

**TOWNSHIP BOARD  
GEORGETOWN CHARTER TOWNSHIP  
OTTAWA COUNTY, MICHIGAN**

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_ to adopt the following resolution:

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AFFIRMING, ON APPEAL, THE MINERAL MINING REVIEW BOARD’S APPROVAL AND ISSUANCE OF MINERAL MINING LICENSE ML1902 TO GRAND RAPIDS GRAVEL, WITH CONDITIONS; MODIFICATION OF PERFORMANCE BOND REQUIREMENT**

WHEREAS, Georgetown Charter Township (“Township”) has adopted a Mineral Mining Ordinance (“Ordinance”), which governs the application, review, issuance, conditions, and other matters related to mineral mining licenses in the Township; and

WHEREAS, Grand Rapids Gravel (“GRG”) of 2700 28th Street SW submitted an application for a new mineral mining license ( “ML1902”) for the following seven parcels of land in the Township:

- P.P. #70-14-03-200-003, located at 1625 Fillmore, zoned RR
- P.P. #70-14-02-100-001, located at 1600 Fillmore, zoned RR
- P.P. #70-14-02-100-008, located at 1600 Fillmore, zoned RR
- P.P. #70-14-02-100-004, located at 9301 12<sup>th</sup> Ave., zoned RR
- P.P. #70-14-02-100-007, located at 9225 12<sup>th</sup> Ave., zoned RR
- P.P. #70-14-03-400-028, located at 1606 Fillmore, zoned LDR (leased property)
- P.P. #70-14-02-300-009, located at 1405 Taylor, zoned LDR (leased property)

(collectively the “Site”); and

WHEREAS, following a public hearing held on October 16, 2019, the Georgetown Township Mineral Mining Review Board (“Review Board”), on November 20, 2019, adopted Resolution No. 191120-03 (attached as Exhibit A), approving the issuance of license ML1902 to GRG, with conditions; and

WHEREAS, the Ordinance permits a person aggrieved by a decision of the Review Board to appeal the decision to the Township Board (“Township Board”); and

WHEREAS, GRG appealed the Review Board’s decision to the Township Board, which held a public hearing on the appeal on January 13, 2020; and

WHEREAS, the Township Board has the power under Section 26-84(e) of the Ordinance to reverse, affirm or modify the decision of the Review Board, and the decision of the Township Board shall be final.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Township Board, after consideration of the record, the applicable standards and requirements provided by the Ordinance, and the written findings of the Review Board, hereby affirms the decision of the Review Board approving the issuance of mineral mining license ML1902, with conditions, except as expressly set forth in this resolution.

2. At the outset, the Review Board found that except as otherwise provided in the Review Board Resolution, GRG had represented that it meets or will meet the minimum standards and requirements set forth in Ordinance Section 26-83 for the following: fencing and signs; screening; hours of operation; access to public roadways; on-site roads; transportation vehicle standards; lighting; location of excavation; drainage and erosion control; dust control; noise control; special land conditions; fueling of vehicles. The Review Board required, as a condition of approval, that GRG maintain compliance with these requirements as set forth in Section 26-83. GRG has not appealed this condition.

3. Similarly, the Review Board required, as a condition of approval, that GRG meets the requirements in Sections 26-83(p) (treatment of banks), Section 26-83(q) (vegetation), Section 26-83(r) (stockpiling and replacement of topsoil), and Section 26-83(s) (fill material). GRG has not appealed this condition.

4. GRG challenges the term of the license, claiming that it would prohibit GRG from excavating gravel on the Site.

5. GRG represented to the Review Board that it intended to excavate the remaining 25,000 tons located directly south of the pump on P.P. #70-14-02-100-004 and 80,000 tons located under Hopper and the extension of Fillmore on P.P. #70-14-02-100-008 and P.P. #70-14-03-200-003, by December 31, 2021.

6. GRG also represented to the Review Board that if the Michigan Department of Environment, Great Lakes & Energy (“EGLE”) permits it to cap and abandon the oil wells located on the peninsulas to the oil wells on P.P. #70-14-02-100-004, it would excavate the gravel on or at the access roads (approximately 80,000 tons) prior to August 1, 2021, and if EGLE does not permit the oil wells to be capped and abandoned, GRG would forego excavation of that area.

7. The Review Board found that December 31, 2021 was a reasonable the time frame for completing excavation of all on-site gravel, and the Township Board agrees, for the reasons set forth in the Review Board Resolution, and further based on GRG’s admission that very limited excavation has occurred on the Site over past several years, that there is a limited amount of gravel left to be excavated on the overall Site, that the amount of gravel remaining on the Site can be excavated within the time period proposed by GRG and approved by the Review Board, and that reclamation is underway and anticipated (by GRG) to be completed within the next few years.

