

MEMBERS PRESENT: ZBA: JEFF MULLIGAN, CINDY KELLEN, BOB WESTFALL, DIANE ATTEA, SAM PRICE

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

OTHERS: COE BRIAN GLISE, TOWN ATTORNEY JIM CAMPBELL, MRB ENGINEER LANCE BRABANT, MRB ENGINEER BROOKE MEYER

VISITORS: GUY MATTHEWS, JOHN METZLER, RICHARD GROTH, KEN PERELLI, JOHN SCIARABBA, ROBERT & CAROLYN MCKEE, DEBRA SALMON, BRUCE MAXON, JANET MANKO, JUDY FALZOI, ERIC HUPPERT, BARB PHILLIPS, STAN PHILLIPS, ANNE BRISTOL, LISA ARNOLD, RICK & KAREN CRATER, ED GIRARD, CRAIG WLECH, DALE TWARDOKUS, JOHN HELLERT, KAREN SCHIEDEL

CLERK: KIM MCDOWELL

PLANNING BOARD MOTION TO OPEN THE MEETING WAS MADE BY CLARA, SECONDED BY KATHY M.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
DAVE SHARMAN - ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

CARRIED 6-0.

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

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

BRUCKEL, PETER/QUICKLEE'S TRAVEL PLAZA/TAX MAP APRCEL #55.-1-4.114/2697 LAKEVILLE RD/CONSTRUCTION OF 100 FT POLE SIGN WITH 928 SQUARE FT. OF SIGNAGE - SITE PLAN APPROVAL

Mr. Ken Perelli and Mr. John Sciarabba were present to answer any questions about site plan application. At the previous ZBA meeting three variances (height of the sign, the square footage of the signs and the use of two ground signs) were granted for the 100 foot sign. They have worked with Lance on the fall zone and location of the 100 foot pole sign on premise. Lance asked the applicants to relocate the pole outside of the right away, which they have done and submitted a new site plan showing those modifications. There were no comments from the Planning Board members. Lance read the site plan approval resolution to everyone present.

TOWN OF AVON PLANNING BOARD RESOLUTION
QUICKLEE'S TRAVEL PLAZA
2781 LAKEVILLE ROAD (US ROUTE 15)
AREA VARIANCE REQUEST - PDD DISTRICT
100 FOOT TALL GROUND SIGN APPLICATION

SITE PLAN APPROVAL

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board) has received a request for site plan approval for the installation of an 100-foot freestanding sign located at 2781 Lakeville Road within the Planned Development District (PDD) and detailed on the Site Plan prepared by Land Tech Surveying & Planning, P.L.L.C. all other relevant information submitted as of September 17, 2018 (the current application); and

WHEREAS, the application required area variances from the ZBA for the increase in height of the signage to the proposed 100', square footage of the signage to 746.8 sq. ft, and placement of a second freestanding ground sign; and

WHEREAS, the area variances were granted by the ZBA at the August 27, 2018 meeting; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQR), a determination of significance was previously adopted by the Zoning Board of Appeals at their August 27, 2018 as part of Area Variance Approval; 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. Site Plan Approval with conditions specified above herein is valid for a period of 180 days from today. Once all conditions of Site Plan Approval have been met and shown on revised drawings including the revision dates, the Planning Board Chairperson will then sign the Site Plans.
2. 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.

The above Resolution was offered by Randy Kozlowski and seconded by Kathleen Cole at a regular scheduled Planning Board meeting held on September 17, 2018. Following discussion, a voice vote was recorded:

Kathleen Cole - Aye
Thomas McGovern - Abstain
Michael Miles - Aye
Randy Kozlowski - Aye
Kathy Mannix - Aye
Dave Sharman - Aye
Clara Mulligan - 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 17, 2018 meeting.

