of the project. John thought it was in regards to the whole 33 acres. Jim feels they need to make sure it does in fact pertain to the whole parcel before submitting the application. He suggested contacting Michelle Baines at Livingston County Water and Sewer Authority as well. Clara asked if each unit would have their own bathroom and John stated they would.

Tom McGovern asked whether the mechanics are in Phase 1 or Phase 2. John stated it would be in both and they will have a water/oil separator.

Lance suggested the application include a detailed statement of operations for Phase 1 and give a brief overview of the other Phases as well.

Kathy Mannix asked according to the drawings for Phase 2 there could be potentially 20 separate businesses on site and John stated that is correct. Brian asked since this is a PDD, will each of these businesses have to get Town Board approval. Jim Campbell said that may not be the case, the Town Board may state any of the permitted uses in the code can be approved. If something is different than the code they may need to go to Town board. Jeff Mulligan stated that currently with Mortalis across the street, the parking has changed with what they originally understood for that building and is hoping that will not happen in this case as well.

John would like to come back to the next meeting with everything suggested by everyone. Kim will get in touch with them regarding deadlines for the November Planning meeting.

THEW, RONALD & FELICIA/6411 ACORN TRAIL/TAX PARCEL#45.-1-84
-VARIANCE FOR ROAD FRONTAGE

Mr. Thew has retained attorney Robert Docherty regarding the variance and concerns with the driveway for emergency vehicles. Mr. Docherty stated he hasn't had a chance to look over the subdivision maps yet and has just recently spoken with Fire Chief Faugh on what still needs to be done. Chief Faugh needs to inspect what has been done to the trees and meet with Mr. Docherty regarding his findings.

Lance stated that Chief Faugh sent an email and he is not concerned with the grade as much but we need to get a letter from Chief Faugh saying he is OK with everything or he is not OK with it but there is nothing that you can do, or he is not OK

with it and here is what needs to be done. Lance said that their next steps would be to come to the ZBA meeting in October for the variance and then the Planning Board meeting in November for the subdivision.

Jim Campbell stated we will need to have a reciprocal maintenance easement agreement for the four lots that are going to be served by Acorn Trail on file as well.

HANSON AGGREGATES NEW YORK LLC/2049 HONEOYE FALLS NO. 6 RD./TAX PARCEL #26.-1-13-SPECIAL USE PERMIT & SITE PLAN APPLICATION

Jeff Mulligan stated that Jim Campbell will be speaking tonight on behalf of both the Zoning Board of Appeals and Planning Boards.

Jim Campbell stated at the last meeting the Board had asked him to do research on what restrictions if any were permissible regarding this application for a Special Use Permit. He has done extensive research regarding restriction in general relating to this kind of operation starting with looking at environmental laws and case laws. The NYS DEC permit was silent in terms of hours of operation, however, the applicant stated the hours of operation in last month's meeting and they have operated without restrictions in the past. The law is pretty consistent and clear. The bottom line perspective is that the law doesn't support the ZBA placing restriction on the mining excavation operations regardless of what our code might suggest. It is preempted by state law.

Jim's determination from a legal perspective is that you don't have much of an opportunity here to deny the application and don't really have any support to place restrictions on this application either. Jim has taken finding and decision document that they have talked about recently and removed some items that were already in the NYS DEC permit.

Jim stated the first several pages are the background history and overview of Hanson, then a procedural summary and different parts of the process for the application, outlined some brief statements from the public hearing, and then the findings.

Jim read the following starting on Page 4 - General Findings.

FINDINGS AND DECISION
Town of Avon Zoning Board of Appeals
September 23, 2019

Matter of the application for Special Use Permit of Hanson Aggregates New York, LLC

Site Address: 1035 Oak Openings Road, Town of Avon, Livingston County, New York
Tax Id. #: 26.-1-13

BACKGROUND SUMMARY

1. Applicant History and Overview

Hanson Aggregates New York LLC ("Hanson") operates a long-standing consolidated limestone quarry that is partially located within the Town of Avon, NY, known as the

Honeoye Falls Quarry. The ongoing mining activity within the portion of the existing Honeoye Falls Quarry within the Town of Avon pre-dates the Zoning Ordinance of the Town of Avon adopted in 1973. The existing Hanson – Honeoye Falls Quarry has operated under a valid New York State Department of Environmental Conservation (NYSDEC) mining permit since the phased in mining regulations took effect in 1978.