8. The term of the license also complies with the Ordinance, which states that a license may be issued for a period not to exceed five (5) years.

9. GRG claims that it proposed certain conditions, including certain end dates, “as a *quid pro quo* for permitting the continued importation of materials and not just an open-ended offer and when the Mining Board adopted those conditions, they had no basis for doing so....”

10. GRG states on appeal that if there is “no deal” allowing it to import 300,000 tons of gravel from Plainfield Township to the Site, GRG is not willing to forego the approximately 80,000 tons of gravel under the access roads in the area of the wells GRG is seeking to have capped and abandoned and “GRG rescinds the proposed timeline for a hard date of when all materials would be excavated on the site.”

11. The Township Board finds that the Ordinance requires an applicant for a mineral mining license to provide, among other things, “[t]he estimated number of years to complete mining and reclamation operations at the site...”; thus, the Review Board properly relied upon and adopted GRG’s representations regarding the estimated number of years to complete mining and reclamation operations at the Site.

12. The Township Board finds that GRG’s request to allow it to operate at the Site without reference to a specific timeline because of the constraints imposed under GRG’s voluntary agreement with Plainfield Township is unreasonable and would be in conflict with the Ordinance. The Township Board further finds that if GRG presented an application without a proposed timeline for completing excavation and reclamation at the Site, the application would have been incomplete.

13. The Township Board further finds that the Review Board was not required to accept GRG’s offer of a *quid pro quo* arrangement allowing GRG to import materials from Plainfield Township, nor was such an arrangement required under the Ordinance.

14. Further, nothing in the Review Board’s decision or the Township Board’s decision prohibits GRG from requesting a renewal of the license if, for example, the efforts with EGLE result in changed conditions requiring a reasonable extension to complete excavation at the Site. Any request for a renewal would be reviewed pursuant to the Ordinance and under the actual circumstances and conditions existing at the time.

15. GRG also challenges the condition that prohibits it from importing gravel from the Boulder Creek site in Plainfield Township, Kent County, to the Site.

16. GRG admits that it has “a specific timeline in which the company must abide by in Plainfield Township” and that it wishes to import gravel from the Boulder Creek site in Kent County to the Site in the Township “in order to run a sufficient business operation.”

17. GRG argues that by prohibiting it from importing materials from Plainfield Township, Georgetown Township “is effectively making GRG abandon the gravel” in Plainfield Township. In that context, GRG argues that Georgetown Township cannot prevent GRG from importing gravel from Plainfield Township to the Site.

18. The Township Board finds that it is GRG’s voluntary agreement with Plainfield Township—not any action by this Township—that prohibits GRG from processing gravel extracted from the Boulder Creek site at the Boulder Creek site.

19. Similarly, the Township Board finds that it is GRG’s voluntary agreement with Plainfield Township—not any action by this Township—that prohibits GRG from extracting gravel from the Boulder Creek site after a certain date, thereby potentially causing GRG to abandon gravel on that site.

20. The Township Board finds that in prohibiting the importing and processing of material from the Boulder Creek site in Plainfield Township, the Review Board did not prevent the extraction, by mining, of valuable natural resources on the relevant property (i.e., the Site). To the contrary, the Review Board permitted the extraction, by mining, of valuable natural resources on the Site (i.e., on-site gravel) within the areas and time frame proposed by GRG.

21. Further, GRG admitted to the Review Board and this Board—and it is undisputed—that beginning in 2015, GRG’s license expressly prohibited the importation of off-site materials to the Site. Thus, GRG knew or should have known that it would not be permitted to import materials from Plainfield Township to the Site. GRG’s attempt to challenge the 2015 conditions is untimely.

22. The Township Board recognizes that concerns were voiced at the Mining Board and this Board regarding the highly-publicized, widespread, and undisputed presence of PFAS in Plainfield Township, including in the vicinity of the Boulder Creek site; however, the Township

Board finds that the condition prohibiting the importation of materials from Plainfield Township was ultimately not based on or grounded in the detection of PFAS in Plainfield Township, or because of stigma as alleged by GRG, but because GRG's proposal regarding the importation of gravel from Plainfield Township would not further the public policy of permitting the extraction of natural resources at the Site and would result in an ongoing industrial operation on the Site in a residential district.

23. The Township Board also concludes that the Review Board correctly found that importing material from Plainfield Township would create more traffic to the Site, including more "heavy" (full) trucks operating on the roadways, which would have an additional impact on pedestrian and traffic safety along the proposed hauling route serving the Site. GRG represented to the Review Board that it would take approximately 4,000 trucks trips to haul material to the Site from Plainfield Township. In its appeal, GRG claimed that "a very high percentage of the 4,000+ truck trips needed would not in fact increase the daily number of trucks on the haul route...." At the public hearing, GRG stated that it would take 5,500 trucks to import 300,000 tons of gravel from Plainfield Township over approximately 14 months, but that it is permitted by Plainfield Township to excavate gravel for a period of three (3) years.

