

# Otsego County Planning Commission

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Approved Minutes for July 20, 2020

**Call to Order:** 6:00pm by Chairperson Hartmann

Pledge of Allegiance

Chairperson Hartmann welcomed the public attending remotely and explained they would be given an opportunity to speak during the public hearing and requested they give their name before speaking.

**Roll Call:**

Present: Mr. Hartmann, Mrs. Jarecki, Mr. Borton, Mr. Hilgendorf, Mr. Maxwell, Mr. Brown, Mr. Marlette, Mr. Scott, Mr. Caverson, Ms. Corfis

Absent: Mr. Bauman

Staff Present: Mr. Churches, Ms. Boyak-Wohlfeil

Others Present: Rieth-Riley Construction Inc. representatives, Keegan Brennan, Todd Colberg, and Brad Shearer

Public Present Remotely: Five (5) residents remoted into the meeting.

**Approval of minutes from:** June 15, 2020

Chairperson Hartmann requested discussion on the minutes.

Mr. Brown stated on page six (6) under Otsego County Parks & Recreation report, Charlton Township was misspelled...*trees had been planted at the Groen and the ~~Charleston~~ Charlton Township Fire Department...*

Motion made by Mr. Brown to approve minutes as corrected; Seconded by Mr. Maxwell.

Motion approved unanimously.

**Consent Agenda:** None

**Other:** None

**Public participation for items not on the agenda:**

Laura Justin, Bagley Township resident, discussed issues she had with allowing camper/trailers in the RR Zoning District; she was against allowing them and questioned the process and her options in the matter.

Mr. Churches explained the enforcement process.

Chairperson Hartmann stated a petition could be circulated and brought forward to the Zoning Department; the Planning Commission may consider a change in use.

Jill Wiley, Charlton Township resident, stated she was attending concerning short-term rentals; she was told the matter would be discussed later in the meeting.

With no further comments, Chairperson Hartmann moved on.

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

## Public Hearing:

**PZ20-002** Rieth-Riley Construction Inc, owner, has requested a Special Use Permit/Site Plan Review for properties located in Elmira Township at 3006 Martindale Rd Elmira, MI 49797. The proposed use of the properties is to extend the permit for an existing mining operation. The properties are located in a FR/Forest Recreation Zoning District. A mining operation is a permitted use subject to special conditions in the FR Zoning District.

Parcel identification number: **060-001-100-005-03**  
**3006 Martindale Rd**  
**Elmira, MI 49730**

### Legal Description:

SE1/4 OF SE1/4 EXC THE EAST 66 FT & THE SOUTH + WEST 50 FT SEC 1 T31N R4W  
SUB TO EASEMENT FOR INGRESS, EGRESS & UTIL CONT 35 AC M/L 2000 OF 060-001-100-005-01

Parcel identification number: **060-001-100-005-04**  
**Martindale Rd**  
**Elmira, MI 49730**

### Legal Description:

N 1/2 OF SE 1/4 & E 66 FT & S AND W 50 FT OF SE 1/4 OF SE 1/4 SEC 1 T31N-R4W 08  
SPLIT OF 069-001-100-005-03

- a. Open Public Hearing
- b. Applicant Summary
- c. Public Comment (3-minute limit)
- d. Close Public Hearing
- e. Planning Commission Discussion
- f. Motion

Chairperson Hartmann stated the case before the Commission, opened the public hearing and requested comment from the applicant.

*Public hearing opened: 6:11pm*

Keegan Brennan, Rieth-Riley Construction corporate counsel, stated they were requesting a renewal for a five-year extension to their current mining special use permit. They were looking to expand the operation to the north (Phase II) within the next few years while continuing work on the current site (Phase I). Phase III would be for future operations. They had obtained a soil erosion permit that would be renewed each year on an annual basis. Mr. Brennan introduced his colleagues for questions, Todd Colberg and Brad Shearer, stating they were in charge of operations.

Chairperson Hartmann requested comment from them.

Mr. Colberg stated the mining operation has been in existence for twenty (20) years and they have been good neighbors during that time. He requested questions.

Mr. Marlette questioned the depth of the pit and if there was a precipice along the edge or a slope.

Mr. Colberg stated the pits were approximately twenty-five feet (25') deep with a berm all around the property; during restoration, a slope would be created.

Mr. Marlette questioned the probability of a child falling into the pit and getting hurt.

Mr. Colberg stated they were under MSHA (Mining Safety and Health Administration) rules and had to maintain a berm around the pit.

Mr. Brennan stated the probability was minimal; the area was heavily forested and the berms were sloped upwards of five to eight feet (5-8') so one needed to climb up to look out into the pit. They felt secure in the safety measures taken and they were also compliant with state rules.

Mr. Marlette questioned if there was ground water in the bottom of the pit.

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

Mr. Colberg stated no.

Mr. Brown questioned if there were residential properties near the pit.