Between 1967 and 1988, the quarry was owned by the Koppers Company under the name General Crushed Stone Company.

The General Crushed Stone Company was acquired by Beazer East Corporation in 1988. Hanson Aggregates acquired the site from Beazer in 1991. Since acquiring the site in 1991, Hanson Aggregates has continually operated the Honeoye Falls Quarry in accordance with its NYDEC mining permit issued pursuant to the New York State Mined Land Reclamation Law (Environmental Conservation Law Article 23, Title 27) (MLRL), including that portion of the Quarry within the jurisdictional bounds of the Town of Avon. On September 26, 2018, NYSDEC issued a modified mining permit to Hanson authorizing the addition of approximately 63.6 acres to the current life of mine at the Honeoye Falls Quarry. The issuance of the modified mining permit was preceded by a comprehensive coordinated environmental review conducted by NYSDEC over the course of approximately five (5) years pursuant to the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) (SEQRA). The Town of Avon participated in the SEQRA review and mining permit modification process as an Involved Agency.

Approximately 10 acres of the NYSDEC-approved modification area is within the Town of Avon. The modification area is zoned as “Agricultural (A)” by the Town of Avon. Pursuant to Section 130-11(D)(4), excavation operations are allowed in the Agricultural (A) district subject to issuance of a Special Use Permit from the Zoning Board of Appeals and Site Plan approval issued by the Town Planning Board. Since the approximately 10 acres of the NYSDEC-approved modification area are not part of the existing “grandfathered” quarry, a Special Use Permit is required by the Town of Avon, for the modification area only.

According to the materials submitted by Hanson, the current area being mined is approaching exhaustion of quality aggregate which is the primary motivation for the requested expansion area. Hanson indicates that almost all of the limestone mined at the Honeoye Falls Quarry is used to supply infrastructure projects within a 20-30 mile radius of the Town of Avon. They further state that if the existing quarry were to be closed because the currently permitted area is exhausted of materials, such materials would have to be trucked in from greater distances, inflating cost, or a new mine would need to be opened on a previously undisturbed site. Hanson opines that either of these alternatives would have significant negative local and regional environmental impacts.

Hanson represents that no changes to the method of mining are proposed as part of the modification for which a Special Use Permit and Site Plan are being sought. No processing of aggregate will occur in the modification area within the Town of Avon. The processing plant will remain in its current location within the existing previously permitted area. Hanson will continue to use the entrance to the facility from Honeoye Falls No. 6 Road which has existed since the facility opened for mining in 1959. Hanson indicates that no increase or changes in customer truck traffic will result since the requested modification is only to slightly change location of where the existing mining activities occur.

No new processing equipment, buildings, or other structures are proposed. No new roads or customer access points are proposed. No changes in current operations are proposed.

2. Procedural Summary

Hanson Aggregates New York, LLC (hereafter “Hanson” or “the Applicant”) has made application for approval of a Special Use Permit to expand its currently existing excavation operation within property it owns at 1035 Oak Openings Road. The property is approximately 86.30 acres in size and is located on the east side of Oak Openings Road, south of the town line between the Town of Avon and the Town of Rush. The use proposed by Applicant is the expansion of a pre-existing mining and excavation operation to extract sand and gravel from the site.

The subject property is zoned Agricultural District (A) and is initially governed by section 130-11 of the Code of the Town of Avon (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 a Special Use Permit, the Applicant applied for a Modified Mining Permit from the New York State Department of Environmental Conservation (hereafter “NYSDEC”). The application for such modification was approved by the NYSDEC on or about September 26, 2018 after several years of review by the NYSDEC.

From a procedural standpoint, 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. The matter was also referred to the Town of Avon Planning Board for its comments relative to the Applicant’s request for a Special Use Permit.

On August 8, 2019, the Livingston County Planning Board issued a written statement that they had reviewed the referral and voted affirmatively to recommend “Approval” with various advisory comments. The written advisory comments have been made a part of the file of the Zoning Board of Appeals and such advisory comments therein have been taken into consideration as part of the deliberation process undertaken by the Zoning Board of Appeals and in part contribute to the basis for its decisions regarding these matters.

The Town of Avon Zoning Board of Appeals met at a properly scheduled and noticed meeting on July 22, 2019, along with the Town of Avon Planning Board to hold a joint public hearing for purposes of obtaining public comment on the requested Special Use Permit (and Site Plan from the Planning Board). Said public hearing resulted in approximately 10 residents appearing, many of whom spoke in opposition to the Hanson’s application for a 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 allow submission of written comments until August 12, 2019. Several written comments were received during the written comment period, which such comments have been reviewed by the ZBA and have been considered as part of the review process leading up to this resolution.

