

WATSON TOWNSHIP, ALLEGAN COUNTY, MICHIGAN

AMENDMENTS TO THE WATSON TOWNSHIP ZONING ORDINANCE

Ordinance Number: **04012021**

Adopted Date: **April 1, 2021**

Effective Date (8 days following publication): **April 16, 2021**

AN ORDINANCE TO AMEND CHAPTER 17 OF THE WATSON TOWNSHIP ZONING ORDINANCE IN ITS ENTIRETY FOR THE PURPOSE OF ALIGNING WITH STATE OF MICHIGAN REGULATIONS.

WATSON TOWNSHIP, ALLEGAN COUNTY, MICHIGAN, ORDAINS:

At a regular meeting of the Township Board for the Township of Watson, Allegan County, Michigan, held on April 1, 2021, the following amendments to the Watson Township Zoning Ordinance were offered for adoption by Township Trustee Wood and seconded by Township Clerk Morris.

Yeas: 5

Nays: 0

Motion Passed Unanimously.

ARTICLE 1: Amend Chapter 17 of the Watson Township Zoning Ordinance to read as follows:

CHAPTER 17

EARTH REMOVAL, QUARRYING, MINING AND RELATED

MINERAL EXTRACTION ACTIVITIES

SECTION 17.01. INTENT AND PURPOSE, EXCEPTIONS, MAJOR AND MINOR OPERATIONS

- A. Intent and Purpose. The purpose and intent of this Article is to protect the public health, safety and general welfare of Township residents and property owners while allowing the extraction of valuable natural resources within the boundaries of Watson Township in a manner consistent with the Michigan Zoning Enabling Act and all other applicable laws,

rules and regulations. The Township acknowledges the overconcentration of mining operations may negatively impact the general health, safety and welfare. Per applicable laws and the provisions of this Article, applications for mineral extraction in any lands within the Township regardless of zoning district shall be considered according to the provisions herein.

B. Exempt Operations- Governmental, Site Development and Farm Excavations Not Involving Off Site Removal of Material. These provisions do not apply to the following excavation and grading operations:

(1) Excavation approved by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or operated utilities, drainage facilities, roads, or other publicly owned or operated improvements, where the excavation is limited to the site of the public utility or improvement.

(2) Excavation which by its nature is of limited scope and duration and which is undertaken primarily for the immediate use and development of the land excavated, such as for the purposes of building construction, septic tanks, swimming pools, graves, etc.

(3) Excavation in conjunction with farming operations conducted in accordance with generally accepted agricultural, practices, including grading and reshaping in preparation of cultivation agricultural drainage work incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.

C. Minor Operations Requiring Site Review - Operations involving removal of material from the property. At a minimum, all operations that involve the removal of soil or mined material off the property from which it originates via a public roadway or a private street serving more than one private interest must undergo site plan review and approval under

Chapter 14 and receive a permit under the provisions of this Chapter. Subsequent to such application and preliminary review, the Planning Commission, may in its discretion determine that the request is minor. If such determination is made, the Planning Commission may waive one or more of the site plan content requirements of Chapter 14, as well as one or more of the standards and requirements itemized under Sections 17.02, 17.03, 17.06, 17.07 and 17.08 of this Chapter. An operation entailing off site removal of material may be classified as a minor mining operation if it meets at least two the following conditions and a written commitment to reclamation requirements of Section 17.05b is provided.

(1) The operation is not commercial in nature (the sale or delivery of material is restricted to a limited number of nearby individuals or sites) and does not involve on-site processing such as crushing, washing or grinding.

(2) The area of the removal operation or volume of material removed is limited to a maximum of one (1) acre in size or 15,000 cubic yards, whichever represents the lesser amount of material.

(3) The duration of operation is limited to a continuous twelve (12) month period.

D. Major Mining Operations Requiring Special Use Permit Review and Approval. Any operation that is determined to initially exceed or subsequent to approval as a minor operation, or is found to exceed the above limits, is required to undergo special use permit authorization under this Chapter and Chapter 15 both and shall satisfy the requirements of both chapters.

