

MEMO

From: Mikey O'Connor
To: Buffalo County Zoning Committee
RE: Documentation to support appropriate due diligence
Date: February 6th, 2012

I am not a lawyer and this should not be taken as legal advice. But I am concerned that the current process to grant permits for frac sand mines does not achieve an appropriate level of due diligence to assure that the County is properly protected from legal and financial risk arising from conditional use permits it may issue to frac sand mining operators.

A number of issues were submitted to the Board of Adjustments by interested parties, both verbally and in writing, which appear to have been ignored in the process that culminated in the granting of the mining permit for the Kendall Klevgard mine on February 2nd, 2012.

To avoid this problem in the future, I request that;

- Applicants be required to submit the following documentation as a part of their application for frac sand mine conditional use permits
 - That updated versions of these documents be made a part of the information made available to the public prior to any public hearings regarding the application and that
 - These documents be incorporated into any permit issued to, or agreement made with, the applicant
- 1) Provide documentation of an **environmental impact statement** addressing both the mine site and proposed haul routes
 - a. By a licensed professional, that
 - b. Confirms that this application will comply with all relevant federal, state and local laws regarding threatened or endangered species, and
 - c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those species
 - 2) Provide documentation of an **assessment of cultural, scenic, habitat, archeological and historic resources** both at the mine site and along proposed haul routes
 - a. By a licensed professional, that

- b. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
 - c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources
- 3) Provide documentation of an **assessment of groundwater, wetland, floodplain or surface water resources** both at the mine site and along proposed haul routes
 - a. By a licensed professional, that
 - b. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
 - c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources
- 4) Provide documentation of an **assessment of public health concerns including toxic waste, impact on potable wells and air quality** both at the mine site and along proposed haul routes
 - a. By a licensed professional, that
 - b. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
 - c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources
- 5) Provide documentation of an **assessment of public safety concerns** both at the mine site and along proposed haul routes
 - a. By a licensed professional engineer, that
 - b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
 - c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature
- 6) Provide documentation demonstrating that this application **will not generate any local negative tax, fiscal and economic, municipal, and resident concerns, including financial assurances to allow proper and timely closure and reclamation.**
 - a. By a financial professional with documented competence in the analysis of municipal and county finances, that
 - b. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature
- 7) Provide documentation of an **assessment of potential public nuisance concerns including dust, noise, traffic congestion, odor, blasting, drilling, light pollution and erosion** both at the mine site and along proposed haul routes
 - a. By a licensed professional mining engineer, that
 - b. Confirms that this application will comply with all relevant federal, state

- and local laws regarding those issues, and that
- c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature

8) Provide documentation of a **plan that addresses closure or reclamation concerns**

- a. By a licensed professional mining engineer, that
- b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
- c. Demonstrates that the plan will minimize issues of this type

9) Provide documentation of an **assessment of work place and local resident safety, health and financial concerns** both at the mine site and along proposed haul routes

- a. By a licensed professional engineer, that
- b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
- c. Demonstrates that the plan will minimize issues of this type

10) Provide documentation of a **transportation study** both at the mine site and along proposed haul routes

- a. By a licensed professional engineer, that
- b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
- c. Confirms that all expected routes have adequate design complying with the most current design standards related to both safety and wear, and
- d. Demonstrates that the least disruptive routes are utilized to minimize impact on residential uses

11) Provide documentation of a **financial assessment** of the applicant

- a. By a certified public accountant, that
- b. Confirms that this applicant has the business wherewithal and the financial resources to undertake a project of this type,
- c. Demonstrates that the applicant is planning appropriate measures to maintain a viable business throughout the life of the project, and that
- d. Demonstrates that the applicant will be able to fulfill any financial requirements that may arise after the project is completed