

MEMO

From: Mikey O'Connor (mike@haven2.com)  
To: Buffalo County Board Zoning Committee  
RE: Board of Adjustments Decision-Making Process  
Date: February 6<sup>th</sup>, 2012

---

I am not a lawyer and this should not be considered legal advice. But I am concerned that the current process to grant permits for frac sand mines does not go far enough to address two important sections (sections 212-5 and 212-7) of the ordinance under which those decisions are being made.

Section 212 of the ordinance states:

**Standards Applicable to all Conditional Uses**

In passing upon a Special Use Permit application, the Board of Adjustment shall consider the following factors:

1. The location, nature, and size of the proposed use.
2. The size of the site in relation to it.
3. The location of the site with respect to existing or future roads giving access to it.
4. Its compatibility with existing uses on land adjacent thereto.
5. **Its harmony with the future development of the district**
6. Existing topography, drainage, soils types and vegetable cover.
7. **Its relationship to the public interest, the purpose and intent of this ordinance and substantial justice to all parties concerned.**

Unlike the typical decisions handled by the Board of Adjustments, industrial frac sand mines have regional impacts far beyond those of the neighbors immediately adjacent to the property. Indeed, during the public hearing on February 2<sup>nd</sup>, 2012 one of the members of the Board of Adjustments commented something to the effect of, "we're reviewing a mine, why are we talking about roads?"

I respectfully submit that the decision making process needs to be improved so that:

- **There is proper due diligence done prior to granting mine permits, and**
- **That the needs of the majority of County residents and landowners are served rather than a minority as now appears to be the case.**

I have a number of suggestions that I think the County Board ought to consider when looking at improving the decision-making process of the Board of Adjustments.

- **Wait for other relevant permits to be granted and plans to be approved before approving Conditional Use Permits.** Examples of these include:
  - Air permits
  - Stormwater Permits
  - High capacity well permits
  - Reclamation plans
- **Require that the County Attorney review applications and proposed final CUP language prior to approval.**
- **Require the applicant to provide sufficient documentation to allow adequate due diligence review by the Zoning Administrator and Board of Adjustments prior to approval** (see separate memo this date for detailed suggestions regarding the type and nature of that documentation)
- **Provide adequate guidance, training, professional services and legal advice to Board of Adjustments members as to the proper conduct of their duties.**
- **Do not make final decisions on CUP if any of the terms and conditions have changed – repost for a public hearing in one month to allow the community time to understand and comment on the implications of those changes.**
- **Allow time to negotiate an agreement between the County and the applicant that balances the needs of the applicants (a minority) with the needs of the rest of the County (the majority)**
- **If the County Board decides to add a Board member to the Board of Adjustments, make sure that the member who is selected is broadly perceived to represent the interests of the whole county rather than the region in which frac sand development is taking place.**