

SUMMARY OF HANDOUTS: CASE PSUP17-014, Elmer's Crane & Dozer, 4281 Pickerel Lake Rd

1. Civil Counsel Memo requested by PC during 8/3/2017 meeting date 8/23/2017 (6 pages)
2. Corporate ownership information as of 8/23/2017 (provided because of question of PC member) (2 pages).
3. Letter submitted 8/3/2017 – submitted by Karla Buckmaster – read during PC meeting of 8/3/2017 (2 pages).
4. Petition submitted during PC meeting of 8/3/2017 (2 pages).
5. Email submitted 8/8/2017 (public comment) – Josh Walkerdine (2 pages).
6. Email submitted 8/8/2017 – MDOT response to questions asked by Karla Buckmaster (3 pages).
7. Email submitted 8/9/2017 (public comment) – Josh Walkerdine (1 page).
8. Letter received 8/11/2017 (public comment) – Karen DenBesten, MD, FIDSA (1 page).
9. Excerpt from Michigan Vehicle Code received 8/11/2017 from PC member (1 page).
10. Letter received 8/17/2017 from Emmet County Road Commission (1 page).
11. Email submitted 8/18/2017 from Karla Buckmaster regarding 8/3/2017 meeting minutes (2 pages).

MEMORANDUM

TO: Emmet County Planning Commission

FROM: Robert J. Engel, Civil Counsel 

DATE: August 23, 2017

RE: Mineral Extraction Request - Elmers - Pickerel Lake Road

The Planning Commission has asked assistance from civil counsel regarding Elmers' request for a mineral extraction special use permit off of Pickerel Lake Road. It is my understanding that the Bear Creek Township Planning Commission recommended denial of the special use permit. At the subsequent Emmet County Planning Commission meeting, more details were brought forth by Elmers. At that meeting, the Planning Commission asked Ms. Doernenburg to consult with the county's civil counsel.

Issues involving mineral extraction under a zoning ordinance are often different than other applications of the ordinance. The State of Michigan has spoken clearly, through its appellate courts and legislature, that mineral extraction is treated differently from most issues coming before a planning commission.

The following information provides some historical background and is taken from the book, *Michigan Zoning, Planning, and Land Use*, published through the Institute of Continuing Legal Education (ICLE):

Michigan courts had created a special rule for judicial review of cases in which a proposed mineral extraction operation has been denied zoning approval. The essence of this special rule was as follows:

- Zoning ordinances are presumed to be reasonable and valid.
- The person challenging a zoning regulation that prevents mineral mining has the burden of overcoming the presumption of reasonableness by showing that:
 - the property at issue contains valuable natural mineral deposits,
 - there is a public need for such minerals, and
 - no "very serious consequences" would result from the proposed mineral extraction operation.

The supreme court in [*Kyser v Kasson Township*, 278 Mich App 743, 755 NW2d 190 (2008), rev'd, 486 Mich 514, 786 NW2d 543 (2010)] held that the "no very serious consequence rule" was not a constitutional requirement and violated the constitutional separation of powers. The supreme court also held that this special rule was superseded by the ZEA's exclusionary zoning provision, MCL 125.3207. The legislature clearly intended for localities to regulate land uses, including the extraction of natural resources other than oil and gas. The constitution only requires that a zoning ordinance be reasonable, regardless of whether the ordinance does or does not regulate the extraction of

natural resources. Moreover, an ordinance is presumed to be reasonable, and the burden is on the party challenging the ordinance to overcome this presumption by demonstrating that there is no reasonable governmental interest being advanced.

In response to *Kyser*, the legislature amended MCL 125.3205 in 2011 PA 113. This enactment embodies the most unusual approach of effectively reversing the portion of *Kyser* that had overruled the *Silva* decision discussed above by reinstating the standards set forth in *Silva* by express reference to the case name. Thus, 2011 PA 113 returns to Michigan the *Silva* test for determining the validity of zoning that prohibits natural resource extraction, namely the so-called “no very serious consequences” test. However, the statute has provided additional details on the application of this test. First, in MCL 125.3205(3) and (4), an initial threshold is established for property owners who seek the benefit of the statute. In MCL 125.3205(3), a property owner must show that the natural resources proposed to be extracted are “valuable,” i.e., that the extraction operation will “receive revenue and reasonably expect to operate at a profit.” An interpretation of this statutory language clarifies that the “no very serious consequences” rule is intended to apply only to a “commercial” operation. MCL 125.3205(4) goes on to impose the very significant requirement that the property owner show a “need” for the resources, that is “that there is a need for the natural resources by the person or in the market served by the person.” Taking these in reverse order of appearance in the statute, a showing of need “in the market served by the person” would involve a demonstration that the resources would be sold in the marketplace and that there is an insufficient supply of resources to satisfactorily meet the prevailing demand. What must be shown to demonstrate “a need for the natural resources by the person” apart from a need in the market is slightly less clear. It would appear that this “need” refers to a person who operates a business that requires the natural resources in question as a raw material for producing a final product such as cement or asphalt and that there is an absence of a reasonable supply of such resource, thus giving rise to a need by this person to extract the resource for the person’s own use.

The statute, MCL 125.3205, is printed below with several areas of concern highlighted:

- (1) A zoning ordinance is subject to all of the following:
 - (a) The electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575.
 - (b) The regional transit authority act.
- (2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) *An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.* Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources.

(5) *In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:*

(a) *The relationship of extraction and associated activities with existing land uses.*

(b) *The impact on existing land uses in the vicinity of the property.*

(c) *The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.*

(d) *The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.*

(e) *The impact on other identifiable health, safety, and welfare interests in the local unit of government.*

(f) *The overall public interest in the extraction of the specific natural resources on the property.*

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

(7) This act does not limit state regulatory authority under other statutes or rules.

