

TOWN OF DUNN

DUNN COUNTY, WISCONSIN

ORD. #2013-01 NONMETALLIC MINING ORDINANCE

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SECTION 1. TITLE, FINDINGS, PURPOSE, AUTHORITY, SCOPE AND INTERPRETATION

1.1 Findings/Purpose

Nonmetallic mining operations, while serving as a vital component of our state and local economy, can have both direct and indirect adverse impacts on the human and physical environments. Studies document that nonmetallic mining can generate harmful levels of dust and noise, particularly if blasting and crushing operations are undertaken. The manner in which nonmetallic mining is undertaken can negatively impact on the landscape and aesthetics if not properly regulated, and present health and safety concerns to members of the public. Through the use of rural highways that have not been designed or constructed to meet the potential volume of traffic generated in association with a nonmetallic mining operation, not to speak of that traffic in conjunction with other public travel on those highways, nor constructed to standards consistent with the safety of the traveling public in light of such use, the truck traffic associated with such operations has the potential to generate off-site impacts, as well, including but not limited to increased wear and damage to roads and safety concerns to children and other residents.

Although the State of Wisconsin regulates certain environmental aspects of nonmetallic mining operations, including but not limited to surface and groundwater contamination and withdrawal, and although the State has also established a system of regulating nonmetallic mine operation reclamation efforts under Wis. Adm. Code Ch. NR 135, the Town finds that certain public health, welfare and safety concerns of a local nature have not been dealt with at all or are inadequately dealt with by the State, thus occasioning the adoption of this Ordinance.

Additional health, welfare and safety concerns dealt with in this Ordinance include the impacts of truck traffic in association with nonmetallic mining operations upon the use, maintenance and repair of Town highways, the generation of noise, light, air and water contamination and the aesthetical impact of such operations upon the rural landscape of the Town, its residents and property owners, generally and the potential impact of such operations on localized property values among other concerns.

The purpose of this Ordinance shall therefore be to establish minimum standards for nonmetallic mining operations and to require of their operators that each shall obtain licenses in order to more fully protect public health, welfare and safety in the Town, as well as to preserve the scenic beauty of the Town and its environment; and to protect property owners adjoining the sites of mining operations from property value losses, as well as to minimize or prevent adverse off site impacts from nonmetallic mining operations,

1.2 Authority

This Ordinance is adopted pursuant to the grant of Village powers to the Town Board under §§60.10(2)(c), 60.22(3) and 61.34(1)&(5), Wis. Stats., the general police power and its authority under §66.0415, Wis. Stats., to regulate potentially offensive industry.

1.3 Scope

- A. This Ordinance applies to all persons who engage in nonmetallic mining operations in the Town except as provided in B, C, and D below.
- B. This Ordinance shall apply only to nonmetallic mine operations that meet or exceed the following minimum levels of operation:
 - 1. Production of 25,000 tons of nonmetallic minerals monthly or at least 200,000 tons on average in a calendar year; or
 - 2. For purposes of application of Section 4.2D. only, nonmetallic mineral operation hauling truck travel on Town roads which exceeds an average of 2 trucks per hour, over the course of a five (5) day week for a 12 hour day.
- C. This Ordinance shall not apply to persons engaging in the following types of nonmetallic mining operations:
 - 1. Excavations or grading solely for domestic or farm use at that person's residence or farm.
 - 2. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the right-of-way of the highway, railroad or other transportation facility.
 - 3. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
 - 4. Excavations for building construction purposes conducted on a building site.
 - 5. The disturbance by any person of less than one acre of land for extraction of nonmetallic minerals.
 - 6. Removal of products or commodities from the earth 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.

7. Active mining operations in existence prior to the effective date of this Ordinance shall be exempt from its requirements. However, if a mining operation in existence prior to the effective date of this Ordinance is expanded after the effective date of this Ordinance in a manner which requires a new or revised nonmetallic mining reclamation permit per Wis. Admin. Code Ch. NR 135, the expansion shall be subject to the licensing requirements of this Ordinance.
- D. At the option of the Town Board, nonmetallic mining operations in the Town may be exempted in whole or in part from operation of this Ordinance because of either or both of the following:
1. Regardless of the size in total acreage of the area of extraction, a nonmetallic mining operation which involves active mining operations that are anticipated to occur in less than four (4) months out of each calendar year.
 2. Where a mining operation, although engaged in for in excess of four (4) months out of each calendar year, is so sporadic in nature as to not justify the expenditure of time and effort by either the applicant or Town under this Ordinance to process an application for a license.
 3. In the process of invoking the powers under 1 and 2, the Town Board shall take into consideration the health, welfare, and safety of the citizens of the Town.
- E. In the event that an operator whose nonmetallic mining operations are exempt from the application of this Ordinance under B or C, above, or has been exempted upon action of the Town Board under D, above, changes his or her operations to the extent of no longer qualifying for such an exemption, said operator shall be required to apply for and obtain a license under this Ordinance.
- F. An exemption from the provisions of this Ordinance shall not prevent the Town from requiring entry into a development or highway use agreement with respect to use of Town highways for hauling purposes under ' 349.16, Wis. Stats., or in accord with other authority of the Town.

