

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

FRIENDS OF GRASS LAKE TOWNSHIP,
a Michigan nonprofit corporation,

Appellant,

v.

Case No. 17-3036-AA

GRASS LAKE CHARTER TOWNSHIP
PLANNING COMMISSION,

Hon. Thomas D. Wilson

Appellee.

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CLAIM OF APPEAL

Appellant, Friends of Grass Lake Township, a Michigan nonprofit corporation, by and through their attorneys, Conlin, McKenney & Philbrick, P.C., claims an appeal from the decision on October 12, 2017, by the Grass Lake Charter Township Planning Commission. In support, Appellant states as follows:

I. Background, Jurisdiction and Standard of Review

1. Appellant is a Michigan nonprofit corporation, whose members include persons who own property in Grass Lake Charter Township adjacent to and in the near vicinity of the

subject “Property” described below, which is located in Jackson County. Appellee’s principal place of business is in Jackson County.

2. The Grass Lake Charter Township Planning Commission conducted public hearings on May 18, 2017, September 14, 2017, and October 12, 2017 to evaluate an application for a special use permit for an aggregate mining operation at property located at 1180 Norvell Road, Grass Lake, Michigan (Parcel ID No: 000-15-09-200-002-00) (the “Property”).

3. The application was submitted by L & L Development, LTD (“L & L”), which maintains an address at 5405 East Michigan Avenue, Jackson, Michigan 49201. The application for the special use permit was reviewed by the Grass Lake Charter Township Planning Commission under Chapter 14 of the Grass Lake Charter Township Zoning Ordinance, as authorized by the Michigan Zoning Enabling Act and Planning Enabling Act.

4. In its decision dated October 12, 2017, the Grass Lake Charter Township Planning Commission made certain findings of fact and approved the application for the special use permit, subject to certain conditions. A copy of the decision is attached hereto as Exhibit A.

5. Appellant is aggrieved by the decision of the Planning Commission.

6. Appellant’s members include persons whose properties are detrimentally affected by the operation of the approved L & L extraction operation, in a manner that is different than the citizenry of Grass Lake Charter Township at large, including, on information and belief, property owners whose property values would be adversely impacted by the nearby presence of the extraction operation, property owners whose health and well-being, and that of their family, would be adversely impacted by the nearby presence of the extraction operation, and property owners whose use and enjoyment of their property would be adversely impacted by the nearby presence of the extraction operation.

7. Review of the Decision by the Planning Commission is authorized under Michigan Court Rule 7.122(G).

8. Chapter 18 of the Grass Lake Charter Township Zoning Ordinance provides that the Grass Lake Charter Township Zoning Board of Appeals may only hear appeals of Planning Commission decisions as they pertain to site plan reviews.

9. Review of the Decision by the Planning Commission in this court is further authorized by Article VI, Section 28 of the Michigan Constitution of 1963, and by the Michigan Zoning Enabling Act and/or the Michigan Planning Enabling Act.

10. Venue in this court is based on the location of the real estate at issue in this case which is located in Jackson County.

II. The Decision Was Not Authorized by Law.

1. The Grass Lake Charter Township Planning Commission was not properly constituted in accordance with the Commission Bylaws on October 12, 2017, the date on which the third and final public hearing occurred and the Planning Commission voted to approve the Special Use Permit Application. On that date, in violation of Article III, Section 3.10 of the Commission Bylaws, the Commission only consisted of 6 members, and there was no member who was a member of the Township Board.

2. The Decision violated the Grass Lake Charter Township Zoning Ordinance because it was prepared in typewritten form *prior* to the hearing. This violated Section 14.05(A) of the Zoning Ordinance, which provides that the Planning Commission shall approve, approve with conditions, or deny the special land use permit “**following** the required public hearing” (emphasis added).

3. Section 14.05(B) of the Zoning Ordinance provides: “A special land use permit **shall not be issued** for the uses specified in this Section **unless complying with the General Review Standards of Section 14.06 and the Specific Standards of Section 14.07**. The Planning Commission may impose **additional** conditions and safeguards when deemed necessary . . .” (emphasis added).

