

TOWNSHIP OF MAYFIELD

ZONING ORDINANCE AMENDMENT

EXCAVATING, MINING, AND FILLING

ORDINANCE AMENDMENT NO. 131

An ordinance to amend the Mayfield Township Zoning Ordinance No. 100, to regulate the excavation, mining or removal of sand, gravel and other earth materials.

THE TOWNSHIP OF MAYFIELD ORDAINS:

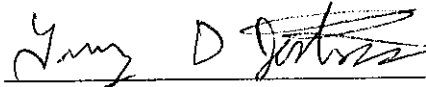
The Mayfield Township Zoning Ordinance is hereby amended to add the following subsection:

SECTION 1522.3 SOIL REMOVAL; EXCAVATION; FILLING.

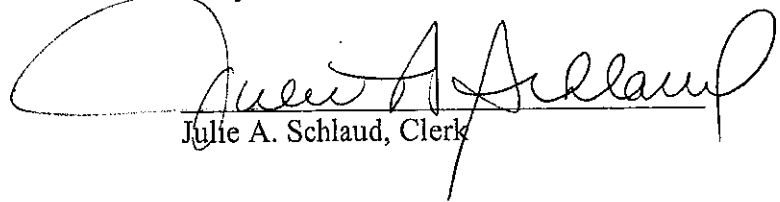
- e. Pursuant to the requirements of Public Act 113 of 2011, a proposal which complies with all the requirements of the Zoning Ordinance shall be approved if the applicant can demonstrate the following:
 - 1) There are valuable natural resources to be extracted. Under the statute, valuable natural resources are defined by whether the operator can receive revenue and can reasonably expect to operate at a profit and that there is a need for the natural resources by the applicant or on the open market.
 - 2) There are not any very serious consequences which would result from the extraction of the natural resources. In determining whether very serious consequences would result, the following factors may be considered:
 - a. The relationship of extraction and associated activities with existing land uses.
 - b. The impact on existing land uses in the vicinity of the property.
 - c. The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
 - d. The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

- e. The impact on other identifiable health, safety, and welfare interests in the Township.
- f. The overall public interest in the extraction of the specific natural resources on the property.

The undersigned Supervisor and Clerk of the Township of Mayfield hereby certify that this Ordinance Amendment was duly adopted by the Township Board at a meeting held on the 10 day of February, 2014 and was published in L.A View on the 13 day of March, 2014. This Ordinance Amendment becomes effective seven (7) days after said date of publication.



Terry D. Jostock, Supervisor



Julie A. Schlaud, Clerk

4. Required lanes or tapers shall be indicated schematically on the site plan and shall be constructed in accordance with the standards for such facilities as established by the Lapeer County Road Commission and/or the Michigan Department of Transportation.

SECTION 1522. SOIL REMOVAL; EXCAVATION; FILLING.

1. Prohibition, Permits Required:

- a. It shall be unlawful for any person, firm, corporation, partnership, or other organization or entity to engage in or conduct any soil removal or excavation within the unincorporated areas of the Township without first procuring a Special Condition Use Permit, from the Township Planning Commission as specified below. This provision shall not apply to excavations for building construction purposes, pursuant to a Building Permit issued under the Township Building Code, or for ponds regulated by Section 1523.
- b. The filling of land with garbage or rubbish or any other waste matter is hereby prohibited in all areas of the Township, except that, pursuant to the terms and conditions of a Special Condition Use Permit that may be granted in a proper case by the Planning Commission in areas designated as R-1, One-Family Residential District.

2. Application for Special Condition Use Permit

- a. Application for a Special Condition Use Permit hereunder shall be made in accordance with Section 1602, Review and Approval of Special Condition Uses. Applications shall contain the name and address of the applicant, a legal description of the property upon which the proposed operation is to be carried out, a topographic map drawn at a scale of 1" to 100' with a two (2) foot contour interval, showing both existing and proposed grades, a description of the extent and nature of the proposed operation (including in the case of filling, the amount of fill to be deposited and the exact nature thereof), the name of the owner of the land described therein, and if the applicant is not the owner, shall contain or have attached thereto the written consent of the owner to the proposed operation on said land, and authorizing the Township to enter upon the land for the purpose of inspecting the premises and considering said application. It shall also contain an agreement that the applicant, and the owner if the applicant is not the owner, will comply with all of the provisions of this Ordinance, and any and all rules and conditions regarding and excavation and/or filling operations established by the Township pursuant to this Ordinance and filed in the office of the Township Clerk.
- b. The original of each application shall be signed by the applicant and sworn to before a notary public. Two conformed copies shall be filed with said original.

