

**TOWN OF SAND LAKE  
PLANNING BOARD MEETING  
AUGUST 3, 2022 – 7:30PM  
SAND LAKE TOWN HALL**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ATTENDANCE**

**Minor Subdivision Application**

Glenn Kinney (Applicant/Property Owner)  
14 Methodist Farm Road  
Averill Park, NY 12018  
R – Residential Zoning District

**Tax Map #:** 170.2-1-16  
**Lot Size:** 6.7 acres  
**Proposed Lot 1 Size:** 2.65 acres  
**Proposed Lot 2 Size:** 4.05 acres

A Minor Subdivision Application to create one new lot from a residential lot.

**Recommendation to the ZBA on Use Variance Application**

Dennis Tremont – Ace Hardware (Applicant)  
2897 NY 43  
Averill Park, NY 12018  
HMU – Hamlet Mixed-Use Zoning District

**Tax Map #:** 148.-6-2.12  
**Lot Size:** 5.07 acres

A Use Variance Application related to the use of an electronic message center business sign.

**Major Subdivision/Special Use Permit (Previously Approved)**

EJP, Inc.  
222-246 Springer Road  
West Sand Lake, NY 12196  
R-Residential Zoning District

**Tax Map #:** 147.-3-3/147.-3-5.12  
**Lot Size:** 12.6428 acres

Amendment to a condition of a previously approved Special Use Permit and Major Subdivision.

**DRAFT RESOLUTIONS FOR APPROVAL**

**Negative Declaration – Eric & Tammy DeLaMater**

Negative Declaration declared at the July 20, 2022 Planning Board Meeting.

**Special Use Permit Application – Eric & Tammy DeLaMater**

Application approved at the July 20, 2022 Planning Board Meeting

**Boundary Line Adjustment Application – Between William Magee and Joseph Scaperrotta**

Application approved at the July 20, 2022 Planning Board Meeting

**Amended Scenic Preservation Application – Jeanne Stinson**

Amended application approved at the July 20, 2022 Planning Board Meeting

Site Plan Review Application – St. Henry’s Church

Amended application approved at the July 20, 2022 Planning Board Meeting

**DRAFT MINUTES FOR APPROVAL - July 6, 2022**

**ADJOURNMENT**

Morton D. Shulman  
Lawrence E. Howard  
Malcolm A. McPherson\*



PO Box 1000  
17 Old Route 66  
Averill Park, New York 12018

July 19, 2022

Arthur Herman, Jr., Chairperson &  
Planning Board Members  
Town of Sand Lake  
8428 NY Rte. 66  
Averill Park, NY 12018

Re: Kinney Minor Subdivision (Tax ID# 170.02-1-16.1)

Dear Chairman Herman and Board Members:

I represent Glenn Kinney in his request for a Minor Subdivision. Please place this application back in the next available agenda. (I believe that will be August 3, 2022.)

Mr. Kinney's Minor Subdivision was originally proposed in January of 2022, and consists of the division of a 6.7 +/- acre lot into two lots. Lot #1 with 2.65 +/- acres and Lot #2 with 4.05 +/- acres. Lot #1 is located on Methodist Farm Road with 354 feet of road frontage and has an existing house with outbuildings. Lot #2 is vacant and has approximately 81 feet of lake frontage on Crooked Lake and over 460 feet of road frontage on Saxby Way. The lots both meet the dimensional and use requirements of the Town's zoning and subdivision regulations. However, when originally presented there were extensive discussions regarding Saxby Way.

Saxby Way is a Street pursuant to the definitions contained in Sand Lake's zoning and subdivision regulations<sup>1</sup> and it provides access for Lot #2 pursuant to §225-19 of the Subdivision regulations, Lots to have frontage and access, which reads *"The subdividing of land shall be such as to provide each lot with frontage on an improved street and with satisfactory access to an existing public street."* Saxby Way is an improved street, open to the public, which currently provides access for its existing residents to Lilly Lane an

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<sup>1</sup> Sand Lake Zoning, STREET: A public or private way which affords the principal means of access to abutting property. (Emphasis Added)

Sand Lake Subdivision, STREETS, ROADS and HIGHWAYS: A way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or, in the case of a sidewalk thereof, for pedestrian travel. The terms "streets," "roads" and "highways" include the legal right-of-way, including but not limited to traffic lanes, curbs, sidewalks, **whether paved or unpaved**, and any grass plots or other grounds found within the legal right-of-way of a street, road or highway. The terms "street," "road" and "highway" apply irrespective of what they are called or formally named, whether alley, avenue, court, drive, boulevard or otherwise. (Emphasis Added)

existing public street. Saxby Way residents own lots that are comprised of portions of a ten-lot subdivision, surveyed by J.P. Thomas dated September 30<sup>th</sup> 1909, recorded in the Rensselaer County Clerk's office as Map 15 in Drawer 8. Copies of the survey are attached. The original subdivision clearly shows Saxby Way, which was then known as Saxby Avenue. Saxby Way or Avenue as shown on said map leads to and ends at lot number one, which is a portion of the currently proposed Lot #2. The end of Saxby Way has always been a developable lakefront lot, as shown on the original subdivision. The purchaser of a lot abutting a street on a filed map is entitled to have the land shown as a street, to remain as a street forever.

*It is well settled that when the owner of land lays it out into distinct lots, with intersecting streets or avenues, and sells the lots with reference to such streets, his grantees or successors cannot afterwards be deprived of the benefit of having such streets kept open. When, in such a case, a lot is sold bounded by a street, the purchaser and his grantees have an easement in the street for the purposes of access, which is a property right. (Story case, 90 N.Y. 145; The Trustees, etc., v. Cowen, 4 Paige, 510; Wyman v. The Mayor, 11 Wend. 487; Bissell v. N.Y.C.R.R., 23 N.Y. 61; White's Bank, etc., v. Nichols, 64 id. 65; Taylor v. Hopper, 62 id. 649; Huttemeier v. Albro, 18 id. 48.) (see, Lord v. Atkins, 138 N.Y. 184, New York Court of Appeals, April 25, 1893.)*

Mr. Kinney is the successor in interest to Harry P. Humphrey who purchased lot number one from Vanderzee and Ketchem, as shown on the 1909 subdivision map. Mr. Kinney eventually came to own nearly ten acres which included all of lot number one. Last year he subdivided out 2.7 acres, creating the current 6.7-acre lot. Adding additional acreage and subdividing off a portion (which does not use Saxby Way) does not modify or remove the right to use Saxby Way as it was originally platted in 1909 and then granted by deed to Humphrey in 1916. The additional land added over time creates additional and extensive frontage along Saxby Way.

I thank the Board for its careful consideration.

