

**LOCAL LAW to REGULATE MINING AND RECLAMATION ACTIVITIES  
TOWN OF WINDSOR**

**Local Law # \_\_\_\_\_ - Adopted \_\_\_\_\_**

**1 GENERAL PROVISION**

100. Enactment.

The Town Board of the Town of Windsor, Broome County, New York, does hereby ordain and enact the Town of Windsor Local Law to Regulate Mining and Reclamation Activities pursuant to the authority and provisions of Section 10 of the Municipal Home Rule Law and Section 274-a of Town Law.

This Local Law is adopted in accordance with the New Your State Mine Land Use and Reclamation Law, which allows local municipalities to enact laws generally applicable to the following:

- a. ingress and egress to locally controlled roads
- b. routing of mineral transport vehicles on locally controlled roads
- c. requirements and conditions as specified in the DEC permit concerning:
  - o setback from property lines and rights-of-way
  - o barriers to restrict property access
  - o dust control
  - o hours of operation
- d. enforcement of reclamation requirements contained in the DEC permit.

For the development of new mines, the Town of Windsor will exercise the right to make recommendations to the New York State DEC with regard to:

- a. setbacks from property lines and rights-of-way
- b. barriers designed to restrict access
- c. dust control
- d. hours of operation
- e. whether mining is prohibited at the location

This Local Law shall not be interpreted as a prohibition on mining or excavation in the Town of Windsor.

101. Title

This local law shall be known as the "Town of Windsor Mining and Reclamation Law." The Town of Windsor is hereinafter referred to as the "Town."

102. Intent and Purpose

It is the intent of this local law to ensure optimum overall conservation and use of the natural resources of the Town, by regulating mining and land reclamation activities within the Town of Windsor through review and approval of site plans. It

is not the specific intent of this local law to prohibit mining and land reclamation activities but to allow said activities that meet the standards set forth in this local law for proper development of mines and associated reclamation activities. Through site plan review, it is the intent of this local law to promote the health, safety, and general welfare of the Town.

#### 103. Issuance of Mining Special Use Permits

- 1) The Town Board hereby authorizes the Town Planning Board to issue mining Special Use Permits in accordance with the provisions this Local Law.
- 2) No person, company or corporation shall do, conduct, perform or engage in any mining, or operate a mine, within the Town on or after the effective date of this Local Law without compliance with the provisions of this Local Law and special use permit approval issued by the Town of Windsor Planning Board as per the standards hereinafter provided.
- 3) It shall be permissible to remove minerals from any parcel of land on a casual basis for noncommercial use without obtaining a mining Special Use Permit therefor, but in no event shall more than two hundred fifty (250) tons of minerals be removed from any parcel of land during any twelve month period or more than one thousand (1,000) tons of minerals on a cumulative basis, except pursuant to a mining Special Use Permit issued pursuant to this Local Law.
- 4) Any mine site for which the New York State Department of Environmental Conservation has issued a valid mining permit prior to the effective date of this Local Law may continue to be operated (subject to the terms and conditions of said mining permit), without the issuance of a mining Special Use Permit hereunder as long as said mine site is not expanded or enlarged beyond the area, size or scope set forth in said mining permit and site plan approval.

#### 104. Relationship of this Local Lawaw to other Laws and Regulations

This local law in no way affects the provisions or requirements of any other federal, state, or local law or regulation that regulates the development and management of mining and land reclamation activities. Where this local law is in conflict with any other law or regulation, the more restrictive provisions and requirements shall apply. The Town Board hereby supersedes the New York State Town Law pursuant to the Municipal Home Rule Law to establish a \$350 per day fine for each violation of this local law and authorizes the Town of Windsor Zoning Board of Appeals to hear and grant variances for parties aggrieved through by the enactment of this local law and where a clear hardship can be proven.

#### 105. Further regulations by Town Board

The Town Board may, after a public hearing, adopt such further rules and regulations as it deems reasonably necessary to carry out the provisions of this local law.

#### 106. Severability

The provisions of this local law are severable. If any article, section, paragraph or provision of this local law shall be invalid, such invalidity shall apply only to the article, section, paragraph or provision(s) adjudged invalid, and the rest of this local law shall remain valid and effective.

#### 107. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State.

## **2. DEFINITIONS**

#### 200. Word Usage

Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meaning of common usage as set forth in the latest edition of Merriam-Webster's Collegiate Dictionary.

Any term used in this local law which is not defined shall carry its customary meaning unless the context otherwise dictates.

#### 201. Definitions

EXCAVATION (QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING) - A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale or use, as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building which has an approved building permit.

MINING - The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes used for the extraction or removal of minerals from their original location and the preparation such as washing, cleaning, crushing, stockpiling or other processing at the mine location that makes a mineral suitable for commercial, industrial, or construction use.

NONCONFORMING STRUCTURE - Any structure which is in existence within the Town on the effective date of this law which is not in conformance with the dimensional regulations herein.

OVERBURDEN - The material that lies above an area that lends itself to economical exploitation, such as rock or soil and is removed during surface mining, but is

typically not contaminated with toxic components. Overburden may also be the material used to restore an exhausted mining site during reclamation.

PERVIOUS SURFACE – A surface that allows storm water to be absorbed by the land.

