



TOWN OF AMENIA

ZONING BOARD OF APPEALS DEPARTMENT
4988 Route 22, AMENIA, NY 12501
TEL: 845-373-8860 x 122 FAX: 845-789-1132

RECEIVED

APR 29 2025

Amenia Town Clerk

RESOLUTION

TOWN OF AMENIA ZONING BOARD OF APPEALS

Resolution # 2 for 2025

RESOLUTION AUTHORIZING SETTLEMENT OF STATE COURT AND FEDERAL COURT PROCEEDINGS COMMENCED BY KENT HOLLOW INC.

April 28, 2025

WHEREAS, there is now pending in the Dutchess County Supreme Court (the “State Court”), a special proceeding and declaratory judgment action entitled “Kent Hollow Inc. v. CEO Segleken and the Town of Amenia Zoning Board of Appeals (“ZBA”), Index No. 2019-52815 (“the State Court Action”); and

WHEREAS, there is also now pending in the Southern District of New York an action entitled “Kent Hollow Inc. v. the Town of Amenia, CEO Segelken, the Town of Amenia ZBA et al., Civil Action No. 7:21-cv-02638-CS (“the Federal Action”); and

WHEREAS, those actions arise out of a Notice of Violation issued by the Town’s Code Enforcement Office, dated May 1, 2017, based on Kent Hollow’s February 10, 2017 application to DEC seeking a soil mining permit to undertake soil mining activities on property that was not located in the Town’s Soil Mining Overlay zoning district, and therefore proposing to conduct those activities in a zoning district where they were not a permitted use; and

WHEREAS, Kent Hollow appealed that Notice directly to the ZBA; and

WHEREAS, following extensive review of that application and supporting materials, the ZBA held a public hearing on the appeal, closed that hearing, and, after further appearances before the ZBA, ultimately denied Kent Hollow’s appeal, finding that Kent Hollow had failed to meet its burden of proof to demonstrate that it had established and maintained a non-conforming mining use on its property that would allow the mining activities proposed in its application to the DEC for a mining permit that would allow up to 55,000 yards of material a year to be removed during the 25 year duration of Kent Hollow’s contemplated soil mining operation; and

WHEREAS, Kent Hollow brought an Article 78 proceeding in Supreme Court to challenge that determination; and

WHEREAS, at the urging of the State Court, the parties, including the ZBA by its Chairman, undertook extensive settlement discussions, which were facilitated by the Court, to resolve the dispute; and

WHEREAS, the parties engaged in extensive negotiations that resulted in Kent Hollow agreeing to substantial concessions, including reducing the maximum amount of materials that could be taken in a calendar year for commercial sale and for Kent Hollow's use to 24,000 yards, placing restrictions on the days of the week and hours of when the proposed mine would be open for commercial sales, closing the mine to the sale of material when the annual limit of 15,000 yards was reached, agreeing not to conduct soil mining activities on holidays or weekends, and a number of other measures that would avoid, minimize or mitigate the impact of those activities on surrounding property owners; and

WHEREAS, during that time, Kent Hollow brought an action in Federal Court, to preserve its claim to constitutional violations: specifically, Kent Hollow asserted a claim for damages in excess of \$7,000,000 against the Town of Amenia, the ZBA, the Town's Code Enforcement Officer, and against various individuals it asserted had conflicts of interest; and

WHEREAS, the claim for \$7,000,000 in damages resulted in the Town's insurance provider appointing Special Counsel to represent the Town defendants, including the ZBA, in the Federal Court action; and

WHEREAS, although the settlement discussions in State Court were constructive, they ultimately were not successful, and the parties advised Supreme Court that it did not appear they would be able to settle; and

WHEREAS, Supreme Court thereafter issued a decision on March 6, 2024, finding that a member of the ZBA had participated in the proceeding despite having a conflict of interest, and consequently the Court annulled the 2019 ZBA determination and directed that the ZBA hear any new appeal by Kent Hollow on a de novo record; and

WHEREAS, as a result of the State Court's decision, the Federal Court restored the action to its calendar, ordered the parties to attend a hearing on May 26, 2024 with their counsel, and directed the parties and counsel to meet before that hearing and attempt to resolve the dispute; and

WHEREAS, at the hearing, Judge Seibel urged the Town to renew its effort to settle the dispute, emphasizing the cost that the Town would incur in preparing for and conducting a trial if the action needed to be resolved by trial, as well as the Town's exposure to the possibility of substantial damages if Kent Hollow was able to prove its claims; and