Mr. Colberg stated there were but were some distance away.

Chairperson Hartmann stated the mining operation was in Elmira Township and in the Elmira Planning Commission's opinion, they were good neighbors.

Chairperson Hartmann requested comment from the public attending remotely; no further public comment.

Mr. Churches stated he had received a phone call from a neighboring property owner who stated he supported the application but requested the restoration plan be followed and they restore some of Phase I before moving on to Phase II.

Mr. Brennan stated as they moved north into Phase II, restoration to the south would ensue. It would be awhile before they would move into Phase II as they were still mining in Phase I but the property would not be left as is.

Chairperson Hartmann closed the public hearing.

*Public hearing closed: 6:18pm*

## Advertised Case:

**PZ20-002** *Rieth-Riley Construction Inc, owner, has requested a Special Use Permit/Site Plan Review for properties located in Elmira Township at 3006 Martindale Rd Elmira, MI 49797. The proposed use of the properties is to extend the permit for an existing mining operation. The properties are located in a FR/Forest Recreation Zoning District. A mining operation is a permitted use subject to special conditions in the FR Zoning District.*

*Parcel identification number: **060-001-100-005-03**  
3006 Martindale Rd  
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### Legal Description:

*SE1/4 OF SE1/4 EXC THE EAST 66 FT & THE SOUTH + WEST 50 FT SEC 1 T31N R4W  
SUB TO EASEMENT FOR INGRESS, EGRESS & UTIL CONT 35 AC M/L 2000 OF 060-001-100-005-01*

*Parcel identification number: **060-001-100-005-04**  
Martindale Rd  
Elmira, MI 49730*

### Legal Description:

*N 1/2 OF SE 1/4 & E 66 FT & S AND W 50 FT OF SE 1/4 OF SE 1/4 SEC 1 T31N-R4W 08  
SPLIT OF 069-001-100-005-03*

With no further input, Chairperson Hartmann made the following motion:

Chairperson Hartmann made a motion to approve the General Findings of Fact as presented in Exhibit 12; Seconded by Mr. Hilgendorf.

Motion approved unanimously. *SEE ATTACHMENT 1*

Chairperson Hartmann read aloud the standards of Article 19.7.1 – 19.7.7; all standards having been met he made the following motion:

Chairperson Hartmann made a motion to approve the Specific Findings of Fact under Article 19 as presented in Exhibit 13; Seconded by Mr. Brown.

Motion approved unanimously. *SEE ATTACHMENT 2*

Chairperson Hartmann made the following motion and requested a roll call vote:

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

Chairperson Hartmann made a motion to approve special use permit PZSU20-002 to extend the existing mining operation on parcel numbers 060-001-100-005-03 and 060-001-100-005-04 for another five (5) years; Seconded by Mr. Caverson.

Roll Call:

Yes: 10

No: 0

Absent: 1

Motion passes.

Case PZSU20-002 is extended for five (5) years, expiring July 20, 2025.

**Unfinished Commission Business:** None

**New Business:**

Chairperson Hartmann stated the commission had some new business before them and requested comment from Mr. Churches.

**1. Proposed definition for 'BED & BREAKFAST'**

Mr. Churches stated short term rentals had been brought to the Commission's attention previously regarding regulation and it seemed the Commission's stance was to regulate them as they currently were in the Zoning Ordinance; a residential use. A recent issue with short term rentals out at Little Bear Lake had been brought to Zoning's attention. There was a particular property involved in the complaint and he had discussed the issue with both parties stating it was a permitted residential use but because the issue could possibly be argued both ways, he had contacted the County attorney to get his opinion on the best way to handle the situation. Mr. Churches stated he had been interpreting the use as a Bed & Breakfast but because of some of the verbiage in the definition, the use could be argued. The County attorney stated if the intent was to interpret the use as a Bed & Breakfast, the definition should be made clearer to dispel any confusion. He was presenting the proposed definition to the Commission instead of having a committee review it first because it was only a small change to the definition. It would be sent to townships for input after review.

Chairperson Hartmann questioned if the complaints were mainly noise and if this was concerning one single address.

Mr. Churches stated there were a variety of complaints; noise, boating regulations, trespassing, garbage, etc. but most of which were not zoning issues. These issues typically occurred after hours or over the weekend so if we did respond, it would be after the fact and likely no violation would be found. The complaints did seem to be isolated to one particular property; he had spoken with the owner, Jill Wiley, and she stated she had visited the property shortly after the complaint and did everything in her control to curb the problem. There did seem to be a neighbor dispute going on as well.

The owner, Jill Wiley, remoted in for comment.

Jill Wiley, Little Bear Lake home owner, stated she's owned the property for three (3) years and it has always been a rental. The first time a complaint was made, was this past Fourth of July yet it did seem like there had been more talk behind the scenes concerning her property. She felt there was an issue with a neighbor because their family had owned the property prior. She did not want to upset neighboring property owners but she did not feel they were doing anything wrong and since then, they had updated their website and added stricter criteria to their requirements.

