



Antrim County Planning Commission

The Antrim County Planning Commission meeting is scheduled for

Tuesday, August 6, 2024 @ 5:30 p.m.

Board of Commissioners Room

203 East Cayuga Street, Bellaire, MI

MEMBERS

Richard Friske, Jr.
12/31/2024

Leslie Elrod
12/31/2025

James Gurr
12/31/2025

Ron Tschudy
12/31/2026

Bill Hefferan
Term elected

STAFF

Jeremy Scott
County Administrator

Janet Koch
Deputy Administrator

Gayle Rider
Administrative Asst.

Margie Boyd
Secretary

OFFICE ADDRESS

P.O. Box 187
Bellaire, MI 49615

PHONE: 231-533-6265

FAX: 231-533-8111

AGENDA ITEMS INCLUDE:

- 1) Call to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda
- 4) Declaration of Conflict of Interest
- 5) Public Comment
- 6) Approval of [Minutes from June 4, 2024](#)
- 7) Old Business
- 8) New Business
 - Banks Township Zoning Amendment—Articles VI, VII, and Article XII
 - Torch Lake Township Zoning Ordinance
- 9) Various Matters
- 10) Public/Member Comment
- 11) Adjourn



Memorandum Administration Office

August 6, 2024

TO: Planning Commission
FR: Administration/Planning Office
RE: Approval of Agenda, Minutes

You should have received your agenda packets via electronic communication on August 1. If there are no changes or additions to the agenda, please consider the following motion:

Approve the August 6, 2024 agenda as presented.

You received the minutes from the June 4, 2024 Planning Commission meeting via electronic communication on August 1. If there are no corrections to those minutes, please consider the following motion:

Approve the minutes of the June 4, 2024 meeting as presented.



Memorandum Administration Office

August 6, 2024

TO: Planning Commission
FR: Administration/Planning Office
RE: Banks Township Zoning Amendment – Article VI: District Regulations, Article VIII: Uses Subject to Special Approval and Supplemental Site Development Standards, Article XII: Transitory Extraction of Natural Resources Use

On July 8, we received the following communication from the Banks Township Planner, Ken Lane:

On behalf of the Banks Township Planning Commission, attached is a proposed amendment to the Banks Township Zoning Ordinance relating to the extraction of natural resources. The attached draft amendment was recommended for Township Board approval by the Township Planning Commission on July 2, 2024, after a properly noticed public hearing.

The Banks Township Planning Commission is requesting review and comment on the attached draft zoning ordinance amendment from the Antrim County Planning Commission.

The draft minutes from the July 2, 2024, Township Planning Commission meeting are also attached. Please let me know if you have any questions or concerns.

The followed was confirmed by Mr. Lane as a summary of the amendments:

Article VI: District Regulations

Language throughout the article is struck regarding sand and gravel extraction.

Article VIII: Uses Subject to Special Approval and Supplemental Site Development Standards
Section 8.03.12 Sand and Gravel Extraction was removed.

Article XII: Transitory Extraction of Natural Resources Use
Entire article is new.

The following motion is presented for your consideration:

That the Antrim County Planning Commission finds no incompatibilities between the Antrim County Master Plan and the proposed amendments to Banks Township Zoning Ordinance Articles VI, VIII and XII, and recommends approval by the Banks Township Board.

1 Banks Township
2 Antrim County, Michigan

3 Ordinance Number 03 of 2024

4 An Ordinance to amend the Banks Township Zoning Ordinance Article VI and Article VIII, and to add
5 Article XII, pertaining to the transitory extraction of natural resources.

6
7 **THE TOWNSHIP OF BANKS HEREBY ORDAINS:**

8
9 **Section 1. Amendment of Article VI:**

10 **Article VI: District Regulations, is hereby amended to read as follows:**

11 Section 6.01.3. Uses Subject to Special Approval.

12 Special approval use of lands and premises, and the erection and use of buildings and structures
13 shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject
14 to the provisions of Section 8.02 Uses Subject to Special Approval.

- 15 1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site
- 16 Development Standards.
- 17 2. Public buildings and facilities.
- 18 3. Churches and related religious buildings.
- 19 4. Cemeteries.
- 20 5. Golf courses and country clubs.
- 21 6. Public and private campgrounds.
- 22 7. Private airports and landing strips.
- 23 8. Fire control structures.
- 24 9. Kennels, veterinary clinics, and animal hospitals.
- 25 10. Non-domestic furbearing animals when confined in cages not less than two hundred (200) feet
- 26 from any property line.
- 27 11. Animal processing facilities, subject to United States Department of Agriculture and local District
- 28 Health Department regulations.
- 29 12. Planned Unit Developments
- 30 13. Additional farm employee dwellings, provided the property is at least 20 acres in size. The
- 31 additional dwellings must be sited such that the property could be split in the future with all
- 32 setbacks met for all parcels created.
- 33 14. Migratory labor dwellings, provided the property is at least 20 acres in size and subject to the
- 34 provisions of Section 8.03 Supplemental Site Development Standards.
- 35 15. Forest product processing and sales.
- 36 16. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
- 37 Section 8.03 Supplemental Site Development Standards.
- 38 17. Cottage industries conducted outside the residence in the yard, garage or accessory structure,
- 39 subject to the provisions of Section 4.12.2 Home Business.
- 40 18. Agricultural Assembly Space.
- 41 19. Accessory buildings and uses customarily incidental to the above special approval uses.
- 42 20. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
- 43 Development Standards.

- 44 21. Accessory Dwelling Units.
- 45 22. Firearms Training Facility.

46 Section 6.02.3. Uses Subject to Special Approval.

47 Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands
48 and premises, and the erection and use of all buildings and structures shall, after the effective date
49 of this Ordinance, be limited to the following uses.

- 50 1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site
51 Development Standards.
- 52 2. Forest products, processing, and sales.
- 53 3. Private resorts and clubs.
- 54 4. Summer camps.
- 55 5. Fire control structures.
- 56 6. Campgrounds, not less than 10 acres.
- 57 7. Snowmobile trails (public and commercial).
- 58 8. Marina and boat launch areas.
- 59 9. Planned Unit Developments.
- 60 10. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
61 Section 8.03 Supplemental Site Development Standards.
- 62 11. Cottage industries conducted outside the residence in the yard, garage or accessory structure,
63 subject to the provisions of Section 4.12.2 Home Business.
- 64 12. Agricultural Assembly Space.
- 65 13. Accessory buildings and uses customarily incidental to the above special approval uses.
- 66 14. Child or adult daycare facilities serving more than six (6) clients.
- 67 15. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
68 Development Standards.
- 69 16. Accessory Dwelling Units.
- 70 17. Firearms Training Facility.

71 Section 6.03.3. Uses Subject to Special Approval.

72 Special approval use of lands and premises, and the erection and use of buildings and structures shall,
73 after the effective date of this Ordinance, be limited to the following uses and shall be subject to the
74 provisions of Section 8.02 Uses Subject to Special Approval.

- 75 1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site
76 Development Standards.
- 77 2. Multi-family dwellings.
- 78 3. Bed and breakfast facilities.
- 79 4. Convalescent or nursing homes.
- 80 5. Senior citizen housing facilities.
- 81 6. Public buildings and facilities.
- 82 7. Churches and related religious buildings.
- 83 8. Cemeteries, on a minimum of twenty (20) acres.
- 84 9. Golf courses or country clubs.
- 85 10. Public and private campgrounds, not less than 10 acres.
- 86 11. Planned Unit Developments
- 87 12. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
88 Section 8.03 Supplemental Site Development Standards.

- 89 13. Cottage industries conducted outside the residence in the yard, garage or accessory structure,
90 subject to the provisions of Section 4.12.2 Home Business.
91 14. Accessory buildings and uses customarily incidental to the above special approval uses.
92 15. Child or adult daycare facilities serving more than six (6) clients.
93 16. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
94 Development Standards.
95 17. Accessory Dwelling Units.

96 Section 6.05.3. Uses Subject to Special Approval.

97 Special approval use of lands and premises, and the erection and use of buildings and structures shall,
98 after the effective date of this Ordinance, be limited to the following uses and shall be subject to the
99 provisions of Section 8.02 Uses Subject to Special Approval.

