

A regular meeting of the Town of Avon was held on Thursday September 23, 2021, at 6:00 P.M. at the Avon Opera Block/Town Hall, 23 Genesee Street, Avon, New York 14414.

PRESENT: Supervisor David LeFeber, Deputy Supervisor Thomas Mairs (arrived 6:09), Councilmen James Harrington, Paul Drozdziel, and Malachy Coyne

OTHERS: Code Enforcement Officer Brian Glise, Attorney James Campbell, Engineer David Willard, and Sharon M Knight, MMC/RMC Town Clerk

VISITORS: Steve Gilbert, Dale Twardokus, Brenda Piccarrude (sp.) Karen & Rick Crater, Bruce Maxon, Anne Bristol, Tim Beavers, David Hoffmann, Steve Fontuzzo (sp.) Ashley Champion, Eric Huppert, Fred & Tammy Eisenberg, Robert Westfall, Karen Schiedel, Jacalyn Eddy, Deb Nupp, Karl Mitchell, Jacqueline Parks, Peter Vonglis, Robert & Carolyn McKee, Kevin Lillis, Paul Colucci, Edward Forsyth, and others.

Supervisor LeFeber called the meeting to order at 6:00 P.M. and led everyone in the Pledge of Allegiance.

### **DISCUSSION – COURT GRANT**

Justice Hoffmann addressed the board regarding the court grant. Discussion included changes to the second floor mainly dealing with the security of the staff and Judges. He attended the Village Board meeting early in the week and they approved a resolution in the amount of \$30,000.00.

This is a stand-alone project that would provide better accommodations for the court system, but it also dovetails in with the other portion of the renovations to the building. The grant would cover a new sound system and reconfigure a portion of the current court space. The project is out for bid and they are due next Friday.

### **RESOLUTION #173 AUTHORIZE TO APPLY FOR A JUSTICE COURT ASSISTANCE PROGRAM GRANT**

On motion of Councilman Drozdziel, seconded by Councilman Coyne the following resolution was ADOPTED AYES 4 NAYS 0 ABSENT 1 (DEPUTY SUPERVISOR MAIRS)

RESOLVE that the Board of the Town of Avon authorizes the Avon Town Court to apply for a JCAP grant in the 2021-22 grant cycle up to \$30,000.00.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Absent, Supervisor LeFeber – Aye**

**RESOLUTION #174 APPROVAL OF MINUTES**

On motion of Councilman Harrington, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 4 NAYS 0 ABSENT 1 (DEPUTY SUPERVISOR MAIRS)

RESOLVE to approve the minutes of September 9, 2021 as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Absent, Supervisor LeFeber – Aye**

**DISCUSSION – VISITOR COMMENTS**

Supervisor LeFeber asked for any comments, and they are as follows:

Visitor Kevin Lillis asked how many people on the Board are on a well? He stated there are 55 homes on Oak Openings Rd and they are all on wells. The mine has a Permit from the DEC to bring in construction material and the permit was canceled due to toxic waste coming in and was reinstated a couple of months later. We are looking for protection of our water. There is no guarantee that our wells will be replaced to bring us continued safe water.

**DISCUSSION – ATTORNEY REPORT**

Attorney Campbell reported on the following:

Attorney Campbell provided the board with a copy of a proposed local law to opt out of the Marijuana Regulation Taxation Act which would allow onsite consumption and dispensaries in the Town of Avon. If you wish to move forward then you would need to schedule a public hearing for October 14, 2021. It's not required but the proposed local law will be submitted for referral to the County Planning for administrative review.

**RESOLUTION #175 SET PUBLIC HEARING FOR LOCAL LAW T-4A-2021, OPTING OUT OF ALLOWING CANNABIS RETAIL DISPENSARIES AND ON-SITE CANNABIS CONSUMPTION SITES**

On motion of Councilman Harrington, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to set a public hearing by the Town Board of the Town of Avon for Local Law T-4A-2021 to be held the 14<sup>th</sup> day of October at 6:15 P.M., at the Avon Opera Block/Town Hall building, 23 Genesee Street Avon, New York 14414.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – ATTORNEY REPORT-CONTINUED**

Attorney Campbell also provided the board with a local law to override the tax levy limit and the following action was taken:

**RESOLUTION #176 SET PUBLIC HEARING FOR LOCAL LAW T-5A-2021, TO OVERRIDE THE TAX LEVY LIMIT**

On motion of Councilman Harrington, seconded by Deputy Supervisor Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to set a public hearing by the Town Board of the Town of Avon for Local Law T-5A-2021 to be held the 14<sup>th</sup> day of October at 6:30 P.M., at the Avon Opera Block/Town Hall building, 23 Genesee Street Avon, New York 14414.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION - OPEN PUBLIC HEARING OAK OPENINGS, LLC HARDSHIP VARIANCE**

Supervisor LeFeber opened public hearing by reading the following legal notice:

**LEGAL NOTICE  
NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN**, pursuant to the provisions of the Code of the Town of Avon, and pursuant to Town Law §130 and §264 a public hearing shall be held by the Town Board of the Town of Avon at **6:15 p.m. on Thursday, September 23, 2021**, at the Avon Town Hall, located at 23 Genesee Street, Avon, New York for the purpose of considering public opinion and comment about or concerning a proposed local law relating to the following:

A request by Oak Openings, LLC for a hardship variance from the moratorium on Excavation Operations as established by Local Law 5 of 2020, adopted on December 10, 2020.

