

Minutes of the regular meeting of the Mineral Mining Board, held Wednesday, July 7, 2021

Meeting called to order by Chairperson Samy at 7:00 p.m.

Present: Josiah Samy, Jessica Ulberg, Jeannine Bolhouse, Donna Ferguson, Michael Moores,
Tom Healy

Absent: Gary Veldink

Also present: Victor Vuong, Mineral Mining Official, Crystal Morgan, Township Attorney, Mannette
Minier

#210707-01 – Mineral Mining Board Agenda for July 7, 2021

Moved by Donna Ferguson, seconded by Michael Moores, to approve the agenda as submitted.

Yeas: Josiah Samy, Jessica Ulberg, Jeannine Bolhouse, Donna Ferguson, Michael Moores, Tom
Healy

Nays: None

MOTION CARRIED.

#210707-02 – Minutes of the April 21, 2021 Mineral Mining Board Meeting

Moved by Donna Ferguson, seconded by Michael Moores, to approve the minutes as presented.

Yeas: Josiah Samy, Jessica Ulberg, Jeannine Bolhouse, Donna Ferguson, Michael Moores, Tom
Healy

Nays: None

MOTION CARRIED.

#210707-03 – Public Hearing (ML2103) Grand Rapids Gravel, 2700 28th St. SW, is requesting a new Mineral Mining License (adding uses not approved with the current license is considered to be a new application) under Sec. 26-74 of the Code of Ordinances, on parcels of land in Georgetown Charter Township, Ottawa County, Michigan, described as:

1. P.P. # 70-14-02-100-001, located at 1600 Fillmore St., zoned RR,
2. P.P. # 70-14-02-100-008, located at 1600 Fillmore St., zoned RR,
3. P.P. # 70-14-03-200-003, located at 1625 Fillmore St., zoned RR,
4. P.P. # 70-14-02-100-007, located at 9225 12th Ave, zoned RR,
5. P.P. # 70-14-02-100-004, located at 9301 12th Ave, zoned RR,
6. P.P. # 70-14-02-300-009, located at 1405 Taylor St., zoned LDR (leased property),
7. P.P. # 70-14-03-400-028, located at 1606 Fillmore St., zoned LDR (leased property).

James Dykema, Grand Rapids Gravel, presented the [request](#). He said he wants to make his presentation in two parts: the renewal and the new request. The renewal is to push the current approvals out 3 years. There's about 185,000 tons to excavate. The three areas consist of 80,000 tons located under Hopper and extension of Fillmore, 25,000 tons south of the pump,

and 80,000 tons on the peninsulas to the oils wells. They've done most of the 25,000 tons south of the pump. They have not excavated the materials under the oils wells or under Hopper and extension of Fillmore. They've been working with Fischer McCall to get the oil wells capped and abandoned.

He said Fischer McCall broke their lease, so Grand Rapids Gravel will be able to fight them in court, but it could drag on for years. They hope to get the oil wells plugged by the end of October 2021 and be able to mine that area next year. He said excavating and taking out the haul route that Cedar Valley had used in the past will make the GRG operation less efficient. He said another change is that Cedar Valley excavations will be carried out longer than initially expected. He said that Cedar Valley management would prefer to transport their excavated materials to Grand Rapids Gravel. They would like to continue to use that short haul from Cedar Valley. He also said that in April 2021, the Ottawa County Road Commission reached out to Grand Rapids Gravel requesting them to process their material since they are already setup there. Since a plant is already there, it doesn't make sense to tear that down just to put another one back up. He said the Parks Department is excited that Grand Rapids Gravel will excavate the area by the oil wells. As for the new part of the request, Grand Rapids Gravel is seeking to transport materials onto the Jenison site from Boulder Creek in Plainfield Township. He said with Cedar Valley not excavating and transporting materials to Grand Rapids Gravel right now, and difficulty excavating the access route, and without the oil wells being capped, they would like to transport onto the Jenison site material from Boulder Creek to utilize the plant for a short period until the end of the year to fill the void of dead time. He said it doesn't affect the length of the operation in anyway. He addressed page 6 of the staff report and said that in his opinion the Mining Board does have the authority to allow this type of industrial use because it has been done in the past and the Mining Board has approved crushing and importing in the past even though those uses aren't listed in the Zoning Ordinance. He noted that a million tons of material was processed through this site from Millennium Park. Huizenga, right next door, was also allowed to import in 2010. Grand Rapids Gravel is aware that it was prohibited from importing materials in its 2015 renewal and that in 2019 they were told they could not import. He said DeWent, now Top Grade Aggregates, should not be importing because that's not a permitted use in the Industrial district. He said traffic should not be a concern because 4,000 trucks over 5 months on Cottonwood is not much.