- 100 1. Public buildings and facilities.
101 2. Churches and related religious buildings.
102 3. Planned Unit Developments.
103 4. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
104 Section 8.03 Supplemental Site Development Standards.
105 5. Cottage industries conducted outside the residence in the yard, garage or accessory structure,
106 subject to the provisions of Section 4.12.2 Home Business.
107 6. Accessory buildings and uses customarily incidental to the above special approval uses.
108 7. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
109 Development Standards.
110 8. Accessory Dwelling Units

111 Section 6.06.3. Uses Subject to Special Approval.

112 Special approval use of lands and premises, and the erection and use of buildings and structures shall,
113 after the effective date of this Ordinance, be limited to the following uses and shall be subject to the
114 provisions of Section 8.02 Uses Subject to Special Approval

- 115 1. Multiple-family dwellings.
116 2. Residential dwellings on the second floor of commercial structures.
117 3. Gasoline / Service Station.
118 4. Sale of motor vehicles.
119 5. Outdoor sales facilities.
120 6. Any use permitted in the “Village” district with a drive-through window.
121 7. Churches and related religious buildings.
122 8. Child or adult daycare facilities serving more than six (6) clients
123 9. Group foster care facilities.
124 10. Convalescent or nursing homes.
125 11. Building materials sales.
126 12. Carpentry, plumbing and electrical sales, services and contracting offices.
127 13. Machine shop.
128 14. Warehouses and storage buildings, but not including commercial bulk storage of flammable
129 liquids and gases.
130 15. Car Wash Facilities, subject to the provisions of Section 8.03 Supplemental Site Development
131 Standards.
132 16. Transmission and Communication Towers, subject to the provisions of Section 8.03
133 Supplemental Site Development Standards.

- 134 17. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
135 Section 8.03 Supplemental Site Development Standards.
136 18. Cottage industries conducted outside the residence in the yard, garage or accessory structure,
137 subject to the provisions of Section 4.12.2 Home Business.
138 19. Accessory buildings and uses customarily incidental to the above special approval uses.
139 20. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
140 Development Standards.
141 21. Accessory Dwelling Units
142 Section 6.07.3. Uses Subject to Special Approval.

143 Special approval use of lands and premises, and the erection and use of buildings and structures
144 shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject
145 to the provisions of Section 8.02 Uses Subject to Special Approval.

- 146 1. Building materials sales.
147 2. Carpentry, plumbing and electrical sales, services and contracting offices.
148 3. Machine shop.
149 4. Warehouses and storage buildings, but not including commercial bulk storage of flammable
150 liquids and gases.
151 5. Production, processing, assembly, manufacturing or packaging of goods or materials which do
152 not emanate noise, smoke, odors, dust, dirt, noxious gases, glare, heat, vibration, electrical, or
153 any similar nuisances. Such facilities may include testing, repair, storage, distribution and sale of
154 such products.
155 6. Outdoor storage facilities, including self-storage facilities.
156 7. Sexually Oriented Businesses, subject to the provisions of Section 8.03 Supplemental Site
157 Development Standards.
158 8. Gas and Oil Processing Facilities, subject to the provisions of Section 8.03 Supplemental Site
159 Development Standards.
160 9. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
161 Section 8.03 Supplemental Site Development Standards.
162 10. Accessory buildings and uses customarily incidental to above special approval uses.
163 11. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site
164 Development Standards.
165 Section 6.08.3. Uses Subject to Special Approval.

166 Special approval use of lands and premises, and the erection and use of buildings and structures
167 shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject
168 to the provisions of Section 8.02 Uses Subject to Special Approval.

- 169 1. Building materials sales.
170 2. Carpentry, plumbing and electrical sales, services and contracting offices.
171 3. Machine shop.
172 4. Warehouses and storage buildings.
173 5. Production, processing, assembly, manufacturing or packaging of goods or materials which, do
174 not emanate noise, smoke, odors, dust, dirt, noxious gases, glare, heat, vibration, electrical, or
175 any similar nuisances. Such facilities may include testing, repair, storage, distribution, and sale of
176 such products.
177 6. Gasoline / Service Station.
178 7. Sale of motor vehicles.
179 8. Outdoor sales facilities.

- 180 9. Any use permitted in the “Village Manufacturing” district with a drive-through window.
181 10. Outdoor storage facilities, including self-storage facilities.
182 11. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of
183 Section 8.03 Supplemental Site Development Standards.
184 12. Transmission and Communication Towers, subject to the provisions of Section 8.03
185 Supplemental Site Development Standards.
186 13. Accessory buildings and uses customarily incidental to above special approval uses.

187 **Section 2. Amendment of Article VIII:**

188 **Article VIII: Uses Subject to Special Approval and Supplemental Site Development Standards, is**
189 **hereby amended to read as follows:**

190 Section 8.03.12. Repeal. Section 8.03.12 is hereby repealed.

191 **Section 3. Addition of Article XII.**

192 **Article XII: Transitory Extraction of Natural Resources Use, is hereby added to read as follows:**

193 **PART I. INTRODUCTION**

194 Section 12.01. General Intent.

195 This Article XII of the Zoning Ordinance is intended to provide the procedure and standards for
196 review and approval of applications seeking permission to conduct the land use of extracting natural
197 resources in Banks Township ("Transitory Extraction of Natural Resources Use") in accordance with
198 MCL 125.3205(3), *et seq.* enacted by Act 113, PA 2011, as amended ("Gravel Statute"). As described
199 and explained in this Article, Transitory Extraction of Natural Resources Use in Banks Township shall
200 require legislative approval of a planned unit development ("Transitory Extraction Use Planned Unit
201 Development") under Part III of this Article. As a condition to being entitled to file an application
202 under Part III, an applicant must first seek and obtain administrative approval under Part II, which
203 imposes the requirements specified in subsections (3) and (4) of the Gravel Statute, MCL
204 125.3205(3) and (4), and requires an applicant to demonstrate such pre-conditions in order to be
205 entitled to apply for the extraordinary zoning treatment provided under the Gravel Statute.

206 In conformance with the Gravel Statute, the application and approval process under this Article XII
207 shall be divided into two parts.

208 A. Part II provides an administrative review process to determine whether the applicant has
209 demonstrated a sufficient property interest in the natural resource, whether valuable natural
210 resources are located on the applicant's property, and whether there is a need for the natural
211 resource sought to be extracted. Part II shall consist of an administrative proceeding. The
212 Planning Commission shall conduct an initial public hearing and make findings and a
213 recommendation to the Township Board, and the Township Board shall make the final Part II
214 administrative determination.

215 B. Once an applicant has received approval under Part II, a legislative review and approval
216 process is provided in Part III for an application for classification of the applicant's property to
217 Transitory Extraction Use Planned Unit Development. This process is intended to determine
218 whether the applicant has demonstrated that the applicant's proposed extractive use would
219 result in "no very serious consequences" as determined under the Michigan Zoning Enabling
220 Act.

221 Section 12.02. Legislative Findings by Township Board for this Article XII.

222 The Michigan Supreme Court observed the following points in *Kyser v Kasson Township*, 486 Mich
223 514, 518 (2010) ("Kyser"):

224 A. Referring to MCL 125.3201, the Zoning Enabling Act ("ZEA") directs that the power of local
225 government units to regulate the use of land is to be exercised by dividing the community into
226 uniform zoning districts:

227 1. A local unit of government may provide by zoning ordinance for the regulation of land
228 development and the **establishment of 1 or more districts within its zoning jurisdiction**
229 which regulate the use of land and structures to meet the needs of the state's citizens for
230 food, fiber, energy, and other natural resources, places of residence, ... to ensure that
231 use of the land is situated in appropriate locations and relationships, ... to facilitate
232 adequate and efficient provision for transportation systems, ... and to promote public
233 health, safety, and welfare.

234 2. Except as otherwise provided under this act, the regulations shall be **uniform** for each
235 class of land or buildings, dwellings, and structures **within a district**.