4. The Decision violated the aforementioned Section 14.05(B) of the Zoning Ordinance because, in Section 2.d. of the Decision, the Commission failed to make a finding that the proposed extraction operation is not hazardous or disturbing to existing or future neighboring uses.

5. The Decision also violated the aforementioned Section 14.05(B) because in the Decision the Commission approved the special land use subject to a later, *post-public hearing*, *post-approval* determination by the Commission that *subsequently submitted material* would satisfy the General Review Standards and the Specific Standards. The Decision states that the Standards “can be met” by the applicant later, after approval of the special land use. The Decision therefore violates Section 14.05(B), which prohibits a permit for the special use “**unless complying**” (i.e., at the time of the Decision) with the General Review Standards and the Specific Standards (referred to collectively in this Claim of Appeal as the “Standards.”) There is no authority in the Zoning Ordinance for the Commission to, in effect, *pre-approve* a special land use provided the applicant *later* demonstrates compliance with the Standards after the Decision has already been made.

6. The Decision violates and conflicts with the legally adopted Master Plan, adopted by the Planning Commission and the Board of Trustees on December 13, 2016, including, without limitation, the following provisions of the Master Plan:

- a) “New development will generally reflect existing rural character.”
- b) “The encroachment of commercial and industrial uses into residential areas will be discouraged by using appropriate land use patterns and zoning practices, such as landscape and open space buffers.”
- c) “The principal land uses in the Township will be residential, with varying densities situated in appropriate locations. Infrastructure will play a key role in determining suitable types and densities of development. Generally, more intensive development will be directed to planned areas, generally in or near the Village or near I-94, while other areas will remain as low density residential development accompanied by related uses.”
- d) “Site plan review standards and zoning regulations will be adopted to preserve and protect environmentally sensitive areas of the township.”
- e) “Residential Development Goal. Development will be encouraged which reflects, and preserves, the community values and character of Grass Lake Township by supporting existing developed areas and promoting a variety of new residential development in locations that support the Community Vision.”

III. The Decision Was Not Supported by Competent, Material, and Substantial

Evidence on the Whole Record.

1. The Decision was prepared and typewritten prior to the last day of the public hearing, therefore was not made on, and supported by, the “whole record.”
2. The finding in Section 2.a. of the Decision that “Applicant’s extraction operation is consistent with the purposes of the Ordinance, as it will provide the Township with natural mineral resources” is not supported by competent, material, and substantial evidence.

3. The findings in Section 2.a. that the extraction operation “will not have adverse effects on traffic, and will eventually be converted into a residential development” are not supported by competent, material, and substantial evidence.

4. The potential future lakeside residential development referred to in the Decision is not the special land use for which the permit is being issued; rather, it is the proposed 5 year *extraction operation* which must satisfy the Standards, not a hypothetical future residential lakeside development which may or may not occur.

5. The finding by the Commission in Section 2.a. that the possible future residential development, which may or may not occur after the 5 year special use mining operation permit, is “harmonious with the Ordinance” reflects a legally wrongful misapplication of the required Standards to something other than the extraction operation which was the special land use applied for.

6. The finding in Section 2.b. that the extraction operation is similar in nature to agricultural operations is not supported by competent, material, and substantial evidence.

7. The finding in Section 2.b. that the extraction operation and proposed restoration plan “are harmonious with surrounding uses” is not supported by competent, material, and substantial evidence, and reflects a legally wrongful misapplication of the required Standards to a future potential residential use, rather than the extraction operation which was the special land use applied for.

8. The finding in Section 2.c. that the extraction operation is adequately served by the Township’s roadways is not supported by competent, material, and substantial evidence.

9. In Section 2.d. of the Decision, the Commission failed to make any finding, much less one supported by competent, material, and substantial evidence, that the proposed extraction operation is not hazardous or disturbing to existing or future neighboring uses.

10. The finding in Section 3.d. that the Applicant has satisfied the requirement that all fixed equipment and machinery be located at least 100 feet from any Lot Line, and 500 feet from any residence, is not supported by competent, material, and substantial evidence.

11. In Section 3.f. of the Decision, the Commission failed to make any finding, much less one supported by competent, material and substantial evidence, that the proposed route to be followed by truck traffic poses “the least interference with other traffic” as required by the Zoning Ordinance.