1.4 Interpretation

- A. Abrogation and Greater Restrictions. Except as is set forth expressly herein, it is not the intent of the Town Board to abrogate, annul, or repeal any other ordinance of the Town or to alter the applicability of laws which are of statewide concern within the Town. To the extent that a conflict arises between this and any other ordinance, rule or regulation, the more restrictive of them shall control.
- B. Liberal Construction. In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare shall be liberally construed in favor of the Town to promote the purposes for which they are adopted and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town.
- C. Town as Regulatory Body. By the adoption and enforcement of this Ordinance, the Town is not to be deemed to be a partner or agent of any person to which a license is granted hereunder.

SECTION 2. DEFINITIONS

The following definitions shall apply to and govern interpretation of the terms:

Adjacent landowners shall mean the legal owners of real estate that lie within a distance of 1 mile of the legally described property or properties upon which nonmetallic mining operations subject to this Ordinance are engaged in by an Operator. For purposes of this definition, “nonmetallic mining operations” shall not include the routes of transportation on Town roads or County or State highway rights-of-way nor transportation across the property on which the nonmetallic mine site is located nor transportation on, through, or above other property, use of which for transportation purposes has been legally secured by the Operator from the owner thereof.

Adjacent properties means properties of adjacent landowners. Adjoining landowners are persons who own adjoining property.

Adjoining property means all property at least one of whose boundaries is immediately contiguous with property on which nonmetallic mining operations are taking place. For purposes of this definition, “nonmetallic mining operations” shall not include the routes of transportation on Town roads or County or State highway rights-of-way nor transportation across the property on which the nonmetallic mine site is located nor transportation on, through, or above other property, use of which for

transportation purposes has been legally secured by the Operator from the owner thereof.

County means Dunn County, Wisconsin.

Nonmetallic Minerals means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, nonrenewable materials. Nonmetallic minerals include but are not limited to stone, rock, gravel, sand, asbestos, beryl, diamond, clay, coal, feldspar, silica, peat and talc.

Nonmetallic mine site or mine site or mining site means all contiguous areas of present or proposed mining.

(a) Nonmetallic mine site means the following:

1. The location where nonmetallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
3. Areas where nonmetallic mining refuse is deposited.
4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
5. Areas where grading or regrading is necessary.
6. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

Nonmetallic Mining Operation means any or all of the activities, processes, methods of approach, applications and means utilized, both mechanically and otherwise, including but not limited to blasting, grading, crushing, screening and scalping to cause the occurrence of one or more of the following:

- (a) Extraction or excavation from the earth of nonmetallic minerals for off site use or sale;
- (b) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separating or blending of nonmetallic minerals obtained in the extraction process from the earth or using nonmetallic materials or other materials transferred to the site at which the operations are taking place.

- (c) Manufacturing processes whose aim or goal is the production of nonmetallic products for sale or use by the licensed operator.
- (d) Stockpiling of nonmetallic minerals for sale or use off site and stockpiling of waste materials.
- (e) Transportation of extracted nonmetallic materials, finished product or waste materials to or from an extraction site.
- (f) Disposal of waste materials.
- (g) Reclamation of an extraction site.

Operator means any person who engages in nonmetallic mining operations in the Town.

Person includes all natural persons, partnerships, associations, and bodies politic or corporate.

Plan Commission means the duly appointed Plan Commission of the Town of Dunn.

Property or properties means legally described and recorded lots, parcels or tracts of land.

Reclamation Plan means a plan approved of by the County pursuant to County ordinances and Wis. Adm. Ch. NR 135 for the reclamation and post mining use of a site on which nonmetallic mineral mining operations have taken place.

Town means the Town of Dunn, Dunn County, Wisconsin.