24. The Township Board concludes that the Mining Board's decision to allow the limited importation of gravel from the Cedar Valley site in the Township while prohibiting the importation of 300,000 tons of gravel from Plainfield Township was not arbitrary and capricious as GRG alleges.

25. GRG informed the Review Board that the Cedar Valley project, which is in close proximity to the Site, was expected to be completed in Spring 2020, at which time it would stop accepting materials from Cedar Valley. The Township Board finds the Review Board's distinction

between the importation of gravel from Cedar Valley and the importation of 300,000 tons of gravel from Plainfield Township until the proposed date of March 15, 2021, to be reasonable based on the proximity and impending completion of the Cedar Valley project.

26. GRG challenges the condition that prohibits it from operating a crushing operation on the Site.

27. With regard to the proposed crushing operation, the Township Board adopts the Review Board's findings and conclusions as its own.

28. The Township Board concludes that the proposed crushing operation, like the use of the Site primarily for the importation and processing of material from the Boulder Creek site, would constitute an ongoing industrial operation that is not permitted in the residential zoning districts comprising the Site, and would be inconsistent with the Zoning Ordinance, the Master Plan, and the Ordinance.

29. GRG challenges the Review Board's requirement of a performance guarantee, arguing (a) that no other mining operation has been required to provide a performance guarantee, and (b) that the requirement for a \$200,000 performance guarantee is excessive and above the \$1,000 per acre standard utilized by Ottawa County.

30. The Township Board finds that, under Section 26-81 of the Ordinance, a performance guarantee shall be required as a condition of approval and that the amount of the performance bond shall be established by the Review Board. Based on the language in the Ordinance, the Township Board concludes that this a mandatory requirement.

31. However, the Township Board finds that GRG's request to reduce the performance guarantee to \$1,000 per acre is reasonable and hereby modifies the performance guarantee requirement accordingly.

32. Within ten (10) days, GRG shall present plans and other documentation as necessary depicting the acreage to be reclaimed, which shall be utilized in determining the amount of the performance bond required. If the Mining Official and GRG cannot agree on the amount of the performance bond, GRG may appear before the Review Board for a determination of the amount, which decision may be appealed to the Township Board pursuant to the Ordinance.

33. Nothing in this resolution prohibits GRG from appearing before the Review Board to request a pro-rata reduction in the amount of the performance guarantee for each acre restored and reclaimed, as permitted in the Ordinance.

34. Finally, GRG claims on appeal that no other mining operation has been held to the reclamation standard that is being imposed on GRG.

35. GRG represented to the Review Board and the Township Board that it has been meeting with the Ottawa County Parks and Recreation Commission to discuss reclamation of the Site. GRG informed the Township Board that GRG expects to continue its discussions with the County, and that there has been discussion of turning the property over to the County within two (2) years.

36. The Review Board determined that GRG shall reclaim the Site to the standards set forth in the Bend in the River Master Plan, as amended (i.e., the 2010 Bend Area Final Report), except as may be expressly approved in writing by the Ottawa County and/or the Ottawa County Parks and Recreation Commission in consultation with the Township (referred to hereinafter as the “Approved Reclamation Plan”).

37. The Township Board finds that the reclamation requirements are reasonable based on the proposal by GRG and the representations regarding the ongoing discussions between GRG and the Ottawa County Parks and Recreation Commission concerning the reclamation.

38. The Township Board adopts and incorporates the findings, conclusions, and conditions in Review Board Resolution No. 191120-03 (attached as Exhibit A hereto), and the findings and conclusions in the Staff Report dated October 2, 2019, which is incorporated therein, to the extent they do not conflict with this Resolution.

39. All resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, repealed.

AYES: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_ DECLARED ADOPTED

Georgetown Charter Township, a Michigan  
municipal corporation

\_\_\_\_\_  
Richard VanderKlok, Clerk

**CERTIFICATION**

I, Richard VanderKlok, the Clerk of Georgetown Charter Township, certify the foregoing is a true and complete copy of a resolution adopted by the Township Board at a \_\_\_\_\_ meeting held on \_\_\_\_\_, 2020, which was noticed and held in accordance with the Michigan Open Meetings Act, Public Act 267 of 1976.

\_\_\_\_\_  
Richard VanderKlok, Clerk

**EXHIBIT A**

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Resolution No. 191120-03

Adopted by the Georgetown Township Mineral Mining Review Board

on November 20, 2019