SECTION 17.02 LOCATION:

- (a) All such operations shall be located on a primary road, as defined by the County, for ingress and egress thereto, or on a road which does not create traffic through an area developed primarily for residential purposes. Where necessary, said Commission may require the applicant to construct and/or improve a road to accommodate the truck travel necessitated by the operations as a condition to such operations, and for the purpose of routing traffic around residential areas and preventing the breaking up of existing roads which are not "all weather" roads.
- (b) Sufficient setbacks shall be provided from all property lines and public highways to assure adequate lateral support for adjacent public and private property. No such excavation operation shall be permitted closer than one hundred fifty (150) feet to interior boundary lines of the property.
- (c) No such excavation operation shall be permitted within fifty (50) feet of an adjoining public right-of-way except for the lowering of land adjoining said rights-of-way to the gravel level of said rights-of-way. Such excavation businesses shall at no time be permitted where adequate lateral support for the maintenance of adjoining lands is not maintained.
- (d) A processing plant and its accessory structures shall not be located closer than two hundred fifty (250) feet from the interior property lines and adjoining public rights-of-way and shall, where practicable, be located at a lower level than the surrounding terrain to lessen visual and noise impact. In addition, the foregoing shall apply to the digging or excavating apparatus and to the stockpiling or loading of materials and to the location of transportation equipment.
- (e) No such excavation operation shall be located within one hundred (100) feet of the banks of any stream or waterway unless previously approved, in writing, by the Michigan Water Resources Commission, or such other state commission having jurisdiction thereof. No such

mining operations shall interfere with the natural established flow of surface waters to the detriment or damage of adjoining public or private properties.

- (f) No berming, storage heaps, access roads, operations or associated activities including a batch plant shall be located within one hundred (100) feet of a regulated wetland.

SECTION 17.03 SIGHT BARRIERS. Sight barriers shall be provided along all boundaries of the site which lack natural screening conditions through existing contours or evergreen growth.

Such barriers shall consist of one or more of the following:

- (a) Earth berms constructed to a height of not less than twelve (12) feet above the mean elevation of the centerline of the adjacent public highway or twelve (12) feet above the general level of terrain along interior property lines. Such berms shall be designed to provide effective screening.
- (b) Plantings of evergreen trees or shrubbery in rows parallel to the boundaries of the property, not less than six (6) feet in height at the time of planting and which grow to not less than eight (8) feet in height within four (4) years and sufficiently spaced to provide effective sight barriers when planted .
- (c) Masonry walls or attractive solid fences made of uniform new materials, constructed to a height of not less than six (6) feet and maintained in good repair.
- (d) Planning Commission may require additional screening subject to topography and site lines.

SECTION 17.04 NUISANCE ABATEMENT:

- (a) Noise and vibration shall be minimized in their effect upon adjacent properties by the utilization of modern equipment designed to accomplish such minimization and by the proper

use of berms, walls, and natural planting screens. All equipment shall be maintained and operated in such a manner to eliminate, as far as practicable, excessive noise and vibrations and shall not exceed PNEL (Permissible Noise Exposure Limit) as set by MIOSHA.

- (b) Air pollution in the form of dust and dirt shall also be kept to a minimum using modern equipment and methods of operation designed to avoid any excessive dust or dirt or other air pollution injurious or substantially annoying to adjoining property owners. Interior and adjoining roads used in the operations shall have their surface treated to minimize any such nuisance.
- (c) Hours. The operation shall be carried on exclusively between the hours of 8:00 AM and 5:00 PM Monday through Friday.

No activities on the property shall occur on Sundays, Thanksgiving Day, Christmas Day, New Year's Day, and the days celebrating the Fourth of July, Memorial Day, and Labor Day with the exception of emergency repair activity required to permit the commencement of operations on the following morning, however, this exception shall not apply in the event that such activities shall involve the operation of vehicles and equipment earlier than 8:00 AM or later than 5:00 PM.

- (d) Fencing. All dangerous excavations, pits, pond areas, banks or slopes shall be fenced and posted with signs around the perimeter thereof and maintained to prevent injury to children or others and shall be eliminated as expeditiously as possible.

SECTION 17.05 RECLAMATION OF MINED AREAS:

- (a) Reclamation and rehabilitation of mined areas shall be accomplished as soon as practicable following the mining or excavation of an area. Rehabilitation and reclamation shall be

commenced immediately upon the termination of the mining or excavation operations in any area effected. Completion of reclamation and rehabilitation shall be accomplished within one year after termination of mining or excavation activity. Inactivity for one 12-month consecutive period shall constitute justification for the Planning Commission to evaluate the operation for the purpose of determining whether the operator has terminated mining activity.