The ZBA has reviewed the State Environmental Quality Review Act (SEQR) process undertaken by the NYSDEC pursuant to 6 NYCRR 617. The ZBA has been provided with extensive materials from the Applicant relating to the SEQR process that was undertaken when Hanson applied for and was granted its Modified Mining Permit. The SEQR materials provided and reviewed demonstrate that the NYSDEC conducted a lengthy and thorough SEQR review which encompassed approximately five (5) years of process, including the preparation, review and modification of a Draft Environmental Impact Statement (which became a Final Environmental Impact Statement) as part of the coordinated review. The Draft Environmental Impact Statement (including all appendices, schedules and attachments), the Final Environmental Impact Statement (including all appendices, schedules and attachments) and all other materials related to the SEQR review conducted by the NYSDEC, including 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 review conducted by the NYSDEC 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 addressed during the course of the NYSDEC’s SEQR review process.

Following the closing the public hearing, the ZBA considered the comments received by the public during the public hearing (as well as written comments received during the extended written comment period) and discussed various issues raised in the public hearing as well as by members of the ZBA, Planning Board and Livingston County Planning Board. After due deliberation, the Town of Avon Zoning Board of Appeals makes the following findings:

GENERAL FINDINGS

- 1. The proposed use as sought by the Applicant to expand its excavation operation to excavate and process sand and gravel into a new area within the parcel is 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, Hanson Aggregates New York, LLC has properly submitted its application pursuant to section 130-45 B. of the Town Code, seeking approval from the ZBA of a Special Use Permit under section 130-35 B. (4) (e) of the Town Code permitting it to operate a sand and gravel excavation operation on the subject property;**
- 4. The Town of Avon Code Department has properly submitted the application requesting the Special Use Permit to the Livingston County Planning Board pursuant to the requirements of General Municipal Law section 239 l & m;**
- 5. On August 8, 2019, the Livingston County Planning Board issued a written statement that they had reviewed the referral and voted affirmatively to recommend “Approval” with various advisory comments:**
 - a. There are two Agriculture District #2 farms within 500 ft of the proposed. According to NYS Agriculture & Markets Law Section 303-a(2), the board reviewing the application “shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district.” If not done already, the Applicant is required to submit an Agricultural Data Statement for the Town to review.**
 - b. The proposed contains a federal wetland, and surface / groundwater resources within the project site. The Natural Resource Inventory advocates for well-thought out development that weighs environmental impacts and considers alternatives that are less damaging to natural resources. Any excavation / mining activity on this parcel should take these natural resources into consideration.**
 - c. The Applicant should ensure that all guidelines, regulations, and requirements of the approved NYS DEC permit are met.**
 - d. If not done already, the Applicant should ensure that the submitted material satisfies the Town conditions for a Special Use Permit.**
- 6. The NYSDEC conducted a coordinated review under the New York State Environmental Quality Review Act (6 NYCRR 617) of the application to the NYSDEC for a Modified Mining Permit by Hanson. The SEQR materials generated during the application by Hanson, including the Draft Environmental Impact Statement and Final Environmental Impact Statement demonstrate that the NYSDEC conducted a lengthy and thorough SEQR review, which concluded on September 26, 2018 when the NYSDEC issued its Findings Statement and approved issuance of the Modified Mining Permit;**
- 7. The Findings Statement dated September 26, 2018 demonstrates that the NYSDEC carefully looked at potential adverse environmental impacts relating to water resources, air resources and dust, noise, wildlife, agriculture and blasting and determined that either such impacts will be appropriately mitigated or were of such a level as to not be a significant concern;**
- 8. The ZBA concludes that it is not necessary, nor would it be appropriate to conduct an independent review of the proposed application pursuant to SEQR. The ZBA**

acknowledges that the NYSDEC 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;

