

**Town of Marbletown**  
**Stone Ridge, New York 12484**  
**Physical Address: 1925 Lucas Avenue, Cottekill**  
**Zoning Board of Appeals**  
**Monthly Meeting**  
**March 22, 2017**

**Minutes**

**Agenda:** **Chairman Husta** called the meeting to order at 6:57pm and read the Agenda into the record

**Old Business**

**New Business**

**Public Hearings**

Will Husta & Tom Smiley	Roger Davis, AKA H&R Rock	Appeal of the Code Enforcement Officer's Determination that Applicant has expanded the previous pre-existing allowed use of mining and now is required to obtain a Special Use Permit	178 Quarry Rd	A4	55.1-1-11	200-46; 200-54	SEQRA classification; set PH
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**Attendees:**

- **Present:** Will Husta, Chairman; Paris Perry, Vice-Chair Tom Smiley Alternate Kathie Grambling; Alternate Max Stratton
- **Absent** Brian Taylor

**Consultants Present:** Larry Wolinsky, Esq.

**Announcements:**

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**Old Business**

New Business:None

**Public Hearings:**

Review time/ ZBA point person	Applicant	Application	Location	Dist	Tax Map Number	Applicable Regs	Need and/or update
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Will Husta& Tom Smiley	Roger Davis, AKA H&R Rock	Appeal of the Code Enforcement Officer's Determination that Applicant has expanded the previous pre-existing allowed use of mining and now is required to obtain a Special Use Permit	178 Quarry Rd	A4	55.1-1-11	200-46; 200-54	SEQRA classification; set PH
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Applicant Overview: Rosemary Stack, ESQ. represented Mr. Davis regarding the Appeal. She presented further material she believes supports the public record of facts of why she believes the CEO was wrong in his determinations:-No new input

Public Input:  
None

Board Input:

The Board reviewed the draft record below:

The items listed below are considered the Zoning Board of Appeals to be the complete record for: Owner: H&R Rock, Inc. (owner Roger Davis)

Application: The appellant, Roger Davis- H&R Rock, Inc. has filed an Appeal of the Code Enforcement Officer's Determinations that: 1. The pre-existing mining operation has expanded and/or changed and now requires a Special Use permit; 2. Applicant must comply with current Stormwater regulations; 3. Applicant's requests to truck materials in and to blast are not allowed uses within the Town. Property is located at 178 Quarry Road, Kingston in the A4 zoning district at tax map number 55.1-1-11 containing 10.6 acres.

### **H&R Rock Appeal of CEO Record Summary**

#### **Appellant Exhibits**

Exhibit number	Exhibit name	Attachment number	Number of pages
A1	Application for Appeal of CEO Determinations	1	2
A1-a	Stack Cover letter 11/16/16		1
A2	Supporting narrative to original application	2	5
A3	Fee	3	3
A4	Aerial of property with structures	4	1
A5	1982 letter from Helen Pierpont regarding use	6	1
A6	Case law supporting position (Hoffay v. Tift)	7	5
A7	Notarized letter of consent to represent	8	1
A8	Map of operation (oversized)	9	1
A9	Short Environmental Assessment form	10	3
A10	Foil Requests	11	3