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

MATTHEWS, GUY/MATTHEWS BUSES, INC./EAST AVON PLAZA/5578 AVON-
EAST AVON RD/TAX MAP PARCEL#35.-1-36.1 - SPECIAL USE PERMIT
APPLICATION - PUBLIC HEARING & SITE PLAN APPROVAL

Mr. Matthews and Mr. Metzler were in attendance from Matthew Buses to answer any questions from either Board. Lance sent a letter dated August 17, 2018 to Matthews Buses with some concerns and as of tonight all concerns have been addressed. Lance stated that ultimately one of the approval conditions will be for MRB Group to look over the plans before the Planning Board approval signatures. The Livingston County recommendations before approval have been addressed as well. Mike asked about the grading of the parking lot - they have submitted a new grading plan and Lance has looked it over. Improvements will be made to the entire building, interior and exterior. Lance read the site plan approval resolution to all present.

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

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

Visitor, Janet Manko, stated that the proposal will make the corner look very good and asked if any traffic studies were done. Jeff stated the amount of traffic is minimal. Lance stated this does not require a traffic study and NYSDOT has the curb cut for the premise.

Visitor, Judy Falzoi, went to Dansville and looked at their current location and said that the premise looks very nice. It will be an improvement to the area.

Visitor, Janet Manko, asked if the zoning in the plaza is going to change and follow the Town of Avon's Comprehensive Plan. Mr. Campbell stated when the Town Board gets to the zoning changes to coincide with the comprehensive plan it will be done in the future in a mass resolution.

Lance read the Special Use Permit Resolution. Lance stated this is a Type II Action and no SEQR process is necessary which is stated in the resolution.

Jim Campbell read the recommendations from the Livingston County Planning Board from their September 13, 2018 meeting.

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

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

Jim Campbell read the findings that need to be taken into consideration for approval of the Special Use Permit from the Livingston County Planning letter. The ZBA Board answered all questions from the letter favorably.

MOTION TO ACCEPT THIS AS A TYPE II ACTION WAS MADE BY BOB; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

MOTION TO APPROVE SPECIAL USE PERMIT WITH CONDITIONS OUTLINED IN THE RESOLUTION WAS MADE BY SAM; SECONDED BY CINDY.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
MATTEWS BUSES, INC - SCHOOL BUS FACILITY - EAST AVON PLAZA
SPECIAL USE PERMIT & SITE PLAN APPROVAL
5578 AVON-EAST - EAST AVON ROAD

SUP APPROVAL RESOLUTION

WHEREAS, the Town of Avon Zoning Board of Appeals (hereinafter referred to as Zoning Board) is considering an application for a Special Use Permit for the sale and servicing of new and used school buses in compliance with §130-15, §130-16, §130-20 and §130-35 in the Combined General Business -Light Industrial District (BI-LI) zoning district located at 5578 Avon East off East Avon Road; 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 Zoning Board has classified the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations thereby completing the environmental review; and

WHEREAS, on September 17, 2018, in compliance with NYS Town Law, the Zoning Board held a public hearing on the current application and completed a formal review of the application; and

WHEREAS, on September 17, 2018, in compliance with the Town of Avon Town Code, 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:

1. 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 and Town Code §130-15, §130-16, §130-20 and §130-35.
2. 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 insure that the Special Use Permit is being operated in accordance with the conditions specified by the Zoning Board.
3. 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.
4. 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.
5. A separate approval by the Planning Board is required for proposed building and ground signage.
6. The Statement of Operations provided by the applicant and as discussed at the September 17, 2018 Joint Board meeting have been accepted by the Zoning Board.
7. 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.

The above Resolution was offered by Samuel Price and seconded by Cindy Kellen at a regular scheduled Zoning Board meeting held on September 17, 2018. Following discussion, a voice vote was recorded:

Jeff Mulligan - Aye
Samuel Price -Aye
Cindy Kellen - Aye
Bob Westfall - Aye
Diane Attea - 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 for the September 17, 2018 meeting.