12. The finding in Section 3.g. that odors, smoke, fumes and dust will not cause a nuisance to adjacent landowners or adjacent roads is not supported by competent, material, and substantial evidence.

13. The finding in Section 3.h. that the extraction operation will not cause pollution, or alter the drainage patterns of surface or subsurface waters on adjacent properties, is not supported by competent, material, and substantial evidence.

14. The finding by the Commission in Section 4 of the Decision that no very serious consequences are likely to result from the proposed extraction operation, including the consequence of a significant negative effect on property values for surrounding landowners, is not supported by competent, material, and substantial evidence, and is against the great weight of the evidence presented to the Commission at the hearings and submitted to the Commission in writing.

WHEREFORE, Appellant respectfully requests this Court to vacate the October 12, 2017 Decision of the Commission. Furthermore, Appellant respectfully requests this Court to stay the effect of the October 12 Decision pending this appeal.

CONLIN, McKENNEY & PHILBRICK, P.C.
Attorneys for Appellant

By: 

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Dated: November 13, 2017

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GRASS LAKE CHARTER TOWNSHIP PLANNING COMMISSION
DECISION REGARDING L & L DEVELOPMENT SUP APPLICATION

Applicant: L & L Development, LTD, 5405 East Michigan Avenue, Jackson, Michigan, 49201 (“Applicant”).

Subject Property: 1180 Norvell Road, Grass Lake, Michigan, 49240, Parcel ID No: 000-15-09-200-002-00 (the “Property”).

Reason(s) for Application: Application for a special use permit (“SUP”) for an extraction operation on the Property under Chapter 14 of the Grass Lake Charter Township Zoning Ordinance (the “Ordinance”).

May 18, 2017 Public Hearing: The Planning Commission opened a public hearing at 7:07 p.m. to evaluate the application. Approximately 70 people attended this hearing. The Planning Commission heard presentations from Applicant, Consumers Energy, Carlisle Wortman Associates (“CWA”) (on behalf of the Township), and members of the public. After consideration, the Planning Commission tabled the matter pending further review of supplemental information to be provided by Applicant.

September 14, 2017 Public Hearing: The Planning Commission opened a public hearing at 7:07 p.m. to evaluate the application and supplemental information. Approximately 90 people attended this hearing. The Planning Commission heard presentations and reviewed documents provided by Applicant, professional planning and environmental groups representing both Applicant and the Township, The Friends of Grass Lake Township (the “Friends”), and members of the public. After consideration, the Planning Commission again tabled the matter for additional review by the Township’s attorney and CWA.

October 12, 2017 Public Meeting: The Planning Commission held a duly scheduled meeting at approximately 7:00 p.m. to evaluate the application. The Planning Commission reviewed documents provided by Applicant, the Township Attorney, professional planning and environmental groups representing Applicant, the Township, the Friends, and heard presentations from members of the public. The Planning Commission then issued this decision.

Findings of Fact:

- 1) The Property is zoned R-1, Single Family Residential.
- 2) Applicant has requested a SUP to conduct an extraction operation on the Property, which is a special use in the R-1 District. Ordinance, §6.03(K).
- 3) Extraction Operations are governed by the regulations of §14.06 and §14.07(HH) of the Ordinance.
- 4) Applicant intends to conduct mineral extraction activities on the Property, and to then restore it by developing site condominiums and single-family dwellings, with the mined area to be converted into a private lake.
- 5) Consumers Energy Company has two adjacent natural gas pipelines on the Property.

Additional findings of fact are discussed in the relevant portions of the Planning Commission’s detailed review below.

DETAILED APPLICATION REVIEW

1. **General Standards for an SUP.** To receive a SUP, an applicant must satisfy both the general standards of §14.06 and the use-specific standards of §14.07. §14.06 requires a special land use:
 - a. Be harmonious with and in accordance with the Purposes of this Ordinance.
 - b. Be designed, constructed, operated, maintained and managed so as to be harmonious and appropriate in appearance with existing or intended character of the general vicinity.
 - c. Be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for those services.
 - d. Not be hazardous or disturbing to existing or future neighboring uses.
 - e. Not create excessive additional requirements for public facilities and services at the public's cost.
 - f. Satisfy the Special Land Use Specific Requirements under §14.07.