QUARRY – See excavation

RECLAMATION - The combined process by which adverse environmental effects of surface mining are minimized and mined lands are returned to a beneficial end use. End uses may be open space, wildlife habitat, agriculture, or residential and commercial development.

RECLAMATION PLAN - A plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to the New York State Mined Land reclamation Permit requirements.

SITE PLAN - A rendering, drawing or sketch prepared to Town specifications and containing necessary elements as set in this law which shows the arrangement, layout and design of a proposed use of a single parcel of land.

SITE PLAN REVIEW — A review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this chapter.

SPECIAL USE PERMIT – An authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) – Part 6 of the New York State Conservation Rules and Regulations requires an environmental review or assessment be completed for any project that may have a direct impact on the natural or man made environment.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) - Required by the Environmental Protection Agency (EPA), an SWPPP is a document that regulates construction sites and outlines how the site will manage stormwater runoff.

STRUCTURE – Any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, signs, tanks and any fixtures, additions and alterations thereto.

STRUCTURE, ACCESSORY – Any structure designed to accommodate an accessory use but detached from the principal structure, such as, a free standing garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility.

TAILINGS - The material that remains after economically valuable components have been extracted from the generally finely milled ore.

VARIANCE - The authorization by the Board of Appeals to vary or modify the application of any provisions of this chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done pursuant to Town Law § 267.

VARIANCE, AREA - The authorization by the Board of Appeals for the use of the land in a manner which is not allowed by the dimensional or physical requirements of the applicable regulations.

VOLATILE MATERIALS - Gasoline or any substance more vaporizable or more inflammable than gasoline.

### **3. PROCEDURES**

#### 300. General procedures

No person, company or corporation shall do, conduct, perform or engage in any mining, or operate a mine, within the Town on or after the effective date of this Local Law without compliance with the provisions of this Local Law and site plan and special use permit approval issued by the Town of Windsor Planning Board as per the standards hereinafter provided.

#### 301. Compliance with Town of Windsor Zoning

Mining, quarrying and excavation of topsoil shall be allowed in all Zoning Districts in the Town of Windsor as defined by Section 93 - Zoning of the Town of Windsor Codes, only if the standards of this Local Law are met. Mining, quarrying, and excavation of topsoil is explicitly prohibited without a Site Plan approval and a New York State Department of Environmental Conservation permit, when applicable. All mining, quarrying and excavation operations must have a reclamation plan as part the approved site plan.

#### 302. Sketch Plan

A sketch plan conference may be held between the Town of Windsor Planning Board and the applicant prior to the preparation and submission of a formal site plan application. The intent of such a conference is to enable the applicant to inform the Town of Windsor Planning Board of his proposal prior to the preparation of a detailed site plan; and for the Town of Windsor Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan.

In order to accomplish these objectives, the applicant shall provide the following:

- 1) A written statement or description and rough sketch showing the locations and dimensions of the proposed mine, quarry or excavation area; parking and loading areas, proposed signage (with descriptions), existing and proposed vegetation, any proposed permanent or temporary structures to be constructed, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
- 2) An area map showing the parcel under consideration for site plan review, and all properties, subdivisions, streets, rights-of-way, easements and other pertinent features within 500 feet of the boundaries of the parcel; and
- 3) A topographic or contour map of adequate scale and detail to show site topography.

### 303. Application requirements

An application for site plan approval shall be made in writing to the chairman of the Town of Windsor Planning Board and shall be accompanied by all information required for sketch plan review and all information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Town of Windsor Planning Board at said sketch plan conference. Six (6) complete copies of the application and all supporting documentation must be submitted to the Code Enforcement Officer no less than ten (10) days prior to the regular Town of Windsor Planning Board meeting.

- 1) A description of the proposed mining operation, including the type of material to be mined, equipment to be used, approximate tonnage for each year of the next five-year period, and the anticipated useful life of the mine. A mining plan prepared pursuant to Title 27, Article 23 of the New York State Environmental Conservation Law and regulations promulgated thereunder shall be sufficient, provided that the Town Planning Board is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said mining plan.
- 2) A map, prepared by a licensed engineer or surveyor, showing the boundaries of the proposed mine, quarry or excavation area, as well as an inset on the map showing its approximate location in the Town of Windsor. The map shall also show the property lines of the adjacent properties, the names of those adjacent property owners, and the adjacent land uses. The scale of the map shall be no less than one (1) inch equals one hundred (100) feet, unless the Town Planning Board, by resolution, allows a smaller scale;
- 3) Title of drawing, including name, address, telephone number and email address of applicant, together with the name of the person to contact for further information, if the applicant is not an individual;

- 4) Name, address, telephone number and email address of the person or professional responsible for preparation of such drawing;
- 5) North arrow, scale and date;
- 6) Boundaries of the property plotted to scale;
- 7) Existing buildings;
- 8) Grading and drainage plan, showing existing and proposed contours, rocks outcrops, depth to bedrock, soil characteristics, and watercourses;
- 9) Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- 10) Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- 11) Location of outdoor storage, overburden disposal and stockpiling of material, if any;
- 12) Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- 13) Description of the method of sewage disposal and location, design and construction materials of such facilities;
- 14) Description of the method of securing public or private water and location, design and construction materials of such facilities;
- 15) Location of fire and other emergency zones, including the location of fire hydrants, if applicable;
- 16) Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- 17) Location, size and design and type of construction of all proposed signs;
- 18) Location and proposed development of all buffer areas, including existing vegetative cover;
- 19) Location and design of outdoor lighting facilities;
- 20) General landscaping plan and planting schedule for the duration of the life of the mined site;