Sincerely,



Lawrence Howard



INDIAN POINT



# MAP

OF  
LAND CONVEYED BY  
T. ELIZA SAXBY  
TO  
GEORGE S. KETCHUM  
and  
WILLARD E. VANDERZEE

*Ketchum and Vanderzee*

PLAT C

PLAT D

PLAT B

PLAT A

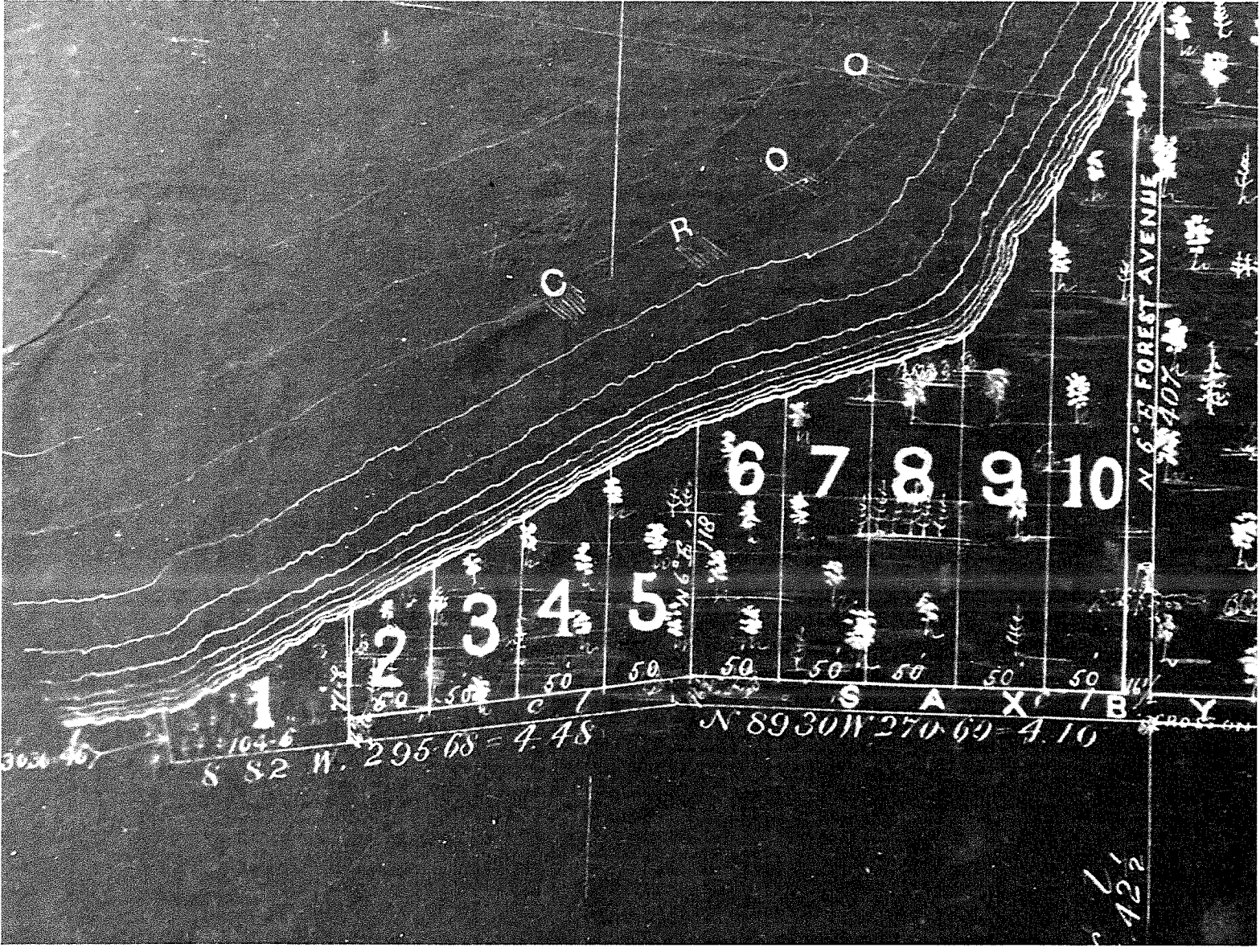
T. ELIZA SAXBY

ARBUTUS AVENUE

F. E. STILES

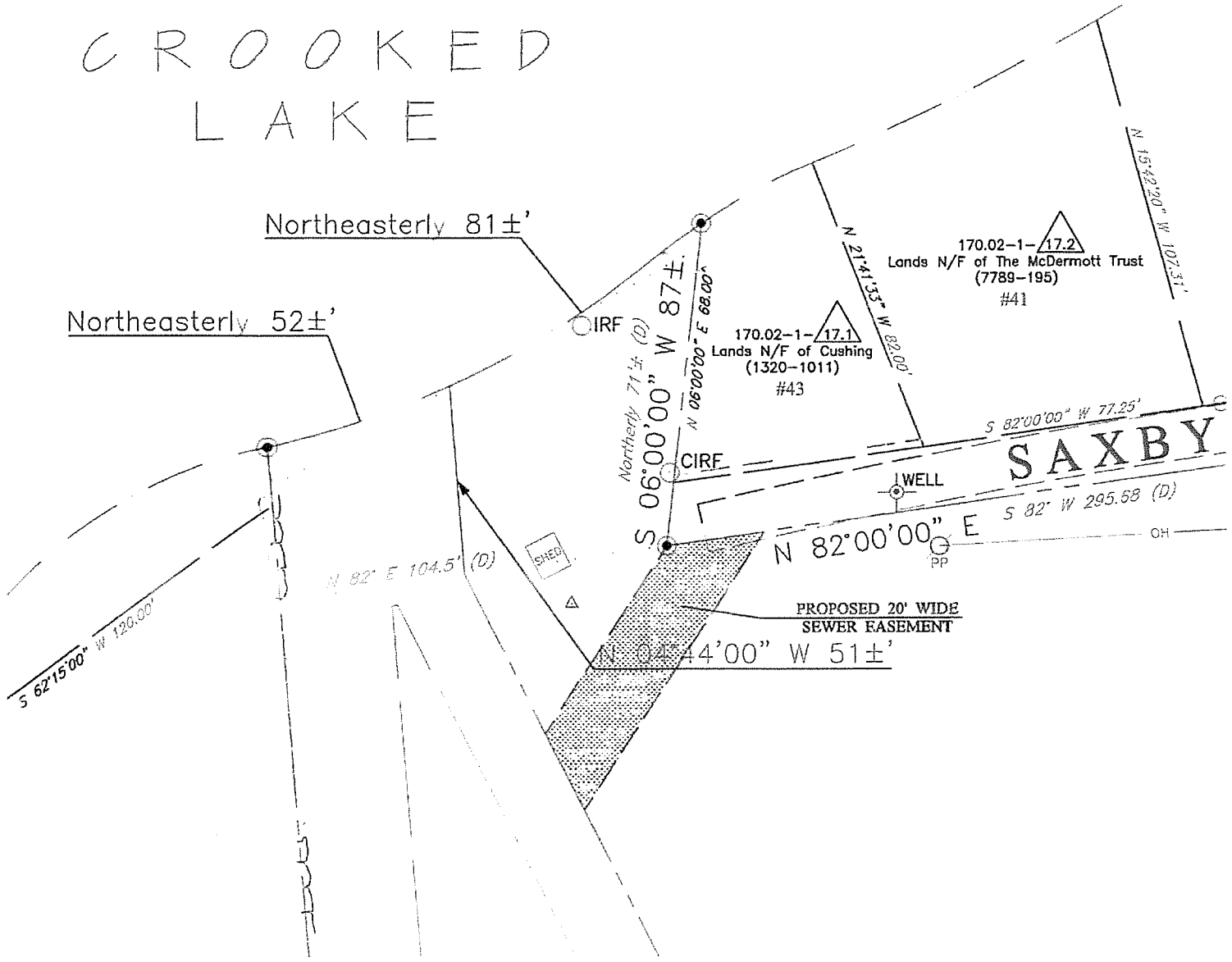


ROAD TO ALBANY  
SAND LAKE PLANK ROAD





# CROOKED LAKE







TOWN OF SAND LAKE PLANNING BOARD  
 PO Box 273, 8428 NY Route 66  
 Sand Lake, NY 12153  
 (518) 674-2026 x111 or x117

**MINOR SUBDIVISION APPLICATION  
 (1-4 Lots Only)**

*Please refer to Section 225 of the Code of the Town of Sand Lake  
 (<http://www.ecode360.com/12326443>) for detailed information.*