As noted, the above statute provides that standards referred to as “very serious consequences” need to be applied in mineral extraction matters, including the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982). Quite frankly, when I read the *Silva* case, its predecessors and

subsequent cases, including the case that overruled the *Silva* decision, and the Legislature's response to adopt *Silva* over the supreme court's decision, it is difficult to state exactly what is meant by "very serious consequences" other than what the statute reads in subparagraph 5.

In my opinion, the only definite conclusion that I have from the courts and legislature is that mineral extraction is treated differently than other zoning decisions, placing the initial burden on the person requesting the permit to set forth reasons for the need, and, if met by the person, then are there "very serious consequences" if the permit was not to be granted. At that point, if the Planning Commission believed that denial of the permit was appropriate, the commission would have to state the "very serious consequences" that it finds to deny the permit. The general rule would be for a court to uphold the decision made by the Planning Commission if the decision is supported by the evidence under the heightened "reasonableness" standards of the statute.

To summarize, MCL 125.3205 specifically addresses mineral extraction. The statute provides that a local zoning ordinance cannot prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. MCL 125.3205(3). Valuable natural resources is defined in the same subsection as ". . . if a person, by extracting the natural resources can receive revenue and reasonably expect to operate at a profit." The applicant also has to show that there is a need for the natural resources by the person or in the market served by the person. MCL 125.3205(4).

Based on the factual information available to me, it appears that there is a valuable natural resource at the applicant's location. The next question is whether Elmers can show that there is a need to extract the sand and gravel. Elmers would likely receive revenue and expect a profit from extracting sand and gravel. Elmers would still have to show there is an actual need. The last question then becomes whether there is sufficient evidence to show the planning commission can prevent the extraction based on the provision of the statute that reads: "unless very serious consequences would result from the extraction . . ."

Between the provisions of Zoning Ordinance Section 26.10.4 and Zoning Ordinance Section 21.02, the County's Zoning Ordinance appears to comply with the statute. In addition, the County of Emmet has provisions in its Zoning Ordinance in relationship to mineral extraction activities. Resource mining and extraction is considered subject to a Special Use Permit under Zoning Ordinance Section (hereafter "ZO Section") 26.10 et seq. Some of the factors suggested above are considered in ZO Section 26.10.1 and 26.10.4. Further consideration is found in ZO Section 21.01 regarding Special Land Use Review.

Now, directing to the question being asked by the Planning Commission, four additional studies and/or requests are being sought in this case. These include a traffic impact study, environmental impact study, water impact study, and evaluation of property values if the extraction operation was approved. Answers to these questions would aid the Planning Commission in making a determination of whether very serious consequences exist and the extent to which those consequences affect the decision to either grant or deny the request.

Generally, the first three studies/requests fall within ZO Section 21.02 and ZO Section 26.10.4. A traffic impact study is specifically stated as something that can be required. Also a road agency (i.e., road commission) review is required under certain circumstances. Under the

ordinance, it would be further reasonable to require the applicant to provide an environmental impact and water impact study. It is my understanding that there may be a claim that part of the property is wetlands, which require special protection.

The Planning Commission can require Elmers to provide the first three studies/requests. Of course, the County could acquire its own studies if felt necessary to either confirm or question the applicant's studies.

As to the fourth request/study, the evaluation of property values, it is not addressed in the Zoning Ordinance, but is one of the factors in MCL 125.3205(5). The County could request Elmers to provide the evaluation of property values, but I do not see how the County could make it mandatory for Elmers to do so. On the other hand, Elmers should be strongly encouraged to present such a study to be considered as part of the application process.

I understand that several of the neighboring property owners have stated that the extraction operation would diminish their property value, but no numbers have been provided. If the neighbors provided appropriate documentation to that effect through a licensed appraiser, the County would not have to have a separate study to meet the standard. But, as noted in the statute, the evaluation of property values must be based on credible evidence. Therefore, something more than a statement that "my property value will go down" would be necessary for this standard to be met. Similar to Elmers, the neighboring property owners may want to present their own study regarding an evaluation of property values.

If the County decided to retain a third party to look at the effect on property values, the Planning Commission will have to determine which properties are affected. The statute refers to "impact on property values *in the vicinity of the property and along the proposed hauling route* serving the property." The statute does not provide a distance for what is "in the vicinity." Based on topography and other land uses in the area, "vicinity" for one case may be different in another case.

The below excerpt is from a Court of Appeals case about the time that the *Silva* decision came from the Michigan Supreme Court. The case addresses many of the factors of "very serious consequences," but of particular importance is the portion dealing with noise levels as well as property values. The case is very fact-specific, so it is clear that the more information available for a decision by the Planning Commission, the better to support its decision:

Second, the trial judge found that the truck traffic generated by plaintiff's operation would result in a serious increase in traffic noise along the three-mile haul route. Expert testimony revealed that each gravel truck that passed by would result in a noise level of eighty-four to one hundred four decibels. A noise level of sixty decibels has been determined to be "very noisy urban" and "not well suited to detached residential houses". A noise level of sixty-five decibels has been determined to be "intolerable" to fifty percent of the general population. Defendant township's expert testified that if the noise level of a gravel truck reached eighty-nine decibels, a sixty-decibel noise level would exist 1400 feet on either side of the county road and a sixty-five-decibel noise level would exist seven hundred feet on either side of the road. If the truck noise level reached one hundred four decibels, a sixty-decibel noise level would exist 5600 feet on either side of

the road and a sixty-five-decibel noise level would exist 2800 feet on either side of the road. For reference purposes, a sixty- to seventy-decibel noise level is equivalent to the noise of a dishwasher or vacuum cleaner, a ninety-decibel noise level is equivalent to a motorcycle twenty-five feet away, and ninety-five- to one hundred five-decibel noise level is equivalent to a jackhammer.