In addition to these general standards, an extraction operation must satisfy the standards of §14.07(HH). These requirements are addressed below.

2. **Special Use Requirements of §14.06.**

a. ***Extraction Operation Harmonious and in Accordance with Purposes of the Ordinance.*** Applicant's extraction operation is consistent with the purposes of the Ordinance, as it will provide the Township with natural mineral resources. It is located in an appropriately-zoned district, will not have adverse effects on traffic, and will eventually be converted into a residential development. This, in turn, provides the Township with additional housing; and the lake that will be created as part of the restoration plan will provide a place of recreation for future residents. Both the extraction and proposed reclamation activities are harmonious with the Ordinance.

b. ***Extraction Operation Designed, Constructed, Operated, Maintained and Managed to be Harmonious and Appropriate in Appearance with Existing or Intended Character of General Vicinity.*** The Property is located in the R-1 District. Nearby land uses include agriculture, site condominiums and single-family residences. Applicant's intent is to extract minerals and eventually convert the Property into a residential site condominium development. The extraction operation is similar in nature to agricultural operations, and site condominiums and single-family residences are already located nearby. Applicant's extraction operation and proposed restoration plan are harmonious with surrounding uses. The Planning Commission finds that it should also impose several additional conditions, as stated below, to further assure this required harmony.

c. ***Extraction Operation Adequately Served by Essential Public Facilities and Services.*** Extraction operations do not require the use of additional public services. The public facilities that will be primarily affected by Applicant's activities are the Township's roadways. Applicant's proposed truck route is acceptable to the Township, and is subject to further approval by the Jackson County Department of Transportation ("JCDOT"). Applicant has provided a dust control plan designed to address concerns regarding excess dust, mud and debris. In addition, the Planning Commission finds

that it should impose several conditions, as stated below, to protect roadways. With these conditions, the Planning Commission concludes this requirement has been met.

d. ***Extraction Operation not Hazardous or Disturbing to Existing or Future Neighboring Uses.*** Extraction operations can create a risk of disturbance to neighboring properties. This means that appropriate conditions must be imposed to ensure that a disturbance does not occur. Such operations are appropriate as long as the requirements of the Ordinance and any required conditions are satisfied. In addition to the requirements of the Ordinance, the Planning Commission finds that it is necessary to impose additional conditions, stated below, which are designed to protect the environment, prevent disturbances of the peace, and promote harmony with surrounding uses.

e. ***Extraction Operation will not Create Excessive Additional Requirements for Public Facilities and Services at the Public's Cost.*** In addition to the conditions imposed below, further review by JCDOT, JDC, JSESC, and MDEQ is anticipated to assure compliance with this requirement. These reviews are required prior to final site plan approval for the extraction operation. Subject to any additional finding of conditions imposed by those agencies, the Planning Commission concludes that this requirement has been met.

Applicant has met the burden of establishing that each of the general standards applicable to special uses have been met, or can be met through appropriate conditions, which are addressed below.

3. Use Requirements of §14.07(HH).

a. ***Extraction Operation Takes Place on a Lot Greater Than 10 Acres.*** This requirement has been met, as the Property is approximately 80 acres.

b. ***Only One Entrance to Extraction Operation from a Public Road.*** Applicant revised its site plan to show a single access location on the eastern boundary of the Property, approximately 440 feet south of the Property's northern boundary. No other access locations are proposed, so this requirement is met.

c. ***Removal, Processing, Transportation and Activities Related to Storage Will not take Place before Sunrise or after Sunset.*** Although Applicant proposed that extraction operations would run from 6am to 6pm weekdays and 7am through 1pm Saturdays, the Planning Commission finds it is necessary to restrict these hours in the conditions stated below, which are designed to help minimize potential concerns regarding dust, noise and traffic. No activities will occur prior to sunrise or after sunset.

d. ***All Fixed Equipment and Machinery to be located at Least 100 feet from any Lot Line, 500 feet from any Residence and Outside of Other Required Setbacks.*** Applicant's site plan shows a 100-foot setback along all boundaries of the Property. The truck scale on the property is located 500 feet from Norvell Road, 700 feet from the northern boundary of the Property and 600 feet from the southern boundary. Applicant has satisfied this requirement.