**APPLICANT:**

Name: Shane Cahill  
 Address: 225 N. Greenbush Rd., Troy, NY 12180  
 Home Phone: \_\_\_\_\_ Work/Cell Phone: 518-424-1608 Email: scahille@518venture.com

**PROPERTY OWNER (if not applicant):**

Name: Glenn Kinney  
 Address: 441 County Rt. 1, Westerlo, NY 12193  
 Home Phone: \_\_\_\_\_ Work/Cell Phone: 518 797 3825 E-mail: jkinney0807@yahoo.com

**PLOT ENGINEER/SURVEYOR:**

Name: Fred Metzger  
 Address: PO Box 237, Latham, NY 12110  
 Work/Cell Phone: 518 783-0688 Email: fmetzger1972@gmail.com

**SIGNATURES:**

Applicant: [Signature] Date: 12-15-21  
 Owner (if not applicant): Glenn W Kinney Date: 12-27-21

**OFFICIAL USE ONLY:**

Date Application Received: \_\_\_\_\_ Amount Received: \_\_\_\_\_ Received By: \_\_\_\_\_

APPROVED  CONDITIONALLY APPROVED  DENIED Date \_\_\_\_\_

**PROPERTY INFORMATION**

Tax Map Number(s): 170.2-1-16

Location of Property/911 Address: 144 Methodist Farm Rd., Averill Park, NY

Zoning District where property is located: Residential

Is the property in a sewer district? Yes

If in subdivision: Subdivision Name: N/A Lot Number: \_\_\_\_\_

Present Use of Property: Residential - Two Single Family Dwellings

Date property was acquired: Over 50 years

Any previous of the following? Select all that apply.

Subdivisions:  Special Use Permits:  Area Variances:

If yes, please explain: Property owner broke off one lot previously for sale that exceeded the 3:1 length to width ratio.

**PROPOSED SUBDIVISION INFORMATION:**

Total Acreage of Parcel to be Subdivided: 6.7 Number of Lots: 2

Please complete the following regarding the proposed lots:

Lot Number	Proposed Lot Size	Proposed Lot Frontage
Lot 1	2.65	354
Lot 2	4.05	462

Lots will be:  Sold with improvements  
 Sold with buildings erected ready for occupancy - Lot 1 (Lot 2 vacant land)  
 Not selling

## Short Environmental Assessment Form

### Part 1 - Project Information

#### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project: <span style="font-size: 1.2em;">144 Methodist Farm Rd., Averill Park, NY 12018</span>			
Project Location (describe, and attach a location map): <span style="font-size: 1.2em;">Corner of Methodist Farm Rd and Lilly Lane, Averill Park, NY</span>			
Brief Description of Proposed Action: <span style="font-size: 1.2em;">Subdivide app. 4 acre parcel from 6.7 acre parcel.</span>			
Name of Applicant or Sponsor: <span style="font-size: 1.2em;">Shane Cahill For owner Glenn Kinney</span>		Telephone: <span style="font-size: 1.2em;">518 424-1608</span>	
		E-Mail: <span style="font-size: 1.2em;">scahill@518venture.com</span>	
Address: <span style="font-size: 1.2em;">225 North Greenbush Rd.</span>			
City/PO: <span style="font-size: 1.2em;">Troy</span>		State: <span style="font-size: 1.2em;">NY</span>	Zip Code: <span style="font-size: 1.2em;">12180</span>
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		<span style="font-size: 1.2em;">6.7</span> acres	
b. Total acreage to be physically disturbed?		<span style="font-size: 1.2em;">0</span> acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		<span style="font-size: 1.2em;">0</span> acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			



18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>Shane Cahill</u>	Date: <u>12-20-21</u>	
Signature: _____		

**PRINT FORM**

EJP, Inc.  
P.O. Box 969  
Averill Park, N.Y. 12018  
(518)428-2480  
(E-Mail) edpatanian@gmail.com

July 27, 2022

To: Town of Sand Lake  
Planning Board  
PO Box 273  
Sand Lake, NY 12153

Re: Springer Lane Subdivision Phase 2

Dear Planning Board Members:

I wish to apply for an amendment to the above referenced subdivision previously approved by the Board on December 19, 2018 under Chapter 250-44 of the Town of Sand Lake Code. More specifically I am hereby requesting that the second bulleted condition of the before said approval be modified as follows in bold: "NYS DEC construction **and or mining permit** approval"

I unfortunately have exhausted all avenues in attempting to obtain a Construction Exemption for this project without success, despite the facts that DEC previously accepted my NOI with substantial fee, granted a wetland buffer zone disturbance permit, and approved the proposed sanitary sewer extension. *(Please see the attached correspondence and other materials in this regard attached.)*

Having served on the Town's Mining Committee for several years and on the Committee that assisted in writing our current Zoning Code, I am aware of the potential downfalls from the Town's perspective, of the issuance of Mining Permits vs. Construction Exemptions. In order to protect the Town's interest, I am willing to restrict further exportation of soil from the site, except as approved in writing by the Planning Board, while also following all methods demonstrated in our previously provided engineers report and adhering to all terms and conditions contained in the previous approvals and as outlined under Chapter 250-44.

Please feel free to contact me with any questions or concerns. Thank you in advance for your consideration.

Respectfully,  
  
by: Edward J. Patanian Pres.

**RESOLUTION OF TOWN OF SAND LAKE PLANNING BOARD  
ON APPLICATION FOR APPROVAL OF SPECIAL USE PERMIT**

**WHEREAS**, the Town of Sand Lake Planning Board received an Application for Approval of a **SPECIAL USE PERMIT** for site preparation excavation associated with a Major Subdivision.

**APPLICANT/S NAME AND ADDRESS:** EJP, Inc., 222-246 Springer Road, West Sand Lake, NY 12196

**PROPERTY OWNER/S NAME AND ADDRESS:** Edward Patanian, PO Box 969, Averill Park, NY 12018

**PROJECT NAME:** Site preparation excavation associated with a Major Subdivision

**LOCATION:** 222-246 Springer Road, West Sand Lake, NY 12196

**TAX MAP NO:** 147.-3-3/147.-3-5.12

**ZONING DISTRICT:** R - Residential Zoning District

**LOT SIZE:** 12.6428 +/- acres

**SPECIAL USE PERMIT APPLICATION PREPARED BY:** Edward Patanian

**SPECIAL USE PERMIT APPLICATION DATED:** August 7, 2018

**NUMBER OF SHEETS:** Three

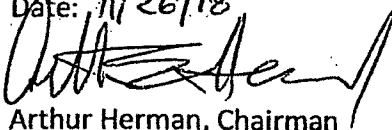
**WHEREAS**, on November 7, 2018 a **Motion** was made by Arthur Herman, **Seconded** by Mary Ellen Trumbull and unanimously carried that this be listed as a Unlisted Action under SEQRA.

**WHEREAS**, on November 7, 2018 a **Motion** was made by Arthur Herman, **Seconded** by Dominick Bates and unanimously carried to approve the Special Use Permit for site preparation excavation associated with a Major Subdivision as presented in the Extraction Narrative entitled Springer Lane Phase 2—5 lot Subdivision dated November 2018 and associated Extraction Plan.

**NOW THEREFORE, BE IT RESOLVED**, that the Town of Sand Lake Planning Board, after due consideration of said **Special Use Permit Application**, and the requirements of the Code of the Town of Sand Lake (Article XXI Code Sections 250-108 to 250-110) does hereby grant **APPROVAL** of the **Special Use Permit** hereinabove stated and identified as submitted.