# Otsego County Planning Commission

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Approved Minutes for July 20, 2020

Mr. Churches stated Mrs. Wiley had reached out to him as he had not been sure what property was in question; addresses had not been specific. He said she had been very cooperative and had done everything asked of her.

Mr. Brown questioned if that was the only complaint on Little Bear Lake and if Mr. Churches had spoken to the Charlton Township Supervisor.

Mr. Churches stated he had gotten many calls but had not gotten specific addresses, only areas so he was unable to determine how many different properties were actually in question. He had not talked with the Charlton Supervisor since last year.

Mr. Brown stated the Township Board had questioned him at their last meeting as to whether he had been alerted to any issues concerning Little Bear Lake; they were wanting to come before the Charlton Township Planning Commission to discuss the issue.

Chairperson Hartmann stated Mr. Brown should consider himself alerted.

Ms. Corfis stated she was having a difficult time correlating the definition of a 'Bed & Breakfast' and a short-term rental. The definition states '*rooms in excess of those used by the family*', meaning a family is on site, which infers there's some sort of oversight on a daily basis and typically a breakfast is served. As rewritten, there is no one on site and everyone fend for themselves; they did not seem related. She questioned why not just define bed and breakfast and short-term rental separately?

Mr. Churches stated as worded previously the family would be on site; as proposed, owners would not need to be. Defining short-term rentals would entail timelines between short-term versus long-term and multiple doors may be opened the Commission may not want opened.

Mr. Brown stated he agreed a breakfast is typically expected at a Bed & Breakfast, someone on site cooks for you.

Mr. Churches stated on the website Air B&B, the B&B stands for bed and breakfast; it was not stated a breakfast was necessarily served.

Mr. Marlette stated he agreed with Ms. Corfis, a Bed & Breakfast serves a cooked breakfast in conjunction with your stay. The definition presented sounded more like a short-term rental.

Mr. Maxwell stated the reality of these rentals is they are currently being treated as a Bed & Breakfast without an owner on site; a definition for a short-term rental would have to be a complete definition of the use and could possibly open doors to future litigation. The question is, does the Commission want to adapt the definition to how a Bed & Breakfast has evolved or remain tied to the out dated version of a B&B.

Ms. Corfis stated it seemed the whole issue of short-term rentals was being skirted by changing the definition of a Bed & Breakfast.

Mr. Caverson stated the rental market created an influx of income for multiple businesses in the area, not just for the property owners. Regulating the renter market would cause a loss in tourism; he did not think the County wanted to be landlords of the landlords.

Chairperson Hartmann questioned if the definition could read 'Bed & Breakfast/Residential Rentals.

Mr. Churches stated he would need to discuss it with the attorney; it could possibly affect long-term rentals as well. Currently Bed & Breakfasts are allowed in the RR, FR and AR Zoning Districts. We don't want residential rentals disallowed in other zoning districts.

Mr. Borton stated he has been working in short-term rentals for over sixteen (16) years and during that time he had not had any complaints; the key is having a good relationship with your

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

neighbors. Every problem that comes up does not need an ordinance in place to solve it; there are other entities to handle these issues such as the Sheriff's Department. There are thousands of these short-term rentals throughout northern Michigan. They are a lot of work but the majority of these are run correctly otherwise there would be a multitude of complaints. It is a huge boost to our economy and a major tax revenue to the State. He agreed with the County attorney to tweak the existing definition instead of creating possible problems.

Vice Chairperson Jarecki questioned the term 'dwelling' stating that term basically implied someone was living there.

Mr. Churches stated 'dwelling' was defined in the Ordinance and was referenced by the County attorney as a residential use in the RR, FR, and AR Zoning Districts as a permitted use.

Ms. Corfis questioned if Mr. Borton advertised his rentals as a Bed & Breakfast.

Mr. Borton stated he did not but he also did not advertise them as short-term rentals. He called them vacation rentals.

Mr. Marlette questioned if there was a time limit on a Bed & Breakfast stay.

Mr. Borton stated the State of Michigan set a time limit, anything beyond a month is considered a full time rental. A 'use tax' is *not* paid if a person stays for thirty (30) or more days; a twenty-nine (29) day stay or less and taxes are paid on every penny.

Mr. Marlette questioned if the complaints coming in were mostly law enforcement issues.

Mr. Churches stated it was mainly noise, boating violations, well or septic issues, not so much zoning problems. Zoning assists any complainants by directing them to the department capable of helping such as the Sheriff's Department, the DNR, the Health Department and so forth.

Mr. Churches stated the term 'Tourist Home' was also in the Ordinance and referenced back to the Bed & Breakfast definition. A Tourist Home may be more along the line of what was being discussed. He could leave the Bed & Breakfast definition as is and add a separate definition for Tourist Home; they were allowed in the same districts as a Bed & Breakfast.

