

NEW SCANDIA TOWNSHIP

ORDINANCE NO. 28

MINING ORDINANCE

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INTRODUCTION

Gravel and other mineral deposits are a valuable resource, available in generous quantities in Washington County. This code was developed to establish conditions whereby these mineral deposits, primarily gravel, will be made available for general use. This code also provides guidelines for restoring the land to a usable, attractive condition after the mining operation is finished.

In order to conduct a mining operation, it is necessary for the owner to have a Special Use Permit for the land covering the expected life of the mine. It is also necessary for the owner to have a mining permit, issued annually, as covered by this Ordinance. A single hearing is preferred for the initial mining permit and the Special Use Permit. Subsequent annual hearings for the mining permit give an opportunity for the community, the operator and the neighbors to talk over any problems that may exist.

Owner/operators of gravel pits must comply with Minnesota Department of Natural Resources, Minnesota Pollution Control Agency and Minnesota Health Department regulations when any groundwater (aquifer supply) is used in the mining process.

Asphalt operations, either portable or permanent, and any new operations or existing operations that are substantially expanding or changing must have a special-use permit from Washington County.

SECTION 1. PURPOSE

101. For the health, welfare, safety, and optimum land development, it is necessary to regulate the removal of sand, gravel, rock, soil and other natural deposits in New Scandia Township.

Other purposes include the following:

- (1) To provide for the economical availability of sand, gravel, rock, soil, and other materials vital to the continued growth of the community.
- (2) To establish reasonable and uniform limitations, safeguards, and controls in the community, for the future production of sand, gravel, rock, soil, and other natural resources.
- (3) To control noise, dust, hazards, effect on adjacent property, and other factors related to the active mining and/or excavating operation.
- (4) To provide for control of the extent of excavation compatible with the surroundings; and for the restoration of the mining area after termination of the removal operation to make the site compatible with the surroundings.
- (5) To control pollution by erosion or sedimentation.

SECTION 2. DEFINITIONS

201. Rules.

201.01. Words used in the present tense include the past and future tense; the singular number includes the plural and the plural includes the singular; the word (shall) is mandatory, and the word (may) is permissive.

201.02. In the event of conflicting provisions in the text of this Regulation, the most restrictive shall apply.

202. Definitions.

202.01. For the purpose of these regulations, certain terms and words are hereby defined as follows:

- (1) Community. Township of New Scandia.
- (2) Engineer. The registered engineer employed by the community unless otherwise stated.

- (3) Governing Body. The Town Board of New Scandia.
- (4) Mining shall include the excavation, removal or storage of sand, gravel, rock, soil, clay, and other natural deposits within the community.
- (5) Mining shall not include the excavation, removal or storage of rock, sand, dirt, gravel, clay or other material for the purpose of the foundation, cellar or basement of some pending structure, for which a permit has been issued and which is to be erected immediately following the excavation, removal or storage.
- (6) Mining shall not include the removal or moving of materials for construction of roads, sewer lines, storm sewers, water mains, surface water drainage, agriculture or conservation purposes and sod removal. Nor shall mining include the moving of dirt for landscaping purposes on a lot used or to be used for residential purposes.

SECTION 3. ANNUAL PERMIT REQUIRED

301. It shall be unlawful for any person, partnership, company or corporation to engage in mining within the community or for an owner to permit a person to mine on his property, without first having obtained a permit from the Governing Body.

302. Persons, partnerships, or corporations now conducting operations governed by this Ordinance and for which this Ordinance requires a permit may continue such operations, but within sixty 60 days of the effective date of this Ordinance shall make application for a permit, and failure to do so shall be a violation of this Ordinance; however, on request and for cause, the Governing Body may extend the time for the initial application to ninety 90 days. If application is not made within the required time, all mining operations shall be terminated.

303. The initial annual permit shall be issued only after a public hearing following ten (10) days posted and published notice and notification of adjoining landowners.

304. The renewal of the annual permit shall be issued only after a public hearing following ten (10) days posted and published notice of the public hearing.

305. A permit, when issued, shall be valid for one (1) year unless terminated pursuant to Section 4. The permit year shall run from March 1, through February 28/29.

SECTION 4. TERMINATION OF PERMIT

401. The governing body may terminate a mining permit for violation of this Ordinance or a condition of the permit, or for other cause.

402. To terminate a permit, the Governing Body shall give notice of the violation or other cause for the termination along with an order that the condition be remedied. If the condition has not been repaired within a reasonable time, and not less than two (2) weeks, the Governing Body shall hold a hearing to determine whether the permit should be terminated.

403. No mining shall take place after the permit is terminated pursuant to this section.

SECTION 5. NUISANCE DEFINED

501. Where unsafe conditions or conditions in violation of this Ordinance or the permit exist, said conditions are hereby declared to be a nuisance, and the Governing Body may give notice to the operator or owner to abate the same.

502. If after a reasonable time for repair of the condition, it still exists, the Governing Body may abate the nuisance and the costs of such work may be taxed against the property and become a lien thereon.