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

TOWN OF AVON PLANNING BOARD RESOLUTION
MATTEWS BUSES, INC - SCHOOL BUS FACILITY - EAST AVON PLAZA
SPECIAL USE PERMIT & SITE PLAN APPROVAL
5578 AVON-EAST - EAST AVON ROAD

SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board) is considering an application for a Site Plan approval for the sale and servicing of new and used school buses in compliance with §130-15, §130-16, §130-20 and §130-35 in the Combined General Business -Light Industrial District (BI-LI) zoning district located at 5578 Avon East off East Avon Road and as detailed on the site plans dated September 2018 prepared by TDK Engineering Associated, P.C.; 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 Planning Board has classified the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations thereby completing the environmental review; and

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

1. Site Plan Approval with conditions specified above herein is valid for a period of 180 days from today. Once all conditions of Site Plan Approval have been met and shown on revised drawings including the revision dates, the Planning Board Chairperson will then sign the Site Plans.
2. 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.
3. A separate approval by the Planning Board is required for proposed building and ground signage.
4. The Town Engineers review letter dated August 17, 2018 is to be addressed prior to the site plans being signed.
5. All conditions as required by the Zoning Board as part of SUP approval are required to be addressed prior to the issuance of permits.

The above Resolution was offered by Michael Miles and seconded by Randy Kozlowski at a regular scheduled Planning Board meeting held on September 17, 2018. Following discussion, a voice vote was recorded:

Kathleen Cole - Aye
Thomas McGovern - Aye
Michael Miles - Aye
Randy Kozlowski - Aye
Kathy Mannix - Aye
Dave Sharman - Aye
Clara Mulligan - 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 17, 2018 meeting.

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

ZBA BOARD MOTION TO APPROVE THE MINUTES FROM THE AUGUST 27, 2018 MEETING AS SUBMITTED WAS MADE BY BOB; SECONDED BY CINDY.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

PLANNING BOARD MOTION TO APPROVE THE MINUTES FROM THE AUGUST 7, 2018 WAS MADE BY KATHY C., SECONDED BY CLARA.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
DAVE SHARMAN - ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

CARRIED 6-0.

TWARDOKUS, DALE, OAK OPENINGS, LLC/TAX MAP PARCEL #26.-1-22.1/
1392 OAK OPENINGS ROAD/SPECIAL USE PERMIT - EXCAVATION
OPERATIONS PUBLIC HEARING & SITE PLAN APPROVAL

Jeff stated the public hearing is still open and everyone will get a chance to speak. Jeff has spoken to each Board member individually and they have been counseled on the legal side from Jim Campbell, Town of Avon Attorney as well. Jeff stated this Board needs to follow the law and the provisions of the Town Code which states this is a permitted use in this zoning district. The Board will carefully consider the concerns that have been expressed by the residents of Oak Openings Road. Anyone who wants to speak will be given 5 minutes and please address any new concerns since we have heard the majority of concerns in prior meetings. Please state your name and address before speaking.

Jim Campbell asked the Planning Board if they would like to do the site plan approval now or wait until the Special Use Permit is approved. They decided to wait for approval from ZBA Board.

Bruce Maxon, 1589 Oak Openings Road, talked about the special use permit and the guidelines for granting these permits. He talked about the hours of operation as well as the water issue that are the main concerns of the residents. His final statement was please do the right thing and vote no to the special use permit. He passed around pictures of the material that has been brought in prior to the special use permit approval.

Robert McKee, 1665 Oak Openings Road, he brought in samples of vinyl siding - one sample has been continuously exposed to diesel exhaust and one that has not for the Board to see the differences.

Carolyn McKee, 1665 Oak Openings Road, she stated that this permit will violate 5 out of the 11 prohibited use in our code 130-27 how are we going to enforce the code. Jeff stated all code infractions are researched and handled by our COE, Brian Glise. Jim Campbell stated that anytime a violation is alleged then we have to figure out how to resolve it. Much discussion on how and under the law what would be able to be done about violations in the Town of Avon. Mrs. McKee also stated that Mr. Twardokus is not certified by the mining safety and health department and according to NYS DEC he has to be.

Debra Salmon, 1160 Oak Openings Road, she stated that she has been to every meeting for this issue and she feels that the Town Attorney, Jim Campbell has given the residents no respect.