Chairperson Hartmann agreed it was a good option. He suggested defining the term Tourist Home and sending it out to townships for further input.

## Reports and Commission Member's Comments:

### 1. Otsego County Parks & Recreation report/Judy Jarecki

Mrs. Jarecki stated the Pigeon River was busier than ever and attributed it to Covid; the County Park was busy as well – the electrical update was working out well, no issues reported – due to the high water levels and compacted soil, some campsites were flooding, additional soil would be brought in to try and remedy the problem – the relocated ranger station was also having issues with water in the crawlspace, this would be taken care of in October – the fireworks show was successful; Ironstone Springs had received a donation from the Guardian Gals, it would be used for fencing; the Mark Mellon Triathlon was scheduled to take place on August 16<sup>th</sup>, precautions would be put in place; the Community Center gym floor had been installed and looked good but the building needed cleaning - things had not been covered prior to the installation and there was sawdust everywhere – they were looking into their contract to see who was responsible for cleaning up; the new Parks & Rec Director, Tom Pratt, was doing a good job.

# Otsego County Planning Commission

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Approved Minutes for July 20, 2020

## 2. Land Use Services report

Chris Churches

Mr. Churches stated the Michaywe' PUD case would be on August's agenda along with the Rezone for the Georgia Pacific parcel.

Mr. Churches requested the committee for 'Article 18 Lots on Water' meet to discuss some proposed language to the section. He would send out the proposed section to members for review prior to the meeting. The list of members are as follows:

- Mr. Hartmann
- Mrs. Jarecki
- Mr. Marlette
- Ms. Corfis
- Mr. Stults

He requested a meeting be scheduled for the committee for 'Solar Panels' as well. Those members are as listed:

- Mr. Hartmann
- Mrs. Jarecki
- Mr. Scott
- Mr. Hilgendorf
- Mr. Brown
- Mr. Marlette

Chairperson Hartmann requested those members remain after the meeting to schedule meeting dates.

Mr. Borton stated the Board of Commissioners' meetings were now open to the public and were being held at the Alpine Center.

With nothing further, Chairperson Hartmann adjourned the meeting.

**Adjournment:** 6:53pm by Chairperson Hartmann

Pete Maxwell; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

# Otsego County Planning Commission

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Approved Minutes for July 20, 2020

*ATTACHMENT #1:*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU20-002  
Special Use Permit/Site Plan Review  
060-001-100-005-03 / 060-001-100-005-04

### GENERAL FINDINGS OF FACT

1. This is a proposal for a five (5) year extension of an existing mining operation permit PSUP15-002. *Exhibit #1, Exhibit #5, Exhibit #6*
2. The properties are located in a FR/Forest Recreation Zoning District. *Exhibit #2*
3. The proposed use is a permitted use subject to special conditions in a FR/Forest Recreation Zoning District. *Exhibit #3*
4. The properties are currently under the ownership of Rieth-Riley Construction Inc. *Exhibit #4*
5. The Public Hearing Notice was published in the Herald Times on July 3, 2020 *Exhibit #7*
6. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
7. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
8. The Planning Commission has the authority to approve a Special Land Use request after review and compliance with the Otsego County Zoning Ordinance. (Section 19.7) *Exhibit #3*
9. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
10. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and all requirements pertaining to the proposed use have been addressed by the Applicant. *Exhibit #5, Exhibit #6, Exhibit #12, Exhibit #13*

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

ATTACHMENT #2:

## OTSEGO COUNTY PLANNING COMMISSION

PZSU20-002

Special Use Permit/Site Plan Review  
060-001-100-005-03 / 060-001-100-005-04

### SPECIFIC FINDINGS OF FACT

#### FINDINGS UNDER ARTICLE 8/SECTION 8.2

##### ARTICLE 8 FR FORESTRY RECREATION DISTRICT

##### SECTION 8.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

The following uses may be permitted, subject to the conditions herein imposed for each use, the review standards of [Article 19](#) and only after the review and approval of the site plan by the Planning Commission. [See [Article 21](#) for applicable Specific Requirements for Certain Uses, if any and [Article 23](#) for Site Plan Requirements.]

**8.2.16** Surface mining of gravel, sand, clay, topsoil or marl [See [Article 21.25](#) for criteria]

**\*\*\*Permitted Use Subject to Special Conditions**

#### FINDINGS UNDER ARTICLE 21 /SECTION 21.25

##### SECTION 21.25 MINING, GRAVEL, SAND, CLAY, TOP SOIL, and MARL

Amended 4.9.2013

Allowed as a use Subject to Special Conditions in the [AR](#), [FR](#) and [I](#) zoning districts:

The Michigan Zoning Enabling Act, Act 110 of 2006, may allow this Use in other Zoning Districts:

##### 21.25.1 Site Development Requirements/Restrictions:

The following Site Development Requirements shall be followed:

**21.25.1.1** The site size shall be a minimum of ten (10) acres.

**Setback Area:** Setbacks in which no part of the mining operation may take place excepting ingress and egress shall be as follows:

Excavation below the existing grade of adjacent roads or property lines shall not take place within fifty feet (50') from any adjacent property line or road right-of-way line. This shall include any sloping during the reclamation of the site.