A copy of any materials submitted by the applicant in support of such request that are not exempt under the Freedom of Information Law (NYS Public Officers Law Article 6.) will be available for review by the public at the office of the Town Clerk during regular Town Clerk hours and will also be available on the Town's website at <https://www.avon-ny.org/town-of-avon/town-home.html>.

All interested persons are invited to appear and be heard at the aforesaid time and place.

Dated: August 27, 2021

Sharon Knight - Town Clerk, MMC/RMC

Supervisor LeFeber asked that Visitors state their name, address and if they are opposed or in support of the variance for the record. Also, comments will be limited to three minutes. After everyone has had a chance to speak, we could go back and allow a second comments if time allows.

**Ashley Champion – Attorney for the applicant.**

Ashley Champion an Attorney with Nixon Peabody introduced her colleague Steve Fontuzzo (sp.), Dale Twardorkus the owner of Oak Openings, LLC., and his colleague Brandon Peretto (sp.).

Attorney Champion stated that they are here to present their case for a Hardship Variance to the Excavation Moratorium in place in the Town of Avon. A hard copy of their application was forwarded to the board. She highlighted the following points of the application.

The moratorium allows for existing mining operations to apply for hardship relief.

The current permit exists under the mining reclamation act.

According to NYS law mining operations are solely and firmly in the DEC's jurisdiction. This includes day to day operations, hours of operation, and truck trips. The town's jurisdiction is to decide where mining operations can take place in the town. The town can issue a special use permit to go along with the DEC.

The special use permit issued by the ZBA says that the applicant will abide by the restrictions of the DEC and does not give a specific number regarding truck trips.

Mr. Twardorkus is running a business in this community and is showing a good faith effort by coming to the town to explain what he is doing by going through these channels.

We can adequately show that we have a great case for the hardship that we are going for.

You need to take the hardship or detriment that is currently being suffered by the applicant and weigh that against the health, safety & welfare issues that may be presented to the Town if the application were to be granted.

My job is to show how there is and will continue to be a hardship and financial suffering by this business because of the inability to increase the truck trips based on this current moratorium.

We have also included letters from businesses that show that there has been almost one million in losses over the last three years and shows how the limitation on the trucks and hours are not allowing the business to succeed and to realize the revenue it otherwise would. We also provided a list of loss business opportunities.

It is trickier to balance the other side of the issue regarding the general health, safety, and welfare issue. While all these concerns are valid it also must be recognized that there is a very tight and conformed legal framework on how this application needs to be viewed and decided on. Though every concern is valid it does not make it relevant to this application.

The granting of the application does not change the existing mining operation or what the mine is permitted to do, all it does is allow him to move on to the ZBA which is the appropriate board to hold a public hearing and consider a modification to the special use permit if appropriate.

At the end of the day the DEC is the real decision maker.

The DEC will have to go through a long and involved SEQR process. What the DEC is doing through that process is what is weighed in the hardship application. They are determining if the application will cause any adverse environmental impacts. The DEC cannot and will not update the mining permit unless they find all aspects negative on the Health/Safety/Welfare issue and the environmental impact issue.

Exhibit F includes several letters of support and how the truck limitation affects them.

Exhibit G our traffic input assessment which was done by professional traffic engineers states that truck increase will not result in any detrimental traffic impacts.

**Councilman Harrington** - Why do you need ZBA approval? She does not believe their approval is necessary but is requesting to avoid confusion and legal issues. The Owner has made this decision.

**Councilman Mairs** – Are all the projects you listed are projects that would be going up for a bid. Were you awarded the bids? Dale Twardokus responded stating the companies do not have to go with the lowest bidder, distance would be considered along with types and quality of materials. None of the projects listed needed to be the lowest bid.

**Councilman Drozdziel** – The projects are missed opportunities that you were in the line for but could not meet the delivery schedule? Dale Twardokus responded, that is correct.

**Supervisor LeFeber** asked for testimony from other visitors. He requested that the person state their name, property address, and if they are in favor or against the application.

**Debbie Nupp, 6555 North Avon Road – OPPOSED** -Small farm, animals, contaminated material in that mine and the DEC or Town did not test wells. Their farming business requires crossing the road with hay wagons and the trucks come flying down the road. She suggested to lower the speed limit.