A11	Copy of 2001 renewal permit	12	17
A12	April 2010 letter from Roy Budnik to NYSDEC & DEC response	13	5
A13	2008 Air facility registration for 400hp Komatsu BR550JR (or equivalent) 400 tph crusher & operating booklet	14	12
A14	Budnik & Associates September 2003 Noise Assessment, last revised October 2016 & related map	15	14
A15	Budnik April 2010 letter to DEC withdrawing all permit modifications except larger crusher and importing and selling sand & gravel	16	7
A16	2001 Mine Use Plan plus 3 maps	17	20
A17	<p>Cover letter dated 1/14/17 enclosing ZBA's 1/9/17 list of requested information with responses. Enclosed documents:</p> <ul style="list-style-type: none"> <li>• July 19, 2001- July 18, 2006 State Mining Permit</li> <li>• April 14, 2006-July 18, 20006 State Mining Permit</li> <li>• March 9, 2007-March 8, 2012 State Mining Permit</li> <li>• May 5, 2015-April 27, 2017 State Mining Permit</li> <li>• Mined Land Use Plan, dated 1/31/2001, rev. 3/23/01 <ul style="list-style-type: none"> <li>○ Mining Plan Map 3/23/01, rev. 7/6/05</li> <li>○ Reclamation Plan Map 3/23/01, rev. 7/6/05</li> <li>○ Cross Sections</li> </ul> </li> <li>• Budnik Letter to DEC 4/14/10 withdrawal of blasting and mining deeper modification requests</li> <li>• DEC Letter to Budnik 10/5/10 confirming w/drawals</li> <li>• Air Facility Registration 400 hp Komatsu or equivalent</li> <li>• Acme Portable Processing Unit (1960 crusher)</li> <li>• Extec Pit-Bull 1999 Crusher</li> <li>• Noise Assessment last dated 10/27/16</li> <li>• DEC letter to Budnik 9/3/08</li> </ul>	18	4 6 6 7 17 1 map 1 map 1 map 2  3  3 6 5 13 w/ 1 map  5
A18	Timeline of permit approvals/renewals	19	2
A19	Affidavit of Roger Davis, sworn to 1/18/17 with Exhibits A-C	20	13
A20	Affirmation of Rosemary Stack, affirmed 1/18/17	21	5
A21	Affidavit of Roy Budnik, sworn to 1/17/17 with attached timeline	22	6

A22	Memorandum of Law (1/18/17 version)	23	8
A23	Letters from property owners within ½ mile of site	24	12
A24	Letters of support from property owners outside ½ mile radius	25	15
A25	Email and letter dated 3/22/17	26	3

### **Zoning Board Exhibits**

Exhibit number	Exhibit Name	Attachment number	Number of pages
Z1	Assessor property card	27	2
Z2	Entire CEO file	28	107
Z3	Previous DEC notices sent to Town	29	27
Z4	December 21/16 Agenda	30	3
Z5	December 21, 2016 neighbor notify for initial meeting	31	1
Z6	Follow-up letter from 12/21/16 mtg of items needed, dated 1/4/17 sent 1/9/17	32	1
Z7	January 18, 2017 Agenda	33	1
Z8	January 18, 2017 Legal notice for Public Hearing, published 1/12/17	34	1
Z9	January 18, 2017 Neighbor Notification of PH	35	1
Z10	January 18, 2017 minutes	36	
Z11	Email to Board Attorney from Applicant's attorney with attachments	37	
Z13	February 22, 2017 Agenda	38	1
Z13	February 22, 2017 Legal notice for PH, published	39	1
Z14	February 22, 2017 minutes	40	
Z15	March 22, 2017 Agenda	41	1
Z16	March 22, 2017 legal notice for PH published 3/17/17	42	2
Z17	March 22, 2017 minutes	43	
Z18	Copy of previous Mosenfelder Trucking/Warehousing ZBA Determination from 2009	44	5
Z17	Copy of complaint filed with CEO	45	2
Z18	Copies of DEC file	46	63
Z19	1999 ZBA minutes regarding H&R Rock	47	2
Z20	Miscellaneous email correspondence	48	29
Z21	Email correspondence with DEC re: Stormwater 3/2017	49	3
Z22	Email correspondence with DEC re mining deeper	50	2
Z23	Entire Code of Town Of Marbletown (cover only)	51	1
Z24	Final Record	52	3
Z25	Final Determination	53	34

### **Public Exhibits**

Exhibit number	Exhibit Name	Attachment number	Number of pages
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P1	Email from John Mendola dated 2/22/17 in response to neighbor notification	54	1
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Official Actions:

Member Paris Perry motioned to approve and accept the above record; member Max Stratton seconded the motion which was thereupon called to the following vote:

Will Husta Aye

Paris Perry-Aye

Brian Taylor-Absent

Kathie Grambling-Aye

Tom Smiley-Aye

Max Stratton-Aye

Member Kathie Grambling motioned to close the public hearing; member Max Paris Perry seconded the motion which was thereupon called to the following vote:

Will Husta Aye

Paris Perry-Aye

Brian Taylor-Absent

Kathie Grambling-Aye

Tom Smiley-Aye

Max Stratton-Aye

The motion carried by a vote of 5 ayes; 0 nays; 1 absent; and 0 abstention/ refusal

Determination:

**I. MINE HISTORY:**

The Appellant, Roger Davis, aka H&R Rock, Inc, owns a 10.6 acre parcel at 178 Quarry Road, located in the A-3 zoning district. The parcel has been mined since 1950s. In 1958 Raymond Davis purchased the property that included an operating bluestone/shale quarry. In 1969 the Town of Marbletown adopted zoning that included regulations for mining. In 1982, the Town of Marbletown Zoning Officer, Helen Pierpoint, notified this Appellant that he needed to apply to the Zoning Board of Appeals for a Special Use Permit to operate a mine in the A3 zoning district. Mr. Davis replied, stating his mining use pre-dated the enactment of zoning in 1969 and therefore did not need to comply with the requirement to obtain a Special Use Permit. The Zoning Officer concurred and the ability to mine at 178 Quarry Road was officially recognized as a pre-existing non-conforming use under the Town of Marbletown Zoning Law. As such, the applicable sections of the Zoning Law dealing with Non-Conforming Uses, such as Section 200-54 thru 200-56, would apply. In 2001, the Appellant applied to NYSDEC for a mining permit. The DEC issued a permit to allow the Appellant to mine bluestone/shale on 4.9 acres of the 10.6 acre parcel over the lifetime of the mine. This permit included a full reclamation plan as required. The Appellant has continued to renew his mining permit within the required timeframes established by the DEC.<sup>1</sup>

**II. APPEAL BACKGROUND:**

A. On or about September 3, 2008, the Town of Marbletown received a “Notice of Intent to Establish Lead Agency” request from DEC in regard to an existing mining operation located within the Town at 178 Quarry Road known as H&R Rock, Inc owned by Roger Davis.

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<sup>1</sup> Timeline provided by Applicant as referenced as Exhibit A18; Attachment #19-attached

B. The Lead Agency request involved a **mining application modification** request by the Appellant to do the following: 1. Increase the permitted depth of mining; 2. Replace the existing crusher with a larger-capacity model; 3. Import and process materials from offsite; 4. Utilize blasting on a limited basis.<sup>2</sup>

C. At that time, in 2008, the Town responded to the Lead Agency request with a letter requesting DEC to make a condition of approval that H&R Rock obtain a Special Use Permit from the Zoning Board of Appeals since he was **expanding** a pre-existing mining use. This request was a separate request from the normal renewal process notifications by NYSDEC

D. On 2/7/2012 the owner submitted an application to NYSDEC to **renew the existing mining permit** that was scheduled to expire on 3/8/2012. As part of that renewal process, on May 9, 2012 Davis received a letter from DEC notifying him that the **reclamation bond** for his renewal permit had been increased from \$25,374 to \$70,171 to cover the increased cost of reclamation performance bond.

E. The owner indicated, in his “Affidavit of Roger Davis” dated January 18, 2017<sup>3</sup>, that being a small family-run operation with only 2 employees, that he first engaged his mining consultant, Roy Budnik, to attempt to propose alternate reclamation approaches and negotiate a reduction in the bond amount . When this approach failed Mr. Davis began efforts to secure the increased bond funds.

F. On or about February 4, 2015, the Town of Marbletown received a copy of a “Notice of Violation (NOV)” sent to the Appellant by NYSDEC. The NOV stated the Appellant still had not submitted the required reclamation bond surety requested in 2012 as a condition of renewal of his mining permit. The NOV required the Appellant to **cease and desist all activities related to mining** since the lack of the increased bond submission prevented the DEC from issuing a revised permit and placed him in violation of his renewed permit. The Appellant ultimately submitted the required reclamation amount in May 2015 and his mining permit renewal was issued and would expire in 2017.

G. On or about the summer of 2016, as a result of the Town of Marbletown Supervisor and the CEO receiving several complaints via phone and one formal written complaint regarding the noise allegedly occurring at the site of the Quarry. The CEO re-examined his existing file noting the previous 2008 requirement for the Appellant to obtain a Special Use Permit regarding the expansion requests from 2008 had not been completed. It turns out, based on input from one of the complaining neighbors at the public hearing that the source of the noise was coming from Lapla Road and not from Quarry Road. The piece of equipment causing the noise was working on a Lapla Road property and has since left the property.