No machinery shall be erected or maintained within one hundred feet (100') of any property or road right-of-way line.

On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on most Geological Survey Quadrangle maps, the Otsego County Planning Commission reserves the right to increase the minimum set-back from the ordinary high-water mark, to a distance greater than fifty feet (50') to ensure the maintenance of safe healthy conditions on the shorelands within Otsego County.

**21.25.1.2** The area permitted for mining shall be marked with stakes or other markers as approved by the zoning administrator at all corners before the operation commences, and shall be maintained until the reclamation is approved in writing by the zoning administrator.

**21.25.1.3** Sufficient native topsoil shall be left on the site as a ready resource to be used in reclamation work following excavation/extraction activity, unless an alternative or replacement plan is approved by the Planning Commission.

**21.25.1.4** Physical isolation from residential properties shall be considered in locating development facilities. Topography, vegetation, screening devices and earth stockpiles may be used to accomplish this.

**21.25.1.5** If necessary to protect the welfare of surrounding properties the access routes serving the site may be specified by the Planning Commission with input from the Otsego County Road Commission.

**21.25.1.6** All structures, equipment and machinery shall be considered temporary and shall be removed upon completion of the mining, excavation, extraction or filling. Items not related to the operation shall not be stored at the site.

**21.25.1.7** Interior access roads, parking lots, haul road loading and unloading areas shall be maintained so as to limit the nuisance caused by windblown dust.

**21.25.1.8** The operation of mechanical equipment of any kind may be limited by the day(s) and/or hours by the Planning Commission.

**21.25.1.9** Processing may be limited to only the materials extracted from the site. If the Operator intends to bring in off-site materials, Planning Commission approval is required.

Exhibit 13

# Otsego County Planning Commission

## Approved Minutes for July 20, 2020

**21.25.1.10** Air pollution, noise and vibration factors shall be controlled within the limits governed by State and/or Federal regulations applicable to the facility.

**21.25.1.11** All required Soil Erosion permit(s) shall be secured prior to the commencement of any operation. The Soil Erosion permit shall be issued for the same period of time as the permit for the operation and reclamation.

### **21.25.2 Reclamation:**

#### **INTENT**

**To prevent negative impacts to soil, water and air resources in and near mined areas. To restore the quality of the soils to their pre-mining level and to maintain or improve landscape visual and functional quality. All reclamation plans shall comply with all applicable Federal, State, Local and Tribal laws related to mining and mined land reclamation.**

**21.25.2.1** Develop a reclamation plan that is consistent with the site capability, the planned land use and the landowner's conservation objectives. Include the practices necessary to reclaim and stabilize the mined areas to prevent further degradation of soil, water, air, plant and animal resources.

**21.25.2.2** Dust control. Control the generation of particulate matter and fugitive dust during removal and replacement of soil and other materials. Detail the practices and activities necessary for dust control in the plans and specifications.

**21.25.2.3** Properly identify areas for preservation including those containing trees, vegetation, historic structures, stream corridors, natural springs or other important features.

**21.25.2.4** Remove trees, logs, brush, rubbish and other debris from disturbed areas that will interfere with reconstruction and reclamation operations. Dispose of these undesirable materials so they will not create a resource problem or interfere with reclamation activities and the planned land use.

**21.25.2.5** Shape the land surface to provide adequate surface drainage and to blend into the surrounding topography. Use erosion control practices to reduce slope lengths where sheet and rill erosion will exceed acceptable levels.

**21.25.2.6** Use sediment trapping practices such as filter strips, riparian forest buffers, contour buffer strips, sediment basins or similar practices to trap sediment before it leaves the project site. Establish drainage ways with sufficient capacity and stability to carry concentrated runoff from the reclaimed area into receiving streams without causing erosion.

**21.25.2.7** Do site preparation, planting and seeding at a time and in a manner to ensure survival and growth of the selected species. In the plans and specifications, identify the criteria for successful establishment of vegetation such as minimum percent ground/canopy cover, percent survival and irrigation for initial establishment or stand density. Apply soil amendments and or plant nutrients as appropriate, according to the requirements of NRCS Conservation Practice Standard Nutrient Management (590). If the recommended fertilizer rate exceeds the criteria in NRCS Conservation Practice Standard Nutrient Management (590), use appropriate mitigating practices to reduce the risk of nutrient losses from the site. Use vegetation adapted to the site that will accomplish the desired purpose. Preference shall be given to native species in order to reduce the introduction of invasive plant species; provide management of existing invasive species; and minimize the economic, ecological, and human health impacts that invasive species may cause. If native plant materials are not adaptable or proven effective for the plant use, then non-native species may be used. Refer to the Field Office Technical Guide, Section II, Invasive Plant Species, for plant materials identified as invasive species.