**Karen Crater 1177 Oak Openings Rd – OPPOSED** - read the following statement:

**Public Hearing Comments in regards to Oak Openings, LLC request for a hardship variance from the moratorium on Excavation Operations held on 9/23/2021 by Karen Crater, 1177 Oak Openings Rd.**

After reading the application Oak Openings LLC submitted for the request for hardship variance, I see no clear evidence that the applicant is suffering a hardship.

Nowhere does it show that he can't pay his bills or employees. I see no evidence of repossessed equipment or late bills.

He has projected numbers for jobs or projects with no proof that he would have won the bid for those projects.

The 5 letters in support of the application are individuals he pays or does business with. They show no actual proof of a hardship.

The traffic study wasn't done with the current route of egress. The study was done with the traffic going south and it currently is being sent north. In addition, the peak traffic time in the PM used in the study is not the peak hours of PM traffic according to the **actual traffic studies** I had done by the Livingston County Highway Department.

Calculated studies do not include the real issues that this business is causing to residents on our road such as road damage, speeding trucks, debris on the road (which he received at least 1 fine of \$5000.00 by the DEC), permit violations of exceeding the 12 truck limit exiting the mine per hour (which the Town of Avon is taking him to court for on September 28, 2021 and was part of the DEC violation), noise levels that are already **unbearable**, and diesel fumes.

We recently had two contractors doing some work on our property. Both commented on the trucks, noise, and road safety that they witnessed. They said you should do something about them. We replied we have tried.

I suggest the Town Attorney look at LU15: Regulating Hours of Operation in NYS to find a way to limit hours of operation to protect us from noise, traffic safety, and pollution (dust and diesel fumes).

I would like the Town or DEC to apply for a grant from the EPA for an actual real-life study of the road noise and pollution we are experiencing at our houses, especially us being closest to the road. My ears are ringing by the end of the day. It is causing us stress and we wish our day away to end the noise. I can't listen to TV or talk to neighbors outside during the mines hours of operations. The use of jake breaks on and off all day makes us jump as they are so loud.

Our property values will decrease if this mine expands or truck traffic increases. This is totally unacceptable.

As the mining committee suggested to the Town Board, no new mining. I urge the Town Board to refuse the request for the hardship variance and use the rest of the moratorium time to modify or change the local codes to prevent the residents from the hardships this business has caused all of us involved, including the Town Government. I urge the town to extend the moratorium if they need more time to make the necessary changes.

**Jacqueline Parks 1391 Oaks Opening Road – OPPOSED –**

Avon Mine Expansion

My family and I are greatly opposed to the expansion of mining activities across the street from our home and farm at 1391 Oak Openings Rd.

We moved to this area because of its rural flavor and while we knew there was a mine across the street when we bought the property we never anticipated that it would be run as an expanded operation including extensive truck traffic, constant noise, and dust pollution and intrude into our weekends. We have found it difficult to be across the street even with the existing operations as our pool is constantly full of dirt, something that never happened before the mine was operating. Additionally, if we leave our front windows open, something that is essential in the warmer weather as we have no air conditioning, we are bombarded with the constant beeping from backing up trucks, and the general noise of the trucks and my front room table is daily covered in a fine layer of dirt.

We try to get along with all of our neighbors and honor our shared interest in having a healthy, friendly neighborhood to live in. The mine owner is not doing the same. When we contacted him about the dirt and asked for a better barrier along the road we never got a response. We are fairly certain that his trucks turn around in our driveway, leaving big ruts in our lawn. The owner has no regard for the health and happiness of his neighbors. Any expectation we have that he would improve in that regard is unbelievable since he hasn't followed the rules he's already been charged to follow

Additionally, we run a barn event venue, West Winds Barn and most events are on Saturdays. Having a noisy operation across the street with many trucks pulling in and out every hour will substantially detract from the pleasantness of our venue and hurt our business.

Jacqueline and Bryan Parks  
1391 Oak Openings Rd  
Avon, NY  
585-230-6963

**Eric Huppert 1160 Oak Openings Rd – OPPOSED** - Claiming 12 trucks per hours is cause of hardship when Routinely 15 - 22 trucks per hour come down the road. Consistent violations, trucks coming from the wrong direction. Just scratching the surface and going on for the last three years.

Twelve trucks per hour is folly as its not abided by, there are 10-wheel trucks and trailer trucks going in and out of the mine. Tractor trailers up to twenty- sixteen wheels are having a hard time accessing Oak Openings Rd from #6 Road. There is a Culvert near his home, and it cannot withstand these trucks with up to gross weight of 109,000 pounds loaded. He does not want to subsidize this business.