H. On or about October 18, 2016, the Code Enforcement Officer notified the Appellant H&R Rock, in writing via certified mail with supporting documentation from NYSDEC, of the following: <sup>4</sup>

1. H&R Rock had discontinued the pre-existing mining use at 178 Quarry Road, tax map number 55.1-1-11 for at least 2 years because from 2012-2016 he lacked full compliance with the NYSDEC permit renewal by not submitting the required reclamation bond amount, and must now conform to the Zoning Law requirements of obtaining a Special Use Permit from the Zoning Board of Appeals;

2. That H&R Rock’s application modification request to NYSDEC in 2008 to import materials, process them and sell them from the site and the request to be allowed to blast at the site are not allowed uses under the Town of Marbletown Schedule of Use Regulations: 200-8;

3. That H&R Rock’s application modification request to NYSDEC in 2008 to create a 1 acre pond, upgrade to a larger rock crusher and mine deeper is an alteration, expansion or enlargement of a pre-existing use and requires issuance of a Special Use Permit from the Zoning Board of Appeals as outlined in Chapter 200-Article VII-“Nonconforming Buildings, Uses and Lots”

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<sup>2</sup> Attached Exhibit Z3; Attachment 28; 9/2008 DEC Notice of Intent to Establish Lead Agency

<sup>3</sup> Exhibit A19; Attachment 20

<sup>4</sup> Attached is Exhibit Z2; Attachment #27

4. That H&R Rock must show compliance with the Town of Marbletown Stormwater requirements in Chapters 130 and 167.

I. The Appellant, along with his Attorney, Rosemary Stack, filed an Appeal of the CEO's Determinations outlined above, which are the subject of this Appeal.

J. The Appeal was filed with the Town on 11/16/16

### **III. ZBA JURISDICTION:**

1. NYS Town Law section 267-a and Town of Marbletown Section 200-73, page 200:87<sup>5</sup> state the following: "The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Code Enforcement Officer under this chapter in accordance with the procedure set forth herewith"

2. NYS Town Law section 267-a and the Town of Marbletown zoning Law, section 200-73-E, page 200:87, states: "Following public notice and hearing, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end shall have all the power of the Code Enforcement Officer."

### **IV. ZONING REQUIREMENTS:**

1. The Town of Marbletown use table, section 200-8, pages 200:8-200:16.1, lists mining as an allowed use in the A3 zoning district by issuance of a Special Use Permit from the Zoning Board of Appeals.
2. The Town of Marbletown Zoning Law, sections 200-54 through 200-56 pages 200:76:1-200:76:2 describe how Nonconforming Uses, are to be administered under Zoning.
3. The Town of Marbletown Zoning Law, section 200-46A, page 200:50 states: "General Provisions: Uses allowed by special use permit are hereby declared to possess characteristics which require that each specific use shall be considered an individual use. Any use for which a special use permit is granted by the Board of Appeals shall be deemed a use permitted in the district in which located, except that for any addition or enlargement of such use, a separate special use permit shall be required for each addition or enlargement. A use allowed by special use permit must be in conformity with the provisions of this chapter and shall affect only the lot or portion thereof for which it shall have been granted."

### **V. CEO DETERMINATIONS**

1. H&R Rock had **discontinued** the pre-existing mining use at 178 Quarry Road, tax map number 55.1-1-11 for at least 2 years and must now conform to the Zoning Law requirements of obtaining a Special Use Permit from the Zoning Board of Appeals;
2. That H&R Rock's application modification request to DEC in 2008 to **import materials**, process them and sell them from the site and the request to be allowed to **blast** at the site are not allowed uses under the Town of Marbletown Schedule of Use Regulations: Section 200-8;
3. That H&R Rock's application modification request to DEC in 2008 to **mine deeper**, create a 1 acre pond and obtain a larger rock crusher is an expansion or enlargement of a pre-existing use and requires issuance of a Special Use Permit from the Zoning Board of Appeals;
4. That H&R Rock must show **compliance** with the Town of **Marbletown Stormwater Chapters 130 and 167**.