**21.25.2.8** Identify in the plans and specifications the species, rates of seeding or planting, minimum quality of planting stock, such as PLS or stem caliper, and method of establishment. Use only viable, high quality seed or planting stock. Use local NRCS criteria for seedbed preparation, seeding rates, planting dates, depths and methods.

### **21.25.3 Restore The Quality of Soils to Their Pre-Mining Level:**

**21.25.3.1** Complete a detailed soil survey of the proposed mine area if suitable soils information is not available. Use the soil survey information to determine the extent and location of prime farmland soils.

**21.25.3.2** Remove all upper soil horizons from the project area that are suitable for reconstruction before operations commence.

**21.25.3.3** Separate soils identified with high electrical conductivity, calcium carbonate, sodium or other restrictive properties, and treat if practicable.

**21.25.3.4** Removal of overburden material for use as topsoil. Selected overburden materials can be substituted for or added to the A and B horizons if field observations and/or chemical and physical laboratory analyses demonstrate that the material, or a mixture of overburden and original topsoil, is suited to restoring the capability and productivity of the original A and B horizon material. Analyze overburden materials for pH, sulfide content, organic matter, nitrogen, phosphorus, potassium, sodium absorption ratio, electrical conductivity, texture and available water holding capacity. If the overburden material is determined to be suitable for topsoil, remove and separate from other materials and replace according to the requirements for topsoil placement.

**21.25.3.5** Storage of soil materials. Stockpile soil materials to be used as topsoil until they are needed for reclamation. Locate stockpiles to protect against wind and water erosion, dust generation, unnecessary compaction and contamination by noxious weeds, invasive species or other undesirable materials.

**21.25.3.6** Replacement of soil material. When placing cover materials, treat graded areas to eliminate slippage surfaces and promote root penetration before spreading topsoil. Spread topsoil so the position and thickness of each horizon is equivalent to the undisturbed soil without causing excess compaction the moist bulk density and soil strength of the reconstructed soil must support plant growth at a level equivalent to that of a similar layer in undisturbed soil.

# Otsego County Planning Commission

## Approved Minutes for July 20, 2020

**21.25.3.7** Reclaim the site to maintain or improve visual quality based on the scenic quality of the reclaimed site as well as the function of the site for the end land use. Plan the reclamation to be compatible with the topography and land cover of the adjacent landscape. Focus on areas of high public visibility, and those offering direct or indirect human and wildlife benefits.

**21.25.3.8** Grade and shape spoil piles and borrow areas to blend with the adjacent landscape topography to the extent practicable.

**21.25.3.9** Develop a planting plan that mimics the species, arrangement, spacing and density of plants growing on adjacent landscapes. Choose native species of erosion control vegetation and other plant materials where practical. Arrange plantings to screen views, delineate open space, act as windbreaks, serve as parkland, wildlife habitat or protect stream corridors.

### **21.25.4 Plans and Specifications:**

**21.25.4.1** Plans and specification for Land Reclamation-Currently Mined Land shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose.

### **21.25.5 Application Procedure:**

An application for Mining- Gravel, Sand, Clay, Top Soil or Marl, shall contain all of the following:

**21.25.5.1** Name and address of owner(s) of land where mining, excavation, extraction or filling are proposed to take place.

**21.25.5.2** Name, address and telephone number of person, firm, or corporation who will be conducting the actual operation. This person, firm or corporation shall be referred to as operator.

**21.25.5.3** A current Survey and legal description of the site where the proposed operation is to take place.

**21.25.5.4** A site plan complying with all requirements of [Article 20](#) of the Otsego County Zoning Ordinance in addition to showing all of the following:

#### **a. The proposed mining area:**

**Setbacks in which no part of the mining operation may take place excepting ingress and egress shall be as follows:**

**Excavation below the existing grade of adjacent roads or property lines shall not take place within fifty feet (50') minimum from any adjacent property line or road right-of-way line. This shall include any sloping during the reclamation of the site.**

**On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on most Geological Survey Quadrangle maps, the Otsego County Planning Commission reserves the right to increase the minimum set-back from the ordinary high-water mark, to a distance greater than fifty feet (50') to ensure the maintenance of safe healthy conditions on the shorelands within Otsego County.**

**b.** The placement of all equipment to be used during the operation.

**No machinery shall be erected or maintained within one hundred feet (100') of any property or road right-of-way line.**

**c.** Required screening of the site shall be in compliance with standards of [Section 21.18](#) of the Otsego County Zoning Ordinance.