Town Board means the Town Board of the Town of Dunn.

Town Clerk shall mean the Town Clerk of the Town of Dunn.

Town Road means a highway, as that term is defined in Ch. 990, Wis. Stats., that is operated, maintained and repaired for purposes of facilitating public travel by the Town under Ch. 82, Wis. Stats., et al.

Waste material means any nonmarketable by-product that directly results from or is displaced from the extraction process for nonmetallic minerals or is a by-product of a manufacturing process and is proposed to be disposed of at an extraction site or some other site in accord with an approved reclamation plan.

SECTION 3. LICENSES, APPLICATIONS, PROCEDURES, LICENSE APPLICATION AND DEVELOPMENT AGREEMENT

3.1 License Required

- A. With the exception of those operations exempted under Section 1.3, above, no person shall engage in nonmetallic mining operations in the Town without first obtaining an operator's license from the Town Board.
- B. An operator's license shall be granted for a period of two years (2) commencing on January 1 and ending on December 31 of the following calendar year, or any portion thereof.
- C. An operator's license may be renewed under Section 6.2.
- D. Licenses are not transferable from person to person without the express, written approval of the Town Board.
- E. If an operator's license is revoked under Section 7, all rights thereunder shall terminate. The only mining operations which may be engaged in on any given mining site after license revocation shall be reclamation pursuant to the requirements of the licensee's NR 135 permit.

3.1.5. General Provisions

Amendments to licenses may be granted during the terms thereof. To seek an amendment to his or her license, an operator shall follow the same procedures as apply to licensing in general.

3.2 Application Procedure

- A. The Town Clerk shall supply Application Forms.
- B. Each applicant shall submit five (5) copies of the Application Form and all documentation required under Section 3 to the Town Clerk accompanied by the payment of the application fee established for the administration of this Ordinance in amounts set forth in the Town Schedule of Fees attached hereto as Appendix A. The fee shall be made payable to "Treasurer, Town of Dunn." The Application Form shall be signed by the operator. In the event that the land or lands on which a nonmetallic mining operation is proposed to take place is owned by someone other than the

applicant, the owner shall join in and sign the application as evidence of the owner's willingness to allow nonmetallic mining operations to take place on his or her property.

- C. The Town Clerk shall forward the application to the Plan Commission for review to initially determine if additional information or professional consultation is required for it to properly evaluate the application. If no additional information or professional analysis is deemed necessary, the Plan Commission will refer the application to the Town Board together with its recommendation for approval, conditional approval, or denial. Should it require additional information or seek out the advice of a consultant, the Plan Commission's recommendation decision will be made after it has received the said information or consultant's report.
- D. If the Plan Commission determines that professional analysis is required, it shall obtain the approval of the Town Board to retain expert assistance and it shall give written notice to the applicant that an additional administrative fee will be charged to cover the cost of the services of such expert. Failure of the applicant to pay the additional fee as directed by the Town shall constitute cause for refusing to process the application.
- E. Upon receipt of the Commission's recommendation, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is requested by the applicant, the applicant shall pay additional fees incurred for the holding of the special meeting. The Town Board shall set a date for a public hearing and give a Class II public notice at least fifteen (15) days prior to the date scheduled for the hearing. At the public hearing the Town Board shall take public comment on the proposed mine license.
- F. Town Board Decision. Following the public hearing, the Town Board shall review the Plan Commission's recommendation and the public comments made at the public hearing. The Town Board shall grant the license if it determines that the operator will act in a manner consistent with the minimum standards of this Ordinance. If the Town Board denies the license, the applicant may request reconsideration of the Board upon presentation to it of new facts in support thereof. The Town Board shall issue its decision within one hundred twenty (120) days of the date of submission of a fully completed application to the Town Clerk. Either of these limits may be extended upon mutual agreement of the Town Board and the applicant. This paragraph shall apply to

both the granting of licenses and the negotiation of operation agreements alike.

3.3 License Application

Applicants for an operator's license shall submit the following:

- A. Information pertaining to the site or sites upon which nonmetallic mining operations will be engaged in by the operator, including:
 - 1. The recorded legal description of all properties on which nonmetallic mining operations are proposed to be located.
 - 2. An aerial photo of any proposed mining site at a scale of 1 inch equals 660 feet.
 - 3. A topographic map of proposed mining sites extending 1/2 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site and all bodies of water and wetlands.
 - 4. The location within each mining site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.
 - 5. A map identifying the properties of all adjacent landowners within one (1) mile of the mine site.
 - 6. A map identifying all anticipated truck haul routes on Town Roads between the mine and processing plants or to other destinations.
 - 7. If the Operator proposes to operate from two or more sites in the Town, he or she shall respond to the requests for information under 1 to 7 with respect to each site.