236 3. A local unit of government may provide under the zoning ordinance for the regulation
237 of land development **and the establishment of districts** which apply only to land areas
238 and activities involved in a special program ... and the **establishment of districts** in areas
239 subject to damage from flooding or beach erosion. (Emphasis supplied)

240 B. The exercise of the zoning authority under MCL 125.3201(1) and (3) (quoted above) is an
241 empowerment of local legislative bodies (e.g., township boards) to plan and zone for a broad
242 range of purposes. These provisions reveal the comprehensive nature of the ZEA. It defines the
243 fundamental structure of a zoning ordinance by requiring a zoning plan to take into account
244 the interests of the entire community and to ensure that a broad range of land uses is
245 permitted within that community. These provisions empower localities to plan for, and
246 regulate, a broad array of land uses, taking into consideration the full range of planning
247 concerns that affect the public health, safety, and welfare of the community.

248 C. The provisions of Gravel Statute read in light of the ZEA as a whole create an exception to
249 the general rule of intended authority and discretion of municipalities clarified in *Kyser*. Thus,
250 under the customary rules of statutory construction, an exception to a general rule of zoning
251 and planning as contained in the Gravel Statute must be construed narrowly, and the applicant
252 must satisfy the burden to prove each of the required showings under this Article, including:

253 1. The burden to prove the three elements identified in the Preliminary Administrative
254 Procedure subsection of this Article; and if it is found that the applicant has met this
255 burden;

256 2. The burden to prove that no very serious consequences would result from the
257 proposed natural resource extraction on the property, *i.e.*, the change in the land use
258 authorization on the subject property established by the Township that prohibits such
259 use, a prohibition relied upon by Township property owners in zoning districts
260 throughout the Township consistent with the doctrine of average reciprocity of
261 advantage (*see, Penn Central Transportation Co. v City of New York*, 438 US 104,139-140
262 (1978)).

263 D. The Gravel Statute specifies that the standards in *Silva v Ada Township*, 416 Mich. 153 (1982)
264 "*Silva*") shall be applied in reviewing an application to permit the extraction of natural
265 resources. As dictated by Michigan Supreme Court the existing zoning ordinance shall be
266 presumed to be reasonable for purposes of substantive due process.

267 E. By reference to *Silva*, the Gravel Statute directs an alternative due process analysis
268 exclusively for natural resource extraction use. However, the Gravel Statute remains within the
269 context of land use decision making established in the ZEA as a whole. Accordingly, reading the
270 ZEA as a whole in the manner directed in *Kyser*, any decision to approve natural resource
271 extraction under this ordinance must consider the decision's effect not only on a specific
272 project or property, but also upon the impact upon the surrounding area, future planning and
273 all land use in the Township.

274 F. Based on the history, tradition, and underlying basis for the authorization of zoning by the
275 Supreme Court of the United States in *Village of Euclid v Ambler Realty Co.*, 272 U.S. 365, 47
276 S.Ct. 114, 54 A.L.R. 1016, 71 L.Ed. 303 (1926), the Planning Commission and Township Board
277 make the legislative finding that the single most important purpose of zoning in Banks
278 Township is to protect the public health and safety, and promote the public welfare, of families
279 and children by the separation and organization of districts zoned to permit residential use and
280 other uses predominantly for families and children. It is the further legislative finding that
281 zoning in Banks Township is intended to serve as the basis for carrying out the functions and
282 purposes clarified in the Michigan Supreme Court's *Kyser* case, including the authorization for
283 the exercise of the police power to achieve the value judgments that must be made regarding
284 aesthetics, economics, transportation, health, safety, and a community's aspirations, and
285 values in general.

286 **PART II. ADMINISTRATIVE DETERMINATION OF ENTITLEMENT TO APPLY FOR PLANNED UNIT**
287 **DEVELOPMENT CLASSIFICATION FOR TRANSITORY EXTRACTION OF NATURAL RESOURCES**

288 Section 12.03. Definition.

289 There are certain terms stated in the Gravel Statute that require interpretation. There has been
290 insufficient litigation and decision making that might otherwise provide a meaningful understanding
291 of these terms. In order to provide guidance for purposes of proceedings conducted at the Township,
292 the following definitions are provided.

293 A. As used in this Article, "*Need for the Natural Resources*," is intended to refer to the phrase
294 in MCL 125.3205(4): "Need for the Natural Resources by the person or in the market served by
295 the person," and shall include a demonstrable need for a commercially meaningful quantity of
296 the natural resources proposed to be excavated on the applicant's property. To the extent
297 included in the applicant's application, demonstrating such a need shall require the applicant
298 to show the following in relation to the natural resources on applicant's property: a commercial
299 need for the natural resources to satisfy a present and ongoing requirement by an active
300 business operated principally by the applicant using the natural resources in the production of
301 a new and different product for sale; or a present and ongoing commercial need by purchasers
302 of such natural resources from the applicant's property within the market described in the
303 application. For purposes of this definition of Need for the Natural Resources:

304 1. "commercial need" in relation to applicant's property will only be deemed to exist if
305 and to the extent the need for the natural resources cannot otherwise be met from other
306 viable sources within the commercial market.

307 2. "commercially meaningful quantity" shall mean that quantity, taking into
308 consideration the quality and type of natural resources, that a person who is experienced
309 and knowledgeable in the industry would require as a condition to investing the time and
310 money necessary to commence and operate a mining enterprise that is expected to be
311 profitable for a sustained period of time.

312 3. "commercial market" means that geographic area within which there would be a
313 commercial demand for the natural resources from the applicant's property, considering
314 factors including, but not limited to: the transportation expenses and other factors
315 relevant to cost; and the actual or available alternative supply of the natural resources
316 from active mining sites and vacant land classified to permit mining within the market
317 area, *i.e.*, the supply from all other active mines, quarries, and vacant land classified for
318 such purpose that could provide an alternative supply to meet such demand in whole or
319 part within the market area.

320 B. As used in this Article, the phrase "sufficiency of applicant's property interest" shall mean a
321 requirement that, with regard to the land which is the subject of the application, all persons
322 who (a) file as applicant, and (b) consent in writing to the application, together are vested with
323 all possessory property rights in the land, as understood in Michigan real property law,
324 including all interests in the land that must be joined in the application in order to avoid a

325 dispute with regard to whether the applicant is authorized to make application and conduct an
326 extraction operation if approved under this Article XII.

327 Section 12.04. Part II Review Process: Three Factor Preliminary Administrative Determination.

328 A. Review of an application to permit a Transitory Extraction Use Planned Unit Development
329 shall begin with a preliminary administrative proceeding in which the applicant must
330 demonstrate qualification to seek rezoning approval. This preliminary administrative
331 proceeding shall be commenced by filing an application for an administrative determination
332 with regard to the following, consistent with the terms defined above: the sufficiency of the
333 applicant's property interest; a determination as to whether there are "valuable" natural
334 resources on the applicant's property, that is, whether the applicant can receive revenue and
335 reasonably expects to operate at a profit if the natural resources are extracted; and the Need
336 for the Natural Resources, including a determination on the duration of the need.

337 The application shall provide written documentation and evidence describing in detail and
338 making the requisite demonstration with regard to each of the three determinations. The
339 specific application form shall be developed by Township officials and representatives and
340 presented to the Township Board for approval by Resolution.

341 For purposes of this preliminary administrative review process, the Planning Commission shall
342 conduct an administrative hearing on the application, which shall be a public hearing. Prior to
343 the hearing, the Township Zoning Administrator shall review the application and
344 documentation submitted in support of the application, and report any deficiencies to the
345 applicant and the Planning Commission within a reasonable time. The hearing shall not be
346 noticed until the applicant has cured the deficiencies found to exist in accordance with this
347 procedure. Public notice of the hearing shall be provided in the manner specified in the ZEA for
348 public hearings for the review of a special land use.

349 B. At the hearing the applicant shall have the initial burden of showing:

- 350 1. The sufficiency of the applicant's property interest; and
351 2. The natural resources are "valuable," that is, the applicant can receive revenue and
352 reasonably expects to operate at a profit if the natural resources are extracted; and
353 3. The Need for the Natural Resources. This determination shall include the duration of
354 the Need for the Natural Resources, which should correspond with the duration of the
355 disruption of the Township authorized only as a result of applying the special treatment
356 specified in the Gravel Statute.

