

**TOWN OF LANARK
NONMETALLIC MINING ORDINANCE
ORDINANCE NO. _____**

WHEREAS, Wisconsin towns that have adopted village powers have the authority to regulate mining, mining-related exploration and processing activities, and other offensive industries, under Wis. Stats. §§ 60.10(2) (c), 60.22, 61.34 & 66.0415, in order to promote and protect public health, safety, and general welfare, and to prevent nuisances; and

WHEREAS, Wisconsin towns also have authority to regulate the use of town highways under Wis. Stats. §§ 349.16 & 349.17; and

WHEREAS, the Town of Lanark, in Portage County, Wisconsin (“Town”), has adopted village powers and is concerned about the potential impacts of nonmetallic mining and mining-related processing activities within the Town, and the Town board desires to regulate such activities in order to protect the public health, safety, and general welfare of Town residents and property owners, regulate the use of Town highways for such purposes, and prevent nuisances.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby enacts this Nonmetallic Mining Ordinance, as follows:

SECTION 1: PREAMBLE

(1) The purpose of this ordinance is to promote the health, safety, prosperity, aesthetics, and general welfare of the people and communities within the Town, to prevent nuisances, and to set forth the rules and procedures for this municipality regarding nonmetallic mining and mining-related processing activities within the Town. This ordinance is adopted pursuant to the Town’s village and police powers under Wis. Stat. §§ 60.10(2) (c), 60.22, 61.34 & 66.0415, and the Town’s authority to regulate town highways under Wis. Stats. §§ 349.16 & 349.17. This Ordinance is based on the Town of Cooks Valley Nonmetallic Mining Ordinance, which was upheld as a licensing ordinance by the Wisconsin Supreme Court in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362 (Wis. 2012). This ordinance replaces and supersedes all previous ordinances relating to the same subject matter adopted by the Town.

SECTION 2: INTENT

(1) The general intent of this ordinance is to regulate the location, construction, installation, alteration, design, operation, reclamation, and use of all nonmetallic mines so as to protect the health of residents and transients; secure safety from disease and pestilence; further the appropriate use and conservation of land and water resources; preserve and promote the administration and enforcement of this subchapter, and provide penalties for its violations.

SECTION 3: INTERPRETATION

(1) In its interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the Town, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

SECTION 4: DEFINITIONS

(1) *Metallic Mining* or *Mining* means operations or activities for the commercial extraction from the earth of merchantable metallic minerals or the exploration or prospecting for such minerals and includes operations, processes or activities related to that extraction.

(2) *Nonmetallic mining* and *mining* mean all of the following:

(a) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

(b) Processes carried out at a nonmetallic mining site relating to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site and mineral aggregates or nonmetallic minerals transported to the site from elsewhere. These processes include, but are not limited to, stockpiling materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, hauling and transporting such materials, screening, scalping, and dewatering.

SECTION 5: REGULATION OF NONMETALLIC MINING

(1) Nonmetallic mining in the Town shall be allowed only as provided for pursuant to this ordinance.

(2) The applicant shall apply for a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to operating any nonmetallic mine within the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto as Appendix A.

(3) The Town Board shall be the sole determining body of whether to issue the permit, after review and recommendation by the Town Plan Commission, and after a public hearing has been held by the Town Board, with notice given by U.S. Mail, to all landowners within two (2) miles of the proposed nonmetallic mine. The Town Board shall grant the permit,

either with or without conditions, if it is determined that the development and operation of the nonmetallic mine will be in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(4) A Town permit issued pursuant to this ordinance shall be void if the permit holder violates any conditions of the permit or any conditions of any required Federal, State or County permits, unless otherwise approved by the Town.

SECTION 6: PROCEDURES, STANDARDS & CONDITIONS OF APPROVAL

(1) The applicant shall complete a Town of Lanark Nonmetallic Mining Permit Application (Appendix A) (“application”) and pay the required application fee of Two-Thousand Dollars (\$2,000.00) to the Town, at the time the application is submitted to the Town Clerk. In addition to the required application fee, within thirty (30) days following submission of the application to the Town Clerk, but before the application itself is reviewed or otherwise considered by the Town, the applicant shall be required to enter into an agreement with the Town under which the applicant shall agree to compensate the Town for all of its legal and expert consulting expenses, which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a permit to mine or conduct mining operations is subsequently approved by the Town.

(2) After receiving the application and the application fee, and after the Town has reached an agreement with the applicant for the applicant to compensate the Town for all of its legal and consulting expenses, as described in § 6 (1), above, the Town Clerk shall mail a copy of the application to all landowners within two (2) miles of the proposed nonmetallic mining site with a notice that notifies them of the date and time of a special Town Plan Commission meeting for initial review of the application. The special Town Plan Commission meeting shall be held at least thirty (30) days after the Town Clerk mails copies of the application and meeting notice to the landowners within two (2) miles of the proposed nonmetallic mining site.

(3) The Clerk shall then place the application on the agenda for the special Town Plan Commission meeting.

(4) The Plan Commission shall review and consider the application and make a recommendation to the Town Board as to whether or not the application is complete, and whether or not the applicant has applied for or received any required Federal, State, and County permits for the proposed mine. After a decision and recommendation has been rendered by the Plan Commission, the application shall be placed on the agenda of the Town Board for a special meeting, providing for a public hearing, to be followed by a period for deliberations and a decision. If the Town Board deems it appropriate, the time set for deliberation and a decision on the application may be scheduled for a subsequent meeting, after the public hearing has been completed.

(5) At the public hearing held by the Town Board, the Town Board shall consider the recommendation of the Plan Commission, and the recommendations of any legal or technical experts it has retained to review the application, the position of the applicant, and public input on

the proposed mining operations, which may be submitted to the Town Board through oral and/or written testimony. Before making a decision on the application, the Town Board shall deliberate and shall determine whether the application is complete, and whether the applicant has applied for or received any required Federal, State, and County permits for the proposed mine, by making factual findings.

(6) All deliberations and decision-making by the Plan Commission and the Town Board under this ordinance shall be carried out in open session unless there is a need to go into closed session pursuant to the Wisconsin Open Meetings Law based on the advice of legal counsel for the Town.

(7) A written record in the form of draft minutes of the meetings, the public hearing, and the decisions of the Plan Commission and the Town Board, shall be made available to interested parties and the public for inspection and copying within fifteen (15) days of each such meeting, hearing or decision, by the Town Clerk, upon written request. Reasonable copying fees may be charged by the Town for such documents.

(8) The Town Board shall grant the permit, either with or without conditions, if it is determined, by factual findings, that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare. If this standard cannot be met with or without conditions the Town Board shall deny the application. However, if a permit is issued pursuant to this ordinance the permit shall be renewed annually for the first five years of the permitted nonmetallic mining and/or processing operations. At that point the duration may be extended by the Town for multiple years if the provisions of the permit have been followed by the permit holder. The Permit Renewal fee shall be \$2000.00 annually for the first five (5) years. Thereafter, the duration of the permit and fees shall be set by the Town Board. The annual renewal fee shall be submitted to the Town Clerk.

(9) If a permit is issued by the Town Board pursuant to this ordinance, the mining extraction area and all mining and/or mining operations shall be setback at least 50 feet from any adjoining line fence or property line, and at least 250 feet from any well or structure on adjoining property (as defined under the Portage County Zoning Ordinance), unless a variance is approved by the Town Board for good cause.

(10) If a permit is issued by the Town Board pursuant to this ordinance, the Town shall conduct an annual review of the permit during the first five (5) years, which shall take place at least fifteen (15) and no more than thirty (30) days prior to the annual anniversary date of the permit.

(11) If a permit is issued by the Town Board pursuant to this ordinance, all nonmetallic mining and/or mining operations shall be in compliance with any other required Portage County, State of Wisconsin, and Federal permits.

(12) If a permit is issued by the Town Board pursuant to this ordinance, any duly authorized officer, employee or representative of the Town may enter and inspect any property,

premises or place on or at which any nonmetallic mining and/or mining operations are being performed pursuant to the permit, with reasonable advance notice to the owner/applicant, for the purpose of determining whether the permit holder is in compliance with this ordinance and the permit.

(13) If a permit is issued by the Town Board pursuant to this ordinance, all permitted activities shall be conducted in compliance with the completed application for the permit, as well as all other requirements of this ordinance and any other conditions approved by the Town pursuant to approval of the permit, as described below and in the Town Board minutes and record relating to approval of the permit.

(14) If a permit is issued by the Town Board pursuant to this ordinance, no hauling of materials may take place from any mining site after the permit has expired, unless otherwise specifically approved by the Town Board.

(15) If a permit is issued by the Town Board pursuant to this ordinance, the Town Board shall, at a minimum, require as a condition of the permit that the permit holder maintain a sufficient performance bond or other financial security arrangements, general and environmental liability insurance, and road maintenance procedures, prior to conducting any activities or operations under the permit.

(16) The Town Board may conditionally approve a permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to:

- (a) Restrictions and proof of financial security for proper abandonment and closure of exploration borings, and mining and processing activities;
- (b) Restrictions and proof of financial security for proper nonmetallic mining and mining-related processing and exploration site reclamation;
- (c) Restrictions and proof of financial security for town road use, maintenance and repair under Wis. Stats. §§ 349.16 & 349.17;
- (d) Restrictions on hours of operation;
- (e) Restrictions on truck and traffic routes and volume into and out of exploration, mining and processing areas;
- (f) Restrictions on blasting and use of explosives, including requiring the applicant to follow a blasting plan approved by the Town Board;
- (g) Restrictions to protect groundwater and surface water quantity and quality;
- (h) Restrictions to safeguard public and private drinking and agricultural wells;

- (i) Restrictions to control air emissions and dust from proposed exploration or proposed mining activities or operations;
- (j) Restrictions to require full disclosure of the names of the owner(s) of the applicant or operator and to prohibit or limit the transfer of the permit to another operator, person or entity;
- (k) Restrictions providing for automatic revocation of the permit after sixty (60) days in cases of bankruptcy or abandonment of operations by the operator or permit holder;
- (l) Restrictions concerning the contents and filing of an annual report by the permit holder for purposes of annual review of the permit by the Town during the first five (5) years of operations and extension thereafter by the Town;
- (m) Restrictions to protect the property rights and property values of other public and private property owners who may be affected by the proposed exploration or mining activities or operations; and
- (n) Any other restrictions deemed necessary or appropriate by the Town Board to protect public health and safety and promote the general welfare of the Town and its residents and property owners.

SECTION 7: LAPSE OF PERMIT

(1) A permit issued pursuant to this ordinance shall lapse and shall be considered void six (6) months after approval by the Town Board if the permitted activities have not been commenced by the permit holder.

SECTION 8: REVOCATION OF PERMIT

(1) If any condition of a permit issued pursuant to this ordinance is violated or if the permitted activities become substantially detrimental to persons or property in the neighborhood, the Town Board shall hold a public hearing to consider revocation of the permit. If, upon finding that any material condition of the permit has been violated or if the character and quality of the area has been substantially and adversely affected by the continuation of the permitted activities, the Town Board may revoke and/or modify the permit. At that point, legal action may be initiated by the Town to enforce the permit and this ordinance in order to protect the public health, safety, and general welfare of Town residents and property owners.

(2) In the event of revocation or termination, a permit issued pursuant to this ordinance shall be void and the activities permitted under the permit shall be immediately stopped by the permit holder. At that time a performance bond or other security, required at the time of permitting by the Town may be invoked and used by the Town, if necessary.

(3) All legal fees and costs to the Town arising from noncompliance with a permit issued pursuant to this ordinance shall be the responsibility of the permit holder and shall be billed to the permit holder by the Town.

SECTION 9: JUDICIAL REVIEW

(1) An applicant or any other person or party who is aggrieved by a final decision of the Town Board on whether or not to approve, revoke or modify a permit or agreement pursuant to this ordinance, either with or without conditions, or a taxpayer, may, within thirty (30) days after the final decision, commence an action seeking the remedy available by certiorari in the Portage County Circuit Court. The court shall not stay the decision appealed from, but may, with notice to the Town Board, grant a restraining order. The Town Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

(2) In any certiorari proceeding brought under the preceding paragraph, attorney fees and costs shall not be allowed against the Town unless it shall appear to the court that the Town acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

SECTION 10: AGREEMENT IN LIEU OF PERMIT & OTHER EXCEPTIONS

(1) In its discretion, the Town Board may negotiate and enter into a nonmetallic mining or nonmetallic mining operations agreement with a permit applicant, in lieu of issuing a permit pursuant to this ordinance. However, before doing so the Town Board shall first consider a formal permit application under the procedures set forth in this ordinance and hold a special public hearing on the proposed agreement, before approving the agreement. If such an agreement is approved by the Town Board, the Town Board shall be required to make findings of fact and a formal determination, based on the terms of the proposed agreement and other information submitted to the Town Board, that the proposed agreement will adequately protect public health and safety and promote the general welfare of Town residents and property owners.

(2) This ordinance does not apply to the following activities and operations:

- (a) Excavation or grading solely for domestic or farm use at a person's residence or farm;
- (b) Excavation or grading for the construction, reconstruction, maintenance or repair of a public highway, railroad, or other transportation facility where the area in which excavation or grading is located entirely within the

boundaries of the highway right of way or is owned by a railroad or other transportation facility or entity;

- (c) Grading to prepare a reconstruction site or to restore land after a flood or natural disaster;
- (d) Excavation for building construction purposes located and conducted entirely on the building site;
- (e) Nonmetallic mining at any site where less than one (1) surface acre or tunnels having an overall length of less than one (1) mile will be affected during the life of the mine;
- (f) Removal from the earth of products or commodities for non-mining purposes that contain minor or incidental amounts of nonmetallic minerals, including but not limited to production of commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees, and plant nursery stock;
- (g) Activities listed in Wis. Admin Code § NR 135.02(3).

SECTION 11: SEVERABILITY

(1) If any section, sentence, clause or phrase of this ordinance, or if any section, sentence, clause or phrase of any permit or permit condition issued by the Town pursuant to this ordinance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance, or of any other section, sentence, clause, condition or phrase of any permit issued by the Town pursuant to this ordinance.

SECTION 12: ENFORCEMENT & PENALTIES

(1) Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$5,000.00 per day for every day of violation of this ordinance, plus the costs of prosecution, including the Town's attorney fees and costs, for each and every violation. Each day of violation shall constitute a separate offense. In addition, the Town Board may: (a) issue a notice of violation and order that specifies required remedial action, which may include a stop work order; (b) suspend or revoke the permit; or (c) impose any other available enforcement remedy.

SECTION 13: EFFECTIVE DATE

(1) This ordinance shall take effect upon passage and publication.

SECTION 14: PUBLICATION

(1) The Town Clerk shall properly post or publish this ordinance as required under Wis. Stat. § 60.80.

Adopted this _____ day of _____ 2016.

Signatures of Town Officials:

Town Chairman: _____

Town Supervisor: _____

Town Supervisor: _____

Town Clerk: _____