- B. An Operation Plan to Include:
 - 1. Proposed dates of the planned commencement and cessation of the operation.
 - 2. Estimated volume of material to be extracted over the life of each nonmetallic mine and during the next calendar year.

3. A physical layout of the proposed sites of each nonmetallic mining operation, including such features as road access points, structures, pit locations, stockpiles, storage, and parking areas, to the extent applicable.
 4. A description of the frequency of traffic and anticipated schedule of travel to be used for transporting extracted materials or products to or from the site on town highways.
- C. Additional information may be required in accord with ' 3.2.C if, in the opinion of the Plan Commission, it is required to process a permit application. The Commission shall identify the information required and request that it be supplied by the applicant.

SECTION 4. MINIMUM STANDARDS OF OPERATION

4.1 General Standards

- A. Upon the basis of the application materials submitted under Section 3, above, further evidence or information submitted by the applicant and consideration of comments at the public hearing, the Town Board shall determine whether the applicant has demonstrated compliance with this Ordinance and, if so, it shall grant a license under this Ordinance, grant a license and enter into an Operator's Agreement, or enter into an Operator's Agreement. In the alternative, it shall deny the license.
- B. The Operator shall demonstrate that all applicable Federal, State, and Town permits and/or approvals for the nonmetallic mining operation have been or will be obtained prior to commencement of the operation by submitting copies of all permits, approvals, or waivers of permits to the Town.
- C. The Operator shall provide notice to the Town of any violations, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town.
- D. A license to engage in nonmetallic mining in the Town shall not be denied upon the basis of the specific location of said mine, its size or proximity to other land uses. The focus of this Ordinance shall be upon requiring that the means and manner by which nonmetallic mining is engaged in within the Town shall be in conformity with the requirements of this Ordinance.

4.2 Standards Regarding Off-Site Impacts

Nonmetallic mining operations shall be conducted in such a manner as to meet or exceed the following minimum requirements:

- A. The Operator shall provide a buffer area around each nonmetallic mine site of a minimum of fifty (50) feet along bordering property lines and public highways. If a berm is placed within this fifty (50) foot buffer area and it lies along a public highway, the bottom edge of the berm shall be a minimum of ten (10) feet from the edge of the right-of-way and shall be vegetated to prevent erosion entering the highway right-of-way.
- B. The Operator shall screen mining operations from public view to the maximum extent possible through the use of berms, setbacks, vegetation or other control measures. The Operator shall leave the existing perimeter tree canopy at highest points of elevation intact to keep the visual appearance and aesthetics and reduce particulate matter from leaving the site.
- C. The Operator shall limit hours of operation at Mine Sites to ten (10) hours per day Monday through Saturday, federal legal holidays excepted, during daylight hours only and not earlier than five o'clock (5:00) am and not later than seven o'clock (7:00) pm to minimize off-site impacts to adjacent properties. The Operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public health, safety and welfare.
- D. Impacts on Town Roads and Public Safety
 - 1. The Operator shall be responsible for the conformance to the following requirements for all haul truck operations to or from the mining site.
 - 2. In the event that truck hauling to or from the Operator's mine site requires travel on Town highways, the Operator shall be required to enter into a ' 349.16, Wis. Stats., highway use agreement.
 - a. The Operator shall ensure that all nonmetallic mining trucking operations on Town highways comply with the Town's highway regulations.