3. Reference of Application to Building Official. Investigation and Report. Standards:

One copy of the application shall be referred to the Building Official, or his duly authorized agent, who shall investigate the premises described in the application, including the surrounding area, and within a reasonable time make recommendations to the Planning Commission as to whether the Special Condition Use Permit should be granted subject to this Ordinance, or whether the application should be denied. Recommendations shall include a report on the following matters, which, in addition to those general standards outlined in Section 1602, shall serve as the standards to be used by the Building Official in making his recommendation to the Planning Commission regarding the Special Condition Use Application:

- a. The qualifications of the applicant to comply satisfactorily with the terms and conditions applicable to any permit to be granted as necessary to protect the public health, safety, and general welfare.

No Special Approval Use Permit shall be granted to an applicant deemed unfit by the Township Board on the basis of the clear and substantial weight of the facts presented.

- b. The full and complete affect on the public health, safety, and general welfare of granting the Special Approval Use Permit without special terms and conditions. For an application to be granted on this basis, the Township Planning Commission , exercising its discretion, must be able to find the application consistent with the public health, safety, and general welfare by the clear and substantial weight of the facts presented.
- c. The necessity of special terms and conditions, with an enumeration thereof, and specific reasons therefor. Even subject to special terms and conditions, an application shall not be granted unless the Township Planning Commission, exercising its discretion, is able to find the application consistent with the public health, safety, and general welfare by the clear and substantial weight of the facts presented.
- d. In connection with items b. and c. above, any geographical, soil, or other physical conditions pertaining to the land or general area involved, or arising out of any of the proposals of the application that would affect the present and future value or condition of the land involved, the general area, or otherwise affect the public health, safety, and general welfare of the residents of the Township shall be considered. No application shall be granted on any basis whatever if the Township Planning Commission, exercising its discretion, finds that the granting of the application, because of such condition or conditions, would tend to injuriously affect the public health, safety, or general welfare, or make worse an already unsatisfactory situation. The Building Official, or his duly authorized agent, shall include on his report to the Planning Commission and the Planning Commission shall consider in its recommendation to the Township Planning Commission, whether the granting of the permit, because of the nature of the fill proposed to be deposited on the site, would tend to leave the land in an unstable, wasted, or unfit condition for the growing of turf or other land uses permitted herein, or tend to impair the surrounding lands as to their respective permitted uses, or tend to create a stagnant or standing water condition, create a drowning hazard, other attractive nuisance, disease problem, or other unhealthful condition.

If the facts regarding the special approval use being reviewed do not establish by a preponderance of the evidence that the standards and requirements set forth in this Zoning Ordinance will be met by the proposed use, the Planning Commission shall not recommend special condition approval.

In recommending approval of a special approval use permit to the Township Planning Commission, the Planning Commission shall recommend imposition of such reasonable conditions of use as it deems necessary to protect the best interests of the Township and the general vicinity, to achieve the objectives of this Ordinance and to assure that the general public health, safety, and welfare will not be infringed upon.

The Planning Commission may recommend denial, approval or approval with conditions, a request for special approval use approval. The recommendation on a special condition use shall be incorporated in a statement containing the conclusions relative to the special condition use under consideration which specifies the basis for the decision and any conditions recommended.

Upon holding a public hearing and completing the review of the special approval use request, the Planning Commission shall within thirty (30) days provide its recommendation. The recommendation findings shall include a record of those conditions that are recommended to be imposed. The Township Planning Commission, upon receipt of the finding and recommendation, may deny, approve, or approve with conditions, any request for a special use approval. Any decision on such a request shall state the findings of fact and specify the conclusions drawn therefrom and any conditions imposed thereon. Any conditions imposed shall remain unchanged except upon the mutual consent of a majority of the Township Planning Commission and the landowner, and the Township Planning Commission shall maintain a record of all conditions that are changed. All records of proceedings hereunder shall be kept and made available to the public.

A special approval use permit shall be issued by the Township Planning Commission upon approval. The Township Planning Commission shall forward a copy of the permit to the owner/applicant, Clerk, and Building Official. The Building Official shall not issue a building permit until he has received a copy of the special approval use permit approved by the Township Planning Commission.