**Karen Schiedel 1180 Oak Openings Rd – OPOSED**

Thomas & Karen Schiedel  
1188 Oak Openings Road  
Honeoye Falls, New York 14472

September 23, 2021

Avon Town Board Meeting - September 23, 2021

Re: Hardship Request by Oak Openings LLC

We live at 1188 Oak Openings Road and we have lived here for 44 years. We have many concerns about Oak Openings LLC operations and we have attended several Town of Avon meetings along with our neighbors.

What about our hardship and other potential hardships for us and our neighbors? We specifically chose this area for the "rural" feel – for peace and quiet. This is our "forever" home and we, like other homeowners, consider the increasing value of our homes over the years as potential income for us at some point in our lives. We are very concerned about our property and home value, our wells and the negative effects of increased truck traffic on Oak Openings Road.

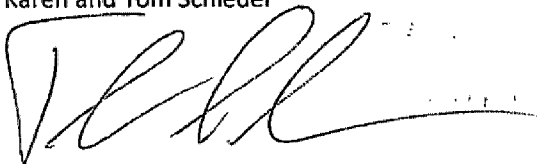
We were forced to deal with all trucks leaving the mine being directed to travel north on Oak Openings Road. Twelve trucks per hour exiting the mine was the determined number. Please note that means potentially 24 trucks per hour going by our homes. Now a request has been made for 30 trucks per hour exiting the mine. That would mean potentially a total of 60 truck per hour going past our homes....potentially one each minute! *It could get to the point where it would look like a train going by!* Why is the proposed increase in truck traffic not considered a significant environmental impact? It certainly is for our environment and our quality of life.

Increased truck travel on Oak Openings means severely increased potential for safety concerns. We have families with children and busses traveling and stopping on Oak Openings Road. We have lawn mowing contractors often parking along the roadside. We have farmers who often cross Oak Openings at North Avon Road. Can we exit our own driveways safely?

We ask that you consider how many homes and families will be affected by the proposed mine expansion, request to extend hours the mine can operate and the proposed increase in trucks allowed to exit the mine per hour. We ask that you deny the "hardship request".

Sincerely,

  
Karen and Tom Schiedel





**Paul Colucci with the Demarco Group 1950 Brighton Henrietta Town Line Road –  
SUPPORTS –**

Mr. Colucci submitted a letter that is part of the hardship application on July 20<sup>th</sup>. We do business with Dale and are reliant on subcontractors to meet our goals. With increased pricing over the last 18 months the end user is paying more for what can be deliver. To be able to have competition in the marketplace it is important to all of us. With restrictions on mines such as this we are looking at the inability for a subcontractor to be able to compete in the marketplace. When providers pull out of a bid, we wind up going over budget on a project.

Below is Mr. Colucci's letter.



July 20, 2021

Town of Avon  
Mr. David LeFeber, Supervisor  
23 Genesee Street  
Avon, NY 14414

Dear Supervisor LeFeber; Deputy Supervisor Mairs; and Councilmen Coyne, Drozdziel, and Harrington:

On behalf of DiMarco Constructors, kindly allow this letter to serve as DiMarco Constructors support of Rochester Gravel Products request for consideration of Financial Hardship by the Town Board and subsequent permission to allow this business to appear before the Zoning Board for consideration of modification to their special permit for the purpose of increasing truck traffic allowed into and out of the mine.

I have been following the Town's moratorium on mining activity in town and understand that there are varying opinions on the benefits and impacts from this type of activity. The products that are produced at facilities of this nature are used in all forms of construction from municipal projects to private development projects. As an executive with a local construction and real estate development company, we routinely encounter increasing material prices and supply chain issues on all of our projects. Limitations on a business such as Rochester Gravel Products have far reaching consequences that impact everyone from subcontractors to general contractors to end users and owners. Our interests lie in maintaining a competitive marketplace and variable options for our company to source material at the best value. Limiting this particular mine reduces competition in the marketplace which subsequently impacts our company as general contractor and property owner.

At present Rochester Gravel Products is limited to a maximum of 12 trucks per hour to leave their facility. While I do believe that there should be limits on mining activity in the Town of Avon and appreciate the hard look the town is taking at where mining should be allowed, I believe that it is inappropriate for the town to place undue restrictions on a mine that has been in operations since the 1980's. Allowing this mine to operate on a level playing field with other

1950 Brighton-Henrietta Town Line Rd.  
Rochester, New York 14623  
585.272.7760 fax 585.272.0720  
www.dimarcoconstructors.com  
A DiMarco Group Company



ABC STEP Safety Training Evaluation Process Diamond Award Recipient



mines is a primary responsibility the town should consider as you weigh concerns voiced by neighbors and general public against the needs of the business community.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Colucci", written over a horizontal line.

Paul M. Colucci  
Vice President- Development and Construction  
DiMarco Constructors

**Dr. Jacalyn Eddy, 1565 Oak Openings Rd. – OPPOSED**

The following letter was provided to be included in the record for the Public Hearing. This is a chance to say hello to her neighbors.