**PLEASE NOTE**, that the Planning Board has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies.

Date: 11/26/18



Arthur Herman, Chairman  
Sand Lake Planning Board

SUB 18-09-A

**RESOLUTION OF SAND LAKE PLANNING BOARD  
ON APPLICATION FOR APPROVAL OF A SUBDIVISION PLAT**

**WHEREAS**, the Sand Lake Planning Board has received an Application of Approval of a subdivision plat for five lots.

**OWNER and APPLICANT NAME AND ADDRESS:** EJP, Inc., PO Box 969, Averill Park, NY 12018

**LOCATION OF THE PROPERTY:** 222-246 Springer Road, Averill Park, NY 12018

**TAX MAP NUMBER:** 147.-3-3/147.-3-5.12

**ZONING DISTRICT:** R – Residential Zoning District

**LOT SIZE:** 12.6428 +/- acres

**PARCEL(S):** Lot #7 – 1.6246 acres, Lot #8 – 3.7546 acres, Lot 9 – 1.2731 acres, Lot 10 – 1.7893 acres and Lot 11 – 4.2012 acres

**NAME ON MAPS:** “Springer Lane Subdivision” Survey & Map of Lands of Averill Ave., Inc. & Patanian, NY 43 & Springer Road – Sand Lake, NY

**MAPS PREPARED BY:** Frederick J. Metzger Land Surveyor, P.C.

**NUMBER OF SHEETS:** Five      **MAP DATED:** May 30, 2017

**WHEREAS** on November 7, 2018 a Motion was made by Arthur Herman, seconded by Mary Ellen Trumbull and unanimously carried to grant conditional preliminary and final approval of this subdivision plat with conditions and waive the final hearing. The conditional final approval is based on receiving area variance approval from the ZBA for Lot 8 for insufficient road frontage;

**WHEREAS** on November 29, 2018 the ZBA granted an area variance for Lot #8 of subdivision for insufficient road frontage of 62 feet;

**WHEREAS** on December 17, 2018 the Town Board granted approval to extend the Town’s Sanitary Sewer System for the subdivision, subject to all State and County regulatory agency requirements;

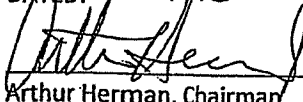
**BE IT FURTHER RESOLVED** that the Chairman and/or Vice Chairman of the Sand Lake Planning Board be and hereby are authorized to sign such subdivision plat; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Sand Lake Planning Board does hereby grant final approval of this subdivision plat with the following conditions:

- Rensselaer County Health Department approval
- NYS DEC construction exemption approval
- covenants added to property owner deeds
  - (1) land owner is responsible for repair and maintenance of storm water control facility on their property and
  - (2) land owner is responsible for grinder pumps/laterals to main line.

**PLEASE NOTE**, the Planning Board has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies.

DATED: 12/19/18

  
\_\_\_\_\_  
Arthur Herman, Chairman  
Sand Lake Planning Board

**OFFICE OF THE COMMISSIONER**

New York State Department of Environmental Conservation  
625 Broadway, 14th Floor, Albany, New York 12233-1010  
P: (518) 402-8545 | F: (518) 402-8541  
www.dec.ny.gov

JUN 16 2021

Honorable Daphne Jordan  
New York State Senate  
508 Legislative Office Building  
Albany, NY 12247

Dear Senator Jordan:

Thank you for your recent correspondence regarding your constituent, Edward Patanian.

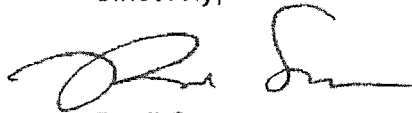
Edward Patanian filed a petition with the Office of General Counsel of the Department of Environmental Conservation (DEC), dated July 29, 2019 and supplemented on November 22, 2019, requesting a declaratory ruling that Phase II of the Springer Road project in the Town of Sand Lake constitutes an activity that does not require a permit under the Mined Land Reclamation Law, Article 23 of the Environmental Conservation Law (MLRL).

In December 2019, DEC's Deputy Commissioner and General Counsel responded to the petition by declining to issue a declaratory ruling pursuant to 6 NYCRR Subpart 619.3(c) because the petition raised issues that are the subject of a pending rulemaking. DEC is currently in the process of drafting new and modified provisions to the part 420 series mining regulations and intends to propose a definition for the term "construction project," which is currently undefined in the MLRL (pursuant to ECL 23-2705, the term "mining" is defined in pertinent part to exclude "the excavation, removal and disposition of minerals from construction projects . . ."). The rulemaking would provide criteria for determining the circumstances under which DEC would consider a project to be a construction project and not subject to permitting under the MLRL.

In addition, please consider that (i) the MLRL does not provide for the issuance of "construction exemptions" from DEC, and (ii) DEC does not opine on local zoning ordinances.

Please call me at (518) 402-8540 if you have any questions.

Sincerely,



Basil Seggos  
Commissioner



Department of  
Environmental  
Conservation

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of the General Counsel, Deputy Commissioner & General Counsel  
625 Broadway, 14th Floor, Albany, New York 12233-1010  
P: (518) 402-8543 | F: (518) 402-9018  
www.dec.ny.gov

DEC 16 2020

Lawrence E. Howard, Esq.  
Shulman Howard & McPherson, LLP

PO Box 1000  
17 Old Route 66  
Averill Park, NY 12018

*Re: Matter of Edward Patanian and EJP, Inc. Request for a Declaratory Ruling*

Dear Mr. Shulman:

I write in response to the petition for a declaratory submitted on behalf of Edward J. Patanian and EJP Properties, Inc. (Petitioners). For the reasons stated below, and in accordance with 6 NYCRR 619.3(c), I am declining to issue a ruling on the petition.

Section 619.3 of 6 NYCRR asserts six grounds for declining to issue a declaratory ruling. Relevant to your clients' petition is paragraph 619(c), which states that the General Counsel may decline to issue a declaratory ruling if "the petition raises issues that are the subject of a pending rulemaking or litigation." DEC is currently in the process of drafting new and modified provisions to the part 420 series mining regulations. Specifically, DEC intends to propose a definition for the term construction project, which is currently undefined in the Mined Land Reclamation Law, article 23 of the Environmental Conservation Law (MLRL), as well as other related terms. The rulemaking would provide criteria for determining the circumstances under which DEC would consider a project to be a construction project and not subject to permitting under the MLRL.

The issues raised in your clients' petition have arisen in the past and are likely to arise again. A rulemaking process is a more appropriate means to address recurring questions of statutory and regulatory interpretation, rather than addressing them on a case by case basis. DEC conducts extensive stakeholder outreach in connection with its rulemakings and any regulations it proposes will be published in the State Register with the opportunity for public comment. Stakeholders and members of the public will have ample opportunity to weigh in on any proposed regulations. Accordingly, I am not issuing a ruling on the petition at this time.

Please note that DEC publishes a Regulatory Agenda that contains a list of the regulations it may propose for adoption or amendment within that calendar year. The part 420 series rulemaking is included on DEC's 2020 Regulatory Agenda and will be included on the 2021 Regulatory Agenda. The 2020 agenda states that the part 420 series regulations will be amended to: (1) clarify ambiguous sections; (2) strengthen portions of the regulations; (3) reflect changes in the regulatory fee structure and civil

penalties; and (4) reflect changes in scientific knowledge. Regulatory amendments to clarify the statutory term construction project in ECL 23-2705(8) are contemplated as part of these regulatory revisions. The Regulatory Agenda may be viewed at the following link: <https://www.dec.ny.gov/regulations/36816.html>.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman  
Deputy Commissioner  
and General Counsel

cc: C. Dickert

Morton D. Shulman  
Lawrence E. Howard  
Malcolm A. McPherson\*

SHULMAN  
HOWARD  
& MCPHERSON  
LLP

PO Box 1000  
17 Old Route 66  
Averill Park, New York 12018

November 22, 2019

Thomas Berkman, General Counsel  
Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-0001

RE: Petition for Declaratory Ruling, (Post FOIL Supplement)  
Jurisdictional Determination, Patanian Springer Rd, MLF# 40916

Dear Mr. Berkman:

I represent Petitioner Edward J. Patanian, in his request for a declaratory ruling, pursuant to 6 NYCRR 619. Petitioner's Springer Road Phase II subdivision constitutes an activity<sup>1</sup> that does not require a permit under the Mined Land Reclamation Law (the "MLRL").