- 21) A reclamation plan, including both a graphic and a narrative description of the proposed land use objective to be achieved in the final stage of reclamation, the proposed method of reclaiming the affected land, providing, where possible, for orderly, continuing reclamation concurrent with mining and a schedule for reclaiming the affected land. The reclamation plan shall contain at least the information required by Title 27, Article 23 of the New York Environmental Conservation Law and any regulations promulgated thereunder, and such plan shall be sufficient, provided that the Town Board is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said reclamation plan;
- 22) A full environmental assessment form, prepared by a licensed professional engineer or architect, to assist the Town Planning Board in its determination of environmental significance of the proposed mine under the New York State Environmental Quality Review Act. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format;
- 23) Record of application for and status of all necessary permits from other governmental bodies including the New York State Mined Land Reclamation permit;
- 24) Other elements integral to the proposed development as may be considered necessary in the particular case by the Town of Windsor Planning Board.

#### 304. Required Fee.

An application for review of a site plan and special use permit for mining, quarrying and excavation of topsoil shall be accompanied by a fee that is established by the Town of Windsor Town Board and modified from time to time by resolution of the Town Board.

#### 305. Reimbursable costs

- 1) In addition to any other fees required under the Town Code, the Town of Windsor Planning Board and the Board of Appeals are authorized to retain engineering, legal, planning and other expert consulting services and clerical costs for:
  - (a) assistance related to the review and processing of Land Mining and Reclamation applications coming before said bodies and the Town Building and Codes Department and;
  - (b) the monitoring and inspection of construction and operation of projects and or reclamation projects by the Building Inspector for projects approved by said Town of Windsor Planning Board and/or Board of Appeals.
- 2) Payment for the services of any expert consultant is to be made from funds deposited by the applicant with the Town Supervisor to be placed in an

escrow account established for that purpose. The Building Inspector, as agent for the Town of Windsor Planning Board and/or Board of Appeals, shall confer with the applicant and compute the amount of the escrow to be posted with the Town. Said amount shall be reasonable related to the costs attendant to the Town's review and processing of the application and/or the monitoring or inspecting of the construction of the project. The Town shall engage any expert at a reasonable rate that is no greater than that customarily charged by said expert and in no event at a rate greater than that paid by the Town to said expert for similar work. If an applicant objects to the amount to be placed in escrow, the applicant may request the Town of Windsor Planning Board or the Board of Appeals, as appropriate, to review the projected amount to be placed in escrow.

- 3) Once the expert consulting fees are fixed it shall be the responsibility of the applicant to submit to the Town Supervisor a certified or bank check in an amount equal to the estimated costs of the expert consulting fees for services to be rendered to the Town. The Town retains the right from time to time to re-compute the amount of the escrow deposited, after conferring with the applicant, in the event there will be a shortfall in the escrowed funds to cover the estimated costs of the expert consulting fees for services needed by the Town.
- 4) The Town of Windsor Planning Board or Board of Appeals may, in their sole discretion, permit an applicant to pay the expert consulting fees in installments where the total fees are estimated to exceed \$10,000, provided that sufficient funds are always available to pay current obligations related to the project in question. Any applicant that has been permitted to make installment payments shall be required to make full payment or an additional installment within five days of receipt of the written demand of the Town where there are insufficient funds in the escrow account to pay outstanding invoices.
- 5) The escrow funds so deposited with the Town shall be paid to its expert consultant upon submission of an invoice and approved voucher and subject to audit in accordance with the provisions of Town Law 118 and 119. Any applicant may request to inspect said invoices and vouchers submitted by any expert retained by the Town.

#### 306. Standards for Review of Land Mining and Reclamation Permits

In considering an application for the site plan and special use permit approval, the Town Planning Board shall consider all relevant factors, including the following:

- 1) The consistency of the proposed Mining permit with the Town of Windsor Comprehensive Plan and Zoning Local Law.
- 2) The character of the neighborhood in which the proposed mine, quarry or excavation area would be located.

- 3) The general Land Use classification of the area in which the proposed mine, quarry or excavation area would be located.
- 4) The proximity of the proposed mine quarry or excavation area to other mines, quarries or excavation areas.
- 5) The proximity of the proposed mine, quarry or excavation area to other parcels of land which, in the future, might be the subject of a petition for the creation of a mine, quarry or excavation area.
- 6) Impact of the mine operation on the immediate area and any haulage ways.
- 7) Any other factors the Town Planning Board considers relevant.