4. Rules and Conditions:

Each party granted a special approval use permit is required to faithfully adhere to and abide by any special condition or conditions which may be attached to the special approval use permit, to honor any and all applicable provisions of law, and to comply with the following regulations:

- a. No top soil, earth or sand shall be removed and no excavation shall be conducted on a parcel of less than five (5) acres in area, or within two hundred (200) feet of any public thoroughfare, or within a distance of one hundred (100) feet, plus the measurement of the depth of the cut, of any adjoining private property line.
- b. Water, ice, or other unsatisfactory matter shall not be permitted to stand or accumulate in any excavation during or following the completion of the excavation operations, unless an impoundment of water has been previously approved by the Township Planning Commission as a part of restoration operations as described in item (d), below.
- c. Each permitted excavation in excess of four (4) feet in depth shall be barricaded with a fence six (6) feet in height, constructed of wire mesh, or other suitable material, to afford protection to persons and property, with warning signs, lights and watchman provided where found by the Township Planning Commission to be reasonably necessary based on the conditions involved.

In any event, the slopes of the excavation shall not exceed a ratio of four (4) feet horizontal to one (1) foot vertical, except where an impoundment of water has been previously approved by the Township Planning Commission as a part of restoration operations (as described in item (d) immediately below). Slopes at a ratio of four (4) feet horizontal to one (1) foot vertical shall be maintained for all areas lying below the proposed water surface, to a depth of six (6) feet.

- d. Where a permit for soil removal or excavation specifies grading, or filling and grading, as a special condition of the permit, said applicant, within ninety (90) days after completion of the removal or excavation operation, shall commence and complete with all due dispatch the grading, or filling and grading, as required. Only proper fill deposited in the proper manner shall be permissible. Grading shall be on the basis of an average grade at least twelve (12) inches above the crown of the lowest road or highway adjacent to or abutting said land, and the land shall be leveled so as to provide drainage suitable for growing of turf or for other land uses permitted under this Ordinance, except that filling the land to an average grade higher than that which existed prior to the removal of the top soil, earth, or sand from said land shall not be required.
- e. Any gravel or dirt roads used for the purpose of ingress and egress to said excavation site shall be dust free by a hard surface or chemical treatment.
- f. In the case of a permit for filling:
 - (1) Evidence of compliance with PA 641 of 1978, as may be amended (the Solid Waste Management Act) must be provided by the applicant. No rubbish or garbage shall be burned, permitted to burn or smolder as a result of voluntary igniting of said material or as a result of involuntary internal combustion of said rubbish or fill material deposited at the site of the permitted operation;
 - (2) A temporary fence to prevent the scattering of rubbish, garbage, and other waste matter, if required by the Township Board, shall be erected around the place of the fill so as to enclose the matter to be deposited; provided that any rubbish, garbage, or other matter that nevertheless collects shall be picked up and removed from the area daily, it being the duty of the Special Condition Use Permit holder to keep the area in a reasonably clean and neat condition;
 - (3) All rubbish and garbage fill when deposited must be thoroughly compacted;
 - (4) All rubbish and garbage fill, within twenty-four (24) hours of depositing in the place or places authorized in the special approval use permit, shall be covered with a compacted layer of soil matter twelve (12) inches thick and of a kind and texture that will be suitable for growing of turf or for other land uses permitted within the district. A final compacted layer of soil matter twenty-four (24) inches thick of a kind and texture that will be suitable for the growing of turf, or for other suitable land uses permitted within the district, shall be placed within one week following the completion of the deposit of refuse in that area. In applying the standards of public health, safety and welfare provided for in this Ordinance, the Township Board may extend the above twenty-four (24) hour period to such longer period as is deemed satisfactory under the circumstances.
 - (5) Conveyance vehicles for rubbish or garbage shall not be open lid and while in transit shall be closed and covered so as to reduce odor and the scattering of the matter being carried. Any rubbish or garbage that is nevertheless dropped in transit shall be recovered by the conveyor of such rubbish or garbage and the affected area restored to its prior condition. Further, any undue collection of soil matter deposited on the public highways by the tracking of the vehicles shall be removed and the affected area restored to its prior condition.
- g. The Township, through its duly authorized agents, shall have the right to enter upon any land designated in any special approval use permit, for the purposes of making

inspections, and for causing compliance with the terms of this Ordinance in the event the permit holder shall fail to do so. It shall be the duty of the Building Official or his duly authorized agents to make periodic inspections of all land for which permits have been issued, and to report any violation of the terms hereof to the Township Board.