Based on this evidence, the trial judge did not err in finding that plaintiff had failed to prove that its extraction operations would not have a significant effect on the noise level along the haul route. Contrary to plaintiff's argument on appeal, the fact that federal law may exclusively regulate truck noise levels and thus may preempt state and local regulation does not preclude the trial judge from considering the gravel truck noise level. Neither defendant township nor the trial judge were attempting to directly regulate the noise level of plaintiff's trucks, but were merely considering the truck noise level to determine whether it would constitute a "very serious consequence" to the community for purposes of assessing the reasonableness of a zoning regulation. Thus, whether or not federal regulations preempt the field and control noise levels on federal highways does not prevent consideration of the noise factor for purposes of litigating the validity of a zoning ordinance.

Third, the trial judge found that plaintiff's extraction operations would result in a serious decrease in the value of property near plaintiff's land and proposed haul route. Defendant township's expert witness on real estate values rebutted the evidence presented by plaintiff's experts, which indicated that a decrease in property values near sand and gravel mining operations should not be expected. Based on a comparative analysis of assessed property values for property near gravel operations, defendant's expert witness concluded that values of properties adjacent to plaintiff's gravel operations would decrease from five to twenty percent. The trial judge was entitled to weigh the experts' credibility and to sift their opinions as to value. In doing so, there was testimony to support his conclusion that plaintiff had failed to prove that its gravel operations would not result in a serious decrease in the values of surrounding properties.

American Aggregates Corp. v. Highland Township, 151 Mich. App. 37, 48-50 (1986)

In summary of this factor of evaluation of property values, it is my opinion that the Planning Commission needs credible evidence of any effect to property values. This credible evidence can be produced by the applicant, by neighboring property owners in the vicinity of the proposed extraction site, or by the Planning Commission retaining a third party.

It is possible that the Planning Commission could state that the property value factor does not carry great weight in its decision when compared to the other factors. However, it is my opinion that would open the door to an action in the Circuit Court.

Finally, MCL 125.3205(6) clarifies that the provisions of subsections (3) through (5) do not limit a municipality's ability to reasonably regulate hours of operation, blasting hours, noise levels, dust control measures, and traffic as long as the regulation is reasonable in accommodating customary mining operations.

CSCU/CD-2500 (12/16)

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PROFIT CORPORATION ANNUAL REPORT

2017



Due May 15, 2017 File Online at www.michigan.gov/fileonline

Identification Number 349063	Corporation name HGI, INC.
Resident agent name and mailing address of the registered office THOMAS R IRWIN P.O. BOX 469 TRAVERSE CITY MI 48685	
<p>RECEIVED FEB 28 2017 FILED LARA \$25.00 JUL 13 2017</p>	
The address of the registered office 1505 KENT ST UNIT 5 TRAVERSE CITY MI 49686 CORPORATIONS DIVISION	
<p>For Bureau use only Fee Received</p> <p><input type="checkbox"/> \$25 before May 16</p> <p><input type="checkbox"/> \$35 (May 16 - 31)</p> <p><input type="checkbox"/> \$45 (June 1 - 30)</p> <p><input type="checkbox"/> \$55 (July 1 - 31)</p> <p><input type="checkbox"/> \$65 (Aug 1 - 31)</p> <p><input type="checkbox"/> \$75 after August 31</p>	

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3. The address of the registered office in Michigan if changed (a P.O. Box may not be designated as the address of the registered office)	

4. Describe the general nature and kind of business in which the corporation engaged in during the year covered by this report:

5.	NAME	BUSINESS OR RESIDENCE ADDRESS
President (Required)	THOMAS R. IRWIN	215 WASHINGTON STREET UNIT 3B TRAVERSE CITY MI 49684
Secretary (Required)	JOHN GRIFFIN	3058 GLENWOOD BEACH DR. BOYNE CITY MI 49712
Treasurer (Required)	GIENN HODGKISS	5625 BONNER LANE PO BOX 838 BOYNE CITY MI 49712
Director:		
Director		
Director		
Director		

6. Signature of authorized officer or agent <i>Thomas R. Irwin</i>	Title PRES.	Date 2-21-17	Phone (Optional) 231-330-4207
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Filing fee \$25

Report due May 15, 2017.

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CSC/LCD-2500 (12/16)

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PROFIT CORPORATION ANNUAL REPORT

2017



Due May 15, 2017

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Identification Number 022916	Corporation name BDK GROUP OF NORTHERN MICHIGAN, INC.
Resident agent name and mailing address of the registered office THOMAS R IRWIN P.O. BOX 469 TRAVERSE CITY MI 49685	<div style="text-align: center;"> <p>RECEIVED</p> <p>FEB 16 2017</p> <p>LARA \$25.00</p> <p>FILED</p> <p>JUL 13 2017</p> <p>CORPORATIONS DIVISION</p> </div>
The address of the registered office 1505 KENT ST UNIT 5 TRAVERSE CITY MI 49686	<p>For Bureau use only Fee Received</p> <p><input type="checkbox"/> \$25 before May 16</p> <p><input type="checkbox"/> \$35 (May 16 - 31)</p> <p><input type="checkbox"/> \$45 (June 1 - 30)</p> <p><input type="checkbox"/> \$55 (July 1 - 31)</p> <p><input type="checkbox"/> \$65 (Aug 1 - 31)</p> <p><input type="checkbox"/> \$75 after August 31</p>