#### 307. Life of permit and approval

Every Land Mining and Reclamation Permit shall remain in existence for the approved duration of the New York State Land Mine Reclamation Permit. For mines not requiring a New York State Land Mine Reclamation permit the approval shall be for a period of one (1) year from the date of its creation and approval, or upon the abandonment of mining activities therein (either upon the termination of the mining permit term without renewal or otherwise) whichever is later. Upon the permanent termination of mining operations therein, the owner of the premises or the Person responsible for the mining operations conducted therein shall commence reclamation of the premises in accordance with the Reclamation Plan. If the responsible person has not commenced reclamation within sixty-two (62) days following the permanent termination of mining activities or fails to complete reclamation in accordance with the Reclamation Plan, the Town may take whatever steps are necessary to accomplish or complete said reclamation, including resort to litigation and resort to the undertaking provided by the mining operator upon the granting of the mining permit. The mining operator shall advise the Town Planning Board in writing upon the commencement and completion of reclamation.

#### 308. Referrals to other agencies and boards

- 1) The Town of Windsor Planning Board may refer the site plan for review and comment to local, and county officials or their designated consultants, and to representatives of federal, state, and county agencies, including but not limited to, the New York State Department of Transportation, the State Department of Environmental Conservation, and the County Department of Public Works, whichever has jurisdiction.
- 2) Whenever any site plan or special permit application involves real property in an area described in Section 239-m of the General Municipal Law, said site plan shall be referred to the Broome County Planning Department for their review pursuant to Section 239-m of the General Municipal Law.

### 309. SEQR Compliance

The applicant shall demonstrate compliance of any actions subject to the New York State Environmental Quality Review Act (SEQR) prior to site plan and special permit approval. The Town of Windsor Planning Board shall, after the site plan has been accepted as complete, determine if SEQR is being conducted by another permitting agency and lead agency and/or coordination has been established. If SEQR has not been coordinated or lead agency has not been requested by another involved agency then the Planning Board shall classify the application according to SEQR, review the Environmental Assessment Form (EAF) and take one of the following actions:

- 1) If additional information is needed to render a determination of significance, the Town of Windsor Planning Board shall specify exactly what the applicant needs to supply, or
- 2) If the information is provided and the project is determined to have only small to moderate impacts with little significance on the environment, then a negative declaration may be given, or
- 3) If an action has been identified as having a large and significant impact, then a positive declaration shall be determined, and a full Environmental Impact Statement (EIS) will be provided.
- 4) The public hearing on the application may be combined with a public hearing on any draft environmental impact statement which the Town Planning Board may require.

### 310. Public hearing

The Town of Windsor Planning Board shall hold a public hearing on the application prior to rendering a final decision on issuance of a special use permit for land mine reclamation.

- 1) Said hearing shall be held within sixty-two (62) days of receipt of the accepted complete site plan and land mine reclamation application for a special use permit.
- 2) At least ten (10) days prior to the public hearing, the applicant shall send notice thereof by certified mail, return receipt requested, to the owners of record of all properties adjoining the proposed mine, quarry or area of excavation. An affidavit subscribed before a notary public containing the following information: the names and addresses of all such property owners; a statement verifying that all such property owners' names and addresses are contained on the list; and a statement that all such property owners were properly served. Applicant shall simultaneously also submit the certified mail return receipts for all property owners served along with the affidavit.

- 3) The Town of Windsor Planning Board shall give public notice of said hearing in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing.
- 4) The cost of preparing, publishing, and mailing the required notices shall be borne by the applicant.
- 5) The Town Planning Board shall cancel the public hearing if the applicant fails to submit all the required information.
- 6) The Town Planning Board shall conduct the public hearing, affording all interested persons an opportunity to speak. At the conclusion of the public hearing, the Town Planning Board shall direct the applicant to submit any additional information it determines is necessary to a determination of the application, if any.

#### 311. Town of Windsor Planning Board Decision

The Town Planning Board shall formally act on said application no later than sixty-two (62) days after the public hearing.

In its decision the Town of Windsor Planning Board may approve, approve with conditions or disapprove the site plan and land mine reclamation special use permit.

The time period in which the Town of Windsor Planning Board must render its decision can be extended by mutual consent of the applicant and the Town of Windsor Planning Board.

- 1) Approval. Upon approval of the Land Mine Reclamation permit, and payment by the applicant of all fees and reimbursable costs due the Town, the Town of Windsor Planning Board shall endorse its approval on a copy of the approved plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
- 2) Approval with modifications. The Town of Windsor Planning Board may conditionally approve the final land mine reclamation special use permit as per the conditions cited in section 312 of this Local Law. A copy of written statement containing the conditions required by the approval will be mailed to the applicant by certified mail, return receipt requested. After adequate demonstration to the Town of Windsor Planning Board that all conditions have been met, and payment by the applicant of all fees and reimbursable costs due to the Town, the Town of Windsor Planning Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.

- 3) Disapproval. Upon disapproval of the site plan the decision of the Town of Windsor Planning Board shall immediately be filed with the Town Clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Town of Windsor Planning Board's reasons for disapproval.