5. Permits; Suspensions; Revocation:

In the event a special approval use permit holder violates the terms of this Ordinance or conditions previously imposed by the Township Planning Commission, the Building Official shall have the power to suspend said permit issued pursuant to this Ordinance, provided that written notice of such suspension, stating the reasons therefore, shall be served upon the permit holder, either personally or by registered mail, and provided further that the permit holder shall have the right to appeal such suspension to the Township Planning Commission within ten (10) days after receipt of such notice. If it shall appear to the Township Planning Commission from the facts presented that the special approval use permit holder has been committing the violation as charged, then the Township Planning Commission shall revoke said permit. In the event of the revocation of a special approval use permit for cause, any performance guarantee shall not be canceled until said premises are restored to a condition deemed satisfactory to the Township Planning Commission, based on the standards of this Ordinance and conditions previously imposed by the Township Planning Commission.

6. Dangerous Excavations or Holes Prohibited:

The construction, maintenance, or existence within the Township of any unprotected, unbarricaded, open or dangerous excavations, holes, pits, or wells, or of any excavations, holes or pits which constitute, or are reasonably likely to constitute, a menace to the public health, safety or welfare, is hereby prohibited. This section shall not apply to excavations operated under a special condition use permit issued pursuant to this Ordinance, or the Building Code of the Township, where such excavations are barricaded and warning signs posted in such manner as may be approved by the Building Official, nor does this section apply to lakes, streams, or other natural bodies of water, or to ditches, streams, reservoirs, or other major bodies of water created or existing by authority of the state of Michigan, Lapeer County, Mayfield Township, or other governmental agencies.

7. Restoration

All areas within any landfill or excavation site operating under a single permit shall be restored progressively. Restoration shall be in accordance with a plan approved by the Township Planning Commission prior to the issuance of a special approval use permit. Restoration shall be to a condition as to leave the surface of the land at a grade which blends with the general surrounding terrain so as to appear reasonably natural and to permit the establishment of other land uses allowed in the district in which said excavation or filling occurs.

The Township Building Official shall conduct inspections hereunder, and shall notify the owner and/or operator in writing of any portions of the site that is deemed abandoned or ready for restoration. Upon receipt of such written notification, the owner and/or operator shall have said areas restored within ninety (90) days, or within thirty (30) days supply the Township Planning Commission with a written reply indicating the date restoration is anticipated. The Township Planning Commission may accept or reject said dates. If said date is accepted, it shall be binding on both parties. If said date is rejected, the Township Planning Commission shall set a new date which shall be final.

SECTION 1523. PONDS.

1. Intent

The regulations set forth in this section are designed to provide for the regulation of ponds and to specify the conditions and circumstances under which such ponds may be developed to protect the health, safety, and general welfare of the residents of the community, preserve ecologically important features, and to prohibit development which, unregulated, may have an adverse effect upon the existing aesthetic character of the township.

2. General provisions

- a. It shall be unlawful for any person, firm, corporation, or partnership, or other organization or entity to construct a pond within the Township without first securing a construction permit from the building official.
- b. A pond shall not be constructed on a lot or parcel of land which is less than 1.5 acres in size.
- c. Water shall be maintained in all pond excavations.
- d. All soil and similar materials excavated during the construction of the pond shall remain on the property.

3. Application and review procedures

- a. Application shall be made to the Township Building Official. Applications shall contain the name and address of the applicant, a legal description of the property upon which the pond will be established, and a site plan submitted in accordance with Section 1600, Site Plan Review Procedures.
- b. Evidence shall also be presented at the time of application that the Lapeer County ~~Drain Commission~~ *Soil Sed* and Michigan Department of Environmental Quality have granted the necessary permits and/or approvals to the applicant for the construction of the pond or have released the applicant from any obligation thereto.
- c. The applicant shall also, at the discretion of the Building Official at the time of application, provide evidence from a licensed excavator, civil engineer, or similar allied professional that water can be continuously maintained in the pond once it is constructed.
- d. The Building Official may, at his discretion, administratively review and approve applications for a pond construction permit, in lieu of a more formal review and consideration by the Township Planning Commission, provided all of the following conditions exist:
 - (1) The parcel contains natural land forms which are so arranged that the change of elevation within the site includes slopes of ten (10) percent or less;
 - (2) The subject site and/or adjoining properties do not contain natural assets including trees, woodlots, endangered species habitats, state regulated wetlands, 100-year floodplains, natural watersheds, or similar features that would be altered by the establishment of the pond.