SECTION 6. APPLICATION

601. The application for the permit required in Section 3 hereof shall be filed with the community clerk for presentation to the Governing Body. A fee of seventy-five dollars (\$75.00) shall accompany each application. Application for renewal permit must be made forty-five (45) days prior to the termination of the previous permit. The Town Board may consider applications submitted subsequent to forty-five (45) days prior to the termination of the previous permit, however, a public hearing must be held in connection with each application and no permit shall be issued until 45 days have elapsed from the date of application. The application shall be made in the name of the owner of the land to be mined.

602. The application shall contain:

- (1) The name and address of the operator and owner of the land.
- (2) The correct legal description of the property where the mining shall occur.
- (3) Names of adjacent landowners including all those within a one-half (1/2) mile radius of the boundary of the property being mined for initial applications.
- (4) A map of the property where the mining is to occur that clearly indicates the property lines and the limits of the proposed excavation. Topographic data, including contours at vertical intervals of not more than five (5) feet except where the horizontal contour interval is one hundred (100) feet or more, a

two (2) foot vertical interval shall be shown on this map. Water courses, marshes, wooded areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown. U.S.G.S. datum shall be used for all topographic mapping where feasible. This information shall be up-dated at least every five (5) years.

- (5) The purpose of the removal, storage or excavation.
- (6) The estimated time required to complete the removal, storage, or excavation.
- (7) The plan of operation, including soil processing (any operation other than direct mining and removal), nature of the processing and equipment, location of the plant, source of water, disposal of water, and reuse of water.
- (8) The travel routes to and from the site.
- (9) The plans for drainage, water and wind erosion control, sedimentation and dust control; these plans shall be in conformity with the recommendations of the Washington County Soil and Water Conservation District Office.
- (10) Certificate of Insurance.
- (11) Bonding Certificate
- (12) A map or plat of the proposed pit or excavation showing the confines or limits thereof together with the proposed finished elevations based on 1929 sea level datum readings. Where the finished elevations prohibit natural drainage, certified soil borings shall be included through the proposed excavation.
- (13) A comprehensive plan showing that suitable provision will be made for the restoration of the excavated area so that it will not become a health or safety hazard or a nuisance, such plan to include anticipated final elevations, slope and a plan for the return of sub-soil and topsoil. Where the Governing Body deems it practical and necessary, such plan shall include adjoining related areas where excavations have previously been made and remain under the control of the owner of the land on which the excavating is to be done or under the control of the person other than the owner to whom the permit is to be issued. This plan must be submitted at least 45 days before public hearing for annual permit renewal.

603. The applicant shall abide by one (1) of the two (2) following operating and land rehabilitation practices:

603.01. Excavations resulting in the accumulation of substantial water areas after rehabilitation must meet the following requirements:

- (1) The water depth must not be less than three (3) feet measured from the low water mark;
- (2) All banks shall be sloped to the water line at a slope which shall not be steeper than four (4) feet horizontal to one (1) foot vertical;
- (3) All banks shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least three (3) inches;
- (4) Such topsoil as required by subsection 3 above shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where re-vegetation is possible.
- (5) Slopes on boundary areas shall not be steeper than four (4) feet horizontal to one (1) foot vertical.

603.02. Excavations not resulting in water areas after rehabilitation but which must be graded or back-filled, shall meet the following requirements:

- (1) Such grading or back-filling shall be made with non-noxious, non-flammable, non-combustible solids;
- (2) The graded or back-filled area shall not collect or permit stagnant water to remain therein;
- (3) The peaks and depressions of the area shall be reduced to a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall;
- (4) Such graded or back-filled area shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding, and to a depth of at least three (3) inches;
- (5) Such topsoil as required by Section 5 above shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where re-vegetation is possible;
- (6) New slopes on boundary areas shall not be steeper than four (4) feet horizontal to one (1) foot vertical;
- (7) The maximum depth of excavation may be regulated by the Governing Body.

SECTION 7. OPERATING CONDITIONS

701. The applicant will comply with the following:

701.01. Fencing. Properly fence any pit or excavation.

- (1) Where collections of water are one and one half (1 1/2) feet or more in depth; all access to such collections of water may be ordered barred by appropriate means;
- (2) Where slopes steeper than one (1) foot vertical to one and one-half (1 1/2) feet horizontal exist for a period of five (5) working days, access to such slopes may be ordered barred by appropriate means.

Said fence shall be located not less than ten (10) feet from the top edge of any exterior cut slope. As an alternative to constructing a fence around the area currently being excavated, a fence may be constructed around the perimeter of the entire property. Details of fence construction are to include: wooden fence posts of 4 inches in diameter or steel fence posts. Three strands of barbed wire shall be evenly spaced on posts. Gates shall be installed at all points of vehicular or pedestrian ingress and egress and be of a material and construction to prevent trespassers and children from entering the property at night and when mining operations are not otherwise being conducted and shall be kept locked when not in regular use.

701.02. Screening. Screening shall be required in the discretion of the governing body where necessary to eliminate unsightly view of the operations. The Applicant or owner shall plant suitable and fast growing screening trees which shall be a minimum of two (2) feet high and, in addition, plant at least two rows of evergreen trees to provide a continuous opaque screen. Tree planting shall be in accordance with standard nursery practice and the screen design shall be approved by the governing body.