- b. Within the Town, trucks used in conjunction with a nonmetallic mining operation shall not, except in case of emergency, employ the use of compression release (Jake) brakes. All truck loads must be tarped.
 - c. The Operator shall take reasonable measures to ensure that trucks traveling to and from the mining site do not interfere with the safety of children being taken or returned from school, the safety of vehicles displaying slow-moving vehicle signage, pedestrians, non-motorized vehicles, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is the highest.
 - d. Each such agreement shall comply with the standards set forth in Section 5.1 B.
- E. The Operator shall limit night lighting to that which is minimally necessary for security and all lights shall have cut-off shrouds so that no light is directed upward or toward adjacent properties. Portable lighting shall only be used as necessary to illuminate work areas. Site access roads shall be designed to minimize light from traffic and operations going onto neighboring properties.
- F. The Operator shall use best management practices to keep noise from nonmetallic mining activity at or below sixty (60) decibels (dba) at the site boundaries. Exceptions to this section are blasting activities, haul trucks entering or leaving the site, and work projects done on the screening berms, drainage systems or Town or County road projects.
- G. In order to be eligible for a license, proof must be submitted of a current air pollution permit issued to the applicant under Wis. Adm. Code Ch. NR 415, which permit shall be maintained in full force and effect at all times during the term of the license, barring which the license or agreement under this Ordinance will be suspended or terminated.
- H. Blasting shall be conducted strictly in accordance with Wis. Adm. Code Ch. SPS 307 and shall occur between the hours of ten o'clock (10:00) am and three o'clock (3:00) pm; except that blasting may occur after three o'clock (3:00) pm, but not after sunset, if required for safety reasons beyond the reasonable control of the Operator.

I. Impacts on Adjoining Landowner's Property Values

1. For a period five (5) years next following the approval of a Nonmetallic Mine Operation under Wis. Adm. Code Ch. NR 135 Reclamation Plan for the Mine Site against which a Property Value Guarantee is sought to be imposed, the Operator shall provide a Property Value Guarantee as follows. Each eligible adjoining property owner who wishes to participate shall sign up with the Town Clerk and provide written notice to the Operator of his or her election to participation in the Property Value Guarantee hereunder. Each such landowner shall have one (1) year to sign up from whichever of the following dates is applicable: (a) approval of the Wis. Adm. Code Ch. NR 135 plan; or (b) the effective date of this Ordinance in cases of pre-existing, nonmetallic Mine Operations; or (c) in the case of Nonmetallic Mine Operations that do not require an NR 135 permit, its commencement of operations. All others forfeit their rights to do so. This guarantee shall apply only to the owner of the property as of the date on which approval of the Reclamation Plan is received.
2. An Adjoining Landowner (hereinafter "Owner" in this Section) desiring to sell his or her property and exercise the option provided in this Property Value Guaranty shall notify the Operator of their intent no later than the first to occur of the following events: (1) the fifth (5th) anniversary date of the approval of the NR 135 Reclamation Plan for the Mine Site in question; or (2) the cessation of mining activity under the License and any renewals.
3. The Owner and the Operator shall agree on an appraiser who is licensed as a real estate appraiser in the State of Wisconsin who shall determine Fair Market Value of the property, further defined as being the full value thereof which could ordinarily be obtained therefore at private sale on an arm's length basis between a willing seller and a willing buyer. This term shall be further defined as being the Fair Market Value of the property assuming that the Operator's Nonmetallic Mining Operation did not exist but taking into account all other factors in valuing the property. The Operator shall pay for the appraisal.
4. In the event that the Owner and Operator are unable to agree on an appraiser, the Owner shall select a financial institution in Dunn County, Wisconsin, that makes residential real estate loans and with whom the Owner does not do business and request that such institution provide to the Owner and Operator the name of an appraiser it regularly employs to conduct residential appraisals.

The identified appraiser shall be retained to conduct the appraisal and shall determine the Fair Market Value of the property using the criteria set forth in C., above, and provide the Owner and Operator with the said appraisal of Fair Market Value.

5. The Owner shall then enter into a listing contract with a duration of at least six (6) months and not more than one (1) year with a Wisconsin licensed real estate broker. The listing contract shall list the Operator as a potential buyer so that if the Operator purchases the property during the term of said contract no commission shall be due.
6. Before accepting any offer of less than the Fair Market Value as determined in paragraphs 3 or 4 above, the Owner shall give the Operator five (5) business days' notice by fax, e-mail, or personal delivery with a copy of the offer to the Operator. If the notice is by fax or e-mail it shall also require confirmed receipt by the Operator. If the Operator objects in writing within two (2) business days, the Owner shall not accept the offer. Within two (2) business days of the Operator's receipt of the offer, the Operator may elect to purchase the property for its Fair Market Value, and if the Operator makes such an election, the Owner shall sell the property to the Operator at the Fair Market Value and upon the other terms contained within the offer (not including the purchase price, which shall be the Fair Market Value).
7. Except as provided otherwise in this paragraph, if the Owner sells the property during the term of the listing contract for less than the Fair Market Value as determined in paragraphs 3. or 4. above, the Operator shall pay the Owner the difference between the selling price and the Fair Market Value, less the realtor's commission that would have been payable on that difference. The Operator shall make the payment within thirty (30) days of the recording of the conveyance of the property. In the event that the Operator reasonably believes that the Fair Market Value determined by the appraiser pursuant to paragraphs 3. or 4. above no longer represents the actual Fair Market Value of the property due to changes in the market, the Operator may have an updated Fair Market Value determined as of the date on which the closing on the property occurred using the same appraiser used to determine the Fair Market Value under paragraphs 3. or 4. The Operator shall pay all costs related to such updated appraisal. If such an updated Fair Market Value is determined to be different than the original Fair Market Value, then the Operator shall pay the Owner the difference between the selling price and the