e. ***All Interior Roads, Driveways, Parking Lots and Loading - Unloading Areas within 100 Feet of Any Lot Line Will be Adequately Treated to Prevent Windborne Dust.*** Applicant has proposed to pave the drive from the entrance at the western edge of Norvell Road extending 100 feet into the Property.

f. ***Proposed Route to be Followed by Truck Traffic will Ensure Minimal Interference with Other Traffic and Applicant has Provided for the Removal of Material from Public Streets.*** Applicant has proposed the following truck route:

Trucks will head north on Norvell Road to Michigan Ave. Once the trucks reach Michigan Ave., 80% to 90% of the truck traffic will head east and the remainder will head west.

Applicant's proposed truck route is acceptable to the Planning Commission. Applicant must obtain approval for this truck route from JCDOT prior to commencing extraction operations, and demonstrate such approval to the Planning Commission. The Planning Commission has also required specific conditions below to meet this requirement.

g. ***Measures to Prevent Odors, Smoke, Fumes and Dust Caused by the Extraction Operation from Leaving the Property and Causing a Nuisance.*** Applicant has provided an environmental assessment by ATSI Environmental addressing these concerns. In addition, the Planning Commission finds that it is necessary to require a number of additional conditions designed to address these concerns, including the conditions stated below. Based on ATSI's report and the additional conditions imposed by this decision, the Planning Commission finds that Applicant has satisfied this requirement.

h. ***Extraction Operation Will not Cause Pollution, Erosion or Alter the Drainage Patterns of Water on Adjacent Properties.*** Applicant's environmental study satisfies this requirement. The Planning Commission has also required that Applicant provide supplemental information as a condition of this SUP. These facts, and the additional approvals that are required from JCDOT, JDC, JSESC, and the MDEQ, ensure that this requirement has been met. Nonetheless, the Planning Commission recognizes that the Friends have presented a study from Atwell, LLC ("Atwell") that suggests numerous deficiencies with the ATSI environmental assessment. As a result, Applicant shall be required to obtain an independent third-party review of the ATSI environmental assessment, which shall, in addition to overall review of that assessment, specifically address the concerns raised by Atwell's report.

i. ***Applicant Shall Accept the Continuing Responsibility to Ensure that No Erosion or Alteration of Drainage Patterns is Permitted.*** Applicant's environmental site plan addresses concerns relating to erosion and drainage patterns. In addition, JSESC, JDC and MDEQ each have additional standards that must be met that will further ensure this requirement is met. The Planning Commission finds that additional conditions are necessary to ensure compliance with this requirement, as specified below.

j. ***Applicant Will Construct an Appropriate Fence.*** Applicant will install a 6-foot tall, 14-gauge woven wire fence around the 31-acre area proposed for mining. Applicant has satisfied this requirement on its site plan.

k. ***Applicant has Provided a Detailed and Satisfactory Restoration Plan.*** Applicant plans to restore the mined area by creating a lake, with the perimeter developed into 18 single-family site condominium units to be served with on-site septic and well facilities. Applicant's plan also shows the development of 3 single-family lots fronting Norvell Road in the southeast corner of the property, with a park also shown in that area. Applicant is proposing a restoration plan that develops the Property for residential purposes, rather than to its pre-extraction condition. This is acceptable to the Planning Commission, although this additional development of the Property is a separate activity from the extraction operation, and will require additional approval and site plan review. Given the connection between these two activities, Applicant will be required to apply for the appropriate approvals for the residential development or restoration to vacant property prior to completion of extraction activities. Applicant must also progressively rehabilitate the Property during the extraction operation, as required by §14.07(HH)(12).

1. ***Required Performance Guarantee.*** Applicant estimates that it will cost \$4,000.00 per mined acre to restore the Property. The Planning Commission finds that this estimate is low, and therefore concludes that an independent review of this estimate is necessary. Once an independent review is received and accepted by the Planning Commission, and Applicant gives the Township a performance guarantee in that amount and in a form approved by the Township Attorney, this requirement will be satisfied.

m. ***Applicant's SUP Will not Exceed a 5 Year Term.*** Applicant states that the extraction operation may take up to 10 years to complete. A SUP cannot exceed 5 years in duration, so this SUP shall expire 5 years after the date of this decision. Applicant will be required to apply for renewal of this SUP if additional time is needed to complete extraction operations.