357 C. The public hearing shall begin with an introduction by the person designated by the Planning
358 Commission chairperson. The applicant shall then be given the opportunity to make the three
359 proofs required in paragraph (2), above. At the completion of the applicant's presentation the
360 Township, through its representatives may address and offer evidence or argument on these
361 issues. Members of the public shall then have the opportunity to address and offer evidence
362 or argument on these issues. If requested, the applicant shall be provided with an opportunity
363 to rebut evidence and argument presented, but for efficiency purposes shall not be permitted
364 to duplicate evidence on matters included in applicant's earlier presentation. Likewise, any new
365 matters addressed by the applicant may be rebutted by representatives of the Township and
366 members of the public. The public hearing shall then be closed.

367 D. Following completion of the public hearing, either at the same meeting at which the public
368 hearing was held, or at some later meeting, the Planning Commission shall, based on the record
369 made, adopt findings and recommendations on whether the applicant has made a sufficient
370 showing on each of the determinations in subparagraphs (1) through (3) of paragraph (B),
371 above. Township representatives may assist the Planning Commission with the articulation of
372 its findings and recommendations.

373 E. The Planning Commission shall forward its findings and recommendation to the Township
374 Board which shall, taking into consideration the evidence from the public hearing and the
375 Planning Commission's recommendation, then make its own findings and conclusions on each
376 of the three determinations in subparagraphs (1) through (3) in paragraph (B), above. The
377 Township Board may conduct an additional public hearing at its discretion. If the Township
378 Board does schedule an additional public hearing, the notice requirement and proceedings
379 conducted shall conform to the procedure set above for the Planning Commission public
380 hearing.

381 F. Appeal. With regard to all findings and conclusions made by the Township Board, an
382 aggrieved applicant or other interested party may appeal to the circuit court.

383 **PART III - LEGISLATIVE DETERMINATION OF APPLICATON FOR REZONING TO PLANNED UNIT**
384 **DEVELOPMENT CLASSIFICATION FOR TRANSITORY EXTRACTION OF NATURAL RESOURCES**

385 An applicant for a transitory extraction of natural resources use as addressed in MCL 125.3205 may
386 apply for legislative approval of a rezoning of its property to Transitory Extraction Use Planned Unit
387 Development classification under this Part III of this Article XII only if the Township Board first makes
388 the administrative determination that the applicant has demonstrated the administrative
389 requirements specified in Part II of this Article.

390 Section 12.05. Part III Reconciliation of the Gravel Statute with the Zoning Enabling Act as a Whole;
391 Creation of Planned Unit Development Classification for Extraction Use.

392 The Gravel Statute (MCL 125.3205) directs that the Township shall not prevent the extraction, by
393 mining, of valuable natural resources from any property in the entire Township if it is demonstrated
394 that no very serious consequences would result from the extraction of those natural resources,
395 referring to the standards in *Silva v Ada Township*, 416 Mich 153 (1982) ("the Silva Standard"). There
396 are fundamental issues pertaining to the Silva Standard that require attention in this ordinance in
397 order to reconcile the Silva Standard with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole
398 ("ZEA"), and with the exercise of the zoning authority as approved by the courts:

399 Whether there are "very serious consequences" is a question ambiguous on its face. Although some
400 attempt is made in the Gravel Statute to provide examples of more specific standards to determine
401 very serious consequences, the Gravel Statute specifies that these more specific examples are in
402 addition to the Silva Standard, and thus do not provide the needed clarification. Determining
403 whether there are very serious consequences requires additional standards, and must consider local
404 conditions and circumstances.

405 Implicit in the Silva Standard adopted by the Gravel Statute are important characteristics of
406 Transitory Extraction Use, matters of both fact and law, that require clarification in order to reconcile
407 the Gravel Statute with the ZEA as a whole, including (but not limited to):

408 A. Unlike most land uses, a Transitory Extraction Use amounts to a transitory use that will have
409 a duration based on various circumstances such as the quantity and quality of resources to be
410 extracted in a particular location, the extent and duration of 'need' for the resources from such
411 location, and other factors. "Extraction of natural resources is frequently a temporary use of
412 the land and that the land can often be restored for other uses and appropriate assurances
413 with adequate security can properly be demanded as a precondition to the commencement of
414 extraction operations." *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982).

415 B. The Gravel Statute, read in isolation, *i.e.*, absent additional standards, purports to allow for
416 Transitory Extraction Use in a manner entirely distinct from the planning and use district
417 allocation specified in the ZEA as a whole, with the Legislature in the Gravel Statute directing
418 the Courts to apply a specific Due Process standard to scrutinize a denial of a proposed use.
419 Such mandated Due Process standard has not been adjudicated by the Courts; rather, the
420 legislatively mandated standard is distinct from and foreign to the Due Process standard
421 established by the Courts and applied in all other zoning considerations.

422 C. The Gravel Statute, read literally, *i.e.*, absent additional standards, authorizes approval for
 423 Transitory Extraction Use within any zoning district, even though the general rule applicable to
 424 the exercise of zoning authority is to separate uses based on use district classifications. This
 425 literal reading of the Gravel Statute creates particular issues in cases in which a heavy industrial
 426 use (such as Transitory Extraction Use) would be approved within a residential or other district,
 427 due to the direct conflict with achieving the objectives specified in the ZEA that provides that
 428 "[a] local unit of government may provide by zoning ordinance for the regulation of land
 429 development and the establishment of 1 or more districts within its zoning jurisdiction which
 430 regulate the use of land and structures to meet the needs of the state's citizens for food, fiber,
 431 energy, and other natural resources, ... to facilitate adequate and efficient provision for
 432 transportation systems, ... and to promote public health, safety, and welfare." As this zoning
 433 authority has been interpreted, the "scope of the power to protect the public health, safety,
 434 and welfare within the zoning context is not confined to elimination of filth, stench, and
 435 unhealthy places, but includes the authority to lay out zones where family values, youth values,
 436 and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village*
 437 *of Belle Terre v. Boraas*, 416 U.S. 1 (1974). In addition, a community is authorized to enact land-
 438 use regulations to enhance quality of life by preserving the character and desirable aesthetic
 439 features of a city. *Penn Central Transportation Co. v New York City*, 438 US 104 (1978).

440 D. Authorization and operation of a heavy industrial Transitory Extraction Use operation in
 441 residential or other zoning districts creates a significant regulatory challenge for the Township,
 442 particularly in comparison with the authorization of nearly any other use considering the
 443 distinct impacts of the Transitory Extraction Use on the immediate surrounding area, as well as
 444 the area along the haul route utilized by the Transitory Extraction Use. The need for additional
 445 standards is manifest.

446 E. Approval of a heavy industrial Transitory Extraction Use operation in residential or other
 447 zoning districts is directed by a literal reading of the Gravel Statute without expressly stated
 448 regard for, and in conflict with, a community's Master Plan in accordance with which zoning is
 449 to be established. The ZEA, MCL 125.3203, provides that "[a] zoning ordinance shall be based
 450 upon a plan designed to promote the public health, safety, and general welfare, ... to conserve
 451 natural resources and energy, to meet the needs of the state's residents for ... other natural
 452 resources, ... industry, ... and other uses of land, to ensure that uses of the land shall be situated
 453 in appropriate locations and relationships, ... to reduce hazards to life and property, to facilitate
 454 adequate provision for a system of transportation... A zoning ordinance shall be made with
 455 reasonable consideration of the character of each district, its peculiar suitability for particular
 456 uses, the conservation of property values and natural resources, and the general and
 457 appropriate trend and character of land, building, and population development." Accordingly,
 458 recognizing how each local government has formulated its master plan and system of zoning
 459 districts is an analysis that is inseparable from the authorized exercise of the zoning authority.
 460 There is a need for additional standards for decision making in order to achieve the necessary
 461 reconciliation among all sections of the ZEA.

462 F. In light of the fundamental issues described above relating to a literal reading of the Silva
 463 Standard, the courts may ultimately find the Gravel Statute invalid and unauthorized. In the
 464 meantime, the Township must attempt to exercise its zoning authority in the manner provided
 465 by existing law. In this regard, the Township has concluded that the only permissible exercise
 466 of zoning authority that could provide a reconciliation of a literal reading of the Gravel Statute
 467 with the ZEA as a whole, and with the common law of zoning, is an invocation of the planned
 468 unit development authorization in PCL 125.3503 for approving uses in residential and other
 469 zoning districts. This invocation would require classification of Transitory Extraction Uses as
 470 "planned unit developments." For the reasons spelled out in paragraphs 12.05 A and B of this
 471 Part III, above, the Gravel Statute standing alone fails to provide an express reconciliation with
 472 the ZEA as a whole, or with the common law of zoning under the judicially established standard

473 of Due Process. The utilization of the planned unit development authorization is within the
474 intent of the ZEA as a whole for providing a permissible means of achieving such reconciliation.
475 The ZEA, in MCL 125.35033(3), provides that "[t]he planned unit development regulations need
476 not be uniform with regard to each type of land use if equitable procedures recognizing due
477 process principles and avoiding arbitrary decisions are followed in making regulatory
478 decisions," thus affording the means of reconciliation. The standards in this Part III are intended
479 to provide the needed equitable procedures recognizing due process principles and avoiding
480 arbitrary decisions.

