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VIA ELECTRONIC MAIL

Mr. Ric Davis, Supervisor
Charter Township of Springfield
12000 Davisburg Road
Davisburg, MI 48350

Re: Burroughs Material Corporation
Opinion Regarding Review of Application Pursuant to Mining Ordinance

Dear Ric

As requested, I reviewed the materials provided by Stephen Estey, the attorney for Burroughs Material Corporation ("Burroughs"), regarding Burroughs' application for a special land use permit and a mining permit for a proposed sand and gravel mining operation located on Ormond Road, about a mile south of Davisburg Road.

I reviewed Mr. Estey's narrative letter, and the application pursuant to the Township's Mining Ordinance, including the Exhibit C Geological Report. I did not receive the preliminary site plan but, as it addresses mostly planning and engineering issues, I do not need to review that document and defer to the Township Planners and Engineer. I also defer to the Township Planners and Engineer for a recommendation as to whether all the requirements for special land use approval have been met, given that again, those requirements include mostly engineering and planning considerations.

In my opinion, the applicant has provided sufficient information for consideration of the application pursuant to Section 12.80 of the Mining Ordinance. In addition, the narrative accurately describes the procedures to process both for the application for the mining permit and for the special land use permit / site plan and has accurately quoted from the Township's Mining Ordinance and Zoning Ordinance the applicable standards.

The Mining Ordinance essentially regulates the operational standards for the mining operation. The Zoning Ordinance determines whether or not a mining operation is appropriate on a particular parcel of land and provides standards for approval and the ability to place reasonable

conditions on that approval. Because the property is not now within the E-1 extractive zoning district, approvals under both the Mining Ordinance and the Zoning Ordinance are required.

Section 12–81 of the Mining Ordinance provides the standards, required improvements and reclamation requirements for a mining operation. Most of the standards in this section are applicable only once the mining operation begins. The three requirements that should have engineering review and Township consideration now are subsection (c), whether the road access is satisfactory, subsection (h), whether the proper drainage has been provided, and subsection (i) whether the reclamation plan accurately meets the requirements of that subsection. If the Township determined that those three items have been satisfactorily addressed, and so long as the applicant has provided the required information under the Mining Ordinance, in my opinion the application should be approved.

As previously noted, mining operations have special status under Michigan law. Pursuant to the Michigan Zoning Enabling Act ("MZEA"), specifically Section 125.3205:

> (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.

Thus, there are essentially two considerations that an applicant must demonstrate to receive zoning approval: First, that the resources proposed to be extracted are "valuable;" and second, that no very serious consequences would result from the extraction of the resource. These standards from the MZEA are incorporated in the Section 40-597 (e) of the Township's Zoning Ordinances. These MZEA standards override any contrary standards for approval of land use under any Township ordinance, including the Mining Ordinance.

1. Resources proposed to be extracted are "valuable."

As to whether the applicant can demonstrate that the resources are valuable, it has noted that growing demand, coupled with the closing of several regional mining operations, has led to a need in the market. The applicant also indicates that it has purchase agreements with customers that cannot be fulfilled from the applicant's current operation in the northern part of the Township.

The application also references continuing government-funded road reconstruction and repair projects, as well as regional construction operations as demonstrating need. Finally, the applicant also indicates its willingness to provide gravel to the Township for a period of five years.

While the applicant has provided a narrative explanation as to why there is a need for these resources, I did not see any additional evidence to support their statements. The Township may wish to question the applicant further and/or have them provide additional documentation and support. However, it would appear that, based upon my understanding of current market conditions, these resources would most likely meet the test of being valuable per the MZEA and Township ordinances.

2. No very serious consequences would result from the extraction of the resource.

The MZEA and the Township Zoning Ordinance require consideration of the following factors. These are the factors that the Planning Commission and Township Board should consider. As these are essentially planning issues, I defer to the Township Planners for a recommendation.

Although the MZEA overrides Township ordinances that conflict, it allows reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by the Michigan natural resources and environmental protection act. Thus, the Township is authorized to adopt the operational standards in the Mining Ordinance. However, the MZEA provides that such regulation shall be reasonable in accommodating customary mining operations.

The factors for the Township to consider are:

1. ***The relationship of extraction and associated activities with existing land uses and the impact on existing land uses in the vicinity.*** These are, in essence, planning determinations .

2. ***Impact on property values.*** I did not see any information provided with the applicant's materials that addresses whether or not property values would be affected by the mining operation.

3. ***Impact on pedestrian and traffic safety.*** The applicant has provided their proposed hauling route, indicates that trucks would travel north on Ormond Road from the mining site, west on Davisburg Road, and then either north or south on Milford Road. The Township Planners and Township Engineer should provide an opinion as to whether there will be traffic impacts from the operation.

4. ***Protecting other identifiable health, safety, and welfare interests in a local unit of government.*** The applicant has indicated a willingness to provide gravel to the Township. The Planners should provide an opinion as to whether there are other interests that the Township should consider.

5. ***Overall public interest in the extraction of the specific natural resources.*** The applicant has referenced the need for sand and gravel for road construction and other construction projects in the general area. As indicated above, the Township may want to ask for additional information on this factor.

6. In addition to those items, per Section 40.597 (e) .the mining operation also must have immediate access to a road having the necessary and appropriate load-bearing and traffic volume capacity in relation to the proposed intensity of the mining operation. I again defer to the Township Planners and Engineers as to whether this standard in met.

7. Finally, the general standards for approval of a special land use contained in Section 40-145 still technically apply to this request, however, the applicability of those standards are preempted in part by application of the "very serious consequences" test stated above.

Please call with any questions.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC

Gregory K. Need

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