The Mineral Mining Official presented the [staff report](#) and also included the comment that staff sees no issues with the proposed timetable and confirmed with the applicant prior to the meeting that crushing is not being requested. He also provided information in response to [Grand Rapids Gravel's response letter to the staff report](#) regarding importation being permitted in past licenses. Although the Mineral Mining Board permitted importing for some licenses in 2010 as pointed out in the response letter, importation has consistently been prohibited in all new and renewed mining licenses on residentially zoned properties since 2013, with the only limited exception being Cedar Valley transporting excavated materials to the Grand Rapids Gravel Jenison Plant #16.

Tom Healy said there is a huge area that's already mined and the only areas left are the wells, the combined area under Hopper and extension of Fillmore, and under the plant. Is there anything else?

James Dykema noted that Ottawa County Road Commission property to the south of the Grand Rapids Gravel property remains to be excavated, though they don't currently have the

authority to mine that land. He confirmed that the current application does not include excavation of the Ottawa County Road Commission property and that would not be excavated until it is legally approved.

Tom Healy said there's a circular logic of rationalization to continue the operation - not excavating to be able to import from Cedar Valley and Boulder Creek. He said because the material remaining for excavation is not that much compared to the material proposed to be imported, so this can go on forever.

James Dykema said yes, it can go on forever.

Tom Healy read MCL 125.3205(3) and questioned how the applicant reasonably expects to operate at a profit.

James Dykema said he's hoping to import materials to bridge the gap so the plant doesn't sit idle. He said the Ottawa County Road Commission just got a renewal last year and they're not doing anything on their land for a profit either.

Jeannine Bolhouse expressed concern about how long this is going to go on. If the Mining Board allows Grand Rapids Gravel to import materials, it disincentivizes them from completing the project and reclaiming the land. She disagrees with Dykema's reading of the law. Overall, she doesn't have any concerns with extending the timeframe by three years. She confirmed through the applicant that Grand Rapids Gravel would like to have the right to mine and process the Ottawa County Road Commission's property, but at this time they do not have the authority.

Regarding Grand Rapids Gravel's request to import materials, she said the applicant was relying on information about licenses that were issued before the Township consistently prohibited importing since 2013.

Josiah Samy asked about the applicant's statement that material from Boulder Creek was already processed.

James Dykema said that the materials imported from Boulder Creek in 2018 or 2019 have been processed. Grand Rapids Gravel ceased importation of materials from Boulder Creek when it was notified by the Township of the violation.

Josiah Samy asked if they are able to process at Boulder Creek.

James Dykema said no, the plant there has been disassembled.

Josiah Samy asked how many developers are relying on Grand Rapids Gravel for their material?

James Dykema said there's about 50 trucks a day, some days more and some days less, depending on the proximity. So maybe hundreds of builders and contractors.

Josiah Samy said so if they can't bring it here, where is the nearest location those builders and developers can go?

James Dykema said Huizenga right next door, but said he got a phone call today from a customer that is looking for material that Huizenga doesn't have anymore.

Josiah Samy said he sees no issues with the new timeline. His hope is that they can complete the prerequisites to mining by the end of 2021. Could it be any sooner?

James Dykema said hopefully by the end of October, but it's contingent on EGLE approval.

Josiah Samy asked has there been additional PFAs tests on the Boulder Creek material?

James Dykema said tests have come back negative. They've had discussions with EGLE and there's been no issues from them either.

Josiah Samy asked for clarification regarding the applicant's comments about industrial uses.

Crystal Morgan said the Township used to regulate mining, including as a special land use in industrial districts, under the Zoning Ordinance. The property included in this application is not zoned industrial so the question is not what is permitted in the industrial district. It is reasonable for the Mining Board to consider the industrial nature of the proposed activity, and the location of the site in a residential district, in reviewing the application. The state law protects extraction of natural resources. The proposed use of importing material onto the site for processing was previously deemed to be an industrial type use and this is residentially zoned property.