Lisa Anderson, North Avon Road, this is her first meeting and she is surprised at the hostility towards the neighbors by the Town Attorney, Jim Campbell. The residents have given you actual information and she feels it appears that Jim is telling people to stop talking. She is concerned about the trucks, noise, water and health concerns. She feels that everyone should know what the penalties are for breaking the law and code of the Town of Avon.

Caroline Crater, 1177 Oak Openings Road, if the Special Use Permit is granted what conditions will there be. Jeff stated that the document Jim Campbell is going to read will address the concerns of the neighbors. She also asked if the Town has conducted any studies and Lance stated that the NYS DEC conducted all of the studies through its thorough SEQOR review and therefore it is not necessary for the Town to also do so.

Jeff stated that the conditions of any approved Special Use Permit will address all the concerns expressed by the residents. Upon being asked by a visitor if there would be an opportunity for further comment after the proposed document was read, Jeff stated there would not be further public participation.

Judy Falzoi, 1739 Athena Drive, my concerns is that if the law is followed then they will have to no other option but to hire their own attorney.

Carolyn McKee, 1665 Oak Openings Road, she stated that the NYS DEC is telling her that the Town Highway is in charge of the roads. Lance stated that the road is a County road and the Town doesn't have authorization to give direction on the road.

Robert McKee, 1665 Oak Openings road, thanked the board for giving them 5 minutes to state their concerns that will affect the rest of their lives.

There were no more comments from the residents at this time.

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

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

Jeff commented that Attorney Campbell has counseled the Board on the legal side and the Board has come up with several conditions for the Special Use Permit. The findings and conditions are based on the main concerns the residents have voiced in all the previous meetings and public hearings: traffic, water, noise, hours of operations.

Jim Campbell will read the proposed findings and conditions that the ZBA has asked him to prepare for this Special Use Permit application.

Debra Salmon stated that she feels making a decision to approve this permit before even coming to the meeting is wrong. Jim Campbell stated that this has not been approved yet. The Board meet with Jim to get legal advice and have spoken amongst themselves about their concerns and what conditions need to be in the document. After this is read than they will discuss and comment based on what is read and determine if and how they want to proceed.

FINDINGS AND DECISION
Town of Avon Zoning Board of Appeals
September 17, 2018

Matter of the application for 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 a Special Use Permit to operate an 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 use proposed by Applicant is a mining and excavation operation to extract sand and gravel from the site.

Prior owners of the property had previously received a Special Use Permit from the Town of Avon, dated April 10, 1978, which permitted the excavation of sand and gravel from the site. At that time and periodically thereafter, the subject property was utilized for purposes of conducting a sand and gravel excavation operation by various persons or entities, including most recently, Dolomite Products.

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 Mining Permit from the New York State Department of Environmental Conservation (hereafter "DEC"). The application dated on or about April 20, 2018, was approved by the DEC on May 16, 2018. The Mining Permit granted to Applicant was a modification to an earlier mining permit issued to the Estate of R. Keith Sanders (hereafter "Sanders Estate"), the predecessor in title to Applicant and the owner from whom Applicant purchased the subject property. The Mining Permit application of the Sanders Estate was approved by the DEC on or about March 25, 2016, approximately two (2) years after the original application was submitted. At the time of application for the Mining Permit by the Sanders Estate, the Sanders Estate was notified that the application was going to be treated as a new application pursuant to 6 NYCRR Part 621.11(h)(4). The previous Mining Permit relating to the subject property was to Dolomite Products and had expired on March 20, 2011. While the exact dates are not known, the ZBA understands that no excavation operations have taken place on the subject property in at least the seven (7) years prior to Applicant's purchase of the property.

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 1 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 September 13, 2018, the Livingston County Planning Board reviewed the referral and took "no action" but made certain 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.