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<sup>5</sup> All page references are the page number as of the 2017 update to the Zoning Law by General Code

## **VI. APPELLANT'S INPUTS AND RESPONSES TO CEO DETERMINATIONS:**

1. The Appellant states that during the time period from 2012-2015 when the mine owner had not submitted the required reclamation bond amount to DEC, that the mine was still operating and had a legal right to do so under the State Administrative Procedures Act, (SAPA) since he had submitted his renewal application on 2/7/2012 within 30 days of his previous permit expiration on 3/8/2012. Since the Appellant had a legal right to operate, which he utilized and had a valid renewal for except for the reclamation bond amount, the CEO erred in his determination that the expiration date of 3/8/2012 represented a cessation and abandonment of the Quarrying operation. Thus the determination that the use dis-continued for 2 or more years is incorrect and said determination should be REVERSED.
2. The Appellant states that importing, processing and selling materials from offsite and blasting are not separate land uses when related to mining, but rather accessory uses that are part of normal mining operations and therefore are allowed as part of the pre-existing non-conforming operation. The importing and processing submission was only provided to the DEC as a modification because they are now regulating it. The Appellant further stated he has always brought in materials. In regard to the request to blasting, the Appellant withdrew that request to DEC in 2010. Based on those facts, the CEO's determination that importing of materials is not allowed should be REVERSED.
3. The Appellant stated that given that the modification/expansion request to DEC to: a). **allow blasting**, b). **dig deeper** and c). **create a 1 acre new pond** should be VACATED since it was withdrawn in 2010. <sup>6</sup>
4. The replacement of a **rock crusher** with a newer, larger model is not considered a modification or expansion of the mining use, and is protected and considered customary to mining operations. The courts of NY have consistently held that the adding, replacing and updating of mining equipment is not an expansion of a non-conforming use. As such the determination relative to replacing the crusher should be REVERSED.
5. The Appellant states that NYSDEC is requiring the Appellant to provide Stormwater measures that comply with the Multi-Sector General Permit for Industrial Discharge, which will result in a zero discharge. The Appellant states that since Chapters 167 and 130 in the Town of Marbletown code only requires compliance with Stormwater for construction activities and since this is not a construction activity, there is no requirement to comply with the Town Stormwater requirement. According to the Appellant, since the mining activities are not within the scope of Marbletown's construction activities, the CEO's determination requiring the Appellant to submit compliance with chapters 167-Stormwater and 130-Illicit Discharges should be REVERSED.

## **VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The CEO determined that the failure of Appellant to successfully meet the requirements for the mine renewal permit on March 8, 2012 meant the mining operation had to cease until the funds for the increased bond was provided on May 5, 2015 and this represented a **discontinuance for more than 2 years**. To continue to operate the mine, a Special Use Permit from the Town of Marbletown would be required.

The Appellant provided documentation that states...

- a. The State Administrative Procedures Act (SAPA) permits mines that have submitted their renewal application 30 days prior to the expiration date to continue operating under their existing

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<sup>6</sup> Attached Exhibit A15; attachment #16 verifying withdrawal and acceptance by NYSDEC



permit. Appellant submitted his renewal application to DEC on 2/7/2012. It was due to expire on 3/8/2012.

- b. The Appellant, in his January 18, 2017 “Affidavit of Roger Davis,” noted that in 2012 he was notified during the renewal process that the reclamation bond amount had increased substantially. In response, he hired Roy Budnik, his mining consultant, to propose alternatives to the DEC that could reduce the reclamation bond. When these efforts failed, he started working on getting the money to fund the increased bond.
- c. The Appellant stated the mine remained active through 2012, 2013, 2014 and up until the Notice of Violation (NOV) to cease operations order was received from DEC in February 2015.
- d. The DEC conducted “on-site inspections” on 7/13/2013 and 1/16/2015 and noted that the mine remained operational.
- e. The mine continued to operate until 2/4/2015 when DEC notified the owner, via a Notice of Violation (NOV), to cease all mining operations until the increased bond had been provided. Upon receipt of the bond money, DEC issued the mining permit renewal on 5/5/2015. As a result, mining operations were suspended for 3 months<sup>7</sup> contrary to the CEO’s understanding that it had discontinued operation for more than 2 years.
- f. The town contacted the DEC and verified that H&R Rock had been allowed to continue to operate under SAPA until 2/4/2015 when they issued an NOV to cease operating.

**CONCLUSION:** The CEO was un-aware of the DEC permit procedures that allowed the mine to continue on the existing permit when a renewal permit has been timely submitted. The mine was issued an NOV to cease and desist operations until the reclamation bond was submitted, which was a period of approximately 3 months in 2015.

In 2012 the owner took immediate action once the increased bond notification was received from DEC to negotiate a bond reduction using techniques that would reduce the mine area needing reclamation. This activity does not suggest the Appellant planned to discontinue operations.