In support of the Petition referenced above, the following supplement is based on the results of a recent FOIL request.<sup>2</sup> The information acquired through the FOIL supports the premise that the Department's January 15, 2019 jurisdictional determination ("Determination") was inconsistent with the Department's past approvals and therefore arbitrary and made in error.

Since January of 2009, Region 4 has evidently made twelve Determinations. Excluding this case, in eight of the twelve cases the Department determined the MLRL did not apply. The four remaining cases consist of two pond excavations (not construction projects) and two enforcement actions. The two projects seeking absolution include a case where a Determination was sought only after illegally mining over 80,000 cubic yards and the other exceeded his annual removal limits while also ignoring the terms of the Town's subdivision approval [grading plan]; Mr. John H. Bouchard and Larry Dickinson (Meadow Ridge Subdivision MLF# 40946) respectively. The Petitioner's request is easily distinguished from the four where it was determined that the MLRL applied.

<sup>1</sup> Specifically, the activity is "the excavation, removal and disposition of minerals from [a] construction [project]." (Environmental Conservation Law 23-2705[8])

<sup>2</sup> W056555-080819 -- Requesting copies of and any supporting materials available for every jurisdictional determination and/or construction exemption approval and/or denial issued by Region 4 for the last ten years beginning in January 2009 through present in accordance with the Mined Land Reclamation Law.

518-674-3805 518-674-3766 Fax 518-674-3964

\*Also Admitted in Texas, New Mexico and Oregon

The other eight Determinations since January 2009 include six residential construction projects and two commercial projects. The residential projects range in size from 20,000-cubic yards for a single home (Hunt) to 150,000-cubic yards for a mobile home park (Pinehaven). It was also determined that the MLRL did not apply to a 45,000-cubic yard removal for a two-lot subdivision (Dickinson, Stop 13 Rd.), 30,000-cubic yards (Farrell) and the Petitioner's own Determination, 60,000-cubic yards for Phase I. Phase II of Mr. Patanian's project is consistent with all the residential projects in the last ten years of where the Department determined that a permit was not required under the MLRL.

The reasons provided in the Department's January 15, 2019 Determination do not place this project in the company of the four projects where the Department determined that the MLRL applies. Phase II simply does not share any commonalities with those projects. Ed Patanian relied on the Department to be consistent and treat Phase II the same as Phase I and all the residential Determinations in the last ten years. It did not.

The intent to undertake Phase II was fully disclosed in the Engineers Report for Phase I. Mr. Patanian secured all the local, state and federal approvals needed. The Town's Planning Board approved the removal that was necessary to prepare the site for the construction. (The Department should not be substituting its judgment in the place of the local approval process that determined what was necessary to prepare the site for the approved construction.) For nearly 35 years Ed Patanian has been building homes, in Sand Lake, at an average rate of about five homes per year. It is not realistic or reasonable to expect that every lot he prepares will be built-out immediately or that each home will be built and sold before securing additional developable lots.

I hope that this supplemental information will assist in your review and that it will be sufficient (along with the prior submittals) to demonstrate that a correction is justified and that the Commissioner will see fit to rule that the prior jurisdictional determination should be reversed.

I look forward to any inquires or further proceedings that may follow.

Sincerely,



Lawrence Howard  
([leh@nycap.rr.com](mailto:leh@nycap.rr.com))

cc: Lisa Wilkinson, Esq.  
Anthony Luisi, Esq.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of the General Counsel, Deputy Commissioner & General Counsel  
625 Broadway, 14th Floor, Albany, New York 12233-1010  
P: (518) 402-8543 | F: (518) 402-9018  
www.dec.ny.gov

Lawrence Howard, Esq.  
Shulman Howard & McPherson LLP

AUG 06 2019

P.O. Box 1000  
17 Old Route 66  
Averill Park, New York 12018

Dear Mr. Howard:

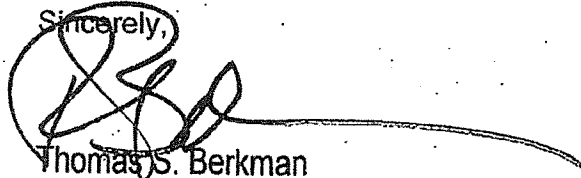
This letter acknowledges receipt of your petition for a declaratory ruling on behalf of Ed Patanian and EJP, Inc. In accordance with 6 NYCRR 619.1(d), I am notifying you that the petition is complete for purposes of my review.

The petition seeks a waiver from the Commissioner to allow the construction of Phase II of a residential subdivision at Springer Road in the Town of Sand Lake (Phase II subdivision), based on the original design of the Phase II subdivision as set forth in the papers you submitted.

The Department does not have a waiver process for construction projects as envisioned in the petition. I will construe the petition as a request for a declaratory ruling, pursuant to 6 NYCRR 619, that the proposed Phase II subdivision constitutes "the excavation, removal and disposition of minerals from [a] construction [project]" (Environmental Conservation Law 23-2705[8]), an activity that does not require a permit under the Mined Land Reclamation Law.

Please contact Associate Counsel Lisa Wilkinson at (518) 402-9185 if you have any questions.

Sincerely,



Thomas S. Berkman  
Deputy Commissioner  
and General Counsel

cc: L. Wilkinson  
A. Luisi  
EDMS #637904

**From:** Wilkinson, Lisa a (DEC)  
**Sent:** Thursday, April 25, 2019 2:01 PM  
**To:** [G.Kelly@HarrisBeach.com](mailto:G.Kelly@HarrisBeach.com)  
**Cc:** Luisi, Anthony P (DEC) <[anthony.luisi@dec.ny.gov](mailto:anthony.luisi@dec.ny.gov)>; Goertz, Keith D (DEC) <[keith.goertz@dec.ny.gov](mailto:keith.goertz@dec.ny.gov)>  
**Subject:** Patanian

Dear Gene:

This is in response to your email to me on April 19, 2019 and our meeting on February 8, 2019 concerning whether the excavation and removal of material that you propose to undertake for phase II of the Springer Road subdivision project ("Phase II") in the Town of Sand Lake (the "Proposed Excavation Activity") constitutes "excavation, removal and disposition of minerals from construction projects," activities that are excluded from the definition of mining under the New York Mined Land Reclamation Law, at Title 27 of Article 23 of the New York Environmental Conservation Law.

Department staff has reviewed the revised site plan Mr. Patanian submitted on February 12, 2019, the revised extraction narrative dated March 2019, a third revised site plan submitted on March 13, 2019, and the other documents referenced in Ms. Wyckoff's letter to your client dated January 15, 2019 (the "Project Documents").

Based on our discussions and our review of the Project Documents, Department staff is unable to conclude that the Proposed Excavation Activity does not constitute mining under the MLRL.