481 G. Accordingly, a Transitory Extraction Use Planned Unit Development zoning classification
482 ("Transitory Extraction Use PUD") is hereby established, and an applicant for a Transitory
483 Extraction Use must meet all of the requirements contained in this Part III, which are deemed
484 to be within the authorization provided by PICL 125.3205 and MCL 125.3503. A property for
485 which a Transitory Extraction Use PUD is approved shall be classified on the Zoning Map as
486 "Transitory Extraction Use PUD."

487 H. Approval of a Transitory Extraction Use PUD shall require amendment of the zoning
488 ordinance in accordance with this Part III, and shall not be deemed to be the subject of
489 administrative approval.

490 Section 12.06. Application for Transitory Extraction Use PUD; Standards for Review.

491 A. The application form for Part III of this Article XII shall be approved by resolution of the
492 Township Board, and shall require the submission of sufficient information for use by the
493 Township in reviewing the relevant issues, including:

- 494 1. The issues required to be considered based on the Silva Standard in the Gravel Statute;
495 and
- 496 2. The more specific standards in the Gravel Statute specified in subparagraphs MCL
497 125.3205(5) (a)-(f).

498 As explained above, reconciliation of the Gravel Statute and the ZEA as a whole requires
499 application of all standards contained in this Part III. The standards in this Part III provide
500 necessary clarification for considering the Silva Standard and specific standards in the Gravel
501 Statute. All of the standards in this Part III shall therefore be deemed to guide and reconcile
502 the statutory standards of the Gravel Statute with the implicitly authorized authority contained
503 in the Zoning Enabling Act as a whole and MCL 125.3503 in particular.

504 An application for Transitory Extraction Use, including haul route, shall include a Transitory
505 Extraction Use Plan, which shall provide a detailed plan for the property which is the subject of
506 the rezoning, and show the property along all haul routes within the Township. The Transitory
507 Extraction Use Plan shall be prepared by a licensed professional civil engineer, or comparable
508 professional, and shall show the location, size, height, design, architecture or other measure
509 and feature for and of buildings, structures, improvements, operational plan, and other
510 features on the subject property. The details offered by the applicant for inclusion within the
511 Transitory Extraction Use Plan may be required to be modified if relevant for decision making
512 by the Planning Commission or Township Board based on facts that have come to light during
513 the course of the process of consideration, including preliminary review of the application.

514 B. The standards of this Article XII that shall guide and reconcile the statutory standards of the
515 Gravel Statute with the authority contained in the Zoning Enabling Act as a whole shall be
516 applied to both the Silva Standard and the more specific standards in the Gravel Statute
517 referenced above. These standards shall not be deemed to be exclusive considerations, and
518 the Silva Standards may be interpreted as being clarified based on the application of sound
519 planning principles.

520 C. The Silva Standard of Review for Legislative Consideration

- 521 1. The Gravel Statute specifies that the Township shall not prevent the extraction, by
522 mining, of valuable natural resources from any property unless very serious
523 consequences would result from the extraction of those natural resources. The applicant
524 must demonstrate that no very serious consequences would result from the extraction,
525 by mining, of the natural resources. In determining under this Article whether very
526 serious consequences would result from the extraction, by mining, of natural resources,
527 the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied, as
528 directed by the Gravel Statute.
- 529 2. *Silva v Ada Township* directs that the "no very serious consequences" test is a part of
530 the Due Process "reasonableness" test, a constitutional test applied to determine
531 whether a zoning regulation meets the demands of Due Process. The *Silva* opinion directs
532 that the courts are to apply this different, and more rigorous Due Process standard for
533 "reasonableness" only when the zoning would prevent the extraction of natural
534 resources. The *Silva* opinion has been overruled, and thus has application only by
535 reference by the Michigan legislature in the Gravel Statute. Accordingly, in the Gravel
536 Statute, the Michigan legislative branch directs the Michigan judicial branch to apply a
537 separate and different interpretation of the Due Process clause only for Transitory
538 Extraction Use.
- 539 3. The *Silva* Standard that an applicant must meet for amendment of the zoning
540 ordinance under this Part III requires an applicant to overcome the presumption of
541 validity of existing zoning regulations, and imposes on such applicant the burden of
542 demonstrating that the proposed Transitory Extraction Use, and all associated activities
543 and haul route, would have "no very serious consequences" as provided in *Silva v Ada*
544 *Township*, presumably including the holdings in cases interpreting *Silva v Ada Township*,
545 e.g., *American Aggregates Corp. v. Highland Township*, 151 Mich App. 37 (1986).
546 Application of this general standard shall be interpreted by the Planning Commission and
547 Township Board on a case by case basis considering all relevant facts and circumstances.
- 548 4. While the Gravel Statute specifically addresses natural resource use, other sections of
549 the Zoning Enabling Act do as well. MCL 125.3201 directs that municipalities are to
550 exercise zoning authority by **dividing the community into districts** to achieve the
551 purposes of zoning, including the objectives of meeting "the needs of the state's citizens
552 for ... **natural resources**, ... to facilitate adequate and efficient provision for
553 transportation systems, ... and to promote public health, safety, and welfare." MCL
554 125.3203 directs that a "zoning ordinance shall be **based upon a plan** designed to
555 promote the public health, safety, and general welfare, ... to conserve natural resources
556 and energy, to **meet the needs of the state's residents for ... other natural resources**, ...
557 industry, ... and other uses of land, to ensure that uses of the land shall be situated in
558 appropriate locations and relationships, ... to reduce hazards to life and property, to
559 facilitate adequate provision for a system of transportation ... **A zoning ordinance shall**
560 **be made with reasonable consideration of the character of each district, its peculiar**
561 **suitability for particular uses, the conservation of property values and natural**
562 **resources**, and the general and appropriate trend and character of land, building, and
563 population development." (Emphasis supplied) These provisions of the ZEA may not be
564 ignored in light of a single section of many sections of the ZEA. Unless and until the Gravel
565 Statute is invalidated, the Gravel Statute must be reconciled with the Zoning Enabling Act
566 as a whole.
- 567 5. Standards are provided in this Part III to reconcile the Gravel Statute with the Zoning
568 Enabling Act as a whole, and shall be deemed implicit requirements of the Gravel Statute
569 to be read into, and guide interpretation and decision making under, the *Silva* Standard
570 that must be met by an applicant for amendment of the zoning ordinance to permit a
571 Transitory Extraction Use. This Part III minimizes the ambiguity of the "no very serious

572 consequences" rule by establishing more specific standards to facilitate understanding
573 of the meaning of the Silva Standard within the context of the ZEA as a whole, applying
574 the master planning component and other considerations compelled in order to place
575 parties and review bodies on notice of the proofs needed in order to secure Transitory
576 Extraction Use PUD approval. The Silva Standard of the Gravel Statute implicitly requires
577 and directs clarification and interpretation based on recognized land use and zoning
578 principles that are relevant to determining whether the applicant has proven that "no
579 very serious consequences" would result from the applicant's proposed Transitory
580 Extraction Use.

581 D. Specific Standards of Review for Township Legislative Consideration

582 The following specific standards are provided. These standards are presented within the
583 framework provided in MCL 125.3205(5) (a)- (f) for the purpose of determining whether the
584 applicant has proven that "no very serious consequences" would result from the applicant's
585 proposed Transitory Extraction Use and associated activities and haul route. These standards
586 are intended to assist the Township in reviewing an application in relation to both the general
587 Silva Standard and the specific standards in PICL 125.3205(5). All of the standards in this Article
588 shall be considered by the Planning Commission and Township Board in deliberating on the
589 application, and shall guide decision making on the Township Board's ultimate legislative
590 decision on whether the applicant has proven that "no very serious consequences" would
591 result from the applicant's proposed Transitory Extraction Use and associated activities and
592 haul route.