Two DEC inspections on 7/3/2013 and 1/16/2015 verified in their reports that the mine continued and was operational on those dates.

The fact that the DEC needed to send an NOV to order the mining operation to cease on 2/4/2015 further supports the Appellant’s continuation of mining operations.

The Appellant provided the required funds for the increased bond and the DEC issued the renewed mining permit on 5/5/2015.

The Zoning Board contacted DEC mine reclamation staff and verified the Appellant had been allowed to operate under SAPA procedures from the 2012 permit expiration date until 2/4/2015 when the NOV cease and desist order was received. They also verified that the revised permit was issued on 5/5/2015 after a period of

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<sup>7</sup> During the Public Hearing, it was the testimony of Rosemary Stack, Esq. that the mine closed for the 3 months in question

about 3 months from the NOV to cease and desist.

2. The CEO's determination stated that the Appellant's request for modification in 2008 to **import materials**, process them and sell them and **blast** on a limited basis are uses not allowed within the A3 zoning district.

a. NY State courts have held that importing materials to process in order to have useable soils to stockpile for reclamation are normal mining accessory uses and are allowed within traditional definitions of mining. This use is allowed and should not be considered a separate use or an expansion of non-conforming uses.

b. The importing of material from offsite is not a new use at this mine. The DEC indicated that it needed to be reported in the renewal application because they are now managing importation as part of mining permits.

c. The existing mine site is short on soil required for reclamation and importing natural materials from construction site excavations is one way to build a supply for reclamation. The rock usually mixed with construction excavations, screened and then crushed to size so it can be mixed with other stone products and sold on an incidental basis.

d. In regard to the blasting request, the Appellant has withdrawn its request.<sup>8</sup>

**CONCLUSION:** Importing natural materials from offsite, screening soil for reclamation and allowing incidental sale of screened material are accessory mining uses and are allowed as part of the pre-existing mining operation.

3. The CEO's determination that the 2008 request for modification of the Appellant's mining permit to DEC to: **mine deeper** by **creating a 1 acre pond** – is an expansion of the mine use that extinguishes the pre-existing mining classification and now requires a Special Use Permit to mine in Marbletown.

a. The Appellant has **withdrawn its request to mine deeper in order to create the proposed 1 acre pond**.

**CONCLUSION:** Given that the mining modification to **mine deeper** by **creating a 1 acre pond** was withdrawn by the Appellant in 2010, the CEO determination that these two items represent an expansion of the mining use is **RENDERED MOOT**.

4. The CEO's determination stated that the Appellant's plan to replace a 1960 vintage crusher with a 1999 crusher that is larger represents an expansion of the pre-existing mine use and therefore requires the owner, per Marbletown zoning, Section 200-56, to obtain a Special Use Permit from the Town of Marbletown in order to continue mining.

a. The updating of the **crusher** with: Acme model 1020 gravel portable processing unit, is merely a replacement of worn out equipment that can no longer be bought nor serviced.<sup>9</sup>

b. Courts in New York have consistently held that equipment at a mining site is an accessory use and adding, replacing and updating the mining equipment is not an expansion of the non-conforming mining use.<sup>10</sup>

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<sup>8</sup> Should the Appellant find a need to blast in the future, approval from the Town will be required first

<sup>9</sup> See exhibit A17; Attachment #20

<sup>10</sup> See exhibit A22; Attachment #23

**CONCLUSION:** Court cases in NY State hold that updating or replacing mining equipment cannot be considered an expansion of a pre-existing non-conforming mining use therefore the CEO's determination that the replacement of the crusher was an expansion of the pre-existing use was incorrect and is therefore **REVERSED**.

5. The CEO's determination that since the Town is an MS-4, the Appellant must show compliance with the Town's Stormwater requirements as defined in The Town of Marbletown's Code in Chapters 167 and 130.