Department staff has previously advised Mr. Patanian that, for several reasons, the scope and other attributes of the Proposed Excavation Activity are unreasonably excessive in relation to the stated objectives and parameters of the proposed construction project. Department staff has expressed concern that Mr. Patanian has not commenced (let alone completed) construction on three of the six houses associated with Phase I, which began in 2013, and that there is no reasonably identifiable timetable to begin the construction of the remaining houses in Phase I or any of the houses in Phase II. Department staff has also asked Mr. Patanian to consider reducing the amount of material to be removed to the minimum volume that would be required to construct the residential buildings depicted on the plans. His most recent submittals to the Department fail to address these concerns.

Moreover, Mr. Patanian's proposal to excavate and remove a large ridge from Lots 7, 9, and 10 to include the creation of a long linear basin to improve the drainage along Springer Road and direct stormwater flow away from wetlands is not necessary. Wetlands do not require any protection from stormwater discharges—receiving stormwater discharges is one of a wetland's primary functions. As Mr. Patanian notes, the Town has rejected his requests to improve the drainage along Springer Road.

Likewise, Mr. Patanian's proposed excavation of lot 7 and 8 to create access to lot 11 to provide a potential groundwater source for the Town is not supported with any determination or indication from the Town that the Town needs an additional water source and would potentially accept a dedication of Lot 11.

Accordingly, Department staff cannot confirm for Mr. Patanian that the Proposed Excavation Activity does not constitute mining under the MLRL. In the event Mr. Patanian is interested in requesting a formal declaratory ruling on this matter, he can file a petition with the General Counsel of the Department for a declaratory ruling under Section 204 of the New York State Administrative Procedures Act and Title 6, Part 619, of the New York Codes, Rules, and Regulations.

Regards,

Lisa

**Lisa A. Wilkinson, Esq.**

Associate Counsel, Office of General Counsel

**New York State Department of Environmental Conservation**

625 Broadway, Albany, NY 12233-1500

P: 518-402-9185 | F: (518) 402-9018 | [lisa.wilkinson@dec.ny.gov](mailto:lisa.wilkinson@dec.ny.gov)

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# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Mineral Resources, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2172 | F: (518) 357-2460  
www.dec.ny.gov

January 15, 2019

Edward Patanian

PO Box 969  
Averill Park, NY 12018

RE: Jurisdictional Determination  
Patanian Springer Rd  
MLF# 40916  
Town of Sand Lake, Rensselaer Co.

Dear Mr. Patanian:

The Department has reviewed your request for a Mined Land Reclamation Law (MLRL) jurisdictional determination for the excavation and grading activities planned for the Springer Lane\* Subdivision, Phase 2.

Department staff reviewed the following documents:

- Permits and authorizations submitted, including the resolution of the Sand Lake Planning Board, granting conditional final approval of the subdivision plat with conditions, resolution of the Sand Lake Town Board approving connection to the town sanitary sewer system, the short Environmental Assessment Form, the NYS DEC Wetland Permit, and the NYS DEC reference number for SPDES coverage.
- The Extraction Narrative for the Springer Lane\* Phase 2 – 5 Lot Subdivision, and Extraction Plan Map.
- The Grading Plan, Springer Lane\* – Phase 2 - 5 Lot Subdivision.
- Correspondence dated December 21, 2018 from EJP, Inc. addressing the Department's request for additional information dated December 19, 2018.

\* The Springer Lane Subdivisions are located on Springer Road, Town of Sand Lake.

When determining if an excavation activity is not subject to the jurisdiction of the MLRL's requirements to obtain a mining permit, the Department considers the following criteria:

1. *All necessary local, state, and federal approvals have been obtained.*
2. *The excavation is conducted solely in aid of onsite construction and deemed necessary to prepare the site for the approved construction.*
3. *The excavation takes place within the construction project area and is an integral part of the construction activities.*
4. *The construction project is not speculative.*
5. *Construction activities should commence within 6 months and be completed within 2 years of the excavation.*

Based on the documents described above, the Department has determined that the Springer Lane Subdivision, as currently designed, is subject to the jurisdiction of the MLRL and requires a mining permit for the following reasons:

- A portion of this project is considered to be speculative. One lot has been identified where no building construction is currently planned and where future construction, as described, is predicated on a future "change of heart about cooperating" or the future retirement and sale of the home of another party. The site plan for this lot does not meet criteria #4 and proposes significant removal of material and grading that exceeds criteria # 2 as described above.
- Portions of this project are not within a construction project area and are not an integral part of the construction activities because the excavation is significantly removed from the footprint of the nearest planned residence and driveway. The construction project area is defined as the excavation essential to the successful completion of the construction project. The site plan for these portions of the project does not meet criteria #3 as described above.
- A significant portion of this project includes excavation in excess of that which is deemed necessary to prepare the site for the approved construction. Level building sites of similar acreage and/or driveways can be achieved with excavation of significantly less material. The site plan for these portions of the project exceeds criteria #2.

The Department is amenable to reconsidering the MLRL jurisdictional determination for the Springer Lane – Phase 2 – 5 Lot Subdivision if an alternate grading plan is submitted. The alternate grading plan must limit the excavation to the construction project areas for each currently planned residence and driveway, and no more excavation than is necessary to prepare the site for the construction.

Alternatively, the Department would be willing to entertain a mining permit application to excavate and grade the site according to the submitted grading plan for the Springer Lane – Phase 2 - 5 Lot Subdivision.

If you would like to schedule a meeting to discuss this jurisdictional determination, please feel free to contact me at 518-357-2254.

Sincerely,



Psalm Wyckoff  
Mined Land Reclamation Specialist II

CC: Keith Goertz, R4 Regional Director  
Nancy Baker, R4 Regional Permit Administrator  
Jeff Rider, R4 Natural Resources Supervisor  
Chris McKelvey, CO Division of Minerals  
Dave Keehn, CO Office of General Counsel  
Nancy Perry, Town of Sand Lake  
Mike Wager, Town of Sand Lake

EJP, Inc.

	P.O. Box 969
Averill Park, N.Y. 12018	(518)428-2480
(E-Mail)	edpatanian@gmail.com

December 21, 2019

To: Psalm Wyckoff, MLR Supervisor  
NYSDEC Region 4  
1130 North Westcott Road  
Schenectady, NY 12306-2014

Re: Springer Lane Subdivision Phase 2  
Narrative Proving Exemption is to be solely in the Aid of Onsite Construction

Dear Ms. Wyckoff:

I am providing this memo in response to your 12/19/18 letter requesting a narrative per the above referenced subject matter:

Although I understand the Department's concern regarding removing this amount of material for construction of three homes, I wish to provide further explanation; the removal of the large ridge on the property accomplishes much more than preparing 3 building lots for the construction of homes, examples of such are as follows:

1. It improves the drainage along Springer Road which is prone to flooding as is evidenced photographically in the project Engineer's Report. The Springer Lane Plans are designed to recharge all storm water not only from the project itself but also the existing drainage system along the northerly side of Springer Road. The elevations shown on the approved plans are necessary to provide sufficient recharge areas in order to recharge storm water.

Please refer to the proposed drainage and recharge swale between Lots 9 & 10 on the Erosion and Sediment Control Plan. The drainage calculations also included in our Report(s) dictate the need to create recharge areas to act as overflows in addition to the proposed recharge areas along Springer Road especially during major precipitous events. The above referenced recharge swale actually takes overflow drainage and recharges same to the rear of their respective lots to additional recharge basins. This obviously could not be accomplished if the proposed grades in the vicinity were higher than the existing ditch line long Springer Road.

2. The existing site is obviously unusable for the residential building purposes the property is zoned for, and for practically any other constructive use. Removal of the hill is the only feasible method of utilizing the property. If the plans were designed at higher elevations, the storm water management on the site would become more problematic and the building lots lower quality. The finish grade elevations in the vicinity of the proposed homes on Lots 9 & 10 are comfortably

higher than their fronting Springer Road elevations and the approximate 2% grades around the proposed home sites are typically considered ideal.