WHEREAS, the parties renewed their settlement discussions with the assistance and guidance of the Federal and State Courts, and eventually proposed a stipulation to the State Court whereby the State Court would review the evidence that Kent Hollow put before the ZBA, including a number of determinations made by Town officials in connection with previous DEC soil mining permit applications between 1975 and 1989 that stated there was a non-conforming use on the property, and determine whether Kent Hollow had sufficiently

established its claim to a non-conforming use of the nature and scope presented in its 2017 DEC application to conduct soil mining operation on 33 acres of its property; and

WHEREAS, the State Court has agreed to do so, and will So Order that Stipulation of Settlement, which is annexed hereto and made part of this Resolution; and

WHEREAS, by entering into the Stipulation, the Zoning Board of Appeals acknowledges and accepts the aforesaid determinations of the Court; and

WHEREAS, the Zoning Board of Appeals acknowledges that settlement of the State Court and Federal Court actions is in the best interest of the Town; and

WHEREAS, the Zoning Board of Appeals has been advised by counsel that as the appeal to the ZBA that gave rise to the litigation that this stipulation of settlement resolves was a Type II action, and this stipulation of settlement is being So Ordered by a court of competent jurisdiction, this stipulation is properly considered a Type II action requiring no further SEQRA review; and

WHEREAS, notwithstanding that conclusion, the Zoning Board of Appeals has considered that entering into the Stipulation of Settlement does not allow or authorize any action that would have an environmental impact; it only allows Kent Hollow to pursue an application to DEC for a new mining permit, and that DEC had previously conducted a full environmental review of a prior application that incorporated mitigation measures that allowed DEC to issue a negative declaration on November 10, 2016; and

WHEREAS, the Board observes that any such future application would be subject to the operational restrictions identified in the Stipulation, whereby Kent Hollow will: restrict its proposed soil mining operations to the thirty-three acres of its property that was proposed in its 2017 DEC permit application; limit the annual amount of materials that will be sold to no more than 15,000 yards in a calendar year; restrict the days and hours that the sale of materials would take place; and limit the amount of material it may take in any month from the property for its own use to 750 yards, with no soil mining activities of any kind on weekends, holidays or after sunset, and has further agreed that any DEC permit shall be subject to the aforesaid restrictions which would further avoid, minimize or mitigate environmental impacts on surrounding properties, and

WHEREAS, Kent Hollow has represented its willingness to work constructively with the Town to resolve any unanticipated concerns that might arise during the permitting process; and

WHEREAS, the Board considered that both the Town Attorney and Special Counsel reviewed and recommended the proposed terms of settlement set forth in the Stipulation; and

WHEREAS, Kent Hollow has agreed by the terms of settlement to discontinue both the State Court and the Federal Court actions against the Zoning Board of Appeals and the other Town respondents-defendants; and

WHEREAS, the members of the Board have reviewed the Stipulation of Settlement and finds that its terms are acceptable, and concurs with the finding of the Town Board that the Stipulation is just, reasonable and to the interest of the Town;

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. The recitals set forth above are incorporated in this Resolution as if fully set forth and adopted herein.
2. The Zoning Board of Appeals hereby finds and determines that the action before it is a Type II SEQRA action, and no further SEQRA compliance is required.
3. The Zoning Board of Appeals hereby approves the Stipulation of Settlement of the aforesaid State Court and Federal Court actions, which Stipulation is annexed hereto.
4. The Chairman of the Zoning Board of Appeals and Special Counsel to the ZBA are hereby authorized to take all actions that are necessary and appropriate to effectuate the terms of this Resolution, including executing and filing the Stipulation of Settlement and any documents required to discontinue the State Court or Federal Court actions on behalf of the ZBA.

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be promptly signed and filed in the office of the Town of Amenia Town Clerk. Filing of this Resolution in the Town Clerk's office commences the time set forth in Town Law 267-c within which an aggrieved party may commence a proceeding to challenge a decision of the Zoning Board of Appeals.

Motion by George Bistransin Second by Paula Pelosi

The motion being called after discussion, the foregoing resolution was voted upon, with all members of the Zoning Board of Appeals present voting as follows:

	Yes	No	Abstain/Absent	Signature
Chairman Metcalfe	✓			<i>John L. Metcalfe</i>
Member Bistransin [alternate]	✓			<i>George Bistransin</i>
Member Menegat			ABSTAIN	
Member Mieli	✓			<i>Gray Mieli</i>
Member Pelosi	✓			<i>Paula Pelosi</i>
Member Wright			ABSTAIN	

The resolution, being approved by a majority of the ZBA Members at a duly noticed meeting of the Board of Zoning Appeals, was declared adopted on April 29, 2025.

Judith Westfall
Judith Westfall, Secretary
Zoning Board of Appeals

RECEIVED

APR 29 2025

Filed in the Office of the Town Clerk of the Town of Amenia on April __, 2025

Amenia Town Clerk