593 1. Existing Land Uses

594 a. The relationship of applicant's proposed Transitory Extraction Use and associated
595 activities with existing land uses anticipated to be impacted shall not produce
596 unreasonable or inequitable results;

597 b. The impact of applicant's proposed Transitory Extraction Use and associated activities
598 on existing land uses in the vicinity of the property shall not produce unreasonable or
599 inequitable results;

600 c. The proposed Transitory Extraction Use, including haul route, shall be capable of being
601 designed, located, planned and operated so that that the public health, safety and
602 welfare shall be protected in relation to existing land uses, and that the proposal will
603 achieve such results.

604 2. Property Values

605 a. The impact of applicant's proposed Transitory Extraction Use and associated activities
606 on property values in the vicinity of the property and along the proposed hauling route
607 serving the property shall not produce unreasonable or inequitable results;

608 b. The proposed Transitory Extraction Use, including use of the haul route, shall not
609 cause injury to the value of other property in the neighborhood in which it is to be
610 located, or along the haul route.

611 c. The proposed Transitory Extraction Use, including use of the haul route, shall not
612 unreasonably or inequitably affect the value of properties in the Township.

613 d. The proposed Transitory Extraction Use, including use of the haul route, shall be such
614 that the proposed vehicles (including number and type); machines and equipment used
615 in the operation, location and height of buildings or structures; location, nature and
616 height of walls, fences and landscaping; and all other aspects of the proposed use will
617 not unreasonably or inequitably affect the value of other uses and properties.

618 3. Pedestrian and Traffic Safety

619 a. The impact of the proposed Transitory Extraction Use and associated activities on
620 pedestrian and traffic safety in the vicinity of the property and along the proposed
621 hauling route serving the property shall not be unreasonable or inequitable.

622 b. The proposed Transitory Extraction Use and haul route shall be consistent with and
623 permissible under state, county, and/or local regulations that have been established for
624 roadways, including regulations applicable to the use of roads for proposed haul routes.

625 c. The proposed Transitory Extraction Use, including haul route, shall be of a nature that
626 will make vehicular and pedestrian traffic no more hazardous than is normal for the
627 district(s) impacted, taking into consideration the number, size, weight, noise, and fumes
628 of vehicles, vehicular control, braking, and vehicular movements in relation to routes of
629 traffic flow, proximity and relationship to intersections, adequacy of sight distances,
630 location and access of off-street parking and provisions for pedestrian traffic, with
631 particular attention to minimizing the interaction of heavy vehicles used for the
632 Transitory Extraction Use with children, the elderly or the handicapped.

633 d. The proposed Transitory Extraction Use, including haul route, shall be of a nature that
634 will make vehicular and pedestrian traffic no more hazardous to children attending
635 schools or other activities within the Township.

636 e. Overall, the proposed Transitory Extraction Use, including haul route, shall not result
637 in children, older persons, or handicapped persons being effectively required to forego
638 or alter their activities.

639 4. Identifiable Health, Safety, and Welfare Interests

640 a. If the property has been designated in the Master Plan as an appropriate site for heavy
641 industrial use, this shall weigh in favor of the applicant under this provision, subject to
642 consideration of the specific scope and impact of the operation and associated activities.
643 Similarly, if the property has been designated in the Master Plan for non-industrial use,
644 this shall weigh in favor of determining that the proposed Transitory Extraction Use
645 would result in a very serious adverse consequence.

646 b. The impact of applicant's proposed Transitory Extraction Use and associated activities
647 on identifiable health, safety, and welfare interests in the Township shall not be
648 unreasonable or inequitable. For purposes of this Article, "health, safety, and welfare"
649 shall have the meaning attributed to such terms by the courts, e.g., *Berman v Parker*, 348
650 U.S. 26 (1954), *Village of Belle Terre v Boraas*, 416 US 1 (1974), *Kyser* (majority opinion),
651 *Cady v City of Detroit*, 289 Mich. 499 (1939), and *Hess v Charter Township of West*
652 *Bloomfield*, 439 Mich. 550 (1992), including the manner in which such meaning has been
653 reasonably determined by the Planning Commission and Township Board in the Master
654 Plan and Zoning Ordinance, read as a whole, including the crucial and material stability
655 and quality of life (see, e.g. dissenting opinion of Judge (later Justice) Davis in the Court
656 of Appeals opinion in *Kyser v Kasson Township*, 278 Mich. App. 743, 773 [referenced with
657 approval by the Michigan Supreme Court in *Kyser*, 486 Mich. 514, 519 (2010)]).

658 c. The proposed Transitory Extraction Use, including haul route, shall not unreasonably
659 or inequitably impact upon surrounding property in terms of noise, dust, fumes, smoke,
660 air, water, odor, light, and/or vibration. In determining whether a proposed Transitory
661 Extraction Use amounts to a very serious consequence, the standards for the stated
662 impacts contained within the Township's regulatory ordinance, as the same may be
663 amended, will apply. In addition, considering that a proposed Transitory Extraction Use
664 may include one or a combination of components that have unique qualities relating to
665 these impacts (e.g., crusher noise and vibration), compliance with the regulatory
666 ordinance standards would not necessarily mean that the use would not amount to a
667 very serious consequence with regard to these impacts (see paragraph k, below).

668 d. The proposed Transitory Extraction Use, including haul route, shall not have an
669 adverse impact on economic development and 'placemaking' in the Township, or in other
670 units of government that will be impacted by the Use, including haul route.

671 e. The proposed Transitory Extraction Use, including haul route, shall not be permitted
672 to have impacts, or create a character, likely to render the applicable limitations of
673 Township zoning on other property in the area and haul route unreasonable in terms of
674 the limitations imposed by existing zoning regulations. For example, the heavy industrial
675 nature of the proposed Transitory Extraction Use shall not be permitted to undermine
676 reciprocity of advantage by creating impacts and character that would raise a reasonable
677 question whether residential zoning restrictions on area property would represent
678 arbitrary limitations on the use and enjoyment of such area property.

679 f. The proposed Transitory Extraction Use operation, including the haul route, shall be
680 such that the proposed location and height of buildings or structures and location, nature
681 and height of walls, fences and landscaping, and all other proposed aspects of the overall
682 use, will not interfere with or discourage the appropriate development and use of
683 adjacent land and buildings.

684 g. The proposed Transitory Extraction Use, including haul route, shall not cause
685 unreasonable or inequitable limitations on the use and enjoyment of other property in
686 the vicinity (zoning district or districts, as impacted) in which it is to be located and along
687 the haul route, and will not be detrimental to existing and/or other permitted land uses
688 in the zoning districts impacted or unreasonably impact on future redevelopment in the
689 manner specified in the Master Plan.

690 h. The proposed Transitory Extraction Use, including haul route, shall not be detrimental
691 to the development of new land uses in the zoning districts impacted.

692 i. The proposed Transitory Extraction Use, including haul route, shall not unreasonably
693 or inequitably burden the capacity of public services, infrastructure or facilities.

694 j. The proposed Transitory Extraction Use, including haul route, shall not unreasonably
695 or inequitably burden retail uses, arts and culture, equestrian activities, non-motorized
696 vehicle travel or recreation, school use, parks, playgrounds, residential uses, or result in
697 the physical vulnerability or degradation of historic uses and resources, including the
698 creation of the need for added public or private expenditures for maintenance of
699 buildings, structures, and infrastructure.

700 k. The proposed Transitory Extraction Use, including haul route, shall not cause
701 unreasonable diesel fumes, dust, truck noise or physical/mental health issues, including
702 along the haul route.

703 l. The proposed Transitory Extraction Use, including haul route, shall not cause
704 unreasonable impacts in relation to environmental resources in the Township, including
705 air, ground water, surface water, soils, and wetlands. In determining whether impacts
706 are unreasonable, the cumulative effect upon all environmental resources shall be
707 evaluated.

708 5. Overall Public Interest in the Proposed Extraction

709 a. The overall public interest in the extraction of the specific natural resources on the
710 property both in absolute terms and in relative terms shall be weighed in relation to the
711 adverse consequences likely to occur, and unreasonable or inequitable consequences
712 shall not be permitted.