- a. The regulation of stormwater from industrial sites, including specifically mines, is comprehensively regulated by the DEC pursuant to the delegation of authority by the EPA under the Clean Water Act. This responsibility is regulated by requirements in a 209-page manual with criteria. Mines also include the preparation of a stormwater pollution prevention plan (SWPPP) as part of the permit process.
- b. In order to show that stormwater for mines in Marbletown is being properly addressed, the DEC has stated it will provide a copy of the mining stormwater plans to the town in order for the Town to have an opportunity to ensure compliance before coverage under the Multi-Sector General Permit for Industrial Discharge is issued.<sup>11</sup>

**CONCLUSION:** The primary responsibility for stormwater plans in relation to mining rests with the DEC under the Multi-Sector General Permit for Industrial Discharge Permit. Since the Town is an MS-4, DEC will provide a copy of mine stormwater plans to the town prior to issuance of the Permit for review and sign off under the Town's MS-4 requirements prior to issuance by DEC. This process addresses the coordination of stormwater compliance with both DEC and the MS-4. As such, the CEO determination for the Appellant to submit a separate stormwater plan to the town is **MODIFIED**.

#### **VIII: DETERMINATIONS:**

1. At a regular meeting of the Zoning Board of Appeals it was motioned by member Tom Smiley to **REVERSE** the determination of the CEO that: the Appellant discontinued the pre-existing mining use at 178 Quarry Road for at least 2 years and must now conform to the Zoning Law requirements of obtaining a Special Use Permit from the Zoning Board of Appeals; the motion was seconded by member Paris Perry and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye

Brian Taylor-Absent

Paris Perry-Aye

Tom Smiley-Aye

Kathie Grambling-Aye

Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent.

2. At a regular meeting of the Zoning Board of Appeals it was motioned by member Kathie Grambling to **REVERSE** the determination of the CEO that: the Appellant's request for modification in 2008 to import materials, screen, process them and sell the excess is a use not allowed within the A3 zoning district; the motion was seconded by member Max Stratton and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye

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<sup>11</sup> See exhibit Z21; Attachment 49

Paris Perry-Aye  
Kathie Grambling-Aye  
Brian Taylor-Absent  
Tom Smiley-Aye  
Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent.

3. At a regular meeting of the Zoning Board of Appeals it was motioned by member Tom Smiley that the requests to a) mine deeper in order to create a 1 acre pond and; b) blast on a limited basis were withdrawn, Therefore the determinations of the CEO hereby **RENDERED MOOT** the motion was seconded by member Max Stratton and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye  
Paris Perry-Aye  
Kathie Grambling-Aye  
Brian Taylor-Absent  
Tom Smiley-Aye  
Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent.

4. At a regular meeting of the Zoning Board of Appeals it was motioned by member Max Stratton that the CEO's determination that replacement of the 1960 model rock crusher to a newer model was considered an expansion of the pre-existing non-conforming use is **REVERSED**; the motion was seconded by member Paris Perry and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye  
Paris Perry-Aye  
Kathie Grambling-Aye  
Brian Taylor-Absent  
Tom Smiley-Aye  
Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent

5. At a regular meeting of the Zoning Board of Appeals it was motioned by member Kathie Grambling that since the DEC will coordinate Stormwater discharges with the Town prior to issuance of the Multi-Sector General Permit for Industrial Discharge Permit, the CEO determination requiring separate application submission to the Town of Marbletown Stormwater Chapters 130 and 167 is **MODIFIED**; the motion was seconded by member Tom Smiley and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye  
Paris Perry-Aye  
Kathie Grambling-Aye  
Brian Taylor-Absent  
Tom Smiley-Aye  
Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent

6. At a regular meeting of the Zoning Board of Appeals it was motioned by member Tom Smiley that the CEO's determination requiring a Special use permit for the alleged expansion and discontinuance is **REVERSED**; the motion was seconded by member Paris Perry and was thereupon called to the following vote of the members assigned to the application:

Will Husta-Aye

Paris Perry-Aye

Kathie Grambling-Aye

Brian Taylor-Absent

Tom Smiley-Aye

Max Stratton-Aye

The motion having been made, seconded and voted upon was approved by 5 ayes; 0 nays; 0 abstentions; and 1 absent

**Action Items: None**

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**Correspondence: None**

**Will Husta** motioned to adjourn the meeting; Tom Smiley seconded the motion which was thereupon called to a vote as follows:

Will Husta-Aye

Kathie Grambling-Aye

Brian Taylor-Absent

Paris Perry-Aye

Max Stratton-Aye

Tom Smiley-Aye

Motion carried by a vote of 5 ayes, 0 nays, 0 abstentions and 1 absent

**Meeting adjourned at 9:50pm.**

Respectfully Submitted,

Maggie Colan, ZBA Secretary