

TOWN OF STEPHENTOWN
PLANNING BOARD

RECEIVED
MAY 3 2023
Stephentown Town Clerk

**IN THE MATTER OF MISTY VALLEY FARMS, LLC
(Hemlock Ridge Mine)**

**RESOLUTION
GRANTING SPECIAL
USE PERMIT**

WHEREAS, on or about June 16, 2021, Misty Valley Farms, LLC (“Applicant”) filed an application with this Board for both a special use permit and site plan approval to allow the operation and siting of a sand and gravel mine on land located on the west side of Route 22, south of the intersection with Hemlock Ridge Way; and

WHEREAS, it was mutually agreed that the review of the subject application would be commenced after NYS DEC completed its review of the matter;

NOW THEREFORE BE IT RESOLVED THAT THIS BOARD MAKE THE FOLLOWING FINDINGS:

Additional Procedural History & The Site

1. The procedural history of the application and description of the site that is the subject of this Decision are set forth in the Decision Granting Site Plan Approval, which is being adopted contemporaneously herewith and is incorporated herein by reference.

Standards For Grant of Site Plan Approval

2. 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.

3. 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.

4. Set forth below each of the foregoing factors are analyzed:

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, and revised analysis, was prepared in compliance with the DEC noise mitigation policy. DEC's SEQRA negative declaration finds that there are no significant noise impacts from this mine operation. It states, in relevant part:

Based on the submitted Noise analysis dated June 12, 2022, and received by DEC on June 17, 2022, a revised noise analysis received by DEC on September 30, 2022, a noise map received by DEC on October 14, 2022, and the final maps and plans listed above, this operation will not result in greater than 6.0 dB(A) noise increase at any given receptor as compared to measured ambient noise levels. Therefore, there will be no significant impacts due to noise.

In addition, the record includes written consents from the neighbor closest to the proposed mine, stating that he is aware of the proposed mining operations and has no objection to the mine operation. The approved plan requires that areas outside of the 21.1 acre Life of Mine be maintained, as well as berms be created in certain areas.

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

Once again, in determining no such adverse effect, this Board points to the Negative Declaration, the contents of which it adopts, and further notes that there is no off-street parking proposed and notes that the access to and from the site is via Route 22, a well-maintained State highway. As noted in the Negative Declaration: "A 12-page traffic study dated May 16, 2022 was submitted by Creighton Manning. This traffic study assumed that a maximum of 50 round trip truckloads per day and found that there would be no significant impact to traffic as a result of this operation." Additionally, and also noted by Applicant in its February 7, 2023 submission, there are no new roads, public or private, that are proposed to be constructed.

C. Whether the sought after specially permitted use will create fire hazards or noxious fumes

As detailed in the Site Plan Decision, there are no fire hazards expected. No buildings or structure are to be constructed. It is not expected that there will be any air emissions other than dust, something that is addressed as a condition to the issuance of the Mined Land Reclamation

Law Permit that was issued by DEC. Additionally, the existing dirt access road to the property has been required to be paved by DEC.

D. *Whether the sought after specially permitted use will create other adverse conditions which will be seen heard or smelled by other residents of the Town.*

The November 9, 2022, SEQRA Negative Declaration, the contents of which are incorporated herein, detail that although there will be a permanent loss of sand and gravel “[u]pon completion of mining, these impacts will be mitigated in accordance with the approved reclamation plan.” It also details that there will be “no adverse visual impacts to Cherry Plain State Park” and that “the use of screening berms will limit visual impacts to NYS 22, maintaining vegetation within the 20-foot property line setback in the northern portions of the mine will limit impacts to Hemlock Ridge Way, and maintaining vegetation in western corner of the property will limit any visual impacts to receptors from the west.” It further details that groundwater impacts will be avoided by the required five foot separation from the water table at all times. This Board agrees with all such findings.

5. Based upon the foregoing, as well as the other factors as examined in the accompanying 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 will not be adversely affected by the subject proposed use.

NOW THEREFORE BE IT FURTHER RESOLVED, upon the motion of Prescott, seconded by Leonard The Board hereby finds and determines that approval for a special use permit is **GRANTED**, conditioned upon Applicant satisfying and complying with all conditions and requirements as set forth in the Mined Land Reclamation Permit and all materials submitted to the DEC and this Board and compliance with all approvals granted by the Town and any of its Boards, further conditioned that the subject special use permit must be renewed on or before January 29, 2028, the date the permit issued by DEC expires, by the following vote:

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

¹ It is noted that Robert Lobdell 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.

Dated: May 2, 2023



Derrick Gardner, Chairman

TO: Andrew Gilchrist, Esq.
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