- (b) The following standards shall control reclamation and rehabilitation
 - (1) Reclamation shall occur on an ongoing basis as mining is completed in certain areas of the site.
 - (2) All excavation shall be either to a water-producing depth of not less than five (5) feet below the average summer level of water in the excavation, or shall be graded or back-filled with non-noxious, non-flammable and non-combustible solids to insure:
 - a) that the excavated area shall not collect stagnant water and not permit the same to remain therein; or
 - b) that the surface of such area which is not permanently submerged is graded or back filled as necessary to produce a gently rolling surface that will minimize wind and water erosion, and which will be generally compatible with the adjoining land area.
 - (3) The banks of all excavation shall be sloped to the waterline in a water-producing excavation, and to the pit floor in a dry operation at a slope which shall not be steeper than one (1) foot vertical to three (3) feet horizontal.
 - (4) Topsoil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, except where streets, beaches, or other planned improvements are to be completed within a one-year period. Where used, topsoil shall be applied to a minimum depth of six (6) inches sufficient to support vegetation.

- (5) Vegetation shall be restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and to minimize erosion.
- (6) Upon cessation of mining operations by abandonment or otherwise as determined by the Planning Commission, the operating company, within a reasonable period of time not to exceed 12 months thereafter, shall remove all plant structures, foundations, buildings, stockpiles and equipment, provided that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which they will be located under such plan may be retained.
- (c) A performance guarantee shall be required to be furnished to the Township Clerk in an amount as determined by the Planning Commission. Said guarantee shall be used to guarantee rehabilitation and reclamation of mining the operation. The Planning Commission shall base its decision on whether to require the posting of surety and the amount of surety to be posted, on the size and extent of the mining operation. Any financing guarantee shall be reviewed annually at time of annual review for special use permit for adjustment and compliance with the foregoing requirements by the zoning inspector of the Township and the Township Planning Commission. The surety shall be in the form of an irrevocable letter of credit or a performance bond.

SECTION 17.06 SUBMISSION OF OPERATIONAL AND RECLAMATION PLANS. No earth removal, quarrying, gravel processing, mining and related mineral extraction businesses shall be allowed or commenced until a plan has been submitted to and approved by the Planning Commission showing compliance with all of the provisions of this Ordinance or the manner in

which compliance will be secured by the applicant. Such plans shall include, among other things, the following:

- (a) A contour map with topography lines at intervals of five (5) feet of the tract of land involved in the operations, including dimensions of the same, access thereto abutting public streets, and whether or not the same are "all weather" roads, additional roads, if any, to be constructed, and the location and nature of abutting improvements on adjoining property.
- (b) The number of acres and the location of the same proposed to be operated upon within the following 12-months' period after commencement of operations.
- (c) The type of mining or processing proposed to be conducted and the nature of the equipment to be used.
- (d) The location of the principal processing plant and the distance of any proposed excavation or mining from the boundaries of the site.
- (e) A map or plan disclosing the final grades and elevations to be established following the completion of the mining operations, including the proposed uses then contemplated for the land, future lakes and roads and such other matters as may evidence the bona fide nature of the reclamation and rehabilitation plans and the fact that the land will not be devastated and rendered unusable by the proposed mining activities.

SECTION 17.07 HEARING:

- (a) After receiving an application for the grant of a special exception permit for an earth removal, quarrying, gravel processing, mining, and related mineral extraction business accompanied by the required plans and specifications and permit fees, the Planning Commission shall hold a

public hearing upon such application in the same manner preceded by the same notice as set forth in Section 24.04 of this Ordinance.

(b) Following such hearing, said Planning Commission shall approve, approve with conditions or deny the special use application and set forth its reasons for its decision. Such recommendation shall be based upon the criteria set forth within the Ordinance and shall be based, in addition, on a consideration of the following:

- (1) the character of the area in question and its peculiar suitability, if any, for particular uses
- (2) conservation of property values, as well as natural resources and the general and appropriate trend and character of development in the subject area
- (3) the protection and preservation of the general health, safety and welfare of the township
- (4) the scarcity or value of the minerals sought to be mined as compared with the effect upon the adjacent community of the proposed operations
- (5) in making any decision, the Planning Commission shall have the right and authority to impose such additional conditions and safeguards as it deems necessary for the protection of the health, safety and general welfare of the neighborhood and of the adjoining residents and property owners. It may also limit the length of time that the special exception permit is to be effective and may provide for a periodic review of the proposed operations to ascertain compliance with the conditions and limitations imposed upon the same. It shall be empowered to renew or extend a special exception permit where all standards and conditions are complied with and may revoke or refuse to renew the same where non-compliance exists. No revocation or failure to renew or extend a permit shall release the applicant from the duty of rehabilitation and reclamation of said mined or disturbed area. No permit shall be revoked or not renewed until the operator has been

given written notice of any violation forming the basis of such revocation or denial or renewal and not less than 30 days have elapsed to correct the said violation. All permits shall be reviewed by the Planning Commission annually.