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1. Mailing address of registered office in Michigan if changed (may be a P.O. Box)	2. Resident Agent if changed
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3 The address of the registered office in Michigan if changed (a P.O. Box may not be designated as the address of the registered office)
215 WASHINGTON STREET UNIT 3B TRAVERSE CITY MI 49604

4. Describe the general nature and kind of business in which the corporation engaged in during the year covered by this report:

5.	NAME	BUSINESS OR RESIDENCE ADDRESS
President (Required)	THOMAS R. IRWIN	215 WASHINGTON STREET UNIT 3B TRAVERSE CITY MI 49684
Secretary (Required)	MON GRIFFIN	3058 GLENWOOD BEACH DR. BOYNE CITY MI 49712
Treasurer (Required)	GLENN HOAGKISS	5625 BONNER LANE PO BOX 838 BOYNE CITY MI 49712
Director		

6. Signature of authorized officer of agent <i>Thomas R. Irwin</i>	Title PRES.	Date 2-12-17	Phone (Optional) 231 330 4207
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Just before the Bear Creek Township Planning & Zoning meeting of July 26, 2017, the man representing Team Elmer's was asked for an interview by TV Channel 7&4. The interview was declined by Team Elmer's. **WHY?**

As that township meeting progressed, multiple concerns over the gravel mining, with its 6 weeks of crushing; concerns regarding the sound, water, and air pollution; road safety; and concerns "on and on" were heard. Residents in a packed hall were expressing very real concerns, and asking heartfelt questions, while receiving little or no input or answers from Team Elmer's. **WHY?**

In my mind, I imagine this is not the "first rodeo" for Team Elmer facing the public, or taking on a Planning and Zoning Commission, when making a move to invade an area zoned Residential and FarmForest, just by asking for a Special Use Permit! So, please do not be fooled by Team Elmer's assumed naiveté, or the seeming unpreparedness by Team Elmer to answer questions. Were they playing dumb like a fox? **WHY?** It was only through very persistent questioning that it was learned, for instance, that Team Elmer's plan for "crushing" includes not only crushing of **onsite aggregate**, but also crushing of **imported used concrete**. I don't believe that was previously revealed on their site plan. So, does that mean that the "up to 50 loaded trucks per day" will be "up to 50 aggregate loaded trucks" both leaving and "up to 50 concrete loaded trucks" arriving at the gravel pit? Make certain **ALL** of Team Elmer's plans for this site are revealed to the public and to you commissioners!

Let me be clear that I am not addressing the quality of Team Elmer's work, but rather I am extremely concerned with their maneuvering of the governmental system for pushing another gravel pit into the middle of our already zoned residential and farming community.

Think about the **WHY** of this "unprepared, naive, and dumb ACT" Team Elmer's presented at the township level. In my opinion, here is at least part of the answer as to **WHY!** They knew NO-ONE, including the zoning board, would like their answers. So, if they evade, or do not answer, or do not address the questions, that either the public or these zoning boards ask... THAT WAY, **they have given no definitive answers that can be entered into the legal record. If they have no answers on the record, then down the road, they would have no standard to adhere for the future.**

Team Elmer's indicated, for instance, at the Pickerel Lake Pit meeting:

1) They do not know how much mining resource is available for both sand and gravel after digging 28 test digs at the site.

2) They could not be sure about how damp the ground would be during extraction... dodging the bullet on whether, or not, they would be mining out of water. The most Elmer's admitted was that they reached out to local well drillers... but, they gave no names of those drillers nor any written records.

3) They had not yet contacted Health Department officials about the impact of their mining on neighbors' water wells.

4) They presented no business plan to include a timeframe of usage, thus no commitment about reclamation. We can be left with a wasteland forever.

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EMMET COUNTY
PLANNING & ZONING

5) They could not nullify the damaging impact of the "up to 50 loaded, plus the supposed 50 unloaded, trucks traveling to and from the site each day" with any sound, traffic, or safety studies, except to say that Pickerel Lake is already busy. Anyone who has ever traveled Pickerel Lake Road already is aware of that, and does not need to have this existing problem exacerbated!

6) They had no comment about tearing up the roads like Bellmer, Graham, Kolinski, Fletcher, Country Club, Alcan, or Boyer, for which local township residents very recently have paid... we Bear Creek Township residents pay \$600,000.00 + per year on township roads... not the county road commission paying that amount, but we local township taxpayers! Any project which would require driving through Petoskey somehow would affect many people on other roads as well as the ingress/egress proposed for Pickerel Lake Road... many who have not even been notified how their lives will be affected with excessive loaded truck traffic. **The impact on people's lives in multiple ways concerning safety, and the probable wreckage of many roadways is going to be almost unthinkable.**

7) They did not address the impact a gravel pit would make on surrounding property values. They did not present any evidence of people clamoring to buy property near already existing gravel pits anywhere. Consider when a gravel pit prepares to take over land adjacent to existing residential homes... those residents' family homes. Not only can the resident no longer enjoy his own home, but his home has no value for sale... for no one else wants to live next to a working sandpit either.

8) No mention was made of possible lighting.

9) No mention was made if a berm might begin at the property line, or would the berm begin possibly at the proposed 50 foot set back; although either way, the neighbors could stare at a close-up wall of gravel.

10) No mention was made if the setback could be larger, at the very least, around the existing homes that would be encased in the proposed site.

11) No mention was made if existing vegetation would be destroyed by burning, or how it would be removed.

12) No mention was made if 6 weeks crushing time is a one-time thing, or is that 6 weeks every year, or every 6 months? How does that 6 weeks work? Is the crushing equipment removed at the end of 6 weeks?

13) No mention was made about Performance Guarantees.