9. **The ZBA further finds that the current application for a Special Use Permit by Applicant is not seeking permission to conduct any activity that is substantively different than the permitted activities that have been ongoing and continuous on portions of the same parcel and contiguous parcels since the 1960’s; and**
10. **In reaching the above findings, the ZBA has considered the following documents as well as other relevant information:**
 - a. **Special Use Permit application materials received from Hanson Aggregates New York, LLC;**
 - b. **Hanson Aggregates New York, LLC’s Mining Permit Application to the NYS Department of Environmental Conservation (hereafter “DEC”) dated March 6, 2019;**
 - c. **Modified Mining Area Plan prepared September 25, 2000 and revised February, 2016;**
 - d. **Reclamation Plan Map prepared September 25, 2000 and revised February, 2016;**
 - e. **Storm Water Pollution Prevention Best Management Practices Plan prepared June 24, 2014 and revised May, 2017;**
 - f. **NYSDEC Water Withdrawal Permit – Non Public under Article 15, Title 15 dated October 17, 2014;**
 - g. **NYSDEC Water Withdrawal Reporting Form for reporting year 2017;**
 - h. **NYSDEC SPDES Permit Renewal dated May 28, 2014;**
 - i. **DEIS dated October 16, 2015, revised February 9, 2016 and accepted May 10, 2016, including all appendices, maps and figures;**
 - j. **Responses to NYSDEC inquiries on proposed DEIS;**
 - k. **Public Comments relating to public hearing on DEIS, including hearing transcript and written comments.**
 - l. **Environmental Conservation Law section 23-2701;**
 - m. **Environmental Conservation Law section 23-2711;**
 - n. **Numerous written correspondence from neighboring property owners;**
 - o. **Comments as made in the Public Hearing held July 22, 2019 and subsequent written comments during the written comment period;**
11. **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” and such concerns can be properly mitigated by conditions made of the modified mining permit issued by the NYSDEC;**

FINDINGS FOR THE SPECIAL USE PERMIT UNDER SECTION 130-35

- 1. The proposed use of the subject property pursuant to the application is to permit the Applicant to use the subject property for an expansion to a pre-existing excavation operation to excavate, process and remove sand and gravel from the site;**
- 2. The above stated proposed use 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;**
- 3. The Zoning Board of Appeals in making its findings has taken into consideration the existing conditions of the proposed site and the surrounding area;**
- 4. The Zoning Board of Appeals 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;**
- 5. Pursuant to 130-35 B. (1) of the Avon Town Code, the Zoning Board of Appeals finds that:**
 - a. With the conditions of use imposed by this determination and the modified mining permit issued by the NYSDEC, the proposed use will likely not have an adverse effect on the orderly development and character of the neighborhood and upon the development and conduct of other lawful uses in the vicinity;**
 - b. With the conditions of use imposed by this determination and the modified mining permit issued by the NYSDEC, the proposed use will be consistent with the existing and probable future development of the vicinity in which the premises are situated;**
 - c. With the conditions of use imposed by this determination and the modified mining permit issued by the NYSDEC, the proposed use will not be a nuisance in law or in fact and the use will not be unreasonably 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;**
 - d. With the conditions of use imposed by this determination and the modified mining permit issued by the NYSDEC, the proposed use 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 proper conditions, restrictions and safeguards as set forth herein and in the modified mining permit issued by the NYSDEC, 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 use of the subject property for excavation operations 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**

- g. The proposed use meets the criteria for review in the Town’s site plan regulations.**

Jeff Mulligan questioned having all of these conditions under #5 in here. He struggles with the statements A-E because of the residents’ comments and concerns during the public hearing. Jim said it does need to be in because it comes from the Town of Avon Code. Jim reread the items and there was some discussion on the wording and some modifications were made.

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

- 1. Pursuant to 130-35 B. (4) (e) of the Avon Town Code, the Zoning Board of Appeals finds that:**
 - a. The proposed use will not have an effect or impact 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] (as the expansion area which is approximately 10 acres is part of a much larger parcel or combination of parcels that are used for the same purpose; 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, information and input from the Town of Avon Planning Board, information and input from the Livingston County Planning Board, as well as all information and comment made by the public at the Public Hearing and on other occasions, and after due deliberation by the Town of Avon Zoning Board of Appeals, I hereby make a motion to adopt the above Findings. Do I have a second?

