TOWNSHIP OF LAPEER

ORDINANCE No. 5

SOIL REMOVAL ORDINANCE

Adopted
March 8, 2010

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LAPEER TOWNSHIP
SOIL REMOVAL ORDINANCE
NO. 5

TITLE

An ordinance to regulate and restrict soil removal operations by requiring a permit for such activities; establishing a fee for the issuance of such permit, establishing regulations for soil removal operations, requiring the reclamation of lands concurrent with or after cessation of such soil removal operations, requiring that financial guarantees be given the Township to assure reclamation of such lands, establishing a procedure for administration and enforcement of such ordinance, *and* prescribing a penalty for ~~a~~ violation*(s)* thereof.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF LAPEER, LAPEER COUNTY, MICHIGAN, ORDAINS:

Section 1. SHORT TITLE

This Ordinance shall be known and cited as the Lapeer Township Soil Removal Ordinance.

Section 2. PURPOSE

The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of persons and property residing and located in Lapeer Township against public nuisances and/or hazardous conditions resulting from soil removal operations.

Section 3. ENABLING AUTHORITY

This Ordinance is adopted pursuant to and in accordance with Act 246, Public Acts of 1945, as amended.

Section 4. DEFINITIONS

As used in this Ordinance,

A. **A-Weighted Sound Level** means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

B. **Decibel (dB**) means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micro-pascals (20 micro-newtons per square meter).

C. **Earthwork** shall include excavation grading and filling.

D. **Enforcing agency/agent** shall mean Township Supervisor, Ordinance Enforcement Officer, Township Engineer and/or those designated by the Township Board.

E. **Existing grade** shall mean the various elevations of the surface of the land, as it exists upon the site.

F. **Finish grade** shall mean those earth elevations established and delineated on a topographic plan, which will result upon completion of the proposed operation for which the permit is issued.

G. **Mean grade** shall mean the average elevation of the centerline of the nearest existing or proposed street or road established or approved by the Lapeer County Road Commission.

H. **Noise** means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological pr physiological effect on humans.

I. **Operator** shall mean the individual on site, designated by the permitee to act on behalf of the permitee in all matters concerning the soil removal operation covered by the permit.

J. **Permitee** shall mean the person to whom a permit for soil removal has been issued.

K. **Person** shall mean any individual or combinations thereof, including partnerships, corporations, associations or firms.

L. **Pit** shall mean the excavation of soil below the mean grade.

M. **Soil** shall mean topsoil, subsoil, sand, gravel, clay and any combination of natural, earthen materials located on or in the earth itself, not including oil, gases or valuable minerals.

N. **Soil Removal/Mining** shall mean a pit or excavation in the earth from which mineral substances are taken by digging or by some other method of extraction, together with the land, buildings and machinery belonging to it. The terms soil removal and mining shall be interchangeable.

O. **Stripping** shall mean the removal of soil from above the mean grade.

P. **Township Board** shall mean the Lapeer Township Board of Trustees.

Q. **Vibration** means an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

Section 5. PERMIT; APPLICATION

A. Permit

It shall be unlawful, unless stated otherwise by this ordinance, for any person to remove any soil from any parcel of land situated in Lapeer Township without first having secured a permit from the Township Board or its delegated representatives. Such permit will be in effect for twelve (12) months and must be renewed annually, if necessary, as outlined in this oridinance.

B. Exclusions.

1. Nothing in this Ordinance shall be construed or interpreted to prohibit the removal of excess soil from an approved project site, provided that approval to do so has been secured from the Township Engineer. It shall be determined by the Engineer that required finish grades have been attained or sufficient soil will remain on the site to attain the required finish grades as shown on an approved site plan.

2. The construction of private residential ponds with less than 40,000 square feet of total disturbance area.

3. All soil removal projects operating in the Township, prior to this ordinance, shall satisfy the Class I Permit requirements prior to issuance or renewal of said permit.

C. Type of Permit Application

1. **Class I Permit:** The applicant may apply for a Class I Soil Removal Permit if the total duration of removal activity is less than one (1) year *and* the planned truck/vehicular traffic is determined by the Township not to be a significant impact on the adjacent infrastructure and land use.

2. **Class II Permit:** All other soil removal activities not excluded in Section 5B or not meeting Class I Permit requirements, shall be required to obtain a Class II Soil Removal Permit.

D. Class I Permit: Application Requirements.

Application will be made to the Township for a Class I Soil Removal Permit. The application shall be submitted to the Township Clerk, who shall notify the Township Board of the filing of the application and refer the application to the Township Planning Commission for special land use consideration and recommendation on the application for soil removal to the Township Board. Following action by the Planning Commission, the matter shall be placed on the agenda of the Township Board for final action on the permit request. In its deliberations on the application, the Township Board shall be entitled to continue this further and shall consult with any and all experts deemed appropriate at the discretion of the Township Board. Upon completion of deliberations, the Township Board shall either grant the permit or deny the same and state the reasons for denial.

1. Submittal Requirements

Written application for a Class I Soil Removal Permit shall be made by the owner(s) of an interest in land to the Township Clerk, accompanied by the necessary fees, financial guarantees and documents as provided herein and shall include:

a. Names and addresses of all owners or parties of interest in the proposed soil removal site, together with a description of their legal or the equitable interest in the property.

b. Name and address of the applicant.

c. Name and address of person, firm or corporation that will be conducting the actual removal operation together with the name, address and telephone number of the specific person designated by the applicant for the purpose of receiving all notice, correspondence and communications.

d. The application shall contain or be accompanied by a written statement of the extent, development, improvement and general purpose of the proposed soil removal operation and the anticipated duration thereof. Further, the application shall contain a statement as to the proposed method of removal, general haul route, and overall site operations that will be required.

e. The application, all plans, and supplemental data in support thereof shall be filed in with the Clerk, together with a fee established by resolution of the Township Board in a sum which shall be sufficient to cover all expenses incurred by the Township in processing and examining the application. Any portion of the aforesaid fee not utilized by the Township shall be refunded to the applicant. In the event the Township incurs additional expenses, the applicant shall be required to deposit such additional sum with the Township prior to issuance of the permit. In addition, financial guarantees shall be provided as required herein.

f. The name of the permittee's insurance carriers for public liability and property damage insurance, together with a copy of the policies of insurance. Insurance shall be a precondition to commencement of operations and maintained in full force through the duration of the project, and full force and effect of insurance shall be a pre-condition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times which (1) any reclamation is left to be done (2) during all times any machinery and/or equipment remains on the site, and (3) any structures, equipment or improvements to be removed remain on the site. Said insurance to contain a hold-harmless clause regarding liability of the Township during any reclamation phase and shall name the Township as additionally insured. This insurance shall be carried in amounts no less than One Million ($1,000,000.00) Dollars for injury and damage to more than one person's property arising out of a single occurrence. This insurance shall cover injury or damage occurring upon the site of the operations, as well as injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property.

g. Confirmation that plans have been submitted to jurisdictional road authority(ies) (if applicable) and a written response from said authority(ies) has been received.

h. The application shall be accompanied by a site plan drawn to a scale of not less than one hundred (100) feet to the inch and containing the following information:

(1) Location, size and legal description of the entire parcel containing the area for the proposed soil removal.