updated Fair Market Value, less the realtor's commission that would have been payable on that difference.

8. If the property is not sold within six (6) months of the date of the listing contract, the Operator shall immediately purchase the property for the Fair Market Value as determined in paragraphs 3. or 4. above, or at such other appraised value as is agreed upon by and between the Operator and the Property Owner. At the option of the Seller with the approval of the Operator, the listing contract may be extended for an additional six (6) months.
9. The guaranty shall apply only once for any adjoining property and shall only be available to owners of record of adjoining properties as of and immediately after the date of commencement of Nonmetallic Mining Operations. In the event that a property constitutes an Adjoining Property of two or more Nonmetallic Mining Operations, any payments from the Operator called for by this Section shall be split equally among the Operators of such Nonmetallic Mining Operations. In such an event, paragraphs 3. and 4. shall apply, but where the term "Operator" is used in 3. or 4., for purposes of this paragraph it shall include each of the Operators of the two or more adjoining Nonmetallic Mining Operations, who shall share the power of nomination of an appraiser under 3. and who shall equally split the cost of appraisal whether performed under paragraph 3. or 4.
10. Adjoining Property which is for sale prior to the date of commencement of Nonmetallic Mining Operations shall not be eligible for the Property Value Guaranty provided in this Section.
11. Properties shall not qualify for the Property Value Guaranty in the event the property owner sells or otherwise conveys the property to a third-party by a transaction which is not considered an arm's length transaction, such as a sale or gift to a relative. This limitation shall not apply with respect to transfers as a result of testate or intestate succession upon the death of the Owner.
12. In the event that Nonmetallic Mining Operations at a Mine Site for which an NR 135 reclamation permit has been obtained do not commence within one (1) year after the date of the approved NR 135 permit, the five (5) year period expressed in A., above, shall commence on the date mining operations actually begin. For Mine Sites for which an NR 135 reclamation permit is not required, the five (5) year period expressed in A., above, shall commence on the date mining operations activity begin. For Mine Sites pre-existing the effective date of this Ordinance, the five (5)

year period expressed in 1., above, shall commence on the effective date.

Section 5. OPERATIONS AGREEMENT AND TERM

5.1 Operations Agreement

- A. In addition to the requirement of entering into a §349.16, Wis. Stats., highway agreement, in order to protect the public health, safety, and welfare, the Plan Commission may recommend to the Town Board that it require an operator to enter into an Operations Agreement with the Town. Such an agreement shall be negotiated pursuant to the provisions of this section. Unless expressly modified by the terms of an operations agreement, all requirements of this Ordinance shall continue in full force and effect with respect to any given nonmetallic mining operation.
- B. Purposes Served by Operations Agreement. An Operations Agreement may be negotiated for one or more of the following reasons:
 - 1. To create standards of operational performance tailored to an individual mine operator.
 - 2. To implement the Town's authority under ' 349.16, Wis. Stats., to ensure the integrity of its highways, to require the operator to fund highway upgrades, maintenance, and repairs for the convenience and safety of the traveling public and prevent financial burdens from being imposed on the taxpayers as a result of highway use in association with a nonmetallic mining operation.
 - 3. To bind the operator to mutually agreed-upon obligations to the Town in exchange for operating privileges. Town highway use conditions shall be established on a case-by-case basis under an agreement entered into pursuant to Section 4.2 D, above, in conjunction with this subsection.
 - 4. To establish, by mutual agreement, terms and conditions of operation of a nonmetallic mine not contemplated or expressed in this Ordinance.
 - 5. Before entering into such an agreement, the Town Board shall hold a public hearing under Section 3.2, after which it shall decide whether to attempt the negotiation of an operator's agreement consistent with this Ordinance or to

issue a biennial operations license. If an operator's agreement is utilized, it shall define the term of the license which may be equal to or greater than two (2) years in length.

