

**Zoning Board of Appeals
Town of Berne
PO Box 57
Berne, NY 12023**

Date: June 16, 2014

Present: George Christian; Chair, John Carsten, Terry Adams, James Fallon, Richard Otto, Wayne Emory (Town Board Liaison)

Guests: Paul Giebitz, Eleanor Giebitz, Christine Sisson, Michael Vincent

Review of Minutes: After Board review, Mr. Fallon moved to approve the minutes from the October 23, 2013 ZBA meeting. Mr. Carsten seconded and the motion carried 4-0.

Mr. Christian advised the Board of the new Department of Conservation Environmental Assessment forms and procedures that became effective in October 2013. He suggested that going forward, due to the increased burden on municipalities, the Board should consider SEQRA requirements prior to permit meetings.

Mr. Carsten moved to close the regular meeting. Mr. Adams seconded and the motion passed, 4-0.

PUBLIC HEARING

Mr. Christian called the public hearing to order at 7:15 p.m.
Mr Otto arrived to the meeting at 7:20.

Helderberg Bluestone and Marble Special Use Permit

An application to conduct a quarry and mining business at 138 Cole Hill Rd., East Berne was presented to the Board. All letters were mailed to adjoining properties and the public notice printed in the local newspaper. The Albany County Planning Board deferred to local consideration with a note indicating that notice of the application be sent to the adjacent Town of Westerlo.

Mr. Christian stated that the permit application is considered a Type I environmental action under DEC's State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF) because the acreage affected is over ten acres. He also stated that the DEC's mining permit is due to expire at the end of the month.

Mr. Christian informed the Board that it needs to complete the SEQRA EAF Part II prior to issuing the special use permit.

Part I of the EAF was prepared and signed by the applicant on February 6, 2014 and received by the Town prior to the meeting.

Upon review of the applicant's EAF Part I, the Board determined that there were several items in need of discussion and one question left unanswered. The Board discussed air emissions with the applicant and determined that there were no permits required from DEC. The Board also discussed ambient noise levels and determined that any activity performed at the site would be within acceptable guidelines. Item E1H on page ten regarding "contamination history" was discussed. Mr. Christian asked the applicant why part 2 of the question was filled out when it was not required. Mr. Gibietz replied that the engineer may have felt that it was required. It was decided that there is no mining activity within 2,000 feet of DEC property and therefore the remainder of the question needn't have been completed. The Board determined that no predominant, endangered or threatened wildlife species would be adversely affected by operations of the facility. Reclamation phases were determined to be progressing as directed by the previous special use permit. Mr. Fallon asked the applicant whether item C4C was correct in stating that the Westerlo Fire Department was responsible for responding to emergency calls to the site. Mr. Giebitz said it was not correct and that it should be the Berne Fire Department.

The SEQRA EAF Part II was reviewed and completed by the Board. Mr. Carsten moved to declare the SEQRA a Type I action with a negative declaration with no significant impact on the environment and no further review is necessary. Mr. Fallon seconded and the motion was approved, 5-0. Mr. Christian read the completed form into the minutes. (See attached.)

Upon review of the conditions of the previous special use permit, Mr. Carsten moved to approve the special use permit application for a period of three years with the following conditions 1-24 applying. (See attached.) Mr. Otto seconded and the motion passed, 5-0.

There being no further business before the Board, Mr. Carsten made a motion, seconded by Mr. Fallon, to adjourn the meeting at 9:45 pm. All were in favor.