On July 3, 2018, the Town of Avon Planning Board (hereafter "Planning Board") reviewed the Applicant's submissions for a Special Use Permit upon the request of the ZBA. The Planning Board invited the Applicant to attend the meeting in order to allow the Planning Board to engage in a detailed discussion with the Applicant about its intentions with regard to use of the property. Approximately 20 neighbors also attended the July 3, 2018 Planning Board meeting and those neighbors that wished to speak were afforded an opportunity to do so, even though the meeting did not constitute a public hearing. The Planning Board subsequently drafted a letter to the ZBA with various comments concerning the pending application for a Special Use Permit. That letter has been made a part of the file of the Zoning Board of Appeals and the 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 23, 2018, to hold a public hearing for purposes of obtaining public comment on the

requested Special Use Permit. Said public hearing resulted in more than 25 residents appearing, many of whom spoke in opposition to the Owner'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 hold the public hearing open so that the hearing could be continued at its meeting on September 17, 2018. On September 17, 2018, the ZBA concluded its public hearing after receiving additional public comment.

After the public hearing was closed, the ZBA discussed the State Environmental Quality Review Act (SEQR) process pursuant to 6 NYCRR 617. The ZBA had been provided with extensive materials from the Applicant relating to the SEQR process that was undertaken when the Sanders Estate applied for and was granted its Mining Permit, as well as other SEQR materials that were generated as a result of Applicant's request for a modified Mining Permit from the DEC. The SEQR materials provided and reviewed demonstrate that the DEC conducted a lengthy and thorough SEQR review, which began in July, 2014 and concluded on February 4, 2016 when the DEC concluded that the issuance of the Mining Permit will result in no significant adverse impacts on the environment and accordingly, issued a negative declaration. The Full Environmental Assessment Form, Parts 1, 2 and 3 are attached hereto and the SEQR review conducted by the DEC 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 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 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, 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 utilize the subject property for purposes of an excavation operation to excavate and process sand and gravel 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, Oak Openings, 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 1 & m;
5. On September 17, 2018, the Livingston County Planning Board issued a written statement that they had reviewed the referral and taken no action but made various advisory comments:
 - a. The proposed operation is not located in Agricultural District # 2; however, the site is located within 500 feet of an active farm operation within the District. This Board has evaluated and considered the Agricultural Data Statement provided by Applicant for possible impacts of the proposed excavation operation upon the functioning of farm operations within such Agricultural District #2 and finds that the proposed excavation operation will have no meaningful impact on such farm operations;
 - b. On the northern portion of the subject parcel exists two (2) potential federal wetlands, just north of the mine access road. Also, approximately 300 feet east of the parcel, a New York State DEC Wetland exists. This Board has carefully reviewed and considered all documentation that has been a part of the DEC's Mining Permit review process relating to naturally and culturally sensitive resources in proximity to the subject parcel.
6. The written statement from the Livingston County Planning Board has been reviewed by the ZBA and has 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 a prior application to the DEC for a Mining Permit by the Sanders Estate, the predecessor in title to Applicant and from whom the Applicant purchased the property. The SEQR materials generated during the application by the Sanders Estate, including the Full Environmental Assessment Form, Parts 1, 2 and 3, demonstrate that the DEC conducted a lengthy and thorough SEQR review, which began in July, 2014 and concluded on February 4, 2016 when the DEC concluded that the issuance of the Mining Permit will result in no significant adverse impacts on the environment and accordingly, issued a negative declaration;
8. Part 3 of the Full Environmental Assessment Form 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 a permit was being sought;

9. 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 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 a Special Use Permit by Applicant is not seeking permission to conduct any activity that is substantively different than the permitted activities granted by the Sanders Estate Mining Permit granted by the DEC on March 25, 2016, or the modification to that permit as granted to Applicant by the DEC on or about May 16, 2018 (which also relied on the DEC's prior SEQR review of the Sanders Estate application); and
11. In reaching the above findings, the ZBA has considered the following documents as well as other relevant information:
 - a. Prior Application for Excavation Permit dated January 17, 1978 and Special Use Permit issued on April 10, 1978;
 - b. Special Use Permit application materials received from Oak Openings LLC;
 - c. Continental Placer Inc. Mining Plan Map being project no. 1011-2-18-5383;
 - d. DEC Mining Permit of Applicant, dated May 16, 2018 with permit transmittal letter;
 - e. Part 1 of the Full Environmental Assessment Form provided to DEC (on or about July 24, 2014) by the Sanders Estate, relative to its Mining Permit Application;
 - f. Part 2 of the Full Environmental Assessment Form completed by the DEC (on or about February 4, 2016);
 - g. 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 February 4, 2016);
 - h. Revised Mined Land Use Plan for the R. Keith Sanders Estate Avon Pit prepared by Thomas Giles, Geologist and dated September 2014;
 - i. TCG Materials Incorporate Hydrogeological Evaluation dated February, 1992, which was a part of the DEC SEQR review process;
 - j. Resource material "Hydraulic Impacts of Quarries and Gravel Pits - Executive Summary;"
 - k. DEC Publication "Upstate New York Groundwater Management Program" dated May, 1987;