C. Negotiation of Agreement.

1. A special committee composed of the Town Board Chairperson, the Plan Commission Chairperson and a third party selected by the Town Board Chairperson shall negotiate an Operations Agreement subject to the power of the Town Board to approve or reject the negotiated agreement.
2. An agreement negotiated under the terms of this paragraph may either increase or decrease the standards under this Ordinance or waive their application altogether when in the opinion of the Town Board it is in the best interests of the citizens of the Town to take such action. An Operator's Agreement may be a complete substitute for a license granted under Section 3, above. Each such agreement shall take into consideration and shall promote the public health, safety and welfare concerns that underlie this Ordinance but need not specifically enforce or apply the specific requirements applicable to licenses where alternatives thereto are deemed to be in the public interest.
3. Both the Town and the proposed Operator/Owner may be represented by no more than three (3) representatives in the negotiations process together with an attorney of their choice, if desired.

D. Requirements. An Operations Agreement shall be in writing and include:

1. A statement identifying the Mine Operator.
2. The legal description of the parcel(s) identified by the operator as the location of his or her nonmetallic mining operation.
3. The effective date and term.
4. Identification of the approval standards designed by the Town Board to promote the public interest.

- E. Negotiations. Upon engaging in negotiations toward entry into an Operations Agreement, both the applicant and the Town shall act in good faith but neither shall be required to enter into an agreement simply because they entered into negotiations toward that end.
- F. All expenses of the Town, including reasonable attorney's fees, shall be paid to the Town by the applicant as a condition of engaging in negotiations, whether an agreement is entered into or not.

5.2 Term

An Operations Agreement may have a term that is in excess of the standard two (2) year term of a license under this Ordinance. Where different, the term expressed in an Operations Agreement shall control.

SECTION 6. ANNUAL REPORT AND LICENSE RENEWAL

6.1 Annual Report

- A. No later than February 1 of each calendar year the operator shall submit an annual report to the Town Board for all of the Operator's operations in the Town.
- B. The annual report shall contain the following information
 1. An identification of the Operator and location of each of its nonmetallic mine sites in the Town.
 2. A map or drawing accurately showing the areas of excavation, the unclaimed area and any reclaimed area including a calculation of the number of acres of each type at each site upon which nonmetallic mining operations are conducted during the year.
 3. A description of activities and operations on each nonmetallic mining site, including total tonnage of material removed, for the previous calendar year.
 4. A description of activities and operations on each site, including total tonnage of material removed, anticipated for the next following calendar year.
 5. A written report demonstrating compliance with all the terms and conditions of the license and this Ordinance. The report shall

include any monitoring results of noise, light, air and water quality and shall include a report on any Adjacent Landowner's complaints or the exercise of the Adjoining Landowner's real estate guaranty.

6. A written report of any areas of noncompliance with its license or this Ordinance and a plan for bringing areas into compliance.

6.2 License Renewal

- A. The operator shall make written request to the Town Clerk for a renewal of the license to operate mines in the Town no later than October 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town Schedule attached hereto as APPENDIX A.
- B. The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of Section 6.1.
- C. The Town Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon determination that it is complete shall forward it to the Plan Commission.
- D. The Plan Commission shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Plan Commission may be assigned to inspect the site. If no additional information or expertise is deemed necessary, the Plan Commission shall schedule the application for its recommendation decision under F. and thereafter for the decision of the Town Board under G.
- E. Additional Fees. If the Plan Commission determines that additional expertise is required, the Town Board shall authorize hiring an engineer or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.
- F. Once the applicant has submitted any required additional information and has paid the additional administrative fee in the amount charged, the

retained expert shall report to the Plan Commission on whether the renewal application meets the requirements of this Chapter. The Plan Commission shall thereupon or in lieu of such a report, issue its recommendations to the Town Board and the Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.

- G. The Town Board shall grant the request for renewal if it finds:
 - 1. There have been no material violations of the Ordinance or the license or Operations Agreement which have not been appropriately remedied; and
 - 2. The Operator has not received and either been convicted or has failed to contest multiple or recurring citations or orders for violations of the operator's license, development agreement or this Ordinance; and
 - 3. All applicable fees have been paid and financial responsibility requirements have been met.
- H. The Town shall expedite its decision-making process to the extent possible so as to issue or deny a renewal license before the expiration of the then current term of license; however, if the decision is delayed beyond the expiration date, the then current license shall automatically be extended to the date upon which the Town Board issues its decision to grant or deny the renewal request.
- I. If the Town Board denies the request for renewal, the Town Board shall notify the Operator and provide the Operator with an opportunity for a hearing.