### 312. Conditions of Approval

In the case of a mining Special Use Permit, conditions placed on such a mining Special Use Permit by the Town of Windsor Planning Board shall be limited to the following:

- 1) Ingress and egress to public thoroughfares controlled by the Town;
- 2) Routing of mineral transport vehicles on roads controlled by the Town;
- 3) Requirements and conditions as specified in the permit issued by the Department of Environmental Conservation under Article 23 of the Environmental Conservation Law concerning setback from property boundaries and public thoroughfare rights-of-way natural or manmade barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision three of section 23-2711 of the Environmental Conservation Law;
- 4) Enforcement of reclamation requirements contained in mined land reclamation permits issued by the State of New York. Notwithstanding the foregoing, to the extent authorized by law, the Town Planning Board may request the New York State DEC or any other lead agency, to impose reasonable conditions and restrictions which address some or all of the following issues and requirements provided that the same are directly related to and incidental to the proposed mining Special Use Permit and associated New York State Land Mine Reclamation Permit:
  - a. A requirement that the mining is to be designed, located and operated so as to protect the public health, safety and welfare.
  - b. A requirement that the mining will encourage and promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood.
  - c. A requirement that the mining will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood.
  - d. A requirement that effective landscaping and buffering is provided as may be required by the Town Planning Board.
  - e. A requirement that adequate off-street parking and loading are provided in accordance with the Zoning Local Law, and ingress and egress to parking

and loading areas are so designed as to minimize the number of curb cuts and not unduly interfere with traffic or abutting streets.

- f. A requirement that site development shall be such as to minimize erosion and shall not produce increased surface water runoff onto abutting properties and other properties between the mine and the nearest tributary to a river.
- g. A requirement that existing public streets and utilities servicing the mining area be determined to be adequate by the appropriate jurisdictional authority for the roadway.
- h. A requirement that significant existing trees and vegetation shall be preserved to the extent practicable.
- i. A requirement that adequate lighting of the site and parking areas is provided and that exterior lighting sources are designed and located so as to produce minimal glare on adjacent streets and properties.
- j. A requirement that the proposed mining be in harmony with the Zoning Local Law and not adversely affect the neighborhood if the conditions imposed by the Town Board are met.
- k. A requirement that noise from mining activities and related operations shall not be in excess of the requirements set forth in the Town of Windsor Noise Local Law.
- l. A requirement that fugitive dust and flying particles shall be confined to the mining site, and disturbed areas shall be kept to a minimum to reduce sources of dust.
- m. A requirement that impact vibrations and steady-state vibrations shall be limited or reduced so as to minimize their effect on adjoining properties.
- n. A requirement that radio-active materials, toxic gases or vapors shall not be emitted on or from the mining site.
- o. A requirement that no surface water drainage or ground water shall be polluted in any manner that renders it less usable (in quality or quantity for irrigation, swimming, drinking, visual attractiveness or whatever lawful uses are made of water resources to person downstream) than such waters' usefulness as it enters said person's property or area of operation.
- p. Installation by Applicant of a berm to reduce the noise level to the neighboring residents; specification of the height of the berm; seeding of the berm to prevent erosion and to improve the look of the berm; a fixed completion date for the berm; and the slope of the berm.

- q. Arrangement of stockpiles to help muffle the sound from crushing and screening operations; height limits for the piles.
- r. Location or relocation of the exit road to reduce traffic next to the residents across from the mine pit.
- s. A timetable for completion of restoration phases.
- t. Installation and maintenance of rubber belting on chutes and similar equipment used in mining operations to help reduce noise levels.
- u. Widening, oiling and stoning by the Applicant of any Town access roads, in consultation with the Town of Windsor Highway Superintendent.
- v. For additional soil and erosion control, requiring Applicant to:
  - a. Prevent runoff from leaving the Site.
  - b. Raise/Depress Entrance/Exit to prevent drainage from going onto road.
  - c. Maintain the Entrance/Exit with clean gravel and keep the same washed (dust and mud free) at all times.
- w. Requiring Applicant to install signage as requested by the Town of Windsor Highway Superintendent, and consult with the Town of Windsor Highway Superintendent regarding recommendations for warning/safety devices.
- x. Requiring Applicant to keep the roads dust and mud free by periodic washing and sweeping, as needed to control dust and flying particles.
- y. Requiring Applicant to provide a Truck Staging Area within the mine; and requiring that trucks awaiting the daily opening of the mine must be staged off public highways on Applicant's Site being used for the mining operation.
- z. Requiring that Applicant shall confine fugitive dust and flying particles to the Permit Area, and:
  - a. In the case of any houses within 500 feet of an active mine area, requiring that Applicant shall annually reimburse the owners thereof for the costs incurred by such owners for washing the outside of such houses once per (Such annual reimbursement for any one house shall not exceed the sum of \$250.00, and shall not be paid without prior notice to Applicant and proof of payment of the washing costs),
  - b. In the case of any houses within 500 feet of an active mine area, requiring that Applicant shall purchase for each house a home air purifier (at a cost not to exceed \$650.00 each) if requested by the homeowner thereof who furnishes a doctor's statement showing that there is a need

therefor and that the need was caused by dust from Applicant's mining operation, and

- c. Requiring that Applicant shall periodically spray water on stock piles/hoppers, as needed, to control dust and flying particles.

aa. To attenuate noise, requiring that Applicant shall:

- a. Lower equipment/raise piles.
- b. Annually review efforts to reduce noise levels in June for additional adjustments.
- c. Annually review noise effects in September, and
- d. Use Applicant's best efforts not to use any crusher or screen before 8 A.M. on Saturdays.