3. This project accomplishes more than creating 3 home sites, and improving the drainage system along Springer Road. Lot # 7 will be a home site one day, either when the homeowners have a change in heart about cooperating, or when their homes is purchased, since they have expressed interest in leaving the area once retired. The grades on Lot # 7 also need to be cut in order to access the remainder of the property and to properly grade the easterly portion of Lot # 6 in Phase 1.

Removal of the hill also creates access to Lot 11, which has no other suitable access without crossing the Wynantskill Creek, filling a large drop off from NY43, and constructing an access road across floodplain. Lot # 11 has been identified as a potential groundwater source should the Town pursue providing public water. I believe I did the ethical thing by earmarking it for that purpose, since suitable sites for that purpose within our Town are very scarce.

4. The proposed site design also helps to protect the regulated wetland across Springer Road from storm water discharges from the existing drainage along the north side of Springer Road and from my property by directing all storm water away from the wetland.

In closing I do not believe there exists any suitable alternatives to our proposed plans. If the grades were raised, the storm water management would not work properly and the home sites would be less desirable.

Redistributing excess fill on site is also not feasible. Lot # 8 does not require fill, its elevation is already ideal. There is not enough buildable area in Lot 11 outside of the floodplain to utilize as a buildable lot. Filling it would also require significant deforestation and de-grubbing, the construction of access roads, and would disrupt the natural water course causing negative drainage issues on other property(ies).

Please feel free to contact me with any questions or concerns, and thank you in advance for your consideration.

Respectfully,

  
By: Edward J. Patanian Pres.

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Mineral Resources, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2172 | F: (518) 357-2460  
www.dec.ny.gov

December 19, 2018

Edward Patanian

PO Box 969  
Averill Park, NY 12018

**RE: Request for Additional Information**  
MLRL Jurisdictional Determination  
Springer Road Subdivision  
MLF# 40916  
Town of Sand Lake,  
Rensselaer County

Dear Mr. Patanian:

The Department has reviewed the following materials submitted regarding the of the Springer Road Subdivision:

- The resolution of the Sand Lake Planning Board on Application for Approval of a Subdivision Plat granting conditional final approval, with a condition requiring the following additional approvals:
  - Rensselaer County Health Department Approval
  - NYS DEC exemption approval (*Mined Land Reclamation Law (MLRL) Jurisdictional Determination*)
  - Town sewer extension approval by the Town Board (granted December 12, 2018)
- A completed Short Environmental Assessment Form
- An Extraction Narrative describing the extraction sequence, haul roads, hours of operation, volume of material to be removed, buffers, traffic impacts, and an estimated schedule for completion of the extractions, and construction of sewer lines, driveways, and homes.
- An Extraction Plan map showing existing and proposed topography, lots, the internal haul roads, topsoil piles and temporary recharge basins.

The Department notes that 100,000 cubic yards will be removed from the 40 ft-high gravel ridge on the site. It appears that three lots (Lots 8, 9, and 10) are planned for development, while Lots 7 and 11 are "not for development at this time".

In order for the Department to complete the review of the proposal and make a determination if the activity is subject to the jurisdiction of the Mined Land Reclamation Law (i.e. if a mining permit is required or not), additional information is required.



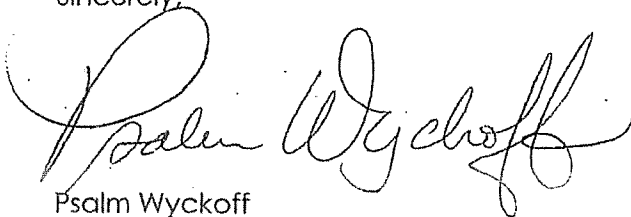
Department of  
Environmental  
Conservation

- Please forward the approval from the Rensselaer County Health Department when received.
- Please provide a narrative addressing if the proposed excavation is to be conducted solely in aid of onsite construction, and the excavation is necessary to prepare the site for the approved construction. The narrative should include the following:
  - An explanation why removing 100,000 cubic yards of material is necessary for the construction of three homes.
  - Could similar construction be accomplished with redistribution of material onsite (i.e. gravel from lots 7, 9, and 10 moved and graded on lots 8, and 11)? (The Department notes that approximately half of lot 11 is outside flood plain.)
  - Could similar construction be accomplished with removal of less material (e.g. removal of only 20 ft of gravel from Lots 7,9, and 10, and little to no removal of gravel from lot 8?

The Department's jurisdictional review of the Springer Road subdivision will resume when the above described information is received.

If you have any questions, please feel free to contact me at 518-357-2254.

Sincerely,



Psalm Wyckoff  
Mined Land Reclamation Specialist II

CC: Nancy Baker, Regional Permit Administrator  
Jeff Rider, R4 Natural Resources Supervisor  
Nancy Perry, Town of Sand Lake  
Mike Wager, Town of Sand Lake

**EXTRACTION NARRATIVE**

FOR THE

**SPRINGER LANE PHASE 2-5 LOT SUBDIVISION**  
**MINING PERMIT**

SPRINGER ROAD  
TOWN OF SAND LAKE  
RENSSELAER COUNTY, NEW YORK

**PREPARED FOR :**  
NYSDEC

**APPLICANT:**  
□ EJP INC.  
**P.O. BOX 969**  
AVERILL PARK, NEW YORK 12018

July, 2022

## **1.0 Introduction & Background:**

This Narrative pertains to the above referenced subdivision which is intended to comply with provision 250-44 of the recently adopted Town of Sand Lake Zoning Code and the granting of a Construction Exemption by DEC. Since the said Construction Exemption is no longer obtainable, the intent is to proceed with the project as previously designed and approved by the Town and County by obtaining the issuance of a mining permit from DEC, while protecting the interests of the Town and its residents by voluntarily placing limitations on the said permit, along with certain rights that may accompany the permit being granted. This document is being submitted as supplemental information in addition to previously submitted materials.

## **2.0 Description of Affected Lands:**

The "Springer Lane, Phase 2- 5 Lot Subdivision" is a proposed development which consists of the subdivision of a 15.7153 +/- acre parcel of land located in the Town of Sand Lake. The parcel of land is situated on the north side of Springer Road, and further consists of 2.5053 +/- acres of remaining lands from the previously approved Springer Lane Subdivision combined with 13.21 +/- acres of land later acquired.

The present conditions of the site consist of very steep wooded and previously cleared and grubbed slopes, and woodlands. The majority of the site is unbuildable in its current state while other areas are inaccessible due to the above-mentioned slopes to the south, floodplain and the Wynantskill Creek to the north.

No structures presently exist on the site.

A SWPPP was previously prepared and submitted, an NOI issued, and all fees related to the same have been paid.

A significant portion of the proposed life of mine was previously cleared and grubbed, and sufficient topsoil and overburden stockpiled to reclaim the previously disturbed areas.

The site consists of sand and gravel and is well drained. There are nearby wetlands and a classified stream, although the drainage from this project will be recharged, and not allowed to reach them. The removal and regrading as proposed will reduce runoff to the wetlands located to the south of the site, by creating recharge basins redirecting stormwater containing road salts and silts away from Springer Road, and its ditch line which presently drains into a designated wetland. The creating of these recharge basins will also alleviate flooding which has occurred regularly along this section of Springer Road under present conditions.