- (c) Annual Review - Renewal and Revocation The Planning Commission shall review each permitted operation annually under the provisions of Section 17.09 to ascertain compliance with the all standards and conditions imposed. The Planning Commission shall renew the special use permit where all standards and conditions are complied with and may revoke or refuse to renew the same where non-compliance exists.
- (d) Review and Inspection Fees.
 - (1) The operator shall be required to pay renewal and inspection fees to cover the cost of inspections and the review efforts of staff and the Planning Commission as may be established by the Township Board.
 - (2) No permit shall be revoked or not renewed until the operator has been given written notice of a violation forming the basis of such revocation or denial of renewal and not less than 30 days have elapsed to correct said violation(s). Operator must respond in writing with an improvement plan within two (2) weeks from the date of the notice, and shall make all required corrections within thirty days of violation notice.
- (e) Obligation to Restore. Revocation of a permit or failure to obtain permit renewal or extension shall not release the applicant from the duty of restoration and reclamation of said mined or disturbed area.
- (f) Insurance. Liability Insurance shall be a pre-condition to commencement of operations, and maintenance in full force and effect of insurance shall be a pre-condition to the right to

continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times which any reclamation is left to be done, and during all times any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site, said insurance to contain a hold-harmless clause regarding liability of the Township during any reclamation phase.

SECTION 17.08 REVIEW PROCEDURE AND REQUIRED INFORMATION. Application for the issuance of a permit to operate a mining or soil removal operation under the standards of this Chapter shall be made under the provisions of Chapter 15 Special Land Uses. The site plan content requirements of Chapter 14, Section 14.03 as applicable shall be relied on as the minimum informational requirements for site plans submitted as part of such application. In addition to the content requirements of Section 14.02, the Planning Commission shall require the applicant to provide all or a portion of the following additional information and documentation for all major operations prior to reaching its decision. The burden of proof of facts which might establish a right to a Special Land Use Permit under the general standards and any specific standards contained herein shall be upon the applicant.

(a) Documentation of Need for the Resource Material.

The need for the material being excavated and/or processed shall be quantified and verified so that the Planning Commission can weigh the value of the material being made available against the potential negative impacts of the operation in the proposed location. The types of information may include:

- (1) Verification to the presence of valuable natural resources located on the relevant property.
- (2) Need for natural resources by the person or in the market served by the person.

(3) No serious consequences would result from the extraction, by mining, of natural resources.

(b) Existing and Projected Roadway Conditions and Traffic.

A written and graphic characterization of the expected haul routes and the proposed access to the site should be presented. This shall include:

- (1) An identification of expected primary and secondary routes that truck traffic will use when traveling to and from the site.
- (2) A characterization of the routes including:
 - a) Types of surface
 - b) Number of lanes and typical roadway width
 - c) Typical roadway speeds or speed limits
 - d) Known or potential trouble spots for heavy truck traffic including street intersections, hills, and curves.
 - e) Number and location of homes and other land uses along the routes including schools, day care operations, churches and businesses.
- (3) Existing traffic volumes along appropriate segments of the anticipated primary and secondary haul routes.
- (4) Projected traffic increases by type and route.
- (5) Characterization of projected truck traffic by size, type and weight of trucks and direction of travel, empty and full on average and extreme daily and average annual basis.
- (6) Expert analysis and testimony as to the adequacy of the routes in general for truck traffic.

- (7) Identification of documented or potential problems such as, inadequate clear vision, roadway width, steep grades, surface condition, maintenance or land use and traffic conflicts.
 - (8) Expert analysis and identification of potential solutions to identified or documented problems in the form of roadway improvement, extra maintenance, traffic control devices, use or speed limitations or combinations of the above.
- (c) Characterization of the proposed operation and site access in relation to the public street and street right of way
- (1) Indicate the proposed location of proposed access (driveway or driveways) and their width, type of surface and other design features such as surface, deceleration and acceleration tapers, culverts, etc.
 - (2) Indicate minimum sight distances.
 - (3) Accurately depict the roadway conditions and width within 500 feet of each access drive including right of way width, roadway elevation and roadway location within the right of way.
 - (4) A written statement from the County Road Commission officials as to whether the proposed access to the site will meet or exceed their standards and if extraction operations or other operations will be allowed to occur within the road right of way, if requested or proposed and under what types of limitations.
- (d) Any other information as deemed necessary and appropriate to its review of the Special Use Permit application including but not limited to hydrology, avian and environmental. Fees relative to the expert analysis studies will be taken from the escrow fund as established by the Watson

Township Fee Schedule.