**If the operator chooses to use a berm to achieve the required screening, the berms shall be placed no closer than twenty feet (20') to any property line.**

**d.** The proposed ingress and egress at the site and route(s) to be used to access the site when not located on a primary road. The route(s) for ingress and egress when not located on a primary road shall have written approval from the Otsego County Road Commission.

**The operator shall be responsible for all road damage to public roads caused as a result of the operation.**

**e.** The type and location of any proposed accessory uses. The Planning Commission may approve vehicle maintenance, sorting, crushing, concrete mixing, asphalt batching and other uses as accessory uses subject to conditions placed upon the accessory uses.

### **21.25.6 Operational Plan Including the Following:**

**21.25.6.1** The Operational plan shall be in written form.

**21.25.6.2** The written plan shall indicate the proposed size, depths, methods of operation, and type of material(s) to be mined, excavated, extracted or filled.

**21.25.6.3** The written plan shall indicate the phases of operation and ending date for each phase.

**21.25.6.4** The written plan shall indicate the method by which the operation shall be secured from entry during hours of non-operation.

**21.25.6.5** The written plan shall indicate the proposed hours and days of operation.

### **21.25.7 Reclamation Plan:**

**21.25.7.1** A written detailed reclamation plan meeting all of the requirements of [21.25.2](#), [21.25.3](#) shall be submitted with the application and operational plan. The submitted reclamation plan shall include photographs of the site prior to commencement of the proposed operation.

**21.25.7.2** The written reclamation plan shall be approved by Planning Commission and may have additional conditions placed upon it prior to final approval.

# Otsego County Planning Commission

## Approved Minutes for July 20, 2020

**21.25.7.3** The approved site plan and/or reclamation plan may be revised at any time by mutual consent of the operator and the Planning Commission to adjust to changed conditions, technology or to correct an oversight. Any costs to amend the plan(s) are to be borne by the initiating party. The Planning Commission may require the modification of the approved Site plan and/or reclamation plan when:

- a. Modification of the plan is necessary so that it will conform to existing laws.
- b. It is found that the previously approved plan is clearly impractical to implement and maintain.
- c. The approved plan is obviously not accomplishing the intent of the Ordinance.
- d. Any modification shall be subject to all provisions of [Article 19](#) and [Article 23](#).

### **21.25.8 Approval Process:**

**21.25.8.1** All approvals shall be made in accordance with the process prescribed in [Article 19 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS](#).

### **21.25.9 Performance Guarantees:**

After a special use permit application has been approved, but before the permit is issued, the applicant shall file with the Otsego County Clerk, a performance guarantee in the form of a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the Planning Commission and conditioned on faithful performance of all requirements under [Section 21.25](#) and the permit.

The performance guarantee shall cover that area of land within the permit area on which file applicant will initiate and conduct the mining and rehabilitation operations. The amount of the performance guarantee shall be determined by the Planning Commission and shall reflect the rehabilitation requirements of the permit and the probable difficulty of the rehabilitation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the performance guarantee shall be sufficient to assure the completion of the rehabilitation plan if the rehabilitation had to be performed by the County in the event of non-performance by the applicant. Any cash deposit of certified funds shall be refunded to the applicant in the following manner:

- a. One-third ( $\frac{1}{3}$ ) of the cash deposit after completion of one-third ( $\frac{1}{3}$ ) of the rehabilitation plan;
- b. Two-thirds ( $\frac{2}{3}$ ) of the cash deposit after completion of two-thirds ( $\frac{2}{3}$ ) of the rehabilitation plan;
- c. The balance at the completion of the rehabilitation plan. Any irrevocable letter of credit or surety bond shall be returned to the applicant upon completion of the rehabilitation plan.

In order to receive a refund of the performance guarantee as provided for in subsections (a) through (c) above, the applicant shall file a written request with the Zoning Administrator. The written request shall include the type and dates of rehabilitation work performed, and a description of the results achieved as they relate to the applicant's rehabilitation plan. Within thirty (30) days after receiving the written request for a refund of the performance guarantee, the Zoning Administrator shall conduct an inspection and evaluation of the rehabilitation work performed. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining rehabilitation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. Within thirty (30) days after the inspection, the Zoning Administrator shall send written recommendations to the Planning Commission indicating approval, partial approval, rejection, or approval with conditions, of the rehabilitation work performed by the applicant, along with a statement of the reasons for any rejections.

The Planning Commission shall approve, partially approve, or reject the rehabilitation work performed by the applicant with the recommendation of the Zoning Administrator's written statement, and shall notify the applicant in writing of the action of the Planning Commission. Where partial approval is granted the applicant shall be refunded a portion of the performance guarantee that is proportionate to the cost of the rehabilitation work approved. Upon approval or partial approval by the Planning Commission, the County Clerk shall refund the performance guarantee or a portion thereof as specified by the Planning Commission to the applicant.