Applicant has met the burden of establishing that each of the above use requirements have been met, or can be met through appropriate conditions, which are addressed below.

4. **"Very Serious Consequences" Claim.** The Friends have raised a number of concerns about the proposed extraction operation. The Planning Commission has considered each of the concerns, including the argument that the SUP must be rejected based on the "very serious consequences" doctrine of MCL 125.3205. Although these factors assisted the Planning Commission's review of this Application, the Friends apparently misapprehend the scope and applicability of this doctrine. MCL 125.3205(3) states that an Ordinance *shall not prevent* extraction activities *unless* "very serious consequences would result from the extraction of those natural resources." In other words, MCL 125.3205 prohibits the Township from preventing extraction operations unless it is clearly established that one or more of the factors found in MCL 125.3205(5) have been met. The Planning Commission finds that none of these factors have been satisfied to prevent Applicant's extraction operation under the "very serious consequences" doctrine.

Planning Commission Decision: Based upon the above discussion and findings, the Planning Commission approves Applicant's request for a SUP, subject to the following conditions. Applicant must satisfy conditions prior to the commencement of operations ("Pre-conditions") and conditions that must be satisfied while the extraction operation is in progress ("Operating Conditions"). These conditions are as follows:

1. ***Pre-conditions:***

- a. Applicant must receive final site plan approval of the extraction operation before beginning any construction, grading, clearing or extraction activities on the Property.
- b. Applicant shall obtain and submit an independent third-party expert's opinion on the appropriate amount of a performance guarantee for restoration of the Property. This guarantee must be sufficient to allow the Township to restore the Property at no cost to the Township, in the event Applicant chooses to discontinue operations on the Property or does not construct the proposed residences and lake on the Property as currently proposed. This review shall evaluate Applicant's proposed \$4,000.00 per mined acre proposal, conduct a review of comparable activities elsewhere in the Township or the County, and propose a performance guarantee that is sufficient to ensure restoration of the Property. Applicant is required to post a performance guarantee in that amount and in a form approved by the Township Attorney in order to obtain final site plan approval of the proposed extraction activities. If the Planning Commission does not approve this independent review, it may hire its own expert at the cost of Applicant to determine restoration

costs, which shall be binding on Applicant.

- c. Applicant shall accept continuing responsibility, via a notarized and sworn statement, to ensure that no erosion or alteration of existing drainage patterns will occur due to the proposed extraction operations, and agreeing to be solely responsible for remedying these issues if they occur.
- d. Applicant shall obtain and submit an independent third-party expert review of the ATSI environmental report submitted to the Planning Commission. If this review reveals additional concerns, the Planning Commission may either terminate this SUP or require additional conditions. The Planning Commission must approve of the independent third-party expert's review prior to the approval of any site plan. This independent third-party review must address the specific concerns identified by Atwell's review of the ATSI environmental assessment.
- e. Applicant must demonstrate that its extraction operations do not pose a risk to the two existing and adjacent Consumers Energy natural gas pipelines on the Property, and shall submit survey drawings indicating the actual position of the pipelines and easement and a statement by Consumers Energy that it does not believe that the location and extent of the proposed extraction activities will have a negative effect on its existing pipelines.
- f. Applicant shall obtain approval from Jackson County Department of Transportation ("JCDOT") for its proposed truck route(s) for access to and from the Property. Any changes to the route(s) specified in the application must be reviewed and approved by the Planning Commission, regardless of whether those changes have been approved by JCDOT.
- g. Applicant shall submit additional documentation specifically addressing environmental concerns about the day-to-day operation of the site (including non-mining activities), including findings on whether those activities will cause pollution, erosion, altered drainage patterns of water, odors, smoke, fumes or dust.
- h. Applicant shall obtain all necessary approvals from JCDOT, Jackson County Drain Commissioner ("JDC"), Jackson County Soil Erosion and Settlement Control ("JSESC") and Michigan Department of Environmental Quality ("MDEQ"). It is understood that the MDEQ will require a hydrogeological study as part of its review, and Applicant shall also provide such hydrogeological study to the Planning Commission for its review and approval.
- i. Applicant shall submit topographical maps of the entire Property.
- j. Applicant shall submit a plan indicating how topsoil will be preserved, the proposed landscaping to be used in the restoration/development phase of the project, and the activities Applicant intends to use to progressively rehabilitate the Property as extraction operations occur.
- k. Applicant shall install evergreen trees no less than 6-feet tall at the top of the earthen berm that is currently planned for the site, with a separation distance no wider than 25 feet measured trunk-to-trunk.
- l. Applicant must submit any documentation necessary to demonstrate compliance with these Pre-conditions. The Planning Commission must certify, in writing, that each of these Pre-conditions have been satisfied prior to final site plan approval of the extraction activities.