Motion made by Jeff Passarell, seconded by Cindy Kellen

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

APPROVAL OF 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 Special Use Permit request of Applicant pursuant to

sections 130-35 and 130-35 B. (4) (e) of the Avon Town Code, subject to the following conditions:

1. Any buildings located on the approximately 10 acres that are the subject of this conditioned approval shall be located not less than 100 feet from any street or property lines;
2. The approximately 10 acres that are the subject of this conditioned approval are to be fenced or have a berm or other 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 equipment used for the excavation of sand and gravel and processing thereof on the approximately 10 acres that are the subject of this conditioned approval shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noises and vibrations. All diesel engines in Applicant's control shall be equipped with mufflers and will be properly maintained;
4. All blasting shall take place in compliance with the NYSDEC Modified Mining Permit, or as such Permit may be modified by the NYSDEC from time to time;
5. There shall be no major repair of heavy equipment performed on the expansion area within the Town of Avon;
6. Any modification of the current NYSDEC Mining Permit requiring lands located in the Town of Avon may require the applicant to seek and obtain modification to its Special Use Permit and/or modification to the Site Plan approved by the Planning Board;
7. Approval of this Special Use Permit shall be subject to and contingent upon issuance of Site Plan approval by the Town of Avon Planning Board; and
8. The Applicant shall provide groundwater level monitoring data to the Town on a semi-annual basis, which shall be made a part of the Special Use Permit file for the Applicant as maintained by the Town.

Motion made by Jeff Mulligan, seconded by Jeff Passarell

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

Tom McGovern stated that at the last meeting they were going to make efforts to reduce the noise level with the trucks. Hanson is making every effort to reduce the noise and are training new employees regarding that. Hanson took emails for notification of blasting from the residents that were present at the meeting. Anyone who wasn't at meeting can call or stop by Hanson office to get on the notification list.

Lance read the conditions for the site plan approval and stated no independent SEQR was done due to the DEC one. There was some wording and reordering of conditions originally given to the Board members at tonight's meeting.

Tom and Clara discussed other options to make the berm higher and the specific trees that are being proposed. Clara feels that white pine is not dense enough and will not thrive in the area, she feels that white spruce is a much better option. Hanson will look into that and the minimum tree height has not been determined yet but they will be 15 feet in between each tree.

TOWN OF AVON PLANNING BOARD RESOLUTION
HANSON AGGREGATES NEW YORK, LLC - HONEOYE FALLS QUARRY
MODIFICATION
1035 OAK OPENINGS ROAD, TOWN OF AVON
AGRICULTURAL (A) DISTRICT - TX MAP NO. 26.-1-13
SPECIAL USE PERMIT & SITE PLAN APPROVAL

SITE PLAN APPROVAL

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board) is considering an application for Site Plan Approval for the continued mining operations with the approved modified mining permit for the 63.6 acres of land, with 10-acres located within the Town of Avon located at 1035 Oak Openings Road and all other relevant information submitted as of August 19, 2019 (the current application); and

WHEREAS, the NYS Department of Environmental Conservation (NYSDEC), acting as Lead Agency classified the above referenced Action to be a Type 1 Action under New York State Environmental Quality Review Act (6 NYCRR 617); and

WHEREAS, the NYSDEC conducted a coordinated review under the New York State Environmental Quality Review Act (6 NYCRR 617) of the application which included the Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS); and

WHEREAS, the NYSDEC concluded on September 26, 2018 when the NYSDEC issued its Findings Statement and approved issuance of the Modified Mining Permit; and

NOW, THEREFORE, BE IT RESOLVED, the Planning Board hereby Approves without Conditions; Approves with the following Conditions; or Denies the application for the following reasons:

1. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer to determine compliance with NYS Building Code requirements and Town Code requirements and conditions of this approval.
2. A site plan meeting all of the conditions referenced herein is to be provided with signature lines for the Town Engineer and Planning Board Chair and the site plan is to be signed prior to issuance of permits.
3. Site Plan approval is conditioned on compliance with all conditions of the Special Use Permit.
4. Prior to issuance of permits, Special Use Permit approval from the Town Zoning Boards of Appeals is required.
5. The site plans are to be revised to identify the berm plantings as a minimum 6' tall "White Spruce" subject to the approval of the NYSDEC.
6. The applicant is encouraged to continue to provide noise suppression alternatives during all hours of operation.

The above Resolution was offered by Kathy Cole and seconded by Randy Kozlowski at a regular scheduled Planning Board meeting held on September 23, 2019. Following discussion, a voice vote was recorded:

Kathleen Cole - Aye
Thomas McGovern - *Abstained*
Michael Miles - Aye
Randy Kozlowski - Aye
Kathy Mannix - Aye
Clara Mulligan - Aye
Brian Thorn - 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 September 23, 2019 meeting.

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

ZBA & PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY CLARA, SECONDED BY KATHY COLE.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE
BRIAN THORN - AYE

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

CARRIED 12-0.

MEETING CLOSED.