SECTION 7. INSPECTION, ENFORCEMENT PROCEDURES AND PENALTIES

7.1 Inspection

In addition to an annual inspection pursuant to Section 6.2.D., the Town Board or other authorized representative of the Town, may make inspections to determine the compliance of operation of nonmetallic mining sites in the Town with the standards of this Ordinance in order to safeguard the health and safety of the public upon showing proper identification and upon reasonable notice.

7.2 Violations

The following are violations of this Ordinance.

- A. Engaging in nonmetallic mining without a valid operator's license or operation agreement granted by the Town Board.
- B. Failure to comply with the minimum standards of this Ordinance.
- C. Making a false or fraudulent statement in an application or informational materials submitted in support thereof, or failure or refusal of a licensee to permit the Town to make inspections of its operations or engaging in misleading or false representations during the course thereof, it shall not be considered to be the making of a false or fraudulent statement in or in support of an application if the applicant determines that such information is inaccurate or incorrect and takes steps to correct the same within a reasonable time of its submission.
- D. Failure to timely file the annual operational report under Section 6.1.
- E. Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 8.2.B., or other order issued by the Town.

7.3 Procedures

- A. **Hearing.** Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 7.3.B., or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his/her name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty (30) days of the date the notice and order are served or within thirty (30) days of the date of denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
- B. **Remedies.** The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:
 - 1. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.

2. Issue a citation in accord with the Town of Dunn citation ordinance.
3. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Section 7.4 and injunctive relief.
4. License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an operator's license or agreement for a violation under Section 7.2.

7.4 Penalties

- A. Any person who is adjudicated guilty of a violation shall pay a forfeiture of not less than \$2,000 per violation nor more than \$5000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
- B. Any person adjudicated guilty of a violation of this Ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.
- C. The failure of the Town to take action against past violation(s) shall not constitute a waiver of the Town's right to take action against any other or further violation(s).

SECTION 8. FINANCIAL ASSURANCE

8.1 General Requirement

In consideration of the granting of a Nonmetallic Mine Operator's License by the Town of Dunn, financial assurances may be required to be provided to the Town as a condition of the License approval in amounts determined necessary by the Town Board or its agents for the potential off-site impacts of the mining activity as follows:

Impacts on Town Roads per Section 4.2.D. An amount necessary for the engineering, building or rebuilding and maintenance of Town Roads and bridges, right-of-way acquisition and stormwater drainage systems.

8.2 Form Of Assurance

- A. The form of assurance made to the Town of Dunn shall be that form agreed to by the Town Board and may include performance bonds,

irrevocable letters of credit, cash deposits or other measures agreed upon by the Town Board.

- B. In the event the Town determines that the amount of financial assurance must be increased to meet specific impacts on Town Roads or the amount available has been utilized, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall have thirty (30) days to provide the increased amount. If the Operator fails to provide the increased amount, the Operator shall be considered to be in violation of this Ordinance per Section 7.2.

8.3 Reclamation

The Operator shall provide to the Town proof that it has provided the financial assurance required for reclamation per Wisconsin law NR 135. In the event that a license is granted under this Ordinance prior to issuance of the Operator's NR 135 permit, it shall not take effect until the date of issuance of said NR 135 permit.

SECTION 9. SEVERABILITY

- A. Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.
- B. If any application of this Ordinance to a particular parcel of land is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

SECTION 10. ADOPTION AND EFFECTIVE DATE

The Town Board by this Ordinance, adopted on proper notice with a quorum and roll call vote by a majority of the Town Board present and voting, provides the authority for the Town Board to regulate certain activities in the Town by License or by agreement with an applicant.

Section Two: This Ordinance shall take effect upon its adoption and publication as required by law.

Ordinance first approved

January 9, 2013

Ordinance first adopted _____ January 9 _____, 2013 _____

Ordinance first published _____ January 10 _____, 2013 _____

TOWN OF DUNN, DUNN COUNTY, WISCONSIN

TOWN BOARD CHAIR

Donald Heit

SUPERVISOR

Dennis Weber

SUPERVISOR

John R. Miller

TOWN CLERK

Vicki Weber-Price

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APPENDIX A – SCHEDULE OF FEES

Application Fee

Operations Agreement

Renewals and/or annual report fee

Professional Consultation(S)

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