bb. Requiring that Applicant shall participate in an annual review (between the Town Board, Applicant and other Town officials) within 30 days after the report required by subsection K3 hereof has been filed, with special attention to noise, dust and dirt being confined to the mine area.

cc. Requiring that Applicant shall, to the extent practicable, not cut certain trees or vegetation on Applicant's property.

dd. Requiring that Applicant shall plant trees (a double row of seedlings on 8' centers, staggered) along certain roads by a certain date, provided, however, that the trees shall not be less than four feet in height if there are any residences in the immediate area. Applicant shall guarantee that all such seedlings (or trees, as the case may be) shall live for a period of at least one year, and in the event any such seedlings (or trees) shall die prior to the expiration of one year, applicant (at its expense) shall replace said seedlings (or trees).

ee. Requiring that no topsoil shall be removed from the Site, that overburden shall not be considered topsoil, and that all restoration shall include a minimum of 4 inches of topsoil.

ff. Requiring that for any persons owning residences within the 500 feet designated area, the Applicant shall protect the fair market value of any residences then located within 500 feet of an active mining area from loss of value caused by mining during the term of the Special Use Permit approval; defining the term "active mining area" as including any area used for mining, hauling, or processing, or any area on the site which is unreclaimed; designating those residences within the designated 500 feet area; providing that any such residence owner claiming loss of property value shall be responsible for demonstrating such loss by a professional appraisal, or any other methods which are mutually agreed upon by the residence owner and the Applicant; providing that such protection from loss of value caused by mining shall take the form of reimbursement to be made

by the Applicant to the affected residence owners in an amount equal to the difference between:

- a. The fair market value of the residence prior to the date the Town Board approves and grants the Special Use Permit, and
  - b. The fair market value of the residence as of the date of the professional appraisal thereof; and providing that any dispute regarding a loss of fair market value caused by mining shall be resolved by arbitration, in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.
- gg. Providing that the Town Highway Superintendent, Town Supervisor, or Town Building and Code Inspector shall have the authority to issue a written notice of violation where he or she determines that the mining Special Use Permit conditions are being violated; upon such written notice, the applicant shall have a reasonable amount of time, at least 2 weeks, to cure such violations; if the violations persist and are found to be significant, the Town Board shall have the authority to revoke the mining Special Use Permit for good cause; the Applicant shall have the right to a hearing prior to any such mining Special Use Permit enforcement action.
- hh. Providing that Applicant shall grant the Town Commissioner of Public Works, Town Supervisor, Town Building and Code Inspector, Town Engineer (or designated Town Consultant) and members of the Town Board a license to enter upon the Site with reasonable prior notice to Applicant to determine that these conditions are being fulfilled and complied with notwithstanding any signs or other notices purporting to limit access to the Site.
- ii. Specifying, in the case of vehicles going to or from the Site, the haul routes to be followed.
- jj. Specifying that Applicant shall refrain from doing any washing of minerals on the Site.
- kk. Requiring if the existing wells of certain neighboring property owners in the vicinity of the mine go dry, and if those neighboring property owners can prove that such condition was directly caused by any action taken on the Site by Applicant during the term of the mining Special Use Permit approval, Applicant shall reimburse those neighboring property owners (up to the sum of \$2,000.00 each) for the costs incurred by said neighboring property owners in drilling a new well on their properties; and providing that any dispute regarding the dry condition of the wells shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.

- ll. Requiring that Applicant shall comply with applicable fuel storage and permit requirements of DEC; Applicant shall provide and maintain on site an on-site secondary container large enough to contain the full volume of the fuel tank on site; and the fuel tank shall at all times be placed within said secondary container; Applicant shall maintain equipment and supplies on site to contain, remediate, and clean up potential spillage, and immediately use same to clean up any actual spillage; vehicle maintenance shall be conducted to minimize and prevent lubricant and fuel spills; all spills of chemicals, gasoline, motor oil, or hydraulic fluid in excess of one gallon at any one time must be reported within one hour to DEC and Town Supervisor.
- mm. Providing that not more than ten (10) acres (exclusive of the berms and the roadway) on the entire site shall be unreclaimed at any one given time.
- nn. Requiring that operations shall be conducted in such a manner as to prevent excessive dust and noise.
- oo. Requiring that operations shall generally be restricted to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 12 noon on Saturday, provided, however, that the Town Board may, at its discretion, modify these hours depending on prevailing conditions.
- pp. Requiring that the mine operator shall maintain private and public roads and driveways in a dust-free condition and provide such surfacing or other treatment as may be required by the Town Board at the time of approval of the mining Special Use Permit.
- qq. Requiring that open excavations extending below the level of an adjacent highway shall not be closer to the highway right-of-way than one hundred (100) feet. Operations shall be carried on no closer than twenty-five (25) feet from an adjacent property.
- rr. Requiring that finished slopes in any open mining pit shall not be steeper than allowed by the DEC, and that finished slopes shall be graded and each site shall be fertilized, mulched and seeded to establish a firm cover of grass or other vegetation sufficient to reduce erosion, and that stone walls of a quarry need not be reduced in slope or reseeded.
- ss. Requiring that all surface drainage shall be controlled through the use of dikes, barriers and drainage structures to prevent silt, erosion, debris or other loose materials from being deposited on any public or private highway or on other property; and that all provisions for control of drainage water shall be subject to periodic review by the Town Board.