So, if you Planning and Zoning commissioners ask Team Elmer's for answers to yours, and the public's, questions and concerns, please make certain Team Elmer's does not continue to evade answering the questions. And, here is **WHY: Team Elmer's needs to publicly commit verbally, or in writing, to... honest, complete, verified, exact records... ON THE RECORD.** ~ Karla Buckmaster (3 August 2017)

Regarding the Elmer's Crane & Dozer Inc. of mining operation on 4281 Pickerel Lk. Rd. We the listed tax payers signed below have safety concerns. And request the county deny this permit.

- 1.) Concerns with fifty trucks a day on already very dangerous access on to Pickerel Lake Road with passed fatality and accidents.
- 2.) Concerns with depth of mining having an impact of ground water wells
- 3.) Concerns with physical harm to humans and animals with poor quality air.

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AUG 03 2017

EMMET COUNTY
PLANNING & ZONING

Residents Against : 41 +

Name	<u>Henry J. [Signature]</u>	Address	<u>3759 Pickerel Lake Rd</u>
Name	<u>Stacy J. Reels</u>	Address	<u>3750 Pickerel Lake Rd</u>
Name	<u>Mark [Signature]</u>	Address	<u>5835 Pickerel Lake Rd</u>
Name	<u>Dee Guffin</u>	Address	<u>3737 Pickerel Lk Rd</u>
Name	<u>Donna Thompson</u>	Address	<u>3943 Pickerel Lk Rd</u>
Name	<u>Terese Thompson</u>	Address	<u>3943 Pickerel Lake Rd</u>
Name	<u>Mark Thompson</u>	Address	<u>4067 Pickerel Lake Rd.</u>
Name	<u>Pam Clark</u>	Address	<u>4083 Pickerel Lake Rd.</u>
Name	<u>Patricia [Signature]</u>	Address	<u>4318 Pickerel Lk Rd</u>
Name	<u>Michelle [Signature]</u>	Address	<u>3693 Pickerel Lake Rd</u>
Name	<u>Angie [Signature]</u>	Address	<u>4318 Pickerel Lake Rd</u>
Name	<u>John [Signature]</u>	Address	<u>4318 Pickerel Lk Rd</u>
Name	<u>Guth M. Hoffstedt</u>	Address	<u>4531 COUNTRY VIEW RD.</u>
Name	<u>Patricia Hoffstedt</u>	Address	<u>4531 Country View Rd</u>
Name	<u>John [Signature]</u>	Address	<u>4687 Country View Rd</u>
Name	<u>[Signature]</u>	Address	<u>4687 COUNTRY VIEW RD.</u>
Name	<u>Robin U. Jordan</u>	Address	<u>4570 Country View Rd.</u>
Name	<u>Charles Cook</u>	Address	<u>#3911 Sheldon DR</u>

Tammy Doernenburg

From: Josh Walkerdine <josh@parallelnorth.com>
Sent: Tuesday, August 08, 2017 11:42 AM
To: Tammy Doernenburg
Subject: Re: Elmer's Presentation at the Planning Commission meeting of 8/3/2017

Hi Tammy,

After reading the Otwell Mawby evaluation I have serious doubts of the accuracy.

Page 2 says the following:

- Review of the USGS Topographic Map for the area indicates a topography sloping downward in a northerly direction with eventual drainage to Round Lake and then eventually to Little Traverse Bay. We did not review specific information with regard to groundwater flow in the area but regional groundwater flow is in a northwesterly direction towards Round Lake and Little Traverse Bay /Lake Michigan. There could be localized groundwater hydrologic flow scenarios in the upper soil profile due to the complicated geology but give the topography in the vicinity of the site and the location of Little Travers Bay, the regional aquifer flow would be in the westerly direction away from Pickerel Lake Road. Gravel mining operations would be in a down-gradient direction from Pickerel Lake Road and are not expected to affect the groundwater quality of the Pickerel Lake Road wells.

My problem with this is the following:

- Round Lake does not flow into Little Traverse Bay/Lake Michigan. I had serious doubts upon reading this and was able to confirm the in-accuracy with Tipp of the Mitt. Please reference this information from Tipp of The Mitt:
 - <https://www.watershedcouncil.org/pickerel-crooked-lakes-watershed.html>
 - Round lake does not go into Lake Michigan or Little Traverse Bay. Quite the contrary, it goes into Crooked lake. We all know that Lake Huron is not Lake Michigan.

The Otwell Mawby study indicates the following:

- Gravel mining operations would be in a downgradeient direction from Pickerel Lake Road and are not expected to affect the groundwater quality of the Pickerel Lake Road wells.

My problem with this is the following:

- Otwell Mawby omitted the term "quantity" and instead used "quality". This was a creative use of words. They used this creative use of words throughout the document.

I plan to add this to our community website that has been established so that we can provide factual information to our residents.

Thank you,

Josh

Tammy Doernenburg

From: Radulski, Matthew (MDOT) <RadulskiM@michigan.gov>
Sent: Tuesday, August 08, 2017 3:00 PM
To: Karla J Buckmaster
Cc: Tammy Doernenburg
Subject: Re: 08_06_17* Intersection of US 31 & Pickerel Lake Road

Karla,

I'm out of the office this week and will return on the 14th. I have very limited internet coverage.