(2) Location, size and legal description of the total land area proposed for soil removal activities (if different than overall parcel description).

(3) Location of all existing and proposed structures thereon.

(4) Location, number, and type of processing and related equipment, if any.

(5) Location of existing and proposed streets, roadways, parking areas, entrances, and exits. Location of all existing and proposed utilities or re-routing of utilities.

(6) Location of all public facilities and services.

(7) Reclamation Plan conforming to the requirements of Section 10, showing proposed elevations upon completion at two (2) foot intervals.

(8) The total area, expressed in acres, proposed to be excavated during the first year of operation.

(9) Such additional information as the applicant deems necessary and/or pertinent to the application of proposed soil removal

(10) Truck stacking/staging area. OFF SITE TRUCK STACKING IS PROHIBITED.

i. A sworn statement that the applicant has never defaulted on any bond posted to insure performance by the applicant in connection with any gravel or mineral soil removal or any related soil removal and/or construction activity. Or, if the applicant has defaulted on any such bond, a brief description of the circumstances surrounding the default, including the name of the surety, date of default and any remedial action, which was taken.

j. Truck traffic average trips per hour, maximum trips per hour; average trips per day, maximum trips per day. In no event shall the number of trips per hour and trips per day be more than 25% of the maximum approved amount.

k. The applicant assumes 100% of all increased maintenance costs of the haul route incurred for length of permit. A cash bond or letter of credit at an approved bank may be required in addition to LCRC/MDOT requirements.

l. The total anticipated length of project.

m. All approved routes for access to the proposed site shall have a legal descriptive easement, signed and executed, if entire access route is not owned by applicant and located on the parcel containing the soil removal area.

2. Reclamation Plan.

A plan for the reclamation of the site, conforming to the requirements of Section 10, shall include a description of reclamation methods and materials. The description shall indicate how and how much topsoil shall be placed, how vegetation shall be established, and the time schedule for said reclamation. Wherein, any on-site development is proposed as part of the reclamation, a specific site plan shall be submitted as part of the plan.

E. Class II Permit; Application Requirements

Application will be made to the Township for a Class II Soil Removal Permit. The application shall be submitted to the Township Clerk, who shall notify the Township Board of the filing of the application and refer the application to the Township Planning Commission for special land use consideration and recommendation on the application for soil removal to the Township Board. Following action by the Planning Commission, the matter shall be placed on the agenda of the Township Board for final action on the permit request. In its deliberations on the application, the Township Board shall be entitled to continue this further and shall consult with any and all experts deemed appropriate at the discretion of the Township Board. Upon completion of deliberations, the Township Board shall either grant the permit or deny the same and state the reasons for denial.

1. Submittal Requirements

Written application for a Class II soil removal permit shall be made by the owner(s) of an interest in land to the Township Clerk, accompanied by the necessary fees, financial guarantees and documents as provided herein and shall include:

a. Names and addresses of all owners or parties of interest in the proposed soil removal site, together with a description of their legal or the equitable interest in the property.

b. Name and address of the applicant.

c. Name and address of person, firm or corporation that will be conducting the actual removal operation together with the name, address and telephone number of the specific person designated by the applicant for the purpose of receiving all notice, correspondence and communications.

d. The application shall contain or be accompanied by a written statement of the extent, development, improvement and general purpose of the proposed soil removal operation and the anticipated duration thereof. Further, the application shall contain a statement as to the proposed method of removal, general haul route, and overall site operations that will be required.

e. The application, all plans, and supplemental data in support thereof shall be filed with the Township Clerk, together with a fee established by resolution of the Township Board in a sum which shall be sufficient to cover all expenses incurred by the Township in processing and examining the application. Any portion of the aforesaid fee not utilized by the Township shall be refunded to the applicant. If additional expenses are incurred by the Township, the applicant shall be required to deposit such additional sum with the Township prior to issuance of the permit. In addition, financial guarantees shall be provided as required herein.

f. The name of the permittee's insurance carriers for public liability and property damage insurance, together with a copy of the policies of insurance. Insurance shall be a precondition to commencement of operations and maintained in full force through the duration of the project, and full force and effect of insurance shall be a pre-condition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times which (1) any reclamation is left to be done (2) during all times any machinery and/or equipment remains on the site, and (3) any structures, equipment or improvements to be removed remain on the site. Said insurance to contain a hold-harmless clause regarding liability of the Township during any reclamation phase and shall name the Township as additionally insured. This insurance shall be carried in amounts no less than One Million ($1,000,000.00) Dollars for injury and damage to more than one person's property arising out of a single occurrence. This insurance shall cover injury or damage occurring upon the site of the operations, as well as injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property.

g. Confirmation that plans have been submitted to jurisdictional road authority(ies) (if applicable) and a written response from said authority(ies) has been received.

h. The application shall be accompanied by a site plan drawn to a scale of not less than one hundred (100) feet to the inch and containing the following information:

(1) Location, size and legal description of the entire parcel containing the area for the proposed soil removal.

(2) Location, size and legal description of the total land area proposed for soil removal activities.

(3) Location of all existing and proposed structures thereon.

(4) Location, number, and type of processing and related equipment, if any.

(5) All existing grade elevations shall be indicated at the intersection of perpendicular parallel lines not more than one hundred (100) feet apart and expressed to the nearest 10th of a foot including 200 feet outside of the project area.

(6) Location of existing and proposed streets, roadways, parking areas entrances and exits. Location of all existing and proposed utilities or re-routing of utilities.

(7) Location of all public facilities and services.

(8) Reclamation Plan conforming to the requirements of Section 10, showing proposed elevations upon completion at two (2) foot intervals. The reclamation plan, indicating the proposed final grades, shall be recorded with the Lapeer County Register of Deeds and shall be deemed covenants running with the land. The obligations contained in this Ordinance and the plans recorded pursuant to this subsection shall bind the permittee's property until such time as the reclamation is complete. Further, site plan application for future development shall not be considered until reclamation is complete according to approved plan.

(9) Topographic survey as outlined in Section 5C.4

(10) The total area, expressed in acres, proposed to be excavated during the first year of operation.

(11) Such additional information as the applicant deems necessary and/or pertinent to the application of proposed soil removal

(12) Detail amount and source of water to be utilized in processing and the anticipated means and location of treatment and disposal of such water following use.

(13) Temporary and/or permanent traffic control devices as necessary and location indicated on plans.

(14) Acceleration/Deceleration lanes, as required at the entrance.

(15) Turn lanes, as required.

(16) Truck stacking/staging area. OFF SITE TRUCK STACKING IS PROHIBITED.

g. A sworn statement that the applicant has never defaulted on any bond posted to insure performance by the applicant in connection with any gravel or mineral soil removal or any related soil removal and/or construction activity. Or, if the applicant has defaulted on any such bond, a brief description of the circumstances surrounding the default, including the name of the surety, date of default and any remedial action, which was taken.

h. Truck traffic average trips per hour, maximum trips per hour; average trips per day, maximum trips per day. In no event shall the number of trips per hour and trips per day be more than 25% of the maximum approved amount.

i. The applicant assumes 100% of all increased maintenance costs pf the haul route incurred for length of permit. A cash bond or letter of credit at an approved bank may be required in addition to LCRC/MDOT requirements.

j. The total anticipated length of project.

k. All approved routes for access to the proposed site shall have a legal descriptive easement, signed and executed, if entire access route is not owned by applicant and located on the parcel containing the soil removal area.

l. A full, independent, and current (within 6 months of application date) traffic study from a reputable source shall be required. The study must cover the hours of 7 a.m. to 9 p.m. on Monday, Wednesday and Friday, and may NOT include data collected during the months of January, February, or March of any year. The study shall address intersection(s) impacts, impacts on adjacent roadways, accelerations lane requirements, turning lane requirements, and any other items determined appropriate for the site application.

m. An environmental impact report, detailing the effects of the proposed operation on all aspects of the environment as outlined in the Michigan Environmental Protection Act, shall be prepared by a licensed professional and submitted with the application. All pollution control measures shall be detailed within the environmental impact report.

n. Estimated yards to be extracted (annually). In no event shall yardage exceed 25% of the submitted and approved estimate.

2. Vertical Aerial Photography.

Vertical aerial photograph, enlarged to a scale of one (1) inch equals one hundred (100) feet, from original photograph flown at a negative scale no smaller than one (1") inch equals six hundred sixty (660') feet, and certified as having been flown within one year prior to the date of the application. The vertical photograph shall cover:

a. All land anticipated to be mined in the application, together with adjoining land owned by the applicant.

b. All contiguous land, which is, or has been, used by the owner or leasehold applicant for mineral extraction and/or processing and/or storage, and all contiguous land in which the applicant or any affiliate has a current interest.

c. All lands within one-half (½) mile of the proposed soil removal area.

d. All private and public roads from which access to the property may be immediately gained.

e. Boundary of the entire planned soil removal area of courses and distance.

f. Site topography and natural features, including location of watercourses within the planned soil removal area.

g. Means of vehicular access to the proposed operation.

3. Sectional Map.

Sectional map, at an appropriate scale to cover the areas within one (1) mile of the boundaries of the land included in the permit application, showing the existing classification of all land appearing on the map as shown on the official Township Zoning Map, roads, streets, and all uses of land within the area of the sectional map, and the names of these roads and streets.

4. Topographic Survey.

Topographic survey completed within one year of the date of the application of the existing parcel, drawn to a scale of one (1") inch equals one hundred (100') feet, prepared by a registered civil engineer or registered land surveyor licensed by the State of Michigan within the minimum four (4') foot contour intervals based upon U.S.G.S. data. The drawing shall also clearly show each and every area to be mined, and each and every area to be utilized for stockpiling, processing, plant location, and maintenance and storage areas. The limits of the topographical survey shall include 200 feet outside of the project area.

5. Geological and Engineering Survey.

Geological and engineering survey and data prepared by a geologist or civil engineer licensed by the State of Michigan. The soil boring data shall be derived from a minimum of 5 borings at least 10 feet deeper than the proposed excavation: four borings at the perimeter and one in the center of excavation. The survey and data will indicate the following:

a. Quality and quantity of each type of mineral to be excavated.

b. Level of water table throughout the planned soil removal area for which a permit is sought.

c. Opinion as to the impact of the operation on the water table and surrounding wells within a minimum one mile radius, measured from the center of the planned soil removal area. Monitoring wells shall be required around the perimeter of the site as determined by the Township Engineer.

d. Quality of surface water, ground water, and the watershed. The anticipated impacts during and subsequent to the operation.

e. Opinion whether the exposure of subterranean waters and/or the impoundment of surface waters, where proposed, will establish a stable water level at the level or levels proposed as part of the operation, and that the same will not interfere with existing subterranean water or cause any harm or impairment to the general public.

f. Impact study of on-site well constructed for mining operation.

g. Detailed plan for controlled flow or controlled drainage of any excess water into existing drains or water courses.

h. Detailed engineering and drainage plan prepared in accordance with Lapeer Township Engineering Specifications.

i. Application for Soil Erosion Permit.

j. Copies of correspondence from MDEQ on wetland determination.

k. Study to identify any underground tiles, piping, and/or drainage improvements established.

l. Soil analysis showing by-products, pesticides, fertilizers, minerals, etc.

6. Plan of Operation (Overlay).

a. A plan of operation shall be presented on a transparent overlay at the same scale as the vertical aerial photograph, and when so applied, shall delineate the following:

(1) Area to be actively excavated, and if the same shall be in phases, a designation of such phases.

(2) Area for settling ponds, crushing facilities, driers and washing plan facilities.

(3) Area of treatment facilities and mineral storage and stockpile.

(4) Area of overburdened storage.

(5) Area for production facilities for resource-related industry.

(6) Area for location of buildings and/or other improvements be they permanent or temporary.

(7) Area to facilitate on-site truck stacking/parking spaces. The area shall be physically separated from the gravel loading areas and shown on the plan. Such spaces shall be provided to eliminate on-street stacking/parking prior to the opening of the sites. OFF SITE TRUCK STACKING IS PROHIBITED.

(8) Area for re-fueling and method of spill containment.

b. To supplement the plan of operation overlay required above, the following shall be submitted: description of operation, including all mobile and stationary machinery and equipment utilized or to be utilized; method or methods of treatment of water utilized in the operation prior to discharge into the ground or into the surface water system; and provisions for sanitary sewage facilities on the site.

7. Reclamation Plan.

a. A plan for the reclamation of the site shall be submitted in three (3) parts:

(1) A reclamation plan as an overlay for the vertical aerial photograph.

(a) The Plan for reclamation shall be prepared on transparent overlay at the same scale as the vertical aerial photograph, illustrating the acreage for each item shown on the overlay.

(i) Each phase of reclamation, reflecting the sequence of each phase in relation to all others.

(ii) Location and boundaries of all permanent water areas.

(iii) Distance of all reclamation areas and water areas from property boundary.

(2) A Reclamation Contour Map.

A restoration contour map shall be prepared to the same base as heretofore required, to indicate the grade and slopes to which excavated areas shall be reclaimed and the distance of such reclaimed areas from the property boundaries. Such grade and slope designations shall also include areas proposed to be beneath the surface of permanent water areas.

(3) A plan for the reclamation of the site, conforming to the requirements of Section 10, shall include a description of reclamation methods and materials. The description shall indicate how and how much topsoil shall be placed, how vegetation shall be established, and the time schedule for said reclamation. Wherein, any on-site development is proposed as part of the reclamation, a specific site plan shall be submitted as part of the plan.

b. The plan for reclamation shall contain a date by which all reclamation shall be completed.

Section 6. GRANTING AND ISSUANCE OF PERMIT AND PERMIT RENEWAL FOR CLASS I AND II PERMITS.

A. **Duration of Permit.** After recommendation by the Planning Commission and approval of the application by the Township Board, the Township Clerk shall issue a permit upon the posting of required financial guarantees and the payment of all fees required herein or by resolution pursuant to this Ordinance. Said permit shall expire on December 31 following the date of issuance, unless renewed thereafter by the Township Board until the following December 31, in accordance with the provisions of this Ordinance.

B. **Renewal of Permit.** Permits issued may be renewed annually by the filing of a progress report as to areas of excavation and reclamation with reference to the initial engineering plans and information filed in support of the original application, a positive annual review by the Township Engineer, and payment of all fees required. Annual renewal of permits need not be predicated upon an updated engineering plan and topographic survey, provided, however, that the Township Board finds that no significant variation from engineering data filed in support of the initial application has occurred.

1. In the event the Township Board determines based upon the written recommendation of the Township Engineer that a topographical survey is necessary; the annual renewal of permits shall be expressly conditioned upon the submission of such survey.

2. Applications for permit renewal, along with the review fee, must be submitted to the Township Clerk no later than Oct. 1st. The clerk shall notify the supervisor when plans and application are received, and shall forward two (2) copies of plans and application to the Township engineer for review. The Township will schedule an annual inspection of the site by the Township engineer who shall issue a report of compliance with, or violation of the Ordinance and permit. The operator shall correct any violation or deficiencies in the operation before a permit may be renewed. All operations shall cease by January 15 of the following year unless renewed by the Township Board.

3. In the event that the Township Board finds significant variation with the initial approved application, the Township Board may require the Planning Commission to review the reports and information and make a recommendation on the permit renewal. The operator shall supply the Planning Commission with the necessary copies of the plans and application required for their review.

Section 7. INSPECTIONS FOR CLASS I AND II PERMITS.

A. Permit Inspection

The Township Engineer, or his/her designee or agent, shall be responsible for inspections under this Ordinance and shall, at all reasonable times, have the right to peaceably enter upon the property for the purpose of conducting inspections to ensure compliance with this Ordinance and all other applicable laws, ordinances and/or regulations. Any refusal to allow such inspections shall be cause for summary proceedings to suspend and/or revoke the permit issued pursuant hereto, pending such inspection. In addition to discretionary inspections, the Engineer shall make regular quarterly inspections during operations and reclamation. Discretionary inspections are in addition to required quarterly inspections. Such inspections shall be with such frequency as shall be necessary to ensure and monitor compliance under all of the circumstances. The Engineer shall make quarterly reports to the Township Board concerning compliance with this Ordinance, or as determined necessary and recommended by the Township Board. The permittee shall pay for all inspections.

B. Procedure for Permit Non-Compliance

Should the Township Engineer, or his/her designee and/or agent, discover any noncompliance with terms and conditions of this Ordinance, with the permit issued hereunder, and/or with any other applicable law, ordinance or regulation, the Engineer shall prepare a notice of this fact detailing the violations and shall send copies of same to the permittee and to the Township Board. Within five (5) calendar days of notice, the permittee shall advise the Township, in writing, whether or not he/she concurs that a violation does exist, and the permittee shall take steps to remedy the violation. If the permittee does not agree, he/she shall, within the same period of time, state the reasons for such lack of agreement.

The permittee shall correct any and all violations in a period of time not to exceed five (5) business days from the date of the violation notice, unless, due to circumstances beyond the permittee's control, completion of the corrective measures are not possible within such period. In this event, the permittee may have a reasonable additional time within which to make the correction, not to exceed 30 calendar days.

In the event of a dispute with respect to the existence of a violation, the Township Board shall set a reasonable time for a hearing. After a review of the reasons stated by the permittee for its position that no violation exists, the Township may, at its discretion, include in the notice of hearing responsive allegations with respect to the claimed violation.

In the event the permittee has concurred that a violation exists, but has not remedied the same in a timely manner as provided for herein, a notice of violation shall be sent and a hearing thereon established, utilizing the same form and procedure set forth above with respect to the notice and hearing on a violation.

At the Township Board meeting, the matter of the disputed violation or the failure to timely cure a violation shall be considered. The Township Board may table this consideration for further investigation. Such consideration shall include a hearing

conducted at the meeting or meetings and shall include the opportunity of the permittee to appear in person or by a duly authorized representative to present arguments, witnesses, and other evidence on behalf and in the defense of the permittee; or, in addition to or in lieu thereof, to file a written presentation prior to the initiation of the meeting. The permittee shall also be afforded the opportunity to examine individuals who have made statements or submitted other evidence supporting the existence of a violation or the failure to timely cure a violation, provided such examination shall be limited in scope to matters relating directly to the statements made and evidence submitted. The Township Board shall make an effort to determine whether the permittee made a reasonable effort to prevent the occurrence of the violation, or to correct the same in a timely manner.

In the event the Township Board shall determine that a violation of this Ordinance exists, or that the permittee has failed to correct a violation in a timely manner, the Township Board is authorized to take the following action, taking into consideration whether the permittee made a reasonable effort to prevent the occurrence of a violation and/or correct the same in a timely manner:

1. If the violation constitutes the first uncorrected violation and/or the first failure to correct a violation in a timely manner, and the same has not resulted in damage to person or property, the Board is authorized to suspend the permit for a period of up to two (2) weeks. If the violation is not corrected during the maximum suspension time, then it shall be considered an additional violation.

2. If the violation constitutes the second uncorrected violation and/or the second failure to correct a violation in a timely manner, or a combination of these, and the same has not resulted in damage to person or property, the Township Board is authorized to suspend the permit for up to one (1) month. If the violation is not corrected during the maximum suspension time, then it shall be considered an additional violation.

3. If the permittee has previously had two (2) uncorrected violations and/or two (2) failures to correct a violation in a timely manner, or a combination of these, and there is an additional uncorrected violation and/or failure to correct a violation in a timely manner, and/or if any violation of failure to correct a violation results in property damage, the Township Board is authorized to suspend the permit for a period of up to one (1) year, or revoke the permit permanently.

C. Suspension or Revocation.

The procedures and remedial action authorized under this section shall be in addition to, and not in lieu of, additional actions such as seeking injunctive relief in Lapeer County District or Circuit Court.

1. Suspension.

a. Any permit may be suspended by the enforcing agency for a period of not more than one year whenever the enforcing agency shall determine that specific violations of this Ordinance by the permittee may result in immediate and irreparable injury, loss or damage, or physical injury to persons or property. Provided, however, the enforcing agency shall forthwith report its act of suspension and the basis for the suspension to the Township Clerk on the next normal business day.

b. In the event the Township Board shall determine, at its discretion, that serious and irreparable harm and damage is likely to occur to person or property, or that an impairment or pollution of the environment is likely to occur, the Township Board may order an emergency summary suspension of the permit, which shall become effective upon service of same upon the permittee. The Township Board shall thereafter, as soon as is practical, conduct a hearing with the same notice and procedural standards as set forth above for violation hearings, to determine whether: 1) to revoke the suspension order; 2) to continue the suspension order for a fixed period of time; or 3) to revoke the permit permanently. The Township Board shall state reasons for its determination. If the permittee wishes to expedite the hearing procedure, the permittee may waive the advanced notice requirements and proceed immediately to a hearing.

2. Review and Revocation.

a. The Township Clerk will notify the permittee that the Township Board will review the action of the enforcing agency at its next regular meeting to determine whether the license shall be reinstated, suspended for a further period of time, or permanently revoked.

b. Following the entry of a determination by the Township Board to suspend or revoke the permit, the institution of a lawsuit in the Circuit Court, or other Court, shall not constitute a stay of the suspension or revocation, as the case may be. Once such revocation occurs, the Enforcing Agency shall take such steps necessary to cause reclamation of the site in accordance with permittee reclamation plan.

Section 8 FINANCIAL GUARANTEES FOR CLASS I AND II PERMITS

A. Financial Guarantees.

Financial guarantees shall be furnished to the Township Board upon the recommendation of the Planning Commission/Township Engineer insuring the proper rehabilitation and reclamation of excavated areas to meet the finish grade plan filed with the Township Board and upon which the license was issued. The area covered by the financial guarantee shall include all areas proposed to be excavated, areas stripped of overburden, areas being excavated, areas used for stockpiling, and areas that have been previously excavated during any preceding period and have not been reclaimed and rehabilitated to the proposed finished grade, and all roads used in approved haul route. Such financial guarantees shall be reviewed by the Township Board upon expiration of the soil removal license for adjustment and compliance with the foregoing requirements. Financial guarantees may be in any one of the following forms: cash, certified check, or irrevocable bank letter of credit. The amount of the guarantee shall be in accordance with the following schedule:

Affected Area	*Amount of Financial Guarantee*
10 acres or less	$10,000.00
More than 10 acres but not Exceeding 30 acres	$2,500.00 per acre
More than 30	$75,000 plus $2,000.00 per acre

1. A cash escrow account shall be established and maintained for each soil removal operation. The cash escrow may be used by the Township for the cost of periodic inspections, required public hearings, or the corrections of nuisance or safety problems on a soil removal site or on public roads or highways resulting from soil removal and hauling operations. Cash escrow remaining after final reclamation shall be refunded to the permittee. The cash escrow amount shall be established by resolution of the Township Board.

2. The conditions of such financial guarantees shall be that, if the permittee has satisfactorily reclaimed the property being the subject of the permit in accordance with the approved reclamation plan, the financial guarantee shall be returned to the permittee. Otherwise, the Township shall have a right to use the cash or proceeds of the guarantee to the extent necessary to reclaim the property and to cover the costs of enforcing and bringing about compliance with this Ordinance, including professional consultant's and attorney's fees.

3. The cash, certified check, or irrevocable letter of credit shall remain with the Township until the parcel or parcels have been reclaimed and all equipment, machinery, materials, buildings and other operation-related improvements have been removed, as required by this Ordinance and/or by the terms of the permit. The Township Board, in considering any

application to renew the permit, may, at its discretion, increase or decrease the amount of the performance bond based upon increased costs, new information or partial reclamation. The Township shall be notified a minimum of 30 days prior to the termination of any bank letter of credit. If such notice is not provided, and an extension not issued, the Township shall make claim to the letter of credit prior to expiration.

4. Financial guarantees for neighboring wells shall be furnished for all wells indicated in the hydro-geological investigation as being negatively impacted by the mining operation and shall be for full replacement of said wells and for the restoration of property damaged by the installation of wells. Guarantee shall be for two years after the date the Township determines that the permittee has satisfactorily reclaimed the property. This guarantee shall be in the form of cash, certified check, or irrevocable bank letter of credit. Cash escrow and deposits remaining after said two year period shall be refunded to the permittee. The cash escrow or deposit amount shall be established by resolution of the Township Board.

   If, upon report of a well or wells having been impacted, the Township Engineer shall investigate to determine if the mining operation was the cause. If the permittee's engineer does not concur with the finding, then the Township's engineer and Permittee's engineer shall agree upon a third party arbitrator. Said arbitrator's decision shall be on a case by case basis and shall be final.

B. Upon issuance of the permit, the legal landowner gives rights to the Township to cash the financial guarantee and for its representatives to enter the site and reclaim the property for the approved reclamation plan if the owner and/or operator fail to reclaim the site as outlined in this ordinance.

Section 9. OPERATIONAL REQUIREMENTS FOR CLASS I AND II PERMITS

The Township shall complete an initial site inspection of a soil removal operation in place prior to the enactment of this ordinance. All setback violations deemed uncorrectable due to topographical features shall be documented. No additional setback violations shall be permitted and all correctable violations shall be addressed prior to additional areas being excavated/filled, etc.

A. General Regulations.

1. **Stockpiled soil setback.** No excavation or stockpiling of soil materials or processing thereof, shall occur closer than fifty (50) feet to any property line, provided, however, that the Township may approve a reduction in the foregoing setback requirement for excavating or stockpiling of soil materials where the Board finds that the proposed lateral supports will adequately protect abutting property. If the conditions of the site indicate that the 50 feet setback requirement would not be adequate to protect abutting property, the Planning Commission may recommend and the Township Board may require a greater setback. Further, the Township Board may require a five (5) foot fence along such property boundary.

2. **Setbacks.** No excavation of soil materials shall be conducted closer than one hundred (100) feet of the right-of-way of a dedicated street, road or highway, or the edge of the traveled portion of an existing and non dedicated street, road or highway, except that excavation may be conducted within such setback area in order to reduce or raise the final elevation thereof to be in substantial conformity with the existing elevation of such street, road or highway. Any such excavation occurring along a street, road or highway within the one hundred (100) foot setback area shall be backfilled within twelve (12) months after completion of the excavation in order that the finish grade will be in substantial conformity to the adjoining street, road or highway. No excavation shall take place closer than one hundred (100) feet to the nearest property line and two hundred fifty (250) feet to the nearest residence. The Township Board may, however, prescribe greater setbacks in order to give sub lateral support to surrounding property where soil or geographic conditions warrant it following recommendation by the Planning Commission.

3. **Sight Barriers.** All active excavations and soil removal operations shall be visually screened from view from all adjacent public thoroughfares and residential land use parcels. The following methods are the minimum requirements and shall be used for such screening, as determined by the Township Board following recommendation of the Planning Commission. The Township may require additional screening:

    a. Construction of a landscaped raised earth berm along the boundary lines of the premises where such lines abut a public thoroughfare or residentially occupied land use. When constructed along public thoroughfares, the berm shall be of sufficient height to screen processing equipment from view of the general public using the thoroughfare. Where

the berm is constructed adjacent to residential property it shall be a minimum of twelve (12') feet in height with two (2) staggered rows of evergreen trees placed fifteen (15') feet on center. All berms constructed adjacent to residential property shall be designed to prevent soil erosion, encroachment and excessive water runoff. During the next planting season following the placement of the berm, and as often as may be necessary thereafter to ensure the existence of a vegetative ground cover, the permittee shall seed or plant the berm in a manner suitable for the area and for soil conditions, so as to provide a visible ground cover substantially similar to the vegetative cover previously on the property and/or on adjacent property. Where the topography of the area acts as a natural screen, the Township Board may waive or reduce the berm requirement. The berm shall have slopes not in excess of one (1') foot vertical to three (3') feet horizontal;

b. Planting of five-foot high (minimum height) evergreen trees along the boundaries of the property, adjacent to vacant or non-residential land use, with sufficient rows and depth to permit effective screening, as determined by the Township Board and following recommendation of the Planning Commission.

c. All trees and/or vegetation utilized for a sight barrier shall be maintained throughout the entire duration of the operation. Vegetation shall be replaced as necessary.

4. **Building Setbacks.** Both permanent and/or temporary processing plants and accessory structures and related uses shall not be located closer than two hundred fifty (250) feet from the interior property lines and adjoining public rights-of-way and shall, where practicable, be located at a lower elevation than the surrounding terrain to lessen visual and noise impact. The foregoing requirement shall not apply to any excavating apparatus or to stockpiling, loading and transportation equipment.

5. **Hours of Operation.** Hours of operation shall be established prior to the issuance of mining permit. The hours of operation shall be limited both as to equipment and vehicles, and operations shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m., and is prohibited entirely on Sunday and legal holidays. The Township Board may establish more limited hours of operation upon the recommendation of the Planning Commission. A recommendation regarding hours of operation may be made by the Planning Commission subsequent to the public hearing on the request for special land use approval to establish a mining or extraction operation pursuant to Article 9 Section 9.02(6) of the Lapeer Township Zoning Ordinance. In making such a recommendation, the Planning Commission shall consider the characteristics of the surrounding area, in particular the proximity of developed residences to the excavation site. Temporary variances may be granted to any person from the hours of operation requirement if the Township Board finds that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors. Any such variance or renewal thereof shall be granted only for the minimum time

period found to be necessary under the facts and circumstances. Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than fourteen (14) days, except upon due notice to the public with opportunity to comment.

6. **Interior Roads.** Roads on soil excavation sites shall be designed and constructed so that traffic will flow smoothly and will not be interrupted by inclement weather. A typical cross-section shall be submitted with the application. Non-paved roads on the site shall be maintained and treated at all times by the application of oil, water and/or other Township approved chemical substances, whichever is most effective to minimize or eliminate dust, whenever such roads are used by vehicles and/or equipment. Moreover, the location and maintenance of roads shall be such as to avoid harm and/or impairment to any bodies of water as well as to surface and/or ground water. Roads on site shall mean roads designed on approved plans and such other areas used by vehicles and/or equipment for travel on a regular basis.

7. **Public Roads.** The permittee shall not permit any motor vehicle to track any soil materials from the site onto any paved public road or highway. If dust materials are carried or tracked onto a paved public road or highway, the permittee shall immediately remove such materials. If the operation results in tracking of materials onto a public road or highway that causes dust, mud or any unsafe condition, the permittee shall immediately remove such material, correct the unsafe condition and notify the appropriate road agency. Should the road agency determine that hauling operations are causing a safety impediment to their roadway, the operator shall immediately cease hauling operations until the unsafe conditions are corrected

8. **Performance Standards.**

The following performance standards shall be applicable to all soil removal operations:

a. **Noise**. The intensity level of sounds shall not exceed the following decibel levels, as measured from the nearest property line of the following types of adjacent uses, where applicable: 55 decibels from residentially used property; 60 decibels from commercially used property; and 70 decibels from industrially used property. Measurements shall be made under this section on an "A" Weighing Scale.

b. **Smoke.** No individual or individuals shall cause, suffer or allow to be discharged in the atmosphere from any source, smoke, the shade or appearance of which is equivalent to or greater than the density described as No. 2 of the Ringelmann Chart, provided, however, that smoke, the shade or appearance of which is equivalent to but not darker than No. 2 on the Ringelmann Chart for a period or periods aggregating four (4) minutes in any thirty (30) minutes shall be permitted; and, provided, further, that smoke, the shade or appearance of which is equivalent to but not darker than No. 3 on the Ringelmann Chart for a period or periods aggregating three (3) minutes in any fifteen (15) minutes shall also be permitted when building of new fire or when breakdown or

malfunctioning of equipment occurs such as to make it evident that the emission was not reasonably preventable.

c. **Vibrations.** All machinery and other operations conducted on or at the soil removal site which cause vibration, shall be conducted so as to prevent transmission of ground vibration. The ground vibration shall be measured from any lot adjoining the site, and the vibrations shall not exceed the vibration perception threshold of an individual standing on said lot line.

d. **Dust.**

(1). All dust produced as a result of the soil mining operations must be confined within the boundaries of the site. The Township Board may require the erection of a snow fence, greenbelt or other barrier to contain blowing soil material, or may require the spraying of material with water or a dust control chemical. The operator shall discontinue operations until the dust control requirement is met.

(2). If the permittee fails to immediately control dust from leaving the boundaries of the site, including all roads or drives used for ingress and egress, the Township may have the work done and charge the cost of the work against the permittee's cash account. The permit authorizes the Township to enter the site and take such action as is reasonably necessary to prevent dust from leaving the site should the permittee fail to do so.

e. **Explosives.** The use of explosives of any kind shall not be permitted.

f. **Surface Water.** No aspect of the operation, including without limitation, soil removal, storage and/or transportation of minerals, shall result in a danger to the public health or safety, and/or impairment and/or pollution of the ground water, surface water and/or watershed. Surface water shall, at all times, be directed in such a manner so as not to interfere with the adjoining property owners; provided, however, that maintenance of the direction and volume of the natural flow of surface water shall not be deemed an interference. Proper drainage shall be provided at all times to prevent the collection and stagnation of water, except in conformance with the reclamation plan as approved as part of the permit. All storm water and drainage plans shall be prepared, reviewed and approved by the Township Engineer prior to issuance of any permit. All surface water shall be retained on site.

g. **Waste Water.** All service waste will be disposed of in an acceptable (by current standards) environmentally friendly method.

B. Pit Operations.

1. **Fencing/Signage.**
   a. All soil removal sites shall be fenced prior to the commencement of extractive operations and prior to the placement on the site of machinery or buildings. The fence shall completely surround the area of the soil removal operation; provided, however, for good cause shown in relation to the protection of public safety in view of the operations conducted, the Township Board may, at its discretion, modify the precise location of fencing. The minimum specifications for the fencing shall be as follows: a five-foot (5') high farm-type fence of Number 9 gauge wire, Number 12 gauge bottom wire, Number 14 gauge stays, and intermediate wires with a maximum spacing of six (6") inches vertically by twelve (12") inches horizontally; all stays shall be of 14 gauge wire; and support posts shall be spaced on 16-foot centers or less.

   b. The perimeter of any soil removal site shall be conspicuously and adequately posted with signs sufficient to indicate the danger of trespassing in the area. In no event shall such signs be more than two hundred (200') feet apart, and the signs shall be constructed of a rigid and sturdy material and be maintained and replaced as needed.

   c. All gates within such fence, also designed to prevent vehicular and pedestrian access, shall be closed and locked during the period when operations are not being conducted on the site. Access gates shall be constructed per Township Ordinances, unless specifically approved as part of the permit application.

2. **Slopes.** The slope of banks of such excavation shall not be steeper than (1) foot vertical to (4) four feet horizontal, except on working faces of excavation. At the end of the mining season, slope shall be one (1) foot vertical to four (4) feet horizontal.

3. **Bodies of Water.** Where soil removal operations result in a body of water, the permittee shall erect warning signs around said premises spaced not less than two hundred (200) feet. The pumping or draining of water from such soil removal operations is prohibited.

4. **Performance Standards.** All of such soil removal operations shall conform with the performance standards established in the preceding subsection. The Township Board may require such other or greater performance standards as may be necessary to protect the health, safety and general welfare of residents of the Township when unique conditions of the site so require.

5. **Nuisances.** All equipment and facilities used in the production, processing or transportation of soil materials shall be constructed, maintained and operated in such a manner as to eliminate noise, vibration or dust which violate the performance standards herein established.

6. **Other Requirements.**

a. Temporary stockpiling of soil materials near road intersections and similar operational problems shall be subject to approval of the Township Board.

b. Before beginning soil removal operations, the operator shall have marked with stakes, temporary fence or other markings acceptable to the Township Engineer, the area designated for soil removal in the current approved permit. Removal operations shall not extend beyond the marked area. This fencing is in addition to the fencing required in Section 9.B.1.a.

c. Monthly log reports indicating the type and amount of material removed from the site shall be provided to the Township.

d. In no event shall the area being mined, *and* which is unreclaimed, exceed twenty (20) acres in size.

7. **Lighting:** All lighting used to illuminate the property and operation, and each and every portion thereof, shall be directed away from surrounding property. Shielding shall be required where lighting would otherwise be directed toward a residential use and/or County road. If permanent lighting is proposed as part of the operation, a lighting plan shall be submitted as part of the application and satisfy all Township standards.

C. Strip Operations.

1. **Water Accumulation.** No soil shall be removed in such manner as to cause water to collect or to result in a place of danger or a menace to the public health. The premises shall at all times be graded so that normal surface water drainage is maintained.

2. **Soil Replacement.** Sufficient topsoil shall be stockpiled on said site in order that the entire site, when stripping operations are completed, may be recovered with a minimum of four (4) inches of topsoil. In the event that such stripping operations continue over a period of time greater than thirty (30) days, the permittee shall replace the stored topsoil over the stripped areas as the operation progresses.

3. **Other Requirements.** The Township Board may impose such other and further requirements as is deemed necessary in the interest of the public health, safety and general welfare of the residents of Lapeer Township.

a. In no event shall the area being mined, and which is unreclaimed, exceed twenty (20) acres in size.

Section 10 SITE RECLAMATION FOR CLASS I AND II PERMITS

Reclamation of excavated areas shall be accomplished as soon as practicable following the excavation of an area. Where possible, such reclamation shall be accomplished concurrently with soil removal operations. Completion of reclamation plan as submitted and approved shall be effected within six (6) months after termination of soil removal operations. The following standards shall control such reclamation:

A. Surface Grade. All excavations shall be either to a water producing depth of not less than 12 feet below the average summer level of water in the excavation, or shall be graded or back-filled with non-noxious, non-flammable and non-combustible solids to insure:

1. That the excavated area shall not collect stagnant water and not permit the same to remain therein; or

2. That the surface of such area which is not permanently submerged is graded or back-filled as necessary to produce a gently rolling surface that will minimize wind and water erosion and which will be generally compatible with the adjoining land area.

B. Slopes. Slopes shall be graded to permanent water areas, if any, and to the pit floor in connection with an operation without permanent water areas, and shall not be graded to the exterior areas of the property so as to create the potential of flooding on adjoining properties and roads. In no event shall a reclaimed slope have a grade in excess of a minimum ratio of one (1') foot vertical to four (4') feet horizontal. Upon completion of manmade lake, pond or lagoon, pursuant to an approved site plan, condominium or subdivision plan, a fence shall be required around the body of water unless the following conditions are met:

1. Final slopes do not exceed one (1) on five (5) to a depth of at least five (5) feet below water level.

2. Slopes above high water shall not exceed one (1) on five (5) within twenty five (25) feet of high water elevation.

C. Topsoil Standards. Topsoil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, except where street, beaches or other planned improvements are desired. Where used, topsoil shall be applied to a minimum depth of four (4) inches sufficient to support vegetation.

D. Vegetation. Vegetation shall be restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and to prevent erosion.

E. Completion of Operation. Upon cessation of soil removal operations by abandonment or otherwise, the permittee, within a reasonable period of time not to exceed six (6) months thereafter, shall remove all plant structures, buildings, stockpiles and equipment, provided that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning

district in which they will be located and under such other plan, may be retained. The Township Board may permit materials that have been mined, processed and stockpiled during the soil removal period to be sold during the reclamation period, if and to the extent that such activity does not interfere with reclamation, and not thereafter, and such stockpiles shall in all events be removed within the time provided for reclamation hereunder. In the event the Township is required to complete reclamation, any remaining mined materials, overburden, top soil, stockpiles, or similar materials may be used in the reclamation of the soil removal area.

F. Surface Water Quality. Wherein a permanent water area is provided, said water area shall be tested for water quality by the county Health Department prior to continuation of reclamation.

G Fill Material Standards. In the event filling of the mined area is necessary in The course of reclamation the fill material shall not consist of and/or contain any organic waste, hazardous waste, industrial waste, or sludge and sewage residues, whether or not compounded, mixed, combined, bound or contained within any other material through any chemical or physical process or a combination thereof, or in any other fashion; and, moreover, such fill material shall not contain any other material which will, or is likely to, impair or harm the air, water and natural resources, and public trust therein, and/or the public health and safety. No solid waste regulated by Act 641 of the Public Acts of 1978, and no hazardous waste regulated by Act 64 of the Public Acts of 1978, shall be used for fill and/or reclamation material of a mined area.

H. Minimum Standards. The standards set forth in this Section shall be considered minimum standards and stricter standards may be required by the Township Board if, and to the extent, such stricter standards are demonstrated to be necessary to protect the environment and/or the public health, safety and/or welfare.

Section 11. RELATION TO ZONING.

Mining and/or soil removal is allowed as a special land use as regulated by Lapeer Township Ordinance, as amended. Soil removal operations may be allowed anywhere in Lapeer Township subject to the provisions of its zoning ordinance and subject further to a finding by the Township Board that the established of such soil removal operation will not adversely affect the public health, safety and welfare of the residents of Lapeer Township by reason of its location, method of operation, haul route, effect o the value of adjacent lands, and such other factors as may be deemed pertinent by the Township Board. The Planning Commission shall review all applications and make a recommendation on said proposed mining operation to the Township Board.

Section 12 VARIANCES, ADMINISTRATION AND ENFORCEMENT.

A. Variances. Variances from a literal application of the provisions of this Ordinance may be granted by the Engineering Board of Appeals upon written application demonstrating that certain aspect(s) of the applicant's proposed soil removal operation are unique and that a strict application of the provisions of this Ordinance would result in practical difficulties and/or undue hardship not suffered by other persons subject to the Ordinance provisions in question. Variances as to noise and/or hours of operation are separately addressed herein and this Section shall not be construed as substitution therefore. A variance shall be granted if the Engineering Board of Appeals finds in the affirmative to *all* of the following:

1. There are special circumstances, or conditions affecting the situation such that a strict application of the provisions of this Ordinance would deprive the applicant of reasonable use of his property.

2. That the variance is necessary for the preservation and enjoyment of the substantial property right of the applicant;

3. That the granting of the variance will not be unduly detrimental to the public welfare or injurious to other property in the Township;

4. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance nor violate the provisions of other State or Federal regulations.

5. No variance shall be granted if the hardship is : 1) the inconvenience of having to abide by the ordinance requirements; 2) a desire to increase financial gain; or 3)the expense of financial compliance."

B. Administration. This Ordinance shall be administered and enforced by the Township Supervisor or any other persons authorized by the Township Board of Trustees from time to time.

Section 13 VIOLATION/PENALTIES.

Any person, firm or corporation who violates any of the provisions of this Ordinance shall be responsible for a violation of a civil infraction upon a finding of responsibility of violating said provision shall be and subject to a penalty not less than ONE THOUSAND ($1,000.00) Dollars and costs not to exceed TWO THOUSAND ($2,000.00) and be ordered to take all necessary actions to insure compliance with this oridinance.

Section 14 REPEAL OF CONFLICTING PROVISIONS.

All resolutions, ordinances or parts thereof in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Section 15 SEVERABILITY.

If any section, paragraph, clause or provision of this Ordinance is for any reason held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 16 EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following the publication hereof, as provided by law.

Certification of Clerk

I hereby certify that the foregoing Soil Removal Ordinance of the Township of Lapeer, Ordinance No. 5, was duly adopted by the Lapeer Township Board at a regular meeting thereof held on March 8, 2010, and was published in the LAView newspaper on March 25, 2010.

I hereby further certify that the following Township Board members were present at said meeting: Clerk Dawn Walker, Supervisor Scott Jarvis, Treasurer Lori Ann Taylor.

and the following Township Board members were absent: Trustee John Rutzen and Trustee Bill Blaine.

I hereby further certify that Board member Walker moved for the adoption of said Ordinance, and that motion was supported by board member Jarvis .

Upon a roll call vote the following voted:
Yes: Walker, Jarvis, Taylor.
No: none.
Absent: Rutzen, Blaine.

Dawn M. Walker

DAWN M. WALKER, CMC
LAPEER TOWNSHIP CLERK

A copy of the Lapeer Township Soil Removal Ordinance No. 5 may be purchased or inspected at the Lapeer Township Offices, 1500 Morris Road, Lapeer, Michigan, during regular business hours.