- tt. Requiring that fencing shall be provided along property lines for whatever distance the Town Board shall determine to be necessary for protection of adjoining property and the public.
- uu. Requiring that screening may be required to reduce the visual impact of the project on the surrounding properties before mining commences and throughout the duration of the project.
- vv. Requiring and providing that whenever the Town Board determines that the excavation of materials is creating a nuisance, or the mining operator has violated the terms of the mining Special Use Permit or of this section, the Town Board may revoke the mining Special Use Permit therefor upon five (5) days written notice after hearing before the Town Board.
- ww. Requiring that no smoke from any source whatever shall be emitted, as measured at the individual property line, of a density greater than, or equal to the density described as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mine provided, however, that the emission of smoke shall not be permitted if it is unreasonably offensive in terms of odor or noxious gases despite its apparent lack of density when measured by the Ringelmann Chart.
- xx. Imposing and requiring such other reasonable conditions and restrictions as are directly related to and incidental to the proposed mining Special Use Permit.
- yy. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of New York State DEC.

### 313. Term of the Mining Special Use Permit.

The term of the mining Special Use Permit shall be coincident with the term of any mining permit issued to the applicant by the New York State Department of Environmental Conservation. Otherwise, the term shall be five (5) years.

### 314. Bond.

Each mining Special Use Permit shall include a requirement that the applicant submit a bond (if DEC does not require one), with such surety and in such amounts as the Town Board shall prescribe, in favor of said Town Board, conditioned upon the satisfactory reclamation of the mining site upon the completion of mining operations thereon.

### 315. Renewals.

The applicant shall, upon the expiration of each mining Special Use Permit period, obtain a renewal for a like term by filing an application therefor with the Town of

Windsor Planning Board on a form prescribed by the Town Board. In entertaining said renewal application, the Town of Windsor Planning Board shall consider, to the extent appropriate and applicable, the same factors considered for an initial application, together with the performance of the renewal applicant under previous permits. The Town of Windsor Planning Board shall require the applicant to pay a fee in the amount which will reimburse the Town for the expenses paid by the Town to the Town Engineer (or designated consultant) for reviewing the renewal application.

### 315. Inspections and Reports.

The Town Board, the Town Building and Code Inspector, and any engineer engaged pursuant to this subsection shall conduct such periodic inspections, on reasonable notice to the mine operator, as they shall deem necessary to ensure compliance with the terms of the mining Special Use Permit and this section. The Town Board may use the Town Building and Code Inspector to inspect each mining operation to determine on a systematic basis its compliance with the mining Special Use Permit and the provisions of this section and to report such determination to the Town Board. The Town Board may devise a schedule for the orderly and systematic inspection of each mining operation.

At least thirty (30) days prior to the anniversary of the granting of a mining Special Use Permit, each mining operator shall submit ten (10) copies of a report, certified by the applicant, showing graphically and by narrative the extent of the operations carried on over the previous year, including any variance from the Mining Plan. If the Town Board finds the report or applicant's compliance with the mining Special Use Permit to be defective or deficient in any way, it may consider its expenses of discovering or remedying any such defect in establishing the fee upon the next occurring renewal of the mining Special Use Permit.

### 316. Violations.

The Town Board and the Town Building and Code Inspector shall report, in writing, any violations of the mining Special Use Permit, any violation of this Local Law, or any apparent violations of applicable United States, New York State or local statutes, local laws, codes, rules or regulations to the Town Board and to the Town Attorney, who shall take whatever steps are available under this Local Law or any other law to remedy such violations. Nothing herein shall prevent the Town from pursuing and enforcing remedies and sanctions pursuant to law.

### 317. Waivers

The Town of Windsor Planning Board may waive any procedural requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which may be subject to appropriate conditions, may be exercised in the event any such procedural requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan. All requests for waiver shall be in writing and justification or hardship for such waiver shall be demonstrated as part of the request. The Town of

Windsor Planning Board shall record all reasons for approval of such waivers in the official record of review.

#### 314. Guarantee of Site Improvements

The Town of Windsor Planning Board may require a performance guarantee in the event of any project where the construction of site improvements will be phased. Such guarantee shall, in its particulars, comply with the requirements for financial guarantees as set forth for subdivisions in Section 277 of the New York State Law.

#### 315. Expansion or Enlargement of Approved Mines

Expansion or enlargement of a mine opened prior to adoption of this local law or a previously approved mine or excavation site beyond the area, size or scope set forth in said mining permit and site plan approval, shall require the owner or authorized operator thereof to apply for, and obtain, a new or revised mining Special Use Permit pursuant to this Local Law.

Applicants requesting an expansion or enlargement of an existing mine or excavation area shall comply with all standards of this local law as set forth in Section 3 Procedures.

### **4. DESIGN STANDARDS**

#### 400.General Standards and Considerations.

The Town of Windsor Planning Board's review of the site plan shall include, as appropriate, the following general considerations:

- 1) Location, arrangement, size, design and general site compatibility of buildings/structures, lighting and signs.
- 2) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- 3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- 4) Adequacy of storm water and drainage facilities.
- 5) Adequacy of water supply and sewage disposal facilities.
- 6) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation. The Town of Windsor Planning Board shall be

authorized to require such buffers wherever required to accomplish these purposes.