September 22, 2021

From Jacalyn Eddy, Ph. D  
Comments to the Town Board of Avon  
**RE: “Rochester Gravel Products”**

My husband and I lived in Avon for 14 years, from 1990-2004. We raised 3 daughters here. One daughter taught social studies for several years at the high school. One daughter still lives here, and we have grandchildren in the district. We have roots in this area. So, after being away for the last 17 years, we decided to return. Three months ago, we bought a home on Oak Openings because it was just the sort of peaceful setting we wanted for our retirement. We were never informed during the purchase process that there was a gravel quarry in the immediate area that endangered the health of the neighborhood and sought to expand such that the peace and quiet of this neighborhood would be utterly disrupted. Had we been given this crucial information, it's doubtful we would have purchased the property.

Below I outline some points for your consideration.

1. **VIDEO.** On 9/22, I *videotaped the entrance of “Rochester Gravel Products”* (south facing north, as is clear from the film) for 19 min and 22 seconds. The consecutive time elapse and date of the film is recorded on the phone. Any and all who wish to invest the 19 minutes are welcome to see it. For those of us living on Oak Openings, none of what was filmed will come as a surprise. During that 19 minutes, *16 trucks entered or left* the premises (8 entering, 8 leaving) for an average of *one truck every 1.18 minutes*. This is not hearsay. This is on the video for anyone to see. My understanding is that, strangely, the current permit allows 12 trucks to leave the site per hour, which is 1 truck every 5 minutes. (I say “strange” because the lungs of residents obviously make no distinction between empty trucks entering and full trucks leaving the site.) At the rate of haulage captured by the film, 48 trucks per hour leave or enter the mine. Even if we stick to the 12 departing trucks per hour, *8 trucks in 19 minutes extrapolates to 24 trucks in an hour, twice the permit limit.*

If 19 minutes of film is not adequate proof of permit violation, please inform how much film is needed to do so. It will not be hard to obtain, since 16 trucks in and out over 20 minutes is not a unique situation, as residents already know. I frequently travel from Oak Openings north to Honeoye Falls #6 and over to Rt. 15. I have never yet seen fewer than 8 trucks headed to “Rochester Gravel Products” in the mere 10 minutes it takes to drive that route. This information is easy enough to verify with a video camera.

Video records are relevant for 2 reasons: first, they reveal blatant disregard for the terms of the permit or the welfare of the citizens of Avon. Second, it’s my understanding that permit violations can result of permit revocation. Therefore, it is important to understand how much film is required to demonstrate violation.

The bigger question is, what will the Town of Avon or the DEC do about violations?

2. **HEALTH.** *To suggest that there is “no environmental impact” from haulage of this magnitude is to ignore information from federal agencies that have acknowledged that diesel emissions absolutely do produce a range of health risks, including skin disorders, cardiovascular compromise, respiratory disease, and lung cancer. Federal agencies, including the EPA and OSHA do not merely acknowledge the possibility of health risk, they acknowledge it as fact. Here is only one of countless examples:*

“Human health, our environment, global climate and environmental justice are all affected by diesel emissions. Emissions from diesel engines contribute to the production of ground-level ozone which damages crops, trees, and other vegetation. Also produced is acid rain, which affects soil, lakes and streams and enters the human food chain via water, produce, meat and fish.” (Epa.gov)

Indeed, the federal government is so convinced of the harmful effects of diesel emissions that the EPA has been given broader authority to promote emission reductions, including substantial appropriations to subsidize clean energy trucking.

Given the clear posture of these federal agencies I have no idea why, at the state level, the DEC suggests that there is “no environmental impact” from “Rochester Gravel Products” but this *contradicts accepted federal conclusions and policy*.

*The pit owner’s request to increase haulage must be denied. Between the entrance of the quarry and south to 5&20, a distance of only 1.3 miles, 26 homes exist. Whether a compass on a map says so or not, this is absolutely a heavily residential area. To expand the terms of the permit would expose citizens to unnecessary, serious, and federally recognized health risks.*

3. **PROPERTY**. Expanding the already egregious reach of this mine threatens not only the health but also the property *rights* and property *value* of tax-paying citizens. In addition to the continual noise level, it is well documented that where haulage increases to this disruptive level, property values can be anticipated to decrease, even by 30-40%. When Avon loses its reputation as a bucolic bedroom community of Rochester and is seen as a mining town where officials cater to the demands of outsiders, property values will suffer. And when that happens, the amount of property tax will also go down. The cost of road repair will go up. The new demand is for 30 trucks an hour. Even if the owner abides by that stipulation, which is doubtful in my mind, that is 240 trucks per 8- hour day, and 1440 trucks per week. In reality, remember, 30 trucks out mean 60 trucks altogether, and then we are talking about *480 diesel-emission trucks per day* on a narrow, shouderless county road not intended for this level of traffic. Beyond simply inaccurate, the owner’s claim that there would be “no traffic impact” is ludicrous and pathetic, as anyone who can multiply simple figures can see.