2. Operating Conditions:

- a. Extraction operations (including, but not limited to, parking or staging trucks outside the Property, warming up equipment, etc.) shall not occur prior to 7 am nor after 6 pm on any weekday. In order to alleviate traffic conditions, the gates into the site may be opened not more than one hour prior to 7 am in order to allow trucks to enter the facility, but trucks shall not run their engines nor be loaded until 7 am. No extraction operations shall occur on weekends or on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.
- b. Applicant must take measures to ensure that the extracted material and dust are not spread to nearby properties or the Township's roads. Applicant must control and minimize the dispersion of dust from any areas on the Property where material is extracted, processed, stored or loaded. Such dust-control activities shall occur on an as-needed basis, but no less than daily. Measures shall include, but are not limited to, spraying down excavation areas and storage piles, sweeping of the entrance onto Norvell Road and the washing of trucks prior to exiting the Property, each to occur at least daily. Applicant must also treat or brine on-site access roads and loading areas, although Applicant is not required to do so daily.
- c. During the school year, based on the Grass Lake Schools' schedule, no trucks shall enter or leave the site during the ½ hour immediately preceding the commencement of classes at Grass Lake High School nor in the ½ hour immediately following the dismissal of classes on any day.
- d. Extraction operations must be completed within 5 years from the date of final site plan approval, unless this SUP is renewed by the Planning Commission and additional site plan approval is granted.
- e. All trucks entering or leaving the site shall comply with all weight requirements imposed by the JCDOT.
- f. Applicant shall provide a public telephone number for citizens to make complaints, and must make reasonable efforts to address any complaints received at this number. Applicant will document all complaints, and provide quarterly reports to the Planning Commission detailing the number of complaints received, the nature of those complaints, and the efforts made to address those complaints and prevent similar complaints in the future.
- g. Approval for the final restoration of the Property, including the development of any residences, site condominium, related infrastructure or creation of the proposed lake, shall require separate site plan approval. Applicant shall obtain this site plan approval before 80% of the available materials on the Property have been extracted or upon renewal of this SUP, whichever is sooner.
- h. No material from off the site shall be deposited in or on the Property.
- i. Failure to satisfy any of the forgoing Pre-Conditions or Operating Conditions will invalidate this decision and will result in the termination and revocation of the SUP. Ordinance, § 14.05(E).

Roll Call Vote of Planning Commissioners:

☒ (Yes) / (No) Chair Hinkle

(Yes)/(No) Commissioner Warbritton
(Yes)/(No) Commissioner Raeltz
(Yes)/(No) Commissioner Memmer
(Yes)/(No) Commissioner Elliott
(Yes)/(No) Commissioner O'Quinn

Signature of Planning Commission Chair (or authorized Planning Commissioner):

The Planning Commission Chair certifies that a majority of the entire Planning Commission membership voted to approve the above decision.



Planning Commission Chair/Authorized Commissioner

Dated: Oct 12, 2017

CERTIFICATION

I, the duly acting Secretary of the Grass Lake Charter Township Planning Commission, certify that on this date I witnessed the signature set forth above and attest to the accuracy of this Decision, which was approved by the Planning Commission at a duly scheduled meeting on October 12, 2017.



Roger G. Memmer, Planning Commission Secretary

Dated: Oct 12, 2017