Therefore, In short, Pickerel Lake Road belongs to the county. Brian Gutowski is correct in his statement about a traffic signal at Pickerel Lake and US31. We have not heard about Elmers adding a pit on Pickerel Lake Road. But even if they did add one, that would not have impact the decision of a signal. It's a physical feature that needs to be changed for a traffic signal, not an operational. The decision is ultimately up to the county and Bear Creek township

Thank you,
Matt

Sent from my iPhone

On Aug 6, 2017, at 1:56 PM, Karla J Buckmaster <howardbushtree@chartermi.net> wrote:

Hello Matt Radulski, Operations Engineer MDOT Gaylord TSC,
AND (sending this same e-mail to Tammy Doernenburg, Director of
Emmet County P&Z)

Matt, I have been attending local Bear Creek Township and Emmet County Planning and Zoning meetings where Team Elmer's is *proposing* to have a gravel mining pit on Pickerel Lake Road about a mile from the intersection of Pickerel Lake Road and US 31... the same intersection that I have written to you in the past.. as recently as July 5, 2017... although I knew nothing of Elmer's proposed site plan review at that time. Now, Elmer's is seeking a "special use permit for gravel extraction" in a residential/farm forest zoned area. Bear Creek Township has denied the request for the proposed gravel pit in this Pickerel Lake Road location, so the request has now moved to being before the Emmet County P&Z.

Team Elmer's is proposing running "**up to 50 loaded trucks per day**" out of the proposed pit. That actually would mean 100 trucks, loaded AND unloaded, although some of the returning trucks are proposed to haul cement chucks for crushing, and thus would be loaded as well. Of course, a huge serious consequence of this proposal for our community, and anyone traveling the area roads is "**safety.**"

So Team Elmer's stated at the recent Emmet County P&Z meeting that:

- 1) Elmer's will be requesting a stop light at that Pickerel Lake and US 31, obviously knowing it is already a dangerous intersection.
- 2) Elmer's also said they would be posting signs close to their one ingress/egress regarding their many trucks entering/exiting.
- 3) Elmer's stated they would be "at their cost" painting a turn lane on their property for entering their driveway.
- 4) They would also be requesting that the public roadway in front of their driveway would have roadway pavement painting of "no passing lines" where it is now "passing lines." Interesting. How would that timeframe work when you, Matt, had in July told me that the entire state has only two pavement painting contractors, and at that time the painters would not be here until August, to address the long-time missing pavement paint lines at the same dangerous intersection.

Is Pickerel Lake Road governed by the state or the county? I believe it is a Primary Road, but could you please research this and let me know for sure? How far out on Pickerel Lake Road might MDOT be responsible?

I would appreciate receiving copies of any studies the MDOT has made regarding the Pickerel Lake Road & US 31 intersection in the past years upon which you based your decisions for not including a traffic light. I believe that I remember that one issue for the decision was because of the "lay of the land" or terrain at the intersection. In fact, just on July 1, 2017 our Emmet County Road Commission Engineer-Manager Brian Gutowski replied to my "traffic light" intersection question:

"The State agrees a light would help there but the north side of Pickerel Lake Road could potentially cause a problem for traffic entering the intersection. MDOT theorizes that if a vehicle were entering the intersection at 45 – 55 mph they could go airborne so they will not allow the traffic signal."

Now, just because Elmer's "requests a traffic light at that intersection" does not change the lay of the land for MDOT to change their decision, does it? Wouldn't that statement consider all modes of transportation, including trucks going at 45-55, the posted speed there? I am concerned that Elmer's is trying to appease the Emmet County P&Z board, and attending public, with the POSSIBILITY of a traffic light there.... although, per MDOT's decision in the past, a light is not possible and is not going to happen. If the county P&Z passes the proposed site plan, then no farther review ever is necessary, so it is important to know that YES or NO regarding a traffic light at that intersection PRIOR to approval of the proposed gravel pit. Because IF the proposed pit is okayed, everyone is stuck with it even if the traffic light were never to materialize... a very real safety consequence of the P&Z's decision making process.

Another road issue to keep in mind too, is that Pickerel Lake Road is extremely narrow, and has no shoulders.... no real pedestrian room for our residential area. We have many walkers, and bussed children on our local roadways. Pickerel Lake Road is not flat, but rather has many dips, and blind spots. Within the last couple of years, a

young man was hit and killed beside the road, in a nearby section to the proposed ingress/egress of Pickerel Lake Road.

Matt, I am hoping to hear your input as to the numbered items above and anything else you can contribute to shed light on this safety consequence. Please address each item thoroughly. I cannot believe that with all of the studies that MDOT has done in recent years which have told us residents for years that NO WAY will the intersection of Pickerel Lake and US have an actual stop light, suddenly, that a traffic light will magically be granted just by a request from Elmer's, or any other company. If MDOT decided to go ahead with a stop light in the future at the intersection, what would be the timeframe? I really want to hear any of your "official input" on all 4 of these items and my other questions. Please also send your reply to this e-mail to Emmet County's P&Z Director Tammy Doernenburg. I have also sent this same e-mail to her, and I further ask that your reply, Matt, be placed in the next packet for the P&Z Commissioners.

I would appreciate being included in any of your communications regarding this particular matter with anyone. I am trying to keep informed on this matter because like many in our rural residential/farming community, we are extremely concerned about these SAFETY issues, among other issues regarding this proposed sand pit, for many, many people.

FYI: The next Emmet County P&Z meeting will be held 7 September 2017 at 7:30PM in the Board of Commissioners' Room at 200 Division Street, Petoskey MI 49770.

Thank you.

Karla Buckmaster

Tammy Doernenburg

From: Josh Walkerdine <josh@parallelnorth.com>
Sent: Wednesday, August 09, 2017 9:38 AM
To: Tammy Doernenburg
Subject: 21.02

Hi Tammy,

Recapping what I said yesterday. I would ask that the Otwell Mawby study be thrown out of the application process. According to section 21.02 subsection C, the zoning ordinance specifically states the following:

Section 21.02 Special Land Use Review Standards.

In reviewing all requests for Special Land Uses the Planning Commission or Zoning Administrator shall require compliance with any of the following as may reasonably apply to the particular use under consideration (See also Article 20 and Section 21.01):

C. Impact of the proposed use on the quality and quantity of water resources, domestic water supplies and capacity to absorb the anticipated sewage disposal demand.

The Otwell Mawby study says the following:

The same evaluation study makes the following statement: "Gravel mining operations would be in a down-gradient direction from Pickerel Lake Road and are not expected to affect the groundwater quality of the Pickerel Lake Road wells." (Page 2)

"As a result, we would not anticipate impact to the well water quality in downgradient or northerly located wells due to the proposed gravel mining." (Page 3)

Question:

Why wasn't "quantity" of the water added in addition to "quality"? The "quality and quantity" is explicitly stated in the Emmet County Zoning ordinance and omitted from the Otwell Mawby evaluation.

8/6/2017

Emmet County Planning and Zoning
200 Division St., Suite 130
Petoskey, MI 49770

Karen DenBesten, MD, FIDSA
3938 Northview Dr.
Petoskey, MI 49770

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AUG 11 2017

EMMET COUNTY
PLANNING & ZONING

Dear Planning and Zoning Commission Board,

I am writing as a neighbor, physician and public health official, to express my concerns about the Elmer Crane and Dozer project at the Pickerel Lake site Case # PSUP17-014.

As a neighbor, I am certainly concerned about the noise, traffic and loss of property value that would result from this sort of heavy manufacturing plant in a residential community. I know that many others have written to express their concern about the disruption and destruction that a Gravel extraction pit/dump would create to the natural beauty and tranquility of our community.

As a physician and public health official, I am much more alarmed about the safety and health issues that would result from a full scale gravel pit production. Any time there is a disruption of soil or rock bed, respiratory illnesses such as silicosis become a real concern. Exposure to quarry dust can result in Silicosis, lung cancer and pulmonary diseases. This is clearly documented in the literature and indisputable. Silicosis can present years and decades after exposure. It can result from any amount of silica dust generated. Although OSHA has established acceptable limits that workers can be exposed to, these numbers and statistically generated to merely decrease the mortality form silicosis, not eliminate it. Wind and dust will expose those in nearby residential communities to this risk.

This is a neighborhood where families walk and children play. The roads are narrow with no sidewalks or shoulder. The thought of fifty gravel trucks a day, weighing 50 tons each is a disaster waiting to happen. Someone will be injured or killed. It is inevitable.

Finally, Elmer's Crane and Dozer indicated that it plans to partition part of the property as a dump for industrial and construction waste. This property has a stream and drains directly into our lakes and aquifers. As a community, we will be exposed the health risks of drinking water which has been contaminated by industrial waste.

The health and safety of our community depend on you, as a board, to acknowledge these risks and not allow this hazard to be allowed in our residential community.

Sincerely,



Karen DenBesten, MD, FIDSA
Infectious Disease & Chairman of Epidemiology and McLaren Northern Michigan

SCANNED

MICHIGAN VEHICLE CODE (EXCERPT)
Act 300 of 1949

257.726 Prohibitions, limitations, or truck route designations by local authorities and county road commissions; signs; written objection by adjoining township; violation as civil infraction.

Sec. 726. (1) Local authorities and county road commissions with respect to highways under their jurisdiction, except state trunk line highways, by ordinance or resolution, may do any of the following:

- (a) Prohibit the operation of trucks or other commercial vehicles on designated highways or streets.
- (b) Impose limitations as to the weight of trucks or other commercial vehicles on designated highways or streets.
- (c) Provide that only certain highways or streets may be used by trucks or other commercial vehicles.

(2) Any prohibitions, limitations, or truck route designations established under subsection (1) shall be designated by appropriate signs placed on the highways or streets. The design and placement of the signs shall be consistent with the requirements of section 608.

(3) If a township has established any prohibition or limitation under subsection (1) on any county primary road that an adjoining township determines diverts traffic onto a border highway or street shared by the township and the adjoining township, the adjoining township may submit a written objection to the county road commission having jurisdiction over the county primary road, along with a copy to the township that established the prohibition or limitation, on or before the later of March 1, 2009, or 60 days after the township approves the prohibition or limitation. The written objection shall explain how the prohibition or limitation diverts traffic onto the border highway or street shared by the township and the adjoining township. The county road commission shall then investigate the objection. The township and adjoining township shall cooperate with that investigation and negotiate in good faith to resolve the objection. If the objection is not resolved within 60 days after the township receives the copy of the written objection, the county road commission has the authority to, and shall, either approve or void the prohibition or limitation that is the subject of the objection within 60 days thereafter, which decision shall be final. For purposes of this subsection, "county primary road" means a highway or street designated as a county primary road pursuant to 1951 PA 51, MCL 247.671 to 247.675.

(4) A person who violates a prohibition, limitation, or truck route designation established pursuant to subsection (1) is responsible for a civil infraction.

History: 1949, Act 300, Eff. Sept. 23, 1949;—Am. 1978, Act 510, Eff. Aug. 1, 1979;—Am. 1983, Act 107, Imd. Eff. June 30, 1983;—Am. 2008, Act 539, Imd. Eff. Jan. 13, 2009.

Constitutionality: This section was held unconstitutional insofar as it deprives a municipality of the right to reasonable control over its streets, including state trunk lines within its limits, in violation of Const 1963, art VII, § 29. City of Dearborn v Sugden and Sivier, Inc, 343 Mich 257; 72 NW2d 185 (1955).

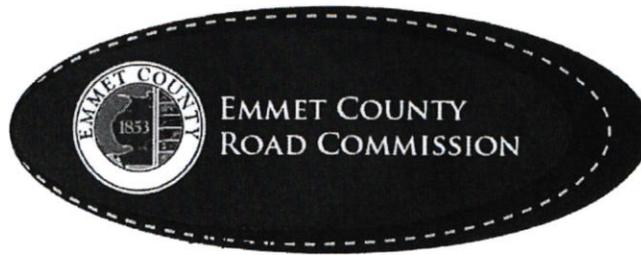
Compiler's note: In the last sentence of subsection (3), the citation "1951 PA 51, MCL 247.671 to 247.675" evidently should read "1951 PA 51, MCL 247.651 to 247.675".

RECEIVED

AUG 11 2017

EMMET COUNTY
PLANNING & ZONING

Larry Williams
Leroy P. Sumner
Frank Zulski Jr.
Brian A. Gutowski, P.E.
Engineer-Manager
Lisa Kleeman
Clerk



2265 E. Hathaway Road
Harbor Springs
Michigan, 49740
Office: 231 347-8142
Fax: 231 347-5787
emmetcrc@emmetcrc.com

August 17, 2017

Ms. Tammy Doernenburg
Director, Emmet County Planning & Zoning
3434 Harbor-Petoskey Rd, Suite E
Harbor Springs, MI 49740

SUBJECT: Proposed Elmer's Gravel Pit

Dear Ms. Doernenburg:

The Board of Emmet County Road Commissioners addressed the proposed gravel pit proposed by Elmer's off of Pickerel Lake Road in Bear Creek Township at its regular meeting of August 10, 2017.

The Board has asked me to clarify four items from the e-mail I sent to Steve Crane – Elmer's:

1. The proposed driveway location(s) on Pickerel Lake Road do meet minimum site distance requirements for a commercial entrance.
2. The Board will not take formal action in support or opposition of the gravel pit. However, the Board does acknowledge there is a need for more sources of gravel as we are having a difficult time getting gravel bids on some projects.
3. If the gravel pit is approved and the entrance is on Pickerel Lake Road, the recommended route is Pickerel Lake Road east to Bellmer Road, then north to Graham Road, then west to U.S.31. If a project is south of the gravel pit, the recommended route is Fletcher Road to Mitchell Road. We do not support using Kolinske Road, Country Club Road or Alcan Road.
4. The Road Commission recommends Emmet County Zoning look at the driveway access to Fochtman Industrial Park as an alternative to Pickerel Lake Road. If a wetland is to be impacted, the Road Commission has banked wetland acreage at our gravel pit on Bellmer Road and is willing to offer some of the banked wetland as an offset.

Please let me know if you have any questions.

Sincerely,


Brian A. Gutowski, P.E.
Engineer-Manager

Cc: EC Road Commissioners
Dennis Keiser – B.C. Twp Superv.

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AUG 17 2017

EMMET COUNTY
PLANNING & ZONING

Tammy Doernenburg

From: Karla J Buckmaster <howardbushtree@chartermi.net>
Sent: Friday, August 18, 2017 5:31 PM
To: Tammy Doernenburg
Subject: 08_18_17* Corrected Dates... Sorry

Tammy, I must have been looking at the wrong month because the dates I sent in the previous e-mail were NOT all correct.... Please delete the previous e-mail and keep this e-mail with the corrected dates of meetings. Sorry, and thank you. ! Karla

On Aug 18, 2017, at 11:49 AM, Monica Linehan <mlinehan@emmetcounty.org> wrote:

<09.07.17.pdf>

All of the following are in reference to the 7-3 August 2017 ECP&Z meeting minutes:

Page 5 of 19:

"The site plan was shown. Doernenburg noted that there is a 10 acre area on the west that is proposed to be the laydown area, the middle 10 acres would be mined for sand, and the easterly 10 acres for gravel."

Tammy, I believe that the 10 acre area on the **west** is the gravel extraction area, and the 10 acre area on the **east** is the laydown area, according to the site plan.

~~~~~  
Page 5 of 19:

**"Passed out tonight is a recommendation of approval from the Emmet County Road Commission who stated that the driveway has good site distance and there is a need for the gravel."**

Tammy, I attended the recent 10 August 2017 ECRC meeting where that board passed a resolution for Brian Gutowski to write a clarifying letter to the ECP&Z stating that the Emmet County Road Commissioners never authorized Brian to write that letter representing the entire ECRC as making "a recommendation of approval for the gravel pit from the ECRC." Please send me a copy of this new letter, as passed in the ECRC's resolution, as soon as you receive it. Thank you.

~~~~~  
Page 14 of 19:

"Buckmaster stated that **they** are not addressing the quality of their work but are more concerned with maneuvering the government by putting another gravel pit into a residential community."

AND

"Laughbaum stated that Buckmaster is making insinuations that the company is dishonest and wants the chair to stop the comment."

Tammy, when the minutes above state "**they**... I believe that I was referring only to myself [not "they"]...only my own opinion. I was NOT questioning/addressing the quality of their [Elmer's] work." I was questioning the workings of the governmental process for the "putting in of another gravel pit into a residential community." At no time was I trying to insinuate dishonesty of anyone as Mr. Laughbaum stated.

Perhaps, Mr. Laughbaum had not realized yet from this county meeting, until perhaps after some following discussion like on page 15 of 19 of the minutes, that at the township level of P&Z that the public had been given few answers. Tammy, you were at the township zoning meeting (~~3 August 2017~~ 26 July 2017), and you, too, know that Elmer's presented few answers to the public's questions and concerns... which was frustrating to the public, but then suddenly at the county P&Z meeting ~~40 3 August 2017~~, only ~~7 8~~ days later, a Power Point was presented to the county ECP&Z commissioners. I had felt I was only stating the facts of what had been, **or had not been**, presented previously at the township zoning level.

Thank you.
Karla