701.03 Slope of Excavation. Slope the banks, and otherwise properly guard and keep any pit or excavation in such condition as not to be dangerous because of sliding or caving banks.

701.04. Set-Backs. Refrain from mining below grade closer than thirty (30) feet to the boundary of any zone where such operations are not permitted, or closer than fifty (50) feet to the boundary of an adjoining property line, unless the written consent of the owner in fee of such property is first secured and filed with the community clerk. Refrain from excavating below road grade closer than fifty (50) feet to the right-of-way line of any existing or platted street, road, or highway, except

that excavating may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or proposed street grades.

701.05. Inspection and Supervision Fee. Gravel pit owners shall pay to the Town of New Scandia an annual inspection and supervision fee of \$2.00 per 1,000 cubic yards of material removed from the site. The purpose of this fee is to cover costs incurred by the Town regarding inspection and supervision of the gravel operations. The fee shall be paid on or before March 1 of the succeeding year. The applicant shall keep records of all material removed from the site and these records shall be made available to the governing body for its review.

701.06. Survey. Furnish a survey by a registered surveyor showing the boundaries of the property.

701.07. Bond. Post a bond, cash deposits or other security, in such form and sum as the governing body may require based in part on the submitted Reclamation Plan and running to the community, conditioned to pay the community the cost and expense of repairing any highways, street, or other public ways and the restoration of other sites within the community made necessary by the special burden resulting from hauling and transporting thereon by the applicant in the removal of rock, sand, dirt, gravel, clay or other material, and conditioned further to comply with all the requirements of this Ordinance and the particular permit, including the restoration of mining areas, and to save the community free and harmless from any and all suits or claims for damage resulting from the negligent excavation, removal or storage of rock, sand, dirt, gravel, clay or other material within the community boundary.

701.08. Insurance. Carry bodily injury and property damage, public liability insurance in the amount of five hundred thousand dollars (\$500,000) minimum for any one (1) person or occurrence including blasting insurance naming the community as an additional insured.

701.09. Noise. Maintain and operate all equipment in such manner as to eliminate, as far as is practicable, noises and vibrations, in accordance with State and County standards.

701.10. Hours of Operation. Conduct operations only between the hours of 7:00 a.m. and 7:00 p.m. , except no trucking shall be allowed on Saturdays, Sundays, or holidays. In the case of public emergencies, such as floods, or whenever any reasonable or necessary repairs to equipment are required the Governing Body may allow an exception to this requirement. Expansion of hours of operation and trucking for "contract penalty jobs" shall require a public notice at least 10 days prior to actual start date.

701.11. Dust and Dirt. Construct, maintain and operate all equipment in such a manner as to minimize dust conditions. All

operations shall meet the standards of the State Pollution Control Agency.

701.12. Appearance. Maintain buildings and plants in a safe condition in accordance with acceptable industrial practice. Weeds shall be controlled.

701.13. Removal of Structures. Within a period of three (3) months after the termination of a sand and gravel operation, or within three (3) months after abandonment of such operation for a period of six (6) months (or within three (3) months after expiration of a sand and gravel permit), dismantle or remove buildings, structures and plants incidental to such operation; except that such buildings, structures and plants need not be dismantled and removed so long as they are legally being used for the production or processing of sand and gravel or for some other purpose permitted in the zone in which they are located.

701.14. Lighting. Set forth the planned lighting of the area and any other equipment or structures that will be installed or built.

701.15. Sewer. Provide for adequate drainage to sanitary sewer and storm sewer including lift stations, if necessary.

701.16. Added Provisions. Comply with such other requirements as the Governing Body from time to time may find necessary for the health, safety, welfare and prevention of nuisance in the area.

701.17. Variance. The standards which apply to these permits may be varied by the Governing Body according to the structure and size of the operation, and to factors presented by the applicant.

SECTIONS 8. VIOLATION AND PENALTIES

801. Any firm, person or corporation who violates any of the provisions of these regulations shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than \$300.00 or imprisonment for a term not to exceed 90 days, or both, plus in either case, the cost of prosecution. Each day that a violation is permitted to exist shall constitute a separate offense.

In addition to other remedies, the governing body may institute appropriate actions or proceedings to prevent, restrain, correct or abate any failure of any firm, person or corporation to comply with the conditions of a permit granted and assess the cost of such action or proceeding against the affected real property or, in the alternative, proceed to collect such costs by an action against the person, party or corporation to whom such permit has been issued.

SECTION 9. VALIDITY

901. It is hereby declared to be the intention that the several provisions of this regulation are separable in accordance with the following:

- (1) If any court of competent jurisdiction shall adjudge any provision of this regulation to be invalid, such judgment shall not affect any other provision of this regulation not specifically included in said judgment.
- (2) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this regulation to a particular property such judgment shall not affect other property.

SECTION 10. PASSAGE

This ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the Town Board of the Town of New Scandia this 18th day of July, 1989.

Russell Jackson
Chairman

ATTEST:

Aoloes Peterson
Clerk