### **21.25.10 Inspection:**

**21.25.10.1** Mining, excavation, extraction or filling permits granted for a period exceeding one (1) year shall be inspected a minimum of once a year during the operation period and a minimum of each one hundred (100) days during restoration, by the Zoning Administrator to insure compliance with the permit and Ordinance. The operator shall pay an inspection fee, as determined by the Otsego County Board of Commissioners, for each inspection to cover the costs of extraction and reclamation inspections required by this section within thirty (30) days of the invoice being sent to them or they will be in violation of the Special Use Permit.

### **21.25.11 Certificate of Completion:**

**21.25.11.1** A certificate of completion shall be issued to the operator when the Zoning Administrator makes the following determination.

**21.25.11.2** All evidence of the operation has been removed from the site.

**21.25.11.3** All required grading of the site has been completed.

**21.25.11.4** All required re-vegetation of the site has been completed and initial growth has begun and there is no erosion present.

**21.25.11.5** Completion and approval of the soil erosion permit has been given.

# Otsego County Planning Commission

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## Approved Minutes for July 20, 2020

### **21.25.12 Evidence of Continuing Use:**

**21.25.12.1** When activities on or the use of the mining area, or any portion thereof, have ceased for more than one (1) year or when, by examination of the premises or other means, the Zoning Administrator determines a manifestation of intent to abandon the mining area, the Zoning Administrator shall give the operator written notice of their intention to declare the mining area or portion thereof abandoned. Within thirty (30) days following receipt of said notice, the operator shall have the opportunity to rebut the Zoning Administrator's evidence and submit other relevant evidence to the contrary. If the Zoning Administrator finds the operator's evidence of continued use satisfactory, he/she shall not declare abandonment.

### **21.25.13 Transference of a Special Use Permit:**

**21.25.13.1** Permits for surface mining shall be issued to the operator. If an operator disposes of his interest in an extraction area prior to final reclamation by sale, lease, assignment, termination of lease, or otherwise, the Planning Commission may release the operator from the duties imposed upon him by this Ordinance, as to the operation, but only if the successor, operator, or property owner assumes the obligations of the former operator with reference to the reclamation activities. At that time the Special Use Permit may be transferred.

### **21.25.14 Permit Extension:**

**21.25.14.1** All requests for an extension/renewal of a Special Use Permit shall for mining, excavation, extraction or filling follow the same process as a request for a new permit.

### **21.25.15 Permit Expiration:**

**21.25.15.1** If approval for a Special Use Permit for mining, excavation, extraction or filling is granted by the Otsego County Planning Commission, it shall be for a specific period of time not to exceed five (5) years and shall specify the period of restoration which cannot extend more than eighteen (18) months beyond the permitted time for operation.

# Otsego County Planning Commission

Approved Minutes for July 20, 2020

## FINDINGS UNDER ARTICLE 19:

- 19.7.1 The property subject to the application is located in a zoning district in which the proposed special land use is allowed.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.2 The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the county or the natural environment as a whole.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.3 The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public highway or seen from any adjoining land owned by another person.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.4 The proposed special land use will be designed, constructed, operated, and maintained so as not to diminish the opportunity for the surrounding properties to be used and developed as zoned.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.5 The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.6 The proposed special land use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.7 If the proposed special land use includes more than fifteen thousand (15,000) square feet of impervious surface, then the storm water management system employed by the use shall (i) preserve the natural drainage characteristics of the site and enhance the aesthetics of the site to the extent possible, (ii) employ storm water disposal through evaporation and infiltration when reasonably possible, (iii) shall not discharge storm water directly to wetlands or surface waters unless there is no other prudent or reasonably feasible means of discharge, (iv) shall not serve to increase the quantity no rate of discharge leaving the property based on 25-year storm criteria, (v) shall be designed using Best Management Practices identified by the DNR or its successor agency, and (vi) shall identify the party responsible for maintenance of the storm water management system.  
~~HAS~~ – HAS NOT BEEN MET
- 19.7.8 The proposed special land use complies with all specific standards required under this Ordinance applicable to it.  
~~HAS~~ – HAS NOT BEEN MET

## SECTION 19.8 - CONDITIONS

The Planning Commission may attach reasonable conditions to the approval of a special use permit. These conditions may include those necessary to ensure that public services and facilities affected by a proposed special land use will be capable of accommodating increased service and facility loads caused by the special land use, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all the following requirements.

19.8.1 Be designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed special land use, and the community as a whole.

19.8.2 Be related to the valid exercise of the police power, and purposes which are affected by the proposed special land use.

19.8.3 Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the special land use under consideration, and be necessary to insure compliance with those standards.

\*\*\*Chairperson Hartmann made a motion to approve special use permit PZSU20-002 to extend the existing mining operation on parcel numbers 060-001-100-005-03 and 060-001-100-005-04 for another five (5) years; Seconded by Mr. Caverson.

Roll Call:

Yes: 10  
No: 0  
Absent: 1

Motion passes.

Exhibit 13