713 b. Public interest in the proposed Transitory Extraction Use shall be measured against
714 any inconsistencies with the interests of the public as are proposed to be protected in

715 the Master Plan for the area to be impacted by the Transitory Extraction Use and haul
716 route.

717 c. Public interest in the proposed extraction shall be measured against any
718 inconsistencies with regard to physical, historic, and economic interests in relation to the
719 Transitory Extraction Use and haul route.

720 d. Public interest in the proposed extraction shall be measured against any likely creation
721 of valid environmental concerns, including without limitation impairment, pollution
722 and/or destruction of the air, water, natural resources and/or public trust therein.

723 e. Public interest in the proposed extraction shall be measured against public costs likely
724 to be caused by the proposed Transitory Extraction Use, including haul route, considering
725 alternative supplies of gravel.

726 Section 12.07. Determination of a Transitory Extraction Use Application to Rezone the Applicant's
727 Property to Planned Unit Development.

728 A. The determination of a Transitory Extraction Use Application may consist of an approval of
729 rezoning to Transitory Extraction Use Planned Unit Development, or an approval of such
730 rezoning with conditions, or a denial of rezoning.

731 B. An approval of rezoning, with or without conditions, shall include and incorporate a
732 Transitory Extraction Use Plan as approved by the Township, and a Transitory Extraction Use
733 Agreement, all as described below. Any conditions, if any, that may be required with the
734 approval shall also be specified in such an approval.

735 C. An approval of rezoning shall include:

736 1. A specification of the duration of the rezoning, which will state a termination date for
737 the effect of the approval. This specification shall be based on findings that balance the
738 public interest in providing the natural resources to be extracted against the public
739 interest of freeing the area of the Township and residents that will be adversely impacted
740 by the Transitory Extraction Use, including use of the haul route, from the burdens and
741 costs allowed under the Gravel Statute due to the finding that the resources to be
742 extracted and transported are needed to a sufficient degree.

743 2. Approval of a Transitory Extraction Use Agreement, which shall clarify for all interested
744 persons, including the public, the rights and obligations of the Township and the
745 applicant and owner(s) of the property.

746 3. Other conditions that conform to the requirements of applicable law.

747 D. A denial of rezoning shall include a statement of reasons why the applicant has failed to
748 satisfy its burden of proof that approval of the application would result in "no very serious
749 consequences."

750 Section 12.08. Transitory Extraction Use Agreement.

751 A Transitory Extraction Use Agreement shall mean a written agreement approved and executed by
752 the Township, the applicant, and all owners of the property to be rezoned, incorporating all relevant
753 terms of the approval, the approved Transitory Extraction Use Plan, any and all Transitory Extraction
754 Use Conditions, and any other terms relevant to the land and operation to which the rezoning will
755 apply. A Transitory Extraction Use Agreement shall include the following as applicable to the facts
756 and circumstances:

757 A. Acknowledgment that the Rezoning to Transitory Extraction Use PUD classification is
758 based on the application submitted and Transitory Extraction Use Plan, and that the duration
759 of a Transitory Extraction Use will be temporary in nature, i.e., "extraction of natural
760 resources is frequently a temporary use of the land and that the land can often be restored

761 for other uses and appropriate assurances with adequate security can properly be demanded
762 as a precondition to the commencement of extraction operations." *Silva v Ada Township*, 416
763 Mich. 153, 160-161 (1982). Thus, the Agreement shall specify the duration of the rezoning
764 and the termination date, as found and determined by the Township Board based on its
765 deliberations and balancing of public interests.

766 B. Acknowledgment that the conditions and Transitory Extraction Use Agreement are
767 authorized by all applicable state and federal law and constitution, and that the Agreement
768 is valid and entered into on a voluntary basis and represents a permissible exercise of
769 authority by the Township.

770 C. Acknowledgment that the property in question shall not be developed or used in a manner
771 inconsistent with the Transitory Extraction Use Agreement, including Transitory Extraction
772 Use Plan, and that any material deviations in development and use from such Plan shall
773 constitute a nuisance per se under MCL 125.3407.

774 D. Acknowledgment that the approval and Transitory Extraction Use Agreement shall be
775 binding on and inure to the benefit of the applicant, the property owner(s) and Township,
776 and their respective heirs, successors, assigns, and transferees.

777 E. Acknowledgment that, when the Transitory Extraction Use zoning authorization
778 terminates, no development or use shall be undertaken or permits for development issued
779 until a new zoning district classification of the property has been established, and that the
780 Township will not unreasonably delay in acting on the establishment of a new zoning district
781 classification.

782 F. Acknowledgment that each of the requirements and conditions in the Transitory
783 Extraction Use Agreement represents a necessary and reasonable measure which, when
784 considered with all other conditions and requirements, is roughly proportional to the
785 increased impact created by the use represented in the approved Transitory Extraction Use
786 Rezoning, taking into consideration the changed zoning district classification and the specific
787 use authorization granted.

788 G. Affidavit in recordable form, signed by the applicant and all owners of the property to be rezoned,
789 to be recorded for the purpose of providing notice of the approval as well as the restrictions and
790 conditions to the approval. The rezoning to Transitory Extraction Use shall not be effective unless and
791 until the affidavit is recorded with the office of the Antrim County Register of Deeds. Section 12.09.
792 Review Process-Planning Commission.

793 A. To seek an amendment of the zoning classification applicable to the property to Transitory
794 Extraction Use PUD classification, the applicant shall submit an application in the form
795 approved by resolution of the Township Board.

796 B. The application shall provide written documentation and evidence describing in detail and
797 making the requisite demonstration with regard to each of the criteria on the issue of whether
798 "no very serious consequences" shall result in relation to the property and haul route, and in
799 the community, as described in detail in this Part III. Prior to conducting a public hearing, the
800 Township shall review the application and documentation submitted in support of the
801 application and report any deficiencies to the applicant and the Planning Commission within a
802 reasonable time. The public hearing on the application to amend the zoning classification shall
803 not be noticed until the applicant has cured the deficiencies found to exist in accordance with
804 this procedure. The Planning Commission may require the applicant to make a preliminary
805 presentation for informational purposes prior to conducting a public hearing.

806 C. After providing the notice required for changing the zoning classification of a property, the
807 Planning Commission shall conduct a public hearing on the application to determine whether

808 the applicant can and does satisfy the applicant's burden of proof that "no very serious
809 consequences" shall result from applicant's use of the property and haul route, as described in
810 detail in this Part III. The hearing shall begin with an introduction by the Planning Commission
811 chairperson, or a person designated by the chairperson. The applicant shall then be given the
812 opportunity to make the showings required in this ordinance. At the completion of the
813 applicant's presentation, either at the same meeting or at a subsequent meeting if additional
814 time is needed in order to thoroughly address the subject matter, the Township, through its
815 representatives, may address and offer evidence or argument on the issues. Members of the
816 public shall then have the opportunity to address and offer evidence or argument on the issues.
817 If requested, the applicant shall be provided with an opportunity to rebut evidence and
818 argument presented, but for efficiency purposes shall not be permitted to duplicate evidence
819 on matters included in applicant's earlier presentation. Likewise, any new matters addressed
820 by the applicant may be rebutted by representatives of the Township and members of the
821 public. The public hearing shall then be closed.

822 D. After the public hearing has been closed, either at the same meeting at which the public
823 hearing was completed, or at a later meeting held within a reasonable time, the Planning
824 Commission shall, based on the evidence presented, adopt findings and recommendations on
825 whether the applicant has made a sufficient showing on whether there would be "no very
826 serious consequences" as a result of the proposed Transitory Extraction Use including haul
827 route, applying the standards contained in this Part III and all other applicable principles and
828 law. Township representatives may assist the Planning Commission with the articulation of
829 such findings and recommendations.

830 E. Following all of the hearing procedures and requirements specified above, the Planning
831 Commission shall forward to the County (if required) its findings and recommendations on
832 whether to amend the zoning ordinance map to approve a rezoning of the property to the
833 Transitory Extraction Use PUD classification, along with the Transitory Extraction Use Plan and
834 Agreement.