Watson Township retains the right to verify any and all information submitted by hiring engineers or other professional experts specific to individual fields. All costs in verifying information will be taken from escrow fees submitted by applicant.

The above informational needs are in addition to the information required to address the evaluation of the proposal's on-site operational and reclamation components.

SECTION 17.09 ANNUAL REVIEW

Annual review of special use permits granted under this Chapter is mandatory. During its annual review, the Planning Commission shall review compliance of the operation with the operational conditions of the permit, the progress of the operation and any request by the applicant to commence operations within a subsequent phase.

- (a) Report. Prior to consideration of annual review, the Township Zoning Administrator or other designated Township Official shall inspect the land and submit to the Planning Commission and Operator a report on compliance of the operation during the prior period for which the permit is valid. Included in the report shall be the status and recommendations regarding the adequacy of any posted or deposited performance guarantees for rehabilitation and reclamation as may have been required under Section 17.05(c) and the status of the inspection and review fees and liability insurance that are required to be in place under Section 17.10.
- (b) Standards. During the Annual Review, the Planning Commission shall apply the standards and conditions of approval that are applicable under this Chapter, taking into consideration the report of the Zoning Administrator (or other designated Township Official), current land use considerations, the operation's history under the current permit and any

complaints, comments or other information that has been received concerning the operation.

- (c) **Planning Commission Decision.** If there has been compliance in all respects with the terms of this ordinance and the conditions of the special use permit as detailed in the public record, continuation of the special use permit allowing the operation shall be granted. If the applicant is found to be in non-compliance by the Planning Commission, the Zoning Administrator shall advise the applicant in writing of the specific items of non-compliance and allow for a period of not less than thirty (30) days to achieve compliance. If compliance is reached within thirty (30) days from the Zoning Administrator's written notice to Operator, the operation may continue until the next annual review subject to the conditions and requirements of the original special use permit. If compliance is not reached, the Planning Commission shall hold a public hearing to consider revocation of the special use permit subject to the requirements of Section 24.04.

SECTION 17.10 PROJECT EXTENSIONS

- A. **Extensions.** Approval of an extension shall be at the discretion of the Planning Commission. When considering an extension, the Planning Commission shall take into consideration such additional factors as the quantities of remaining material and the time frame of the requested extension. Requests for permit extensions beyond the time period originally granted may be requested under this Section.
- B. **Applications.** To avoid uninterrupted operations, applications for extensions shall be made to the Township Clerk no sooner than February 1 and no later than April 1 of the year in which the original project approval is set to expire. The application shall be made on a form provided by the Clerk and shall be accompanied by the current required fees for

application, inspection and review as established by the Township Board. Upon receipt of a complete and accurate application, the Clerk shall forward copies of same to the Planning Commission, Township Building Inspector and the Township Planner.

1. Unless specifically waived by the Planning Commission prior to the required period of application, the application must be accompanied by current “as built” site plans and site photographs detailing:

- a. Site entrances and the locations and spot elevations of required berming and of areas already excavated and reclaimed,
- b. Well log information (if required as a condition of initial approval or a prior renewal)
- c. The location and extent of where excavation will occur during the upcoming season, and
- d. The locations of existing and proposed processing areas and equipment.
- e. The estimated volume of material to be removed in the coming year.
- f. The status and locations of reclamation and restoration activities.

C. Standards. In determining whether to approve an extension, the Planning Commission shall apply the standards and conditions of approval that are applicable under this Chapter, taking into consideration the report of the Zoning Administrator (or other designated Township Official), current land use considerations, the operation’s history under the current permit and any complaints, comments or other information that has been received concerning the operation. Approval of an extension shall be at the discretion of the Planning Commission and shall take into consideration such additional factors as the quantities of remaining material and the time frame of the requested extension.

D. Public Hearing. The consideration of any extension shall take place after application has been made in accordance with this section, proper notice has been made and a public hearing held in accordance with Section 24.04. After such Public Hearing, the Planning Commission may decide to approve, modify or deny the application for extension based on the standards in herein.

ARTICLE II. SEVERABILITY:

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain valid and in effect.

ARTICLE III. REPEAL AND EFFECTIVE DATE:

This Ordinance is ordered to take effect the eighth day following publication of notice of its adoption in accordance with the Michigan Public Act 110 of 2006 as amended. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Kelli Morris, Watson Township Clerk

DATE: 4/1/2021

Publication date: 4/8/2021

Effective date: 4/16/2021