The owner threatens to sue the town but that does not mean he would win. If he won, it’s true you would lose revenue. But if you are held hostage to his ever-increasing demands, you will certainly lose revenue in other ways over the long run.

If the desire of one person (a minority) to make more money at the expense of the health, welfare, and property rights of the majority is upheld, it is unjust. Excusing the pit owner from accountability to the town, which seems to be his request, is outrageous. He has offered unfounded and blatantly false support for his demands. His customer service issues aren’t our problem.

We depend on you to do everything in your power to represent the best interests of citizens over a non-resident who wishes he could make more money. As I understand it, you have the power to set limits on hauling, and it seems to me that the argument for doing so is solid and with legal precedent.

Judges have certainly ruled in favor of towns seeking to protect themselves from money-hungry individuals who scream “hardship,” who demand by intimidation and operate without concern for others.

Sincerely

Dr. Jacalyn Eddy  
1565 Oak Openings Rd.  
(585) 738-9913

**Bob McKee 1665 Oaks Opening Road – OPPOSED** - The Town of Avon is a municipality and is funded by the taxpayers’ dollars as such you have a fiscal responsibility. A financial audit is performed each year. A private company does not have to do that. It’s not certified by a third party. The information provided you is not certified by a third party. Please take that into consideration when making your decision.

**Carolyn McKee, 1665 Oaks Opening Road – OPPOSED**

## Rochester Gravel Products Hardship Request Comments

There are several important points for the town board to consider when deciding if the Rochester Gravel Products request meets the criteria for a financial hardship relief.

THE FIRST IS WHETHER THE FACTS AND FIGURES THAT WERE PROVIDED ARE ACCURATE.

The first discrepancy is in **Exhibit B** which states that the applicant's CPA has "analyzed the applicant's financial situation"

The CPA's letter clearly states "we did not perform any analytical review".

In addition, the CPA firm's letter states that the CPA assisted Rochester Gravel in preparing tax returns and were **based on what was TOLD to them** by Rochester Gravel. **NO factual evidence to support this was provided to the CPA and therefore cannot be verified as accurate.**

**In fact, the CPA firm states that NO ATTESTATION SERVICES WERE PROVIDED.**

An attestation is the method a CPA uses to verify the authenticity of financial document. It is a crucial function of a CPA's accurate review of a company's financial statements.

By declaring that no attestation services were provided in the financial review of Rochester Gravel Products..... **TWICE in both letters**, they are effectively removing themselves from any liability possibly related to Rochester Gravel providing inaccurate and undocumented financial information. Only an audit by either a CPA or the IRS can confirm whether or not the information provided by Rochester Gravel was accurate.

Without this supporting declaration certifying the \$804,308 loss that Rochester Gravel claims this loss cannot be used to support a financial hardship request.

The second important fact the board must consider before granting a financial hardship request is whether or not the applicant's request meets the legal criteria for a financial hardship.

The Moratorium that the town of Avon enacted on December 10 2020 states that " A grant from relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner which is unique to the property owner..."

Legally, "unreasonable hardship means substantial economic loss which is unique to a person and which has not been caused or exacerbated by **PRIOR ACTION OF OR INACTION** on the part of the person."

According to the DEC, it is the **applicant** who determines how many trucks per hour he needs, not the town or the DEC. It is this **PRIOR ACTION** by Rochester Gravel Products that resulted in the limit of 12 trucks per hour.

It was also Rochester Gravel's **INACTION** that resulted in the 12 truck limit.

An email from Will Saar from the DEC reads..." Dale, will you be seeking to increase the permitted hourly truck traffic ? If so, add that in now and all the things you want to do in the next 5 years and let's add them to this permit (max 5 years).

The email goes on to say..."Next steps in general is to send in the request with truck traffic changed, if that is something you wish within 5 years..."

**THIS EMAIL IS DATED DECEMBER 27, 2018.**

**If Rochester Gravel Products had used this opportunity to increase the permitted number of trucks to 30 per hour WHEN THE DEC SUGGESTED IT, the permit would have been valid until December 27,2023 and ALL THE JOB LOSSES CLAIMED ON THIS HARDSHIP REQUEST POSSIBLY WOULD NOT HAVE OCCURRED.**

It was Rochester Gravel Products' ACTION of requesting 12 trucks per hour and his choice NOT to increase the truck limit when given the opportunity and the encouragement of the DEC that led to any financial hardship. Rochester Gravel products own choices and decisions led to any financial hardship they may be experiencing.

**Based upon the PRIOR ACTION and the INACTION of Rochester Gravel Products, it is clear that Rochester Gravel Products DOES NOT meet the legal criteria for the town to grant a financial hardship request.**

Therefore, the Town of Avon should deny Rochester Gravel's financial hardship request.