835 Section 12.10. Review Process- County and Township Board.

836 A. After any required action is taken by the County, the Planning Commission shall forward a
837 summary of public hearing comments, along with its findings and recommendation, to the
838 Township Board. The Planning Commission shall also forward to the Township Board the
839 proposed Transitory Extraction Use Plan and Agreement.

840 B. The Township Board shall, taking into consideration the evidence from the public hearing,
841 the Planning Commission's recommendation, and any additional evidence presented to the
842 Township Board, act on the application for a rezoning of the property to Transitory Extraction
843 Use PUD classification. The Township Board shall conduct a public hearing on whether the
844 property should be rezoned and classified for Transitory Extraction Use Planned Unit
845 Development, and may direct changes in the Plan and Agreement (including a direction for
846 representatives of the applicant and Township to negotiate proposed changes and present
847 them to the Board). The Board's action may then consist of approval of rezoning, approval of
848 rezoning with conditions, or denial of rezoning.

849 C. If the Board acts to approve the rezoning to Transitory Extraction Use Planned Unit
850 Development, or approve with conditions, the approval shall also include the Transitory
851 Extraction Use Plan, Transitory Extraction Use Agreement, and a determination of the
852 permitted duration of the rezoning, considering that that the duration of a Transitory
853 Extraction Use will be temporary in nature, *i.e.*, "extraction of natural resources is frequently

854 a temporary use of the land and that the land can often be restored for other uses and
855 appropriate assurances with adequate security can properly be demanded as a precondition to
856 the commencement of extraction operations." *Silva v Ada Township*, 416 Mich. 153, 160-161
857 (1982).

858 Section 12.11. Effect of Approval.

859 A. Approval of a rezoning of property to Transitory Extraction Use PUD classification shall
860 authorize the owner of the property to apply for permits for construction and operation of a
861 Transitory Extraction Use, including permits required under a separate Township Ordinance
862 established for the regulation of extraction use operations. The approval shall become
863 effective in the manner and on the date provided by law and after recordation of the Affidavit
864 that is part of the Transitory Extraction Use Agreement, whichever is later (see Section 12.08,
865 above).

866 B. The Transitory Extraction Use PUD classification shall expire following a period of two (2)
867 years from the effective date of the rezoning unless:

868 1. The period for securing permits and commencing bona fide construction is extended
869 by the Township Board for good cause within the effective period; or

870 2. Approved bona fide development of the property pursuant to building and other
871 required permits issued by the Township commences within such two (2) year period and
872 proceeds diligently and in good faith as required by ordinance to completion.

873 C. In the event that bona fide development has not commenced within the permissible period
874 of time calculated under sub-paragraph (2) above, the Transitory Extraction Use classification
875 shall be void and of no effect.

876 D. If development and/or actions are undertaken on or with respect to the property in material
877 violation of the Transitory Extraction Use classification approved by the Township Board,
878 including Transitory Extraction Use Plan, Transitory Extraction Use Agreement, and all
879 conditions established with the approval, such development and/or actions shall constitute a
880 nuisance per se. MCL 125.3407. In such case, the Township may issue a stop work order
881 relative to the property and seek any other lawful remedies. Until curative action is taken to
882 bring the property into compliance with the Transitory Extraction Use approval, Plan,
883 Agreement and conditions, the Township may withhold or, following notice and an opportunity
884 to be heard, revoke permits and certificates, in addition to or in lieu of other lawful action to
885 achieve compliance.

886 E. At the end of the authorized duration of the Transitory Extraction Use, either or both of the
887 following actions may be taken:

888 1. The property owner, at any time before or after the end of the authorized duration,
889 may seek a new Rezoning of the property, including a new application for rezoning to
890 Transitory Extraction Use classification, in which case the property owner shall have the
891 obligation to newly demonstrate a "Need for the Natural Resources," taking into account
892 the adverse impacts of the terminated Transitory Extraction Use endured already; and/or

893 2. The Township may initiate a new Rezoning of the property to a reasonable district
894 classification in accordance with the procedure provided by law for rezonings in
895 townships.

896 Until such time as a new zoning district classification of the property has become effective, no
897 development or operations shall be undertaken or permits for development issued. The

898 Township will not unreasonably delay in acting on the establishment of a new zoning district
899 classification.

900 Section 12.12. Fee.

901 The applicant for a rezoning Transitory Extraction Use classification under this Article shall pay as a
902 fee the Township's costs and expenses incurred in the review and evaluation of the application and
903 preparation of documents for approval. An escrow shall be established in an amount specified by
904 Township Board resolution, and additional reasonable amounts shall be contributed as required in
905 order to complete the process of review and approval. Any unexpended amounts from such escrow
906 shall be returned to the applicant.

907 **PART IV ADMINISTRATION AND ENFORCEMENT**

908 Section 12.13. Operational Regulations.

909 A. Approval of rezoning under this Article of the zoning ordinance shall be subject to separate
910 Township ordinance established for the regulation of extraction use operations.
911 Commencement of work for the operation, and any and all other operation activities, shall
912 require permits for construction and operation of a Transitory Extraction Use, as specified in
913 applicable Township ordinances.

914 B. Exemption: Usual and customary land balancing by cutting and filling in preparation for
915 immediately planned and approved development in accordance with other applicable
916 ordinance and law, not involving the extraction of natural resources for sale or use as
917 contemplated under MCL 125.3205, shall be exempted from the provisions of this Article.

918 C. Enforcement: Violations of section 12 of this zoning ordinance is subject to the enforcement
919 and penalties stated in section 9.05 of the Banks Township Zoning Ordinance.

920 Section 4. Severability.

921 If any section, provision or clause of this Ordinance or the application thereof to any person of
922 circumstances is held invalid, such invalidity shall not affect any remaining portions or application of
923 this Ordinance, which can be given effect without the invalid portion or application.

924 Section 5. Effective Date.

925 This Ordinance shall become effective eight (8) days after being published in a newspaper of general
926 circulation within the Township.

927 Township of Banks

928

929 By: _____
930 Alex Busman, Supervisor
931 Adoption date: XX, XX, 2024
932 Effective date: XX, XX, 2024

By: _____
Donna L. Heeres, Clerk

Banks Township Planning Commission

Regular Meeting and Public Hearing

Tuesday, July 2, 2024

6:00 p.m.

1. Meeting was called to order by R. Diebold at 6:00 p.m.
 - a. Present – F. Hersha, J. Waterman, A. Hoeksema, P. Howes, R. Diebold
2. MMS J. Waterman, A. Hoeksema to enter the Public Hearing on the proposed Ordinance re: Transitory Extraction Planned Unit Development and Soil Removal. Motion carried. Public Hearing opened at 6:01 p.m.
 - a. Public Comment – none
 - b. Receipt of written testimony – none received
 - c. MMS P. Howes, J. Waterman to close the Public Hearing. Motion carried. Public Hearing closed at 6:02 p.m.
3. Guests and Visitors – K. Busman, Zoning Administrator, C. Busman, Recording Secretary. Alex Busman – a Township property owner
4. MMS J. Waterman, F. Hersha to approve the June 4, 2024 minutes as written. Motion carried.
5. No announcements or correspondence
6. No Public Comment
7. Standing Reports:
 - a. Zoning Board of Appeals – Did not meet since last PC meeting.
 - b. Zoning Administrator – reported there were 4 permits issued since the last PC meeting.
 - c. Township Board representative – J. Waterman: Highlighted minutes from the Township Board meeting. PC members have had opportunity to review
 - d. Planning Consultant – Ken Lane: not present but provided packet for review
8. Unfinished Business:
 - a. Master Plan 5 year revision update – The survey has been up at www.surveymonkey.com/r/bankstownship since early June. Planning Consultant K. Lane recommends no firm end date at this time. The PC will review at the August meeting and decide if an end date is warranted.
 - b. Proposed ordinance re: Transitory Extraction Planned Unit Development and Soil Removal – over the past several months the commissioners have had much discussion around all aspects of this proposed ordinance and a Public

Hearing was held earlier in this meeting. The PC is ready to move forward with the proposed ordinance. MMS J. Waterman, F. Hersha to recommend approval of the Ordinance 03 of 2024 to the Township Board and send a copy of the proposed ordinance to the County Planning Commission for review and comment. No discussion. Motion carried unanimously.

- c. Proposed ordinance moratorium – Action was taken last meeