

**Windsor Charter Township
Eaton County, Michigan
Zoning Ordinance Amendment
Ordinance No. 25**

At a meeting of the Township Board of Windsor Charter Township, Eaton County, Michigan, held at the Windsor Charter Township Hall on September 23, 2014, at 7:30 p.m., Township Board Member Dan Blair moved to introduce the following Ordinance for posting, publication and subsequent final adoption, which motion was seconded by Township Board Member Sue Butler:

An Ordinance to amend Article VIII, 110.806, Miscellaneous Special Uses, Section 8.6.3(7) of the Windsor Charter Township Zoning Ordinance, as amended, regarding special use permits for excavation of soil and minerals.

**THE CHARTER TOWNSHIP OF WINDSOR, EATON COUNTY, MICHIGAN,
ORDAINS:**

Section 1. Amendment of Article VIII, 110.806, Miscellaneous Special Uses, Section 8.6.3(7): The Windsor Charter Township Zoning Ordinance, Article VIII, 110.806, Miscellaneous Special uses, Section 8.6.3(7) shall be amended to state as follows:

(7) Excavation of Soil and Minerals: The purpose of this section is to provide for the use of lands which have significant mineral deposits such as gravel and sand and, which if mined under the regulations of this section, will not constitute a hazard to the public health, safety and welfare and, to ensure that said excavation operations will result in the reclamation of said lands so that the lands will be suitable for other uses upon expiration of the mining activity. Excavation is the removal of any earthen material, including topsoil, sand, gravel, stone or any other earthen material for the purpose of disposition away from the premises. Topsoil shall not be stripped, excavated or otherwise removed from any premises for sale, or for any other use than on the premises which the topsoil was originally located except when as a product of an authorized excavation of other soils. This provision shall not prohibit agricultural and/or sod farm operations, or excavation of less than 500 cubic yards which is incidental to the construction of a building and/or infrastructure.

(a) Excavation of Soil and Minerals: Application Requirements and Procedures

- (1) Application for a special use permit shall be made as specified in Section 8.1 and meet the additional requirements of this section.
- (2) The application shall contain the following information:
 - (i) Name, address, and contact information of owner(s) of land from which removal will occur.

- (ii) Name, address, and contact information of person or legal entity who will conduct removal.
 - (iii) Location, size, and legal description of the total site area for excavation, including deed restrictions and easements.
 - (iv) Proposed period of time and proposed hours and days of operation to complete removal operations, extraction and processing of materials.
 - (v) Estimated area in acres from which excavation will take place each year of operation until completion.
 - (vi) A written explanation of the proposed future land use and its compatibility with the Comprehensive Development Plan.
 - (vii) A written description of the proposed method of excavation and a description of the equipment to be utilized.
- (3) Any application for a special use permit shall not be set for a public hearing by the Planning Commission until the Township Clerk shall determine that such application meets the requirements of this section. Section 8.1.2(3) shall not apply to a special use permit for excavation of soil and minerals.
- (4) The Planning Commission shall not consider any application without the payment by the applicant to the Township Clerk of a fee, if any, as established by the Township Board. In addition to the application fee, the Zoning Administrator, after review of the application, shall establish an amount to be deposited by the applicant with the Township Clerk as an escrow deposit to defray the anticipated costs incurred by the Township to review and process the application, including reasonable and appropriate professional analysis. Any unused portions of the escrow deposit remaining after consideration and processing of the application shall be returned to the applicant.
- (5) A professionally prepared site plan shall be required with an application for special use permit. The professionally prepared site plan shall be drawn to scale and contain the following:
- (i) The legal description and location of the proposed excavation.
 - (ii) Adjacent zoning districts and land use information.
 - (iii) The location and size of proposed excavation areas to include stages of excavation.
 - (iv) The roads and types of road surfaces that will serve the site or be utilized on site.

- (v) The proposed haul route for vehicles to and from the site.
 - (vi) The location and size of any processing equipment and structures.
 - (vii) A description of the plan for stripping topsoil and overburden, stockpiling, excavation and rehabilitation to include depths of cuts and fills.
 - (viii) A rehabilitation plan that includes a recent aerial photograph of the site with the general plan for rehabilitation as an overlay, a reclamation contour plan, description of reclamation methods, and materials proposed for restoration of topsoil and replanting.
 - (ix) The final grade elevation plan to include proposed surface water, proposed earth berms, and other significant final site features.
 - (x) The location of any floodplain, floodway, wetland, lake, creek, stream, easement, or wooded area affecting or adjoining the site.
- (6) The Township may require hydrogeological investigations conducted by a certified professional, at the expense of the applicant, describing the impact of the proposed excavation activity on the existing water levels and water quality.

(b) Financial Guarantees:

- (1) Financial guarantees shall be furnished to Windsor Charter Township prior to the issuance of the Special Use Permit by the Township Clerk to ensure proper rehabilitation and reclamation in accordance with the provisions of this ordinance and the conditions of the special use permit.
- (2) The following areas of the site shall be included in the financial guarantee:
 - (i) Area stripped of topsoil or overburden.
 - (ii) Area from which material is extracted.
 - (iii) Area utilized for stockpiling extracted material, overburden, and topsoil.
 - (iv) Area to be rehabilitated and reclaimed, including progressive rehabilitation of the site.
 - (v) Area included in the special use permit which is deemed to warrant protection under a financial guarantee.
- (3) The Township Board shall establish the financial guarantee based on, but not limited to, the prevailing cost to rehabilitate the property upon default of the

operator and court costs and other reasonable expenses to ensure that all conditions are complied with.

- (4) Financial guarantees shall be provided in the form of cash, certified check, irrevocable letter of credit, performance bond, or other form of surety acceptable to the Township Board.
- (5) The financial guarantee shall remain in effect for one (1) year after completion of rehabilitation according to approved plans. No portion of the guarantee shall be released until the Township has determined by inspection and/or other factual documentation that the rehabilitation has been completed according to the approved plans. Upon determination by the Township that rehabilitation has been completed according to approved plans, the Township Board shall release the financial guarantee.
- (6) The applicant shall be required to provide a certificate of indemnity from a company licensed to do business in the State of Michigan insuring Windsor Charter Township against any loss or damage to persons or property arising directly or indirectly from the operations authorized by the Special Use Permit.

(c) Site Development Requirements:

- (1) **Setbacks:** Setbacks, in which no excavation activity may take place other than ingress and egress, shall not be less than seventy five (75) feet from any road right-of-way on the perimeter of the site and not less than fifty (50) feet from any line common to undeveloped property and seventy five (75) feet from lots lines of residentially zoned land.
- (2) **Screening:** Site screening shall be provided where deemed practicable after consideration of natural buffers and adjoining land uses. The use of berms/fencing and/or plantings may be deemed necessary to achieve aesthetic and/or utilitarian objectives as shall be determined by the Township from application materials. Site screening requirements apply to final site rehabilitation as well as during site operation activities.
- (3) **Fencing:** Fencing shall be required around the perimeter of the site area being worked at any one time and shall consist of a five (5) foot security fence. The work area enclosed by said fencing shall be provided with gates at any point of ingress or egress which shall be secured at any time the site is unattended by personnel.
- (4) **Posting:** The aforementioned fence must be maintained and be posted at a minimum of two hundred (200) foot intervals by durable, weather proof signs not less than two (2) square feet in size with a minimum of two (2) inch lettering containing the following words: **DANGER, KEEP OUT, EXCAVATION IN PROGRESS.**

- (5) Signage: Signage shall be provided at all gate locations indicating contact information for property owner and operator of the site.
 - (6) Slopes: Slopes on previously excavated areas outside the fenced working area, prior to rehabilitation, shall be not greater than thirty (30) degrees. Upon completion of rehabilitation, the finished grade shall not exceed three (3) feet horizontal to one (1) foot vertical.
 - (7) Erosion: All slopes shall be adequately seeded and/or planted with appropriate vegetation such as trees to prevent erosion. Erosion control measures of excavated slopes shall take place progressively as outlined in the site plans on file and shall be accomplished prior to renewal of the special use permit. To insure the permanence of the reestablished vegetation in rehabilitated areas, the permit holder will be released from care and maintenance only after inspection approval by the Township.
 - (8) Dust Control: On site haul roads, access drives, and off site haul roads shall have dust and mud control measures applied which are part of a comprehensive and consistent dust and mud control plan which meet the requirements of the approved Special Use Permit for the site and the requirements of the Eaton County Road Commission.
 - (9) Noise Control: Noise control shall be primarily controlled through the special use permit approved timeframes for excavation and operation by days of the week and hours per day on an annual basis. The time frame of operation and repair of equipment and vehicles shall also be specified in the special use permit.
 - (10) Inspection: The Township, through its agents, shall have the reasonable right to enter any private property associated with the application to verify any information provided by the applicant or any approved special use permit to determine if the conditions of any approved Special Use Permit have been complied with.
- (d) **Special Use Permit Agreement:** Upon approval of the special use permit by the Township Board, the Township and the applicant shall both sign a special use permit agreement which documents the approved land use activities and the associated conditions of approval. The Township shall prepare the draft agreement and provide it to the applicant. In addition, the special use permit agreement shall list all local, state, and federal permits known by the Township to be required for the proposed excavation operation. The proposed excavation activities shall not begin until the special use permit agreement has been signed by both parties, financial guarantees provided, and all required permits filed with the Township. The special use permit agreement shall contain an explanation of the review and renewal process for the permit and what information is required from the applicant.

(e) Special Use Permit Timeframe and Renewals:

- (1) Special use permits for the extraction of soils and minerals may be approved up to a maximum of five (5) years.
- (2) Special use permits for the extraction of soils and minerals, including all conditions of approval, shall be reviewed annually from the effective date of approval by the Planning Commission to ensure compliance with all conditions of the original approval. The Township Board may establish an appropriate renewal fee for this request.
- (3) Ninety(90) days prior to the annual review by the Planning Commission, the property owner and site operator shall submit to the Township the following: quantities in cubic yards of material removed from the site during the past year, the location of the excavation activity during the past year, written documentation by the property owner and site operator of compliance with the conditions of the special use permit, written documentation by the property owner and site operator of the number and type of complaints relating to site excavation received during the past year, days and hours operation occurred, and haul routes used.
- (4) The Township Board shall require, as part of the annual renewal process, that the property owner and site operator survey adjacent property owners to determine their opinion as to the compliance with the special use permit conditions during the previous year.
- (5) The Planning Commission, upon completion of the annual review, shall forward a report to the Township Board, the Zoning Administrator, and the property owner and site operator summarizing compliance or noncompliance with the conditions of the original special use permit.
- (6) If the Planning Commission finds that the site is in compliance with the conditions of the special use permit, the Zoning Administrator shall notify the owner and/or operator by certified mail and the Township Board that the permit has been renewed for a one (1) year period.
- (7) If the Planning Commission finds that the site is in noncompliance with the conditions of the special use permit, the applicant may appeal that finding in writing to the Township Board for a review and final decision. Such appeal will delay any final decision by the Township Board on suspension or revocation of the original special use permit for a ninety (90) day period. The Zoning Administrator shall notify the property owner and site operator by certified mail of the facts of noncompliance and shall require the property owner and site operator to provide written documentation of the proposed method and

timeframe for compliance to the Township within ninety (90) days of the receipt of the certified mail.

- (8) If the Zoning Administrator determines that the documented noncompliance is a violation of health, safety, and welfare issues, the Zoning Administrator shall advise the Township Board to suspend permit activities until all noncompliance issues have been addressed.
- (9) Upon receipt of the written response from the property owner and site operator, the Zoning Administrator shall have thirty (30) days to determine if the proposed compliance method and timeframe is sufficient.
- (10) If the proposed compliance method meets the requirements of the original special use permit, the Zoning Administrator shall notify the owner and/or operator that the original permit has been renewed for a one (1) year period.
- (11) If the proposed compliance method does not meet the requirements of the original permit, the Zoning Administrator shall notify the property owner and site operator by certified mail requesting final compliance within thirty (30) days.
- (12) Failure of the property owner and site operator to provide written documentation of the method and timeframe for compliance within (30) days shall be cause for the Township Board to initiate suspension or revocation procedures for the original special use permit under Section 8.1.2(6).

Section 2. Severability: The provisions of this Ordinance are declared severable. If any provisions of this Ordinance or part thereof is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.

Section 3. Effective Date: This Ordinance shall take effect effective seven (7) days after publication of a notice of adoption of this Ordinance, unless referendum procedures are initiated under MCL 125.3402. If referendum procedures are initiated, this Ordinance will take effect in accordance with MCL 125.3402.

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN _____

ORDINANCE DECLARED ADOPTED.

Dated: _____

Marcie Dailey, Windsor Charter Township Clerk

AFFIDAVIT OF POSTING AND PUBLICATION

I hereby certify that:

1. The above is a true copy of an Ordinance introduced for publication and subsequent final adoption by the Windsor Charter Township Board at a duly scheduled and noticed meeting of that Township Board held on _____, 2014, pursuant to the required statutory procedures.
2. The complete text of the proposed Ordinance was posted at the Township Clerk's office and on the Township's website on _____, 2014.
3. The attached Notice of Posting of the Ordinance was duly published in the _____ newspaper, a newspaper that circulates within Windsor Charter Township, on _____, 2014, within not more than seven (7) days after the posting.

ATTESTED:

Marcie Dailey, Windsor Charter Township Clerk

**Windsor Charter Township
Eaton County, Michigan
Zoning Ordinance Amendment
Notice of Posting**

Ordinance No. _____

At a meeting of the Township Board of Windsor Charter Township, Eaton County, Michigan, held at the Windsor Charter Township Hall on _____, 2014, at ____ p.m., the Township Board introduced for posting, publication and subsequent final adoption a proposed amendment to the Windsor Charter Township Zoning Ordinance, proposed Ordinance No. ____. The proposed Ordinance amends Article VIII, 110.806, Miscellaneous Special Uses, Section 8.6.3(7) of the Windsor Charter Township Zoning Ordinance, as amended, regarding special use permits for excavation of soil and minerals; and repeals all ordinances or parts of ordinances in conflict with this Ordinance. Copies of the complete text of the proposed Ordinance were posted at the office of the Township Clerk at 405 W. Jefferson Street, Dimondale, MI 48821 and on the Township's website: <http://twp.windsor.mi.us/> .

By Order of the Windsor Charter Township Board

Marcie Dailey, Township Clerk
(517) 646-0772