- l. Continental Placer, Inc. resource material "Hydrogeologic Investigation/ Background Data Review: The Impact of Sand and Gravel Mining on Groundwater Resources" dated August 12, 1988;
 - m. Environmental Conservation Law section 23-2701;
 - n. Environmental Conservation Law section 23-2711;
 - o. Mining Permit application to DEC from Oak Openings LLC;
 - p. 2nd Supplemental Information for a Mining Permit Modification During Permit Term 2016-2021 for Oak Openings LLC, prepared by Continental Placer, Inc. and dated May 10, 2018;
 - q. Numerous maps provided as part of the DEC SEQR review of the Sanders Estate Mining Permit application and the Mining Permit application of Oak Openings LLC;
 - r. Part 1 of the Full Environmental Assessment Form (dated March 15, 2018) provided to the DEC by Applicant relating to its application for a modified Mining Permit for the subject property; and
 - s. Numerous written correspondence from neighboring property owners;
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" and 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;

FINDINGS FOR THE SPECIAL USE PERMIT UNDER SECTION 130-35

13. The proposed use of the subject property pursuant to the application is to permit the Applicant to use the subject property for an excavation operation to excavate, process and remove sand and gravel from the site;
14. 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;
15. The Zoning Board of Appeals in making its findings has taken into consideration the existing conditions of the proposed site and the surrounding area,

16. 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;
17. 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, the proposed use will 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, the proposed use will be in harmony 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, 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;
 - d. With the conditions of use imposed by this determination, 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, 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 as evidenced by the referral response from the Town of Avon Planning Board, which did not recommend disapproval and which recommends various "stipulations/limitation" within any Special Use Permit to be issued.

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

18. 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]; 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 both at the Public Hearing and prior thereto, 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 Bob Westfall, seconded by Diane Attea

All in favor? All opposed?

Ayes 5 Nays 0

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. 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 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 entering and leaving the subject property shall not exceed the volume permitted by the DEC in its Mining Permits dated August 4, 2016 and May 16, 2018;
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 4:00 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 4:00 p.m.

Saturday

No operations of any kind

Sunday

No operations of any kind

Federal Holidays

No operations of any kind

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;
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. 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 DEC Mining Permit currently in effect and not otherwise modified by these conditions shall be deemed to be conditions of this conditioned approval for Special Use Permit. 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 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 New York State Department of Environmental Conservation:

- 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 DEC Mining Permit shall require Applicant to seek modification of the Special Use Permit granted hereby;
 17. 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
 18. At all times during the operation of any excavation and/or mining activities pursuant to this 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 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 Bob Westfall, seconded by Sam Price

All in favor? All opposed?

Ayes 5 Nays 0

Jeff asked if there were any questions from the ZBA Board.

Bob feels that there should be no loading of trucks after 3:30PM and all trucks should be off premises by 4:00PM. Mr. Welch stated that the trucks can get loaded at 3:45PM and exited from the premises by 4:00PM. Jeff stated that it should state that all hauling trucks need to be off premise by 4:00PM.

Cindy asked about the on-site well and how that will work. Mr. Twardokus and the NYSDEC have agreed to have a monitoring well on premise at a specific location as directed by the DEC. Cindy asked who would monitor the well.

Mr. Hellert, Geologist, stated that it would be monitored monthly for the 1st year and bi-monthly the 2nd year and have to turn reports into the DEC as requested. The test would be ground water level not any other testing. Lengthy discussion on what type of testing should be done and who should test the water and where the report should be sent. In conclusion there will be a third party independent certified inspection company testing on a semi-annual basis for water depth and quality. The Town Code Enforcement Office will receive a copy of these reports that will be kept on file. Mr. Maxon asked if there was some kind of spill/contamination who is responsible for cleanup. Jim Campbell stated that the DEC will be the entity to enforce any environmental clean up and fines associated with any spill to the applicant/mine owner.

The ZBA Board reviewed correspondence from the Livingston County Planning Board, which took no action at their meeting due to lack of quorum on September 13, 2018 but gave recommendations for consideration in the decision process of the Special Use Permit application. The ZBA Board stated there is no concern about farm operations, wetland area was part of the NYSDEC SEQR review, if there is an expansion/change of the NYS DEC and Town permit they will be required to come into a ZBA meeting.

The next step is for Site Plan and Special Use Permit decision by the appropriate board. Kathy Cole, Chairperson of the Planning Board, stated that the ZBA Board should make their decision prior to the Planning Board's decision.

Lance and Jim reported that at the request of the ZBA Board and after concern expressed by the residents, they researched the SEQR process done by the NYS DEC and found it to be done thoroughly over the course of approximately two years and deemed it appropriate to rely on for this application for Special User Permit and Site Plan.

Deb Salmon stated that the NYS DEC found that there is no change in traffic due to the mine, she disagrees with 240 trucks traveling daily on Oak Openings Road doesn't have an effect on the traffic. If you have the trucks going the other way will open the door for Hanson trucks to travel the road as well. How is this not an issue for the Boards consideration.

Carolyn McKee questions how the Town will know if they ask for a change to the NYS DEC permit. She stated that they are requesting to have gravel washing on premises which will change the water quality. How will the Town be notified of that change. Jim Campbell stated that they will send a copy of the Special Use Permit to the NYS DEC and it will state they need to notify the Town of any changes requested. Mr. Hallert stated that any gravel washing is on a closed loop system and will not affect water quality.

Diane questioned whether we need to regulate the truck traffic exiting the mine due to what the residents stated tonight. The ZBA discussed in length which way the trucks are to go and why they decided on the direction they did in the conditions of the permit. Mr. Twardokus stated that he will do whatever is deemed necessary by the Board. In conclusion they decided to keep the conditions originally stated in the Special Use Permit resolution.

ZBA BOARD MOTION TO APPROVE THE FINDINGS READ BY JIM CAMPBELL WAS MADE BY BOB; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

ZBA BOARD MOTION TO APPROVE THE CONDITIONS WITH A FEW MODIFICATIONS READ BY JIM CAMPBELL WAS MADE BY BOB; SECONDED BY SAM.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 5-0.

Lance stated that for the site plan approval there are 2 conditions, they will have to have an inspection by COE, Brian Glise, prior to opening the mine operations and the ZBA Special Use Permit approval by ZBA Board. Kathy Mannix asked is there only one inspection at the beginning but nothing else during the Special Use Permit time frame. Lance stated unless they change or modify the application there is only one inspection.

PLANNING BOARD MOTION TO APPROVE SITE PLAN AS SUBMITTED WAS MADE BY KATHY C., SECONDED BY MIKE.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
DAVE SHARMAN - ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

CARRIED 6-0.

PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY KATHY C., SECONDED BY CLARA.

KATHLEEN COLE -AYE
TOM MCGOVERN- AYE
DAVE SHARMAN - ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

CARRIED 6-0.

ZBA BOARD MOTION TO CLOSE THE MEETING WAS MADE BY BOB; SECONDED BY CINDY.

JEFF MULLIGAN - AYE

CINDY KELLEN - AYE

BOB WESTFALL- AYE

DIANE ATTEA - AYE

SAM PRICE - AYE

CARRIED 5-0.

MEETING CLOSED.