Josiah Samy asked if there's anything the Mining Board can do since it is an industrial type use?

Crystal Morgan said if the Mining Board is asking for an opinion if they can allow this in any particular district, that's something she can bring back at a future meeting.

Donna Ferguson said she likes to see the reclamation happen sooner rather than later and that's what this is all about. She said last time the applicant said if they weren't able to excavate the oil wells then they would abandon that and there was a hard deadline. So why is there a request for a renewal?

James Dykema said that Grand Rapids Gravel offered to forego mining the wells as part of a quid pro quo, similar to the restrictive covenant they signed with Plainfield Township, but the Township did not accept the quid pro quo so now they are hoping to excavate around the oil wells.

Jessica Ulberg said she doesn't have any issues with the revised timeline. She said they were allowed to import material from Cedar Valley so she doesn't have an issue with importing from Boulder Creek. She said the traffic on Cottonwood is already happening. She said if we remove condition 12 from the current license conditions, it would only be until the end of 2021.

Michael Moores said that he doesn't have an issue with the extension, but obviously we don't want it to go on indefinitely.

Tom Healy said in recognition of the fact they probably lost 18 months due to the pandemic, he

is in favor of granting an extension, but not for the dates proposed because he wants to incentivize finishing the project sooner. He has concerns about an industrial type use in a residential area. He said the oil wells are not being operated and by analogy we would not allow the owner of the oil wells to import oil for processing there. Importing materials for processing is an industrial kind of operation in a residential zone and is inconsistent with the Township's land use goals. He said he would be in favor of an 18-month extension: to June 30, 2023 for completing excavation; to June 30, 2024 for removing stockpiles; and to December 31, 2024 to complete reclamation. He said the Mining Board could consider a future application if conditions changed during the 18 months, such as Grand Rapids Gravel obtaining permission to mine the oil wells.

Josiah Samy asked the applicant about the proposed time frame and James Dykema said he's waiting on the oil wells and doesn't want to come back for another meeting.

The Chairperson opened the public hearing.

Jim Dykema, President of Grand Rapids Gravel, commented that notice of the public hearing was published and nobody in the Township showed up to voice any concerns.

The Chairperson closed the public hearing.

Jeannine Bolhouse said this application includes 7 parcels and it appears there are multiple parcels on this application where mining has been completed. She said it doesn't look like any excavating can be done on the properties with parcel number 70-14-03-200-003 and 70-14-02-100-001.

James Dykema said a cleaning plant is on those parcels to wash the material. The operation uses all 7 parcels, but not all for excavating.

Jeannine Bolhouse said the way that she reads the statute and ordinances, there's a very clear and distinct difference between excavating materials on the site and processing those materials versus processing materials imported onto the site and there's a very clear and distinct difference between the limited moving of products a short distance within the Township versus moving material miles and miles away including from another township.

Tom Healy said he has a concern that they are missing the Township Board liaison at tonight's meeting. He said the Township Board liaison is a developer and is also the person who has the capacity to bring to the Mining Board the general outlook of the Township Board. Tom thinks the liaison should be involved in the review of this application. He would also like more time to review the applicant's rebuttal materials. He would like to table the option and also ask the Township Attorney to work on a proposed motion to bring back to the Mining Board. Some of the things he would like to be considered are the timeframe he referenced, ensuring the prohibition of crushing, raising the bond to \$3,000 per acre consistent with state law, and prohibiting importation of materials from other sites so as not to set a precedent.

Josiah Samy asked the Mineral Mining Official to provide options for a motion. The Mineral

Mineral Mining Official provided options for a motion.

James Dykema asked the Mining Board to please make a decision tonight because time is of the essence. He said Grand Rapids Gravel is proposing to import materials only until the end of the year. He said the Mining Board can change the previous conditions as they see fit in order to make a decision tonight. Having readily accessible material here in Georgetown is good for all businesses in Georgetown. He commented that another mining operation is taking material from a development on Cottonwood, after the Township told Grand Rapids Gravel it could not import it.

Josiah Samy confirmed with legal counsel that the Mining Board has 60 days to make a final decision.

Crystal Morgan said if the Mining Board wishes to follow the same process that it utilized in 2019, legal counsel can prepare a draft resolution for the Mining Board's consideration at a future meeting. Tonight's motion would not be to approve or disapprove; it would be to postpone action on the application and instruct legal counsel to prepare a draft resolution for consideration at a future meeting based on the discussion and the consensus tonight. If a member wishes to make a motion from the staff report, it could or could not include a resolution being brought back to the Mining Board. The terms of the current permit remain in effect.

Tom Healy said he's in favor of requesting legal counsel to draft a proposed resolution as discussed, and said the Mining Board could discuss the issues such as timeframe, bond, and importing and crushing tonight or at a later time. He recommends postponing to July 21, 2021.

Josiah Samy asked Tom Healy his idea on the bond.

Tom Healy said the pending Senate bill that James Dykema referenced requires a \$3,000 per acre performance bond.

Jeannine Bolhouse is in favor of a motion to instruct legal counsel to put together a resolution and to meet in 2 weeks to discuss and make a decision since the Planning Commission meets in 2 weeks. She said in order to maintain consistency, there is a question if the Mining Board should or should not still allow Cedar Valley to export materials to Grand Rapids Gravel, maybe that should be a point of discussion if the Mining Board is to be clear and consistent.

Josiah Samy said he has no issue with the proposed timeline, he understands things take time. He said staff doesn't see an issue with the timeline either. He understands that we all want to see this through, but other entities in this area have a similar timeline. He understands the applicant's desire to import materials and recognizes that there's a lot of new development going on in the Township and that's where a lot of builders and developers get their material. He's leaning toward allowing importing, but would like a legal opinion on the question of whether the Mining Board has authority to allow it. He'd like more information about the performance bond for other licensees. Regarding Cedar Valley, he understands they had a bond with the Ottawa County Drain Commission. He does see everyone working in good faith and there's a lot of transparency here. He is leaning in favor of the proposed timeline and importation, but he wants a little more clarification.

Donna Ferguson said she agrees with Josiah Samy. She believes they can make the motion tonight on the proposed extension of the deadlines. She stressed the need for consistency.

Regarding the importing, from a business standpoint, she understands that it makes sense, but she doesn't see how it makes sense for the Township. She said she needs more clarification to make a decision. She doesn't think the Mining Board is equipped tonight to make a decision. She did not have an opinion regarding the bond.

Jessica Ulberg said the proposed timeline was acceptable and she was in favor of allowing the importation of material through the end of this year. She thinks people will be more upset about paying more for material than the importing. She feels if people were upset, they would be here tonight. She doesn't have an opinion on the bond.

Michael Moores said he doesn't have a problem with the proposed timeline and no opinion on the bond. He wants to know that the Mining Board is operating legally. He said we have a forum for the public to offer their opinion, but nobody is here to voice their concerns.

Tom Healy said the fact that nobody is present to complain doesn't necessarily mean there's nobody objecting to it. Just like there's no one here to support, should the conclusion be that there's no one in support? He said we need to stick to the law and not allow any more importation. Regarding the bond, the \$3,000 per acre is an objective opinion that is coming from an authoritative source, the Senate Fiscal Agency.

Josiah Samy asked Crystal Morgan to put together a couple different options for the Mining Board and a legal opinion regarding the questions raised tonight. Josiah asked the Mineral Mining Official to please confirm that the Township Board liaison will be present next time.

Crystal Morgan said she understands there may be a motion to postpone until July 21 to allow legal counsel to prepare resolution language and to provide a legal opinion to the Mining Board. She said the Mining Board can review the proposed language and the earlier resolution to guide its discussion at the next meeting.

Donna Ferguson said she will not be at the July 21 meeting.

Crystal Morgan said if a member is not present at the meeting where the resolution is presented the member can't vote on the resolution. She asked the Chairperson if he is asking for the amounts of bonds of other licensees.

Josiah Samy said yes, as the Senate bill is still pending so more information would be great.

Moved by Tom Healy, seconded by Jeannine Bolhouse, to postpone action on the application until a meeting to be held on July 21, 2021, with instructions to legal counsel to prepare draft resolution language and to report back to the board with legal opinions on the items discussed.

Yeas: Josiah Samy, Jessica Ulberg, Jeannine Bolhouse, Donna Ferguson, Tom Healy, Michael Moores

Nays: None

MOTION CARRIED.

#210707-04 – Public Comments

No one in the public made public comments at this time.

#210707-05 – Adjournment - The Mineral Mining Board meeting was adjourned at 9:30 p.m.