Respectfully submitted,



Kathy Brown
ZBA Secretary

**SUBJECT: Helderberg Bluestone & Marble – Grippy Lane Quarry
Special Use Permit Conditions**

1. Annual Inspection - An annual inspection shall be made by the Town's Engineer and a written report made to the Building Department. This inspection shall be done in early April of each year when the quarry resumes operation. The Engineer shall coordinate with the Building Department and the NYSDEC Division of Mineral Resources. The Town of Berne reserves the right to inspect the facility at any time during normal hours without prior notice.
2. The applicant agrees to comply with conditions of this permit and all town ordinances, and operate the quarry in a manner not to negatively impact adjacent property owners.
3. The six foot perimeter fence and all access gates shall be maintained.
4. A 100-foot setback shall be maintained.
5. Only one entrance and exit will be used; Grippy Lane shall not be used.
6. All vehicles shall be operated in strict conformance with NYSDOT requirements.
7. There shall be no parking or staging on Cole Hill Road.
8. The depth of stone removal shall not exceed the levels and limits shown on the life of mine drawings.
9. Sound levels shall be controlled at all times by use of adequate mufflers and through good equipment maintenance.
10. Effective practices shall be used to control dust and mud and to prevent spillage of loads. Any accumulation of material on the entrance road or the highway shall be immediately addressed. Water shall be used for dust control.
11. Effective erosion and sediment control practices shall be used and stormwater facilities shall be maintained to prevent pollutants from leaving the site.
12. Work hours shall be 7:00a.m. to 6:00p.m., Monday through Friday, and there will be maintenance allowed on Saturdays between 7 a.m. and 12:00 p.m.
13. Blasting shall occur between the hours of 10:00a.m. and 5:00p.m., Monday through Friday. Blasting will be limited to a maximum of four times per month. A licensed drilling and blasting company shall be used.

14. Notification of Upcoming Blasting Event – the applicant shall maintain a list of residents and business owners who so request to be notified prior to each blast event. These requestors shall be within ½ mile of the blasting site unless special circumstances warrant extending this requirement. The applicant shall notify these residents and business owners by letter a minimum of two days prior to each blast. The notice shall include the expected date and time of the next blast and also the alternate date and time should weather or other conditions warrant postponement of the blast. The exact time of the blast does not have to be specified – a time period is acceptable. Each notice shall identify the name and phone number of a contact person who represents the applicant that residents or business owners may contact to answer questions or to file a complaint. The applicant shall add additional names of residents or businesses to the list upon the request of any party and shall provide a copy of the said list to the Town of Berne upon request.

15. Monitoring By Seismograph – All blasts shall be monitored by a properly calibrated seismograph which shall be placed at the nearest structure outside of the permit area (Life of Mine). Any and all seismograph(s) utilized for monitoring must be capable of measuring air blast. In the event that a landowner will not allow access for the purpose of monitoring, then the seismograph shall be placed at the property line, in line between the blast area and the nearest structure located outside of the Life of Mine permit area. Standard blasting reports in compliance with the Office of Surface Mining Reclamation and Enforcement (OSMRE) regulations, including blast design records, blast logs and seismograph records shall be maintained by the applicant in a secure location and shall be provided to the Town of Berne upon request within 15 calendar days. All documentation must be clear and in writing that is readily legible; otherwise, the applicant shall provide originals and/or typed reports. The applicant shall provide an additional seismograph at a location to be determined by the Town of Berne upon request in order to help facilitate a complaint investigation.

16. Monitoring of decibel levels will take place to maintain 85 db at the source and 68 db or less at 50 foot distance or the DEC guideline at the property line.

17. The escrow account shall be maintained at \$10,000.

18. Engine or jake brakes will not be used on town roads.

19. If the Town of Berne receives continual substantiated noise complaints regarding the crusher operation, it reserves the right to require additional mitigation regarding crushing operations if deemed necessary.

20. The applicant shall contact Albany County Department of Public Works for review for design of highway access, assessment of road capacity, and drainage as it relates to larger truck size, and increased trips due to increased operating hours.

21. The applicant shall submit updated mine cross sections and profiles 180 days prior to the end of the permit to show the areas that have been affected since the last submission. The applicant will indicate whether any area is ready for reclamation activities to begin.

22. The Code Enforcement Officer shall inspect said property at any time and if any violations are found the Special Use Permit can be rescinded at any time and the applicant would be entitled to a hearing.

23. The applicant shall reapply 180 days prior to the expiration of the permit and shall be subject to the same review as a new application.

24. The applicant is required to maintain a valid and ongoing NYS DEC mining permit at all times.



George Christian, ZBA Chair

Dated: June 30, 2014