This moratorium was put in place to give the Town Boards sufficient time to carefully analyze current town codes relating to mining and to take into consideration all of the negative aspects mining has to residents who live and work nearby. To date, this has not been accomplished and I would request the Town Board to extend the moratorium for as long as necessary until such analysis is complete.

Carolyn McKee  
September 23, 2021



At this point in time the Traffic Impact Assessment is totally invalid. For approximately the last 2 years, almost everyone has been working from home and NOT traveling to work. Even now, many people are still working from home and/or have reduced the number of days they travel to work, including employees at the DEC. Any recent analysis of the number of cars or trucks using Oak Openings either way is not accurate.

The Traffic Assessment also did not take into consideration that the peak hours listed for the gravel pit operation, 7-8 AM and 3-4 PM, are also the peak hours for school busses to operate on Oak Openings Rd.

The school bus turn around is .4 of a mile from the pit entrance.

Other factors that were not considered in this traffic assessment include the width of each traffic lane, the width of the shoulder, height of the guard rails and proximity of ditches and drop offs.

The width of each lane from the white line to the center yellow line is 10 feet, the width of the shoulder is 30 inches, the height of the guard rail is 24 inches and the drop off in front of my house is over 12 feet.

The width of a tractor trailer, such as the ones currently being used by Rochester Gravel, at its widest point is also 10 feet. The width of a school bus is 8 feet with an additional 20 inches on each side when the bus doors open and when all the safety signs are engaged as when the bus is stopped for pick ups or drop offs for a total of 11 and 1/3 feet.

In addition, the entire length of Oak Openings going north to the pit, is a double yellow solid line, indicating little or no visibility to oncoming traffic.

A complete traffic assessment should have taken into consideration ALL of these aspects.

### **Bruce Maxon 1589 Oak Opening Road - OPPOSED**

Mr. Maxon asked about having a representative from the DEC and they should be here.

Supervisor LeFever responded stated on September 8, 2021 the Town provided testimony to Mr. Guillermo Saar. Attorney Campbell called and emailed several times.

Attorney Champion stated that the comments and inferences of Dales losses is a little offensive. That he would take the risk of faking his tax returns that are submitted to the IRS so that he could hopefully show a loss is not true. You have documents from his accounting firm on their letterhead, Tax returns that were submitted to the IRS and letters from our office versus someone who says they don't believe it.

Regarding the claim that Dale does as he pleases regarding truck traffic; His employees spend much of their day trying to manage trucks in and out to try to maintain that limit. In all the three years there have been less than a handful of violations. It is the nature of the business that trucks show up sometimes, it's not all perfectly scheduled. When there has been an issue Dale has shown up and does what needs to be done with the town or the DEC.

There was a comment that was said that I have been saying that the health, safety, and welfare of the residents is not important. That is not at all what I am saying. They do have to be balanced against the hardship.

This board does not have the authority to delve into issues like noise, vibration, traffic, and historic impasse. Those are issues that are covered in the SEQR process, which the DEC is going through now and they are separate issues outside of the hardship application. All we ask is for recognition that this business is suffering and would like to go through the appropriate process.

Supervisor LeFerber stated that the board has several options to consider. We can leave the public hearing open and additional information can be sought, the board could do some more of our own investigation, or we can close the hearing and decide.

Attorney Campbell provided the following legal guidance:

He suggested to leave the public hearing open until the next meeting, as a lot of people have not had the chance to speak and may want to provide written comments. Also, the applicant may want to provide more written comments. This will also give the board a chance to think about what you heard tonight and to absorb these materials in the context of what you heard tonight.

Carolyn McKee stated she wants to clarify that no one is saying that the financial information that has been presented is faulty what we are saying and what the CPA firm has said is that they cannot certify that the financial information provided is accurate. The application must prove that you have a legitimate hardship and that has not been proven.

Attorney Champion asked if the board would like anything further from her provided in advance, please let her know. It should go through Attorney Campbell.

### **DISCUSSION – HIGHWAY/WATER DEPARTMENT REPORT**

Highway/Water Superintendent Crye provided the following report:

#### **HIGHWAY:**

Mow back, Parks & Cemeteries, ditching, put a driveway in, touched up some shoulders, fixed sidewalk in Royal Springs, pulled stumps in Cemetery Street cemetery, and shop

#### **WATER:**

Everyday maintenance & sampling

### **DISCUSSION – ENGINEER REPORT**

Engineer Willard provided the following report:

Email from Kim on hydrant mapping that Brian needs. We can provide with GIS for ISO rating.

Dan Allen has called Tom to program in the Street signs for GIS.

Sent an email on Papermill Park looking for an update on the grant. Last word received was in June. The grant is for around ½ million dollars.

