


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