- 7) Adequacy of access for fire and emergency vehicles.
- 8) Adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

#### 401. Sight distance.

All street and driveway intersections shall be kept free of vegetation and other structures that would obstruct the vision of drivers between the heights of 3 ½ feet to 10 feet above the average grade of each street on the center line thereof. A minimum sight distance of 250 feet shall be available in both directions and more where determined necessary in the site plan review.

#### 402. Stormwater Management

All requirements of the State of New York for Storm Water Pollution Prevention Plans (SWPPP's) are incorporated herein by reference and shall apply in addition to any permit standards.

#### 403. Highway Access.

All access drives shall be subject to the requirement of obtaining a driveway permit from the Town of Windsor Highway Superintendent, the Broome County Department of Public Works or the New York State Department of Transportation, as the case may be, and approval of any permits here-under may be conditioned upon the application for and/or receipt of such permits from these authorities.

- 1) Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits.
- 2) No driveway center line shall intersect a street line less than 100 feet from the intersection of any two street lines, including intersections on the opposite side of the street.
- 3) The maximum grade for new driveways shall not exceed 15%. All driveways shall have a negative 2% grade within 50 feet of the center line of the street, or within 25 feet of the property line of the street, whichever distance is greater.
- 4) The Planning Board, at its discretion, may require a traffic impact study by an independent engineer with any Site Plan review application hereunder involving an activity likely to generate more than five-hundred (500) trip-ends per day or create specific traffic issues. The study shall examine

existing and projected traffic flows before and after development and generally follow the guidelines set forth for such studies by the Institute of Transportation Engineers. Its purpose shall be to ensure that proposed developments do not adversely affect the transportation network and to identify any traffic problems associated with access to the site from the network. It shall identify solutions to potential problems and any improvements needed. The scope of the study shall be approved in advance by the Planning Board. This requirement shall apply in the case of County or State, as well as Town roads.

#### 404. Special Flood Hazard Areas

Construction in those areas designated on the Federal Emergency Management Agency's Flood Insurance Rate Map as areas of special flood hazard, as defined by the one hundred (100) year floodplain boundary, shall be avoided or minimized. Disturbed areas shall be properly stabilized to prevent future damage from storms, heavy runoff and flooding. Any development within Flood Hazard Areas shall be subject to the standards outlined in the Town's Floodplain Prevention Law.

#### 405. Watercourses

No alteration of watercourses, whether by excavation, filling, grading, cleaning, draining, or otherwise, shall be made that affects the water levels or flow of such watercourses without review as to the affect of such alteration and any related facilities on water recharge areas, water table levels, water pollution, aquatic animal and plant life, temperature change, drainage, flooding, runoff and erosion. This review and approval of such alteration shall be made by the Planning Board in consultation with Delaware County and the DEC. Where the applicant must obtain a stream disturbance or discharge permit from the DEC, Planning Board approval shall be conditional on the DEC's permit approval.

### **5. BOARD OF APPEALS**

#### 500. Establishment

Pursuant to the provisions of the Town Law, a Board of Appeals is hereby established in the Town of Windsor. The Town Board hereby appoints the Town of Windsor Zoning Board of Appeals as the appellate board for grievances, variances and interpretations of the provisions of this Local Law.

#### 501. Types of Variances

Area variances involve relief from dimensional or other requirements under the terms of this Law. Each of the following findings of fact shall be made in writing by resolution by the Board of Appeals prior to granting such variances. The Board of Appeals shall

have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein. In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- 3) whether the requested area variance is substantial;
- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
- 5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- 6) whether the applicant possesses adjoining property.

The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

## **6. NON-CONFORMING USES (GRANDFATHER CLAUSE)**

### **601. Applicability**

This law does not apply to land uses or structures which are lawfully in existence as of the date this Local Law becomes effective. Any use which would otherwise be subject to this law that has been discontinued for a period of one (1) year or more shall be subject to review pursuant to the terms of this law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been substantially commenced as of the effective date of this local law and fully constructed and completed within one year from the effective date of this local law.

### **602. Non-conforming Structures**

A non-conforming structure is any building which does not conform to the dimensional and bulk requirements of this Local Law with respect to lot area, width, or depth; front, side or rear yards; maximum height; etc. Nonconforming structures

may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that such action does not increase the degree of or create any new nonconformity with respect to the bulk requirements of this Law.

## **7. ENFORCEMENT**

No permit or certificate of occupancy shall be issued by the Building Inspector, except upon the authorization by and in conformity with an approved site plan where required. The Town Board may alternatively appoint some other enforcement officer to conduct inspections and any other enforcement activities required by this local law. Such officer shall be responsible for the overall inspection of site improvements including coordination with the Town of Windsor Planning Board, Town Board and other officials and agencies, as appropriate.

Any person, firm, or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this local law shall, upon conviction, be deemed guilty of a violation, punishable by a fine of not more than \$350.00. Each day an offense is continued shall be deemed a separate violation of this local law. In addition to the penalties provided above, the Building Inspector, or Town Board, may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this Local Law.