NEXTRA revisions – hopefully next week. There is an issue with putting the trees in, the ground is too wet. There was further discussion about where and what kind of trees to plant.

Another solar project in a PDD is expected. The Town Board will need to approve the use in the PDD, and they will be asking for some conditions. Then onto the Planning and ZBA Boards.

Route #15 water main is one of two projects. We have \$400,000.00 in the water fund balance. Put \$200,000.00 in the tentative budget for 2022 to improve infrastructure. ARP money needs to be reported by October 1<sup>st</sup>. The other project is a Joint Water Study earmarked at \$125,000.00. The Village wants a Joint Meeting in October. We have three or four years to spend the ARP money.

### **DISCUSSION – CODE DEPARTMENT REPORT**

CEO Glise Provided the following report:

Met with the ISO guy and they do an audit about every five years and every ten years on the hydrants. I requested the hydrant map and can get it in a PDF and/or shape file that is used with GIS.

Looking at solar laws from other Towns and talked with the County guy a few weeks ago. The Town of Avon innovates, and other Towns look at our laws.

Three projects are going on at the solar farm. The tree project, my violation, and the Village is looking at drainage/swale with William Davis. Bruce is looking at it first as the landowner.

Compliant on Lake Road of a box getting locked on a tree. An ambulant noise study of the area is being done and it was put on the wrong tree. This is for a study on noise before and after a solar field is put in as the Town Code requires this for purposes of decommissioning.

### **DISCUSSION – TOWN CLERK DEPARTMENT REPORT**

Town Clerk Knight provide a written report dated September 21st and confirmed with the Board Members present they received the report.

Board action items are:

Approval of minutes of September 9, 2021

**RESOLUTION #177 SPECIAL JOINT MEETING WITH THE VILLAGE**

On motion of Supervisor LeFeber, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to attend a special joint meeting with the Village Board on October 4, 2021 at 5:00 P.M. at the Village Hall.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – OPEN HIGHWAY/WATER POSITION**

Livingston county sewer and water authority possibly taking over. No applicants for interviewing yet. Highway budget talk with Tom Crye. Sending his people to Morrisville. Build bench debt. Certified in water or sewer or both. One of five municipalities looking for a water operator. Lima, Leicester, and Springwater are without a Water Operator.

Also, sewer capacity discussion with the Village and County.

**RESOLUTION #178 ACCEPT THE CLAIMS**

On motion of Councilman Harrington, seconded by Deputy Supervisor Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept for payment Abstract 2021-18 in the following amounts:

|                     |                              |
|---------------------|------------------------------|
| <b>General Fund</b> | Amounts totaling \$10,725.23 |
| <b>Highway Fund</b> | Amounts totaling \$11,160.19 |
| <b>Water Fund</b>   | Amounts totaling \$364.00    |

**Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION - SUPERVISOR’S ITEMS**

Tentative Budget, exemptions and PILOTS attached. The two solar PILOTS will be attached. The budget has a three percent raise for all but three, generator for highway barn, back parking lot, one-million-dollar ban, tax rates down about percent, almost flat tax, hard on conferences, SRO and Park contribution was left the same, conferences were not completely supported. Additional dollars may be put in for Paper Mill Park.

**RESOLUTION #179 TENTATIVE BUDGET PRESENTED TO THE TOWN CLERK**

On motion of Councilman Harrington, seconded by Councilman Coyne the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE That Supervisor LeFeber presented Town Clerk Knight with the 2022 Tentative budget requesting that she attach the two solar PILOTS.

**Vote of the Board: Councilman Drozdzziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**OPEN ITEMS**

Councilman Harrington asked if the village could pay half of the cost of the Summer Recreation Program? This is funded through the General A part of the budget which includes taxes from both village and town residents.

Councilman Drozdzziel spoke on the following:

Revised pricing for the Highway Barn generator will be provided.

Meeting with the same company to review this building for a generator.

Court grant moving forward.

Met last week with AV suppliers for the third floor.

Will meet with the furniture supplier next week Thursday or Friday for 1/2 hour to 45 minutes to discuss the needs of the Town Clerk's office.

SHIPO reached out to see if they had any questions and have not heard anything back.

Mitigation Plan paperwork was due last Friday, and the backup power was mentioned. If we get firm numbers, I will see if I can get County Planning to put them in. Drainage on Pole Bridge Road was also mentioned. If numbers come back from MRB Group and the village I may be able to get the numbers in and funding may be available.

**DISCUSSION – VISITOR COMMENTS**

Supervisor LeFeber asked if there were any visitor comments.

Visitor Howard Forsythe asked if money could be set aside for Papermill Park and Bronson Hill Road Cemetery as a couple of the monuments are falling. The Town does not have dollars available in the budget for this.

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the meeting was adjourned at 8:24 P.M.

Respectfully submitted by:

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Sharon M Knight, MMC/RMC Town Clerk