## **3.0 Type of Mining Operation: Sand and gravel surface mine**

### **4.0 Removal of Soil Prior to Mining:**

As previously mentioned, and as depicted on our Mining Plan, sufficient topsoil and overburden was previously removed and stockpiled for reclamation. Sufficient topsoil and overburden for reclamation will also be removed before removal of mined materials and stockpiled towards the rear of the life of mine from areas not previously cleared and grubbed.

### **5.0 Mining Method:**

Excavation shall take place using a front end loader to excavate and load trucks or to stockpile mined material onsite.

In order to reduce the gravel face height, I propose to cut and bench the site so the maximum face height does not exceed 20'.

#### **6.0 Mineral preparation and processing:**

There will be no onsite processing, blasting, washing or crushing of mined materials in connection with the mining.

#### **7.0 Storage and disposition of excavated materials:**

Materials being stockpiled shall be stored out of sight of adjoining properties to the extent feasible.

#### **8.0 Grading and slope control:**

Active slopes are to be no more than 20' in height during excavation. They will be graded to no steeper than 1V:2H when reclaimed with subsoil, topsoil, and seed.

#### **9.0 Erosion Control & Drainage:**

- 9.1 All stormwater runoff from outside the LOM shall be channeled into temporary diversion ditches to keep excess water from reaching the mine. Until vegetation is established in the diversion ditches, the runoff will be filtered by silt/hay bale fences which shall be maintained and moved as necessary, as mining continues.
- 9.2 Water within the mine shall be retained within the mine boundaries and recharged recharge basins as shown on the plans.
- 9.3 Transportation routes shall be watered when necessary to keep dust down. If water bars are required to keep the roads accessible, they will be installed to curtail erosion on steeper slopes. The road will be covered with crushed rock when needed to keep the road passable and control road erosion.

#### **10.0 Pollution control:**

- 10.1 Dust from the mining operation will be retained within the property boundaries
- 10.2 Noise from machinery will be mitigated by low intensity, lower elevation of the mine and surrounding forests. There are many residences within one mile of the mine.
- 10.3 Water will be retained within the mine by providing the retention areas within the mine where stormwater can run to until it disperses into either the ground or the air.
- 10.4 The mine itself is visually screened by, surrounding forested land, etc. No trees shall be removed from the neighboring areas to ensure the visual screening of the mine. The wooded slope along Springer Road will remain as a buffer until after materials from the existing cleared and grubbed areas have been removed and graded. The before mentioned wooded slope shall be cleared and grubbed sequentially to mitigate visual impacts.

#### **11.0 Mining schedule:**

The mine will generally be worked year round for up to a 5 year period, when all mining of the site shall cease. There shall be no operations on Saturdays, Sundays, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, or Christmas Day.

#### **12.0 Hours of operation:**

The mine will operate between 7:30AM until 4:30PM on Monday through Friday, when it is in operation.

#### **13.0 Petroleum storage:**

There will be no storage of petroleum at the site in tanks of more than 300 gallons. All tanks and containers will be set on impermeable polyethylene (black plastic) to catch drips. If there is a spill, soil will be dug up and kept encapsulated in poly for 12 months to allow the volatiles to vaporize. If after 12 months there is no petroleum odor, the soil can be spread out on the mine floor. If a petroleum odor is noticed at that time, the soil must be re-encapsulated for additional time until the odor is gone.

#### **14.0 Original topsoil depth:**

The soils at the site are Hoosic gravelly sandy loam soils. The existing topsoil thickness at this location is approximately 6" with an approximately 12" subsoil layer beneath it. 18" +/- total thickness) All remaining topsoil (to be staged in vegetated perimeter berms) is to be saved for final reclamation.

#### **15.0 Topsoil inventory:**

At present there approximately 1,500 yds of topsoil inventory stockpiled for the reclamation of the site. In order to replace a minimum of 6" of soil over a 3.8 acre site, 3,066 cubic yards (807 cu yd x 3.8 acres) of topsoil would be required. The miner plans to make up the missing topsoil by stripping and saving all additional topsoil and subsoil that is currently at the site. See 3.1 below regarding depth of soil to be replaced.

#### **16.0 Depth of mine:**

The final mine floor is proposed to be the excavated to an elevation of 564-566 feet above mean sea level (amsl). Mining will remain at a minimum 8 feet above the high annual local water table.

#### **17.0 No Blasting is proposed.**

### **Reclamation Narrative:**

#### **1.0 Land use objective upon reclamation:**

The intention of the project is to transform unusable portions of the site due to very steep slopes into residential single family building lots, and to provide suitable access to usable portions of the site for residential and municipal purposes.

#### **2.0 Reclamation methods:**

- 2.1 All mining equipment and mining materials will be removed at the conclusion of mining, although other equipment and materials incidental to the building of homes and their infrastructure will remain intermittently until construction is completed.
- 2.2 Stumps and other herbaceous material will not be buried anywhere on the site.
- 2.3 All leftover stockpiles will be removed or used in the reclamation of the mine.
- 2.4 Portions of the access roads will be kept for home driveways after reclamation has been completed, remaining roads shall be reclaimed.
- 2.5 Slopes will be graded to a 1V:2H minimum slope. After the area is covered with overburden, topsoil will be spread out and the area will be seeded and mulched with hay.

#### **3.0 Reclamation of the land:**

- 3.1 Replacement of subsoil and then topsoil on all affected lands to recreate the pre-existing soil profile. Depth of topsoil and subsoil will be equal to the depths of same before mining was initiated. (6" topsoil, 12" subsoil)
- 3.2 Seed with a conservation seeding mixture that contains at least 2 legumes (ex. clover & trefoil) at the rate of 80 pounds per acre.
- 3.3 Perform pH test and lime as necessary.

- 3.4 Fertilize with a slow release nitrogen fertilizer at the rate of 300 pounds per acre.
- 3.5 Mulch at the rate of 2,000 pounds per acre without bare spots.
- 4.0 Upon reclamation, drainage will continue to be internal.
- 5.0 Reclamation will be performed concurrently with mining wherever possible.

#### **Other Concerns**

- 1) Traffic concerns – Mined traffic will increase traffic on local roads intermittently, as they would with the construction of any subdivision. This issue is mitigated by the facts that sanitary sewers will be extended and turned over to the Town, and very little mined materials will require importation to construct the homes, driveways and septic systems due to the fact that predominately onsite materials may be utilized and septic systems will not be required.
- 2) Archeological: The area has previously been excavated and has already gone through the SEQRA Process. This particular project has also gone through a coordinated review under SEQRA, a Negative Declaration has been issued and final approvals for the subdivision under the prerequisite of DEC issuing a construction exemption has been issued.
- 3) There are no historical buildings in the vicinity.
- 4) There is no evidence of protected species in the area.
- 5) Noise levels will increase during the removal process but will be mitigated by the buffer along Springer Road and surrounding woodlands. Also, no processing of mined materials is proposed.
- 6) Visual – Visual impacts will be mitigated by the buffer along Springer Road and surrounding woodlands.
- 7) Stormwater – All stormwater will be recharged and/or evaporated via recharge basins. An erosion and control plan has also been integrated into the subdivision site plan and a SWPPP prepared, and a NOI issued.
- 8) Subsurface Investigation: Neighboring properties are on private wells, although the existing operation will have no effect on them due to the project's higher elevation. This project has previously gone through the SEQRA Process, and subsurface factors approved by the Rensselaer County Health Dept.

#### **4.0 Conclusion:**

Subdivisions do typically cause significant short term increases in truck traffic while being constructed. This subdivision differs as it involves removal of surplus material vs. importation of materials for roads, septic systems, driveways, sewer bedding and backfill and home foundation backfill. The net result in terms of truck traffic, however, is similar, materials are merely predominately being hauled out rather than being hauled in.