

January 13, 2020

Georgetown Charter Township Board  
Mr. Richard VanderKlok, Georgetown Township Clerk  
1515 Baldwin Street  
Jenison, MI 49428

RE: Grand Rapids Gravel Company Appeal of the Mineral Mining Board Decision.

Dear Mr. VanderKlok,

Happy New Year to you and to all the Georgetown Township Board Members. Thank you all for your service to Georgetown Township.

It is my honor and privilege to be a Member of the Georgetown Township Mineral Mining Board, Planning Commission and Zoning Board of Appeals. I submit this letter not on behalf of the Mineral Mining Board, nor the Planning Commission, nor the Zoning Board of Appeals. I submit this letter as a resident and concerned citizen of Georgetown Township.

On Monday, 1/13/2020, the Georgetown Township Board (Board) is hearing an appeal from Grand Rapids Gravel (GRG) concerning a decision made by the Township's Mineral Mining Board (MMB).

As the Board deliberates on the GRG appeal, please keep in mind these three critical points:

1. GRG has conducted mining operations on these parcels for the past 60 years (See 11/25/2019 GRG appeal letter) pursuing the best use of the property and deriving optimal benefit. Although previously allowed, the Township is not legally bound to the best, most "optimal" property use. Reasonable use is acceptable.
2. When these mining activities began roughly 60 years ago, environmental considerations were drastically different. As recently as 2010 the term PFAS was not a part of the vocabulary of most Michigan residents.
3. Article IV. The Mineral Mining Ordinance (bold print and underline added):  
Sect. 26-80 (a) states in pertinent part "**...the review board may impose reasonable conditions on the issuance or renewal of a license. Conditions of approval may be imposed as necessary: to eliminate or mitigate any potentially adverse impact of the mineral mining operations on adjacent or nearby property, ... or the natural environment...or to otherwise protect the public health, safety and general welfare of the community. The conditions may include, without limitation, conditions regarding the location, design or operation of a site.**"

In referencing the 11/25/2019 appeal letter from James Dykema of GRG, GRG lays out objections by referencing certain "Condition(s)" by "Condition Number." For ease of review, that same format will be followed here.

#### **GRG begins by contesting Condition #6.**

GRG is linking foregoing mining under the oil well-heads and oil well access roads to the approval to import products mined in Plainfield Township as their reason for agreeing to the projected time frame for completing the Georgetown Township operation. The letter goes on to imply that by denying the importation approval, GRG is being forced to abandon 300,000 tons of gravel in Plainfield Twp.

Please consider two points:

1. If the Department of Environment, Great Lakes & Energy (EGLE) denies the well-head abandonment declaration, GRG is effectively prohibited from mining under the well-head or under the access roads – that outcome would not be the result of any actions taken by Georgetown Township.
2. Georgetown Township does not have the authority and did not require GRG to abandon any Plainfield Township gravel. GRG's abandonment claim rests squarely with EGLE, Plainfield Township and/or GRG.

#### **GRG is contesting Condition #10.**

The Staff Report and the MMB correctly established that importing products mined elsewhere to the Georgetown Township site, and then processing, crushing and/or blending those products with gravel mined on-site constitutes an industrial use, and is not permitted in the RR or LDR zoned mine location.

The zoning ordinance states the specific uses that are permitted in the zones. It is impossible to detail by statement all possible prohibited uses. Therefore, as a function of law, if the use is not expressly permitted, by omission it is prohibited.

Ord. Section 26-80 grants the MMB the authority to place conditions on the operation: **"The conditions may include, without limitation, conditions regarding the location, design or operation of a site."**

GRG claims that by allowing mined products from the Georgetown Township Cedar Valley site, to be imported to the subject site, the MMB is approving the industrial use. The Cedar Valley site is less than one mile from the subject site. The MMB could have required that GRG go to the extra cost of constructing a second processing plant within one mile. It seems GRG's claim is disingenuous: The Cedar Valley import exception benefits GRG by reducing their costs.

**GRG is contesting Condition #13 Part One re: Truck Traffic.**

Ord. Section 26-80. The MMB's authority includes setting reasonable conditions on the operation: **"The conditions may include, without limitation, conditions regarding the location, design or operation of a site."** Truck traffic volumes and routes are valid concerns for all governmental units.

**GRG is contesting Condition #13 Part Two re: PFAS.**

GRG is claiming that because certain zero-detection PFAS tests were submitted, there is no threat of contamination, and a decision based on anything but those tests is arbitrary and capricious.

Sect. 26-80 (a) states in pertinent part **"...the review board may impose reasonable conditions on the issuance or renewal of a license. Conditions of approval may be imposed as necessary: to eliminate or mitigate any potentially adverse impact of the mineral mining operations on adjacent or nearby property, ... or the natural environment.....or to otherwise protect the public health, safety and general welfare of the community. The conditions may include, without limitation, conditions regarding the location, design or operation of a site."**

"Plainfield Township" has become synonymous in Michigan with the term "PFAS." The PFAS contamination consists of a "25-mile plume **spreading** in northern Kent County" (Grand Rapids Press; Sunday January 12, 2020 Section A, Page 9) (Bold added.) It is important to keep in mind that Plainfield Township had no way of knowing of the PFAS contamination prior to its discovery. Georgetown Township is aware of the possible PFAS threat that accompanies any product mined in Plainfield Township.

Importantly, GRG has other properties where they can conduct their operations. The MMB minutes record Mr. Berg stating that they have a 70-acre site in Plainfield Twp. that is not yet operating. (MMB Meeting Minutes; 10/16/2019 page 5.)

Any loss of economic opportunity suffered by GRG because of the closure of the Plainfield Township site is not a legal claim for Georgetown Township to mitigate. Indeed, GRG may have a cause of action, but it is against Plainfield Township and/or Wolverine Worldwide. It is not against Georgetown Township.

**GRG is contesting Conditions. #15, #16 & #17.**

GRG claims that the proposed restrictive covenant timeline was predicated on importing material from Plainfield Township. Without importation approval, GRG rescinds the timeline.

Sect. 26-80 (a) states in pertinent part **"...the review board may impose reasonable conditions on the issuance or renewal of a license."**

The proposed timeline that GRG now wants to abandon tells the Board that GRG can complete the Georgetown Township operation on the proposed timeline. GRG has elected not to honor the timeline unless they can import. It seems the MMB's position is a reasonable condition: Finish the Georgetown Township operation on the timeline GRG proposed. If GRG can finish with the added 300,000 tons of imported product, GRG can certainly finish without the additional imported products.

**GRG is contesting Condition #19 d. iii.**

As allowed under Ord. Sect. 26-80; the minutes indicate that the MMB denied any authority to conduct a crush operation at the location. See GRG's appeal letter where they stated opposition to Conditions #25 and #26. GRG confirms that the crush operation was prohibited. If any portion of the resolution permitted a crush operation, I would suggest it is inconsistent with the record of the MMB's intent.

**GRG is contesting Condition #20.**

Condition #20 addresses the surety bond. Sect. 26-81 (a) states in pertinent part: "The review board shall require as a condition of approval...a performance guarantee in the form of a.... surety bond..."

Sect. 26-82 allows the review board to waive or modify a requirement, but no waiver of the surety bond was granted. Since the review board did not waive the bond, the bond is required by ordinance.

**GRG is contesting Conditions #21 & #22.**

Per the Zoning Administrator, GRG is previously on record as having committed to compliance with the requirements of the Bend in the River plan.

**GRG is contesting Conditions #25 & #26.**

Ord. Sect. 26-80 (a) states in pertinent part "...**the review board may impose reasonable conditions on the issuance or renewal of a license.**" The parcels are zoned RR and LDR and by ordinance, industrial uses are not permitted. All township property owners are expected to comply with the ordinances governing their property.

**CONCLUSION:**

Under the authority granted to the Georgetown Township Mineral Mining Board in Article IV. The Mineral Mining Ordinance; Section 26-80 (a) the MMB was fully within its authority to establish the reasonable conditions and limits placed on the local operations of the Grand Rapids Gravel Company. I urge the Georgetown Township Board to uphold the determination of the Mineral Mining Board.

Thank you for your consideration of these points.

Tom Healy  
2659 Cedargrove N. Jenison, MI 49428