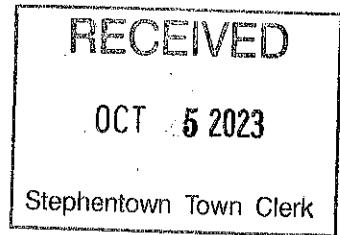


TOWN OF STEPHENTOWN
PLANNING BOARD



IN THE MATTER OF MISTY VALLEY FARMS, LLC

RESOLUTION
GRANTING RENEWAL
OF SPECIAL USE
PERMIT

WHEREAS, by Decision filed January 16, 2019 this Board granted Applicant Misty Valley Farms, LLC a special use permit to allow the operation of a sand and gravel mine at its property on the west side of NYS Route 22 near the northern end of Madden Road in the Town of Stephentown;

WHEREAS, as a condition of approval this Board determined that said special use permit "must be renewed on or before October 17, 2023, the date the permit issued by DEC expires".

WHEREAS, by application filed August 7, 2023, Applicant applied to this Board to renew the previously granted special use permit;

WHEREAS, as part of said application, Applicant has supplied the renewal application it submitted to NYS DEC, which notes, among other things, that the total acreage permitted by NYS DEC to date is 13.0 acres and the total acreage affected since 1975 is 2.5 acres and the "new acreage to be affected during the coming permit term" is 2.3 acres;

WHEREAS, this Board has not been apprised of any violations of either NYS DEC's MLRL permit or of any other conditions set forth by this Board;

WHEREAS, a public hearing was duly noticed and held on October 3, 2023;

WHEREAS, this Board now has the benefit of having been able to observe the operation of the mine now for over four years since this Board granted its aforementioned initial approval;

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board has classified and hereby once again classifies this action per 6 NYCRR 617.5(c)(32) as a Type II action under SEQRA.

2. The prior procedural history and description of the site that is the subject of this renewal application is set forth in the previously adopted Decision Granting Site Plan Approval, which is incorporated herein by reference.

Standards For Grant of Site Plan Approval

3. Article VI of Local Law Number 1 of the Year 2014, entitled "Amended Land Use Regulations of the Town of Stephentown" is entitled "Special Use Permit Uses" and states:

All special permit uses specified in Article III, Schedule of Use Regulations, shall be subject to review and approval of the Planning Board in accordance with the standards and procedures included in this Article and no Building Permit or Certificate of Occupancy of Use shall be issued by the Building Inspector unless in full conformity with plans approved by the Planning Board.

4. Article VI, subsection A, sets forth the following "General Standards for Special Use Permit Uses":

In authorizing any special use permit use, the Planning Board shall take into consideration the public health, safety, and general welfare, the comfort and convenience of the public in general and that of the residents of the immediate neighborhood in particular. The Planning Board shall also consider where appropriate, whether the special use permit will create noise, traffic, danger or congestion, fire hazards, noxious fumes or other adverse conditions which will be seen heard or smelled by other residents of the Town.

5. Set forth below each of the foregoing factors are once again analyzed with this Board, as note above, having had the ability to observe Applicant's the operation of the subject property since the issuance of the prior approval:

A. *Whether the sought after specially permitted use will create noise which will be seen heard by other residents of the Town.*

A noise impact analysis was previously prepared in compliance with the DEC noise mitigation policy. DEC's SEQRA negative declaration previously found that there are no significant noise impacts from this mine's operation. In addition, as part of the initial application the record included written consents from some neighbors stating that they are aware of the proposed mining operations and have no objection to the mine operation. The approved plan requires that significant areas of existing topography and vegetation will be maintained around the life of mine area, effectuating a noise barrier. Moreover, NYSDEC's Responsiveness Summary, dated October 17, 2018, which reasoning this Board previously and once again adopts, provided, in relevant part:

Comments were raised concerning an increase in industrial noise due to mining activity, and specifically local topography in the valley causing an echoing effect. The submitted Noise Impact Analysis demonstrates sound levels on nearby receptors during a 'worst case scenario' setting, which could potentially occur during the final phase of mining with equipment operating simultaneously, close together, and at the life of mine boundary. It should be noted that the majority of day-to-day mine operations will not reflect the worst-case scenario noise impacts, as mining activity will occur substantially farther away from the life of mine,

with equipment running on an as-needed basis, and will employ appropriate Best Management Techniques. For example, forested vegetation surrounding the site will be retained, strategically-placed perimeter berms will be created, machinery will be properly maintained and muffled, mine faces will be used to attenuate sound levels, creation of a circular traffic pattern with the mine to avoid the use of back-up alarms on equipment, and retention of natural topographic barriers will all effectively minimize noise impacts. The facility will be limited to seasonal operation with a maximum of 250 days per year with limited hours of operation, as addressed below.

Additionally and most important, this Board is not aware of any noise issues that have resulted in the almost five years of operation of the subject mine.

B. Whether the sought after specially permitted use will create traffic, danger or congestion.

Once again, in determining no adverse effect, this Board points to the Negative Declaration and further notes that there is no off-street parking at the site and notes that the access to and from the site is and will continue to be via Route 22, a well-maintained State highway. Also, from the NYSDEC's Responsiveness Summary, dated October 17, 2018, reasoning adopted by this Board, states, in relevant part:

New York State Department of Transportation (NYSDOT) owns and maintains Route 22, and has been given opportunity to comment on road condition. NYSDOT reviewed the submitted engineering report and confirmed that a 4% max. increase in traffic, with a daily average increase of 1% in traffic volume, will not have a negative impact on road structure. NYSDOT has also issued the requisite Curb Cut Permit to install the haul road.

As also noted by Applicant in its November 9, 2018 submission, there are no new roads that were proposed to be constructed and Applicant does not propose to add any new roads as part of its renewal application. Once again, and most important, this Board does not believe based upon almost five years of operation that there have been or will in the future be any traffic issues.

C. Whether the sought after specially permitted use will create fire hazards, noxious fumes or other adverse conditions which will be seen heard or smelled by other residents of the Town.

As detailed in the Site Plan Decision, there are no fire hazards that were expected and none have resulted. DEC has determined that "The mining permit will be conditioned to keep noise and dust impacts negligible as addressed in items 1 and 2 above." See NYSDEC's Responsiveness Summary, dated October 17, 2018.

6. Based upon the foregoing, as well as the other factors as examined in the prior decision granting site plan approval, it is also determined that the public health, safety, and general welfare, the comfort and convenience of the public in general and that of the residents of the immediate neighborhood in particular have not in the past and will not be adversely affected in the future by the subject proposed use.

7. The Board hereby finds and determines that approval for a renewed special use permit is **GRANTED**, conditioned upon Applicant being granted a renewed NYS DEC Mined Land Reclamation Permit and satisfying and complying with all conditions and requirements as set forth in said NYS DEC permit and in all materials submitted to the NYS DEC and this Town and its boards.

8. Article VI requires that the subject permit "be renewed periodically." It is the determination that the subject special use permit must be renewed on or before October 17, 2028.

Made by Prescott and seconded by Leonard;

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
GARDNER	X		
PRESCOTT	X		
HALEY	X		
LEONARD	X		
LOBDELL ¹			X

Dated: October 3, 2023

Derrick Gardner
Chairman Derrick Gardner

TO: Andrew Gilchrist, Esq.
Gilchrist Tingley, PC
251 River St., Ste. 201
Troy, NY 12180

¹ It is noted that Robert Lobdell has recused himself from all matters relating to this application in that his brother is a member of Applicant. As such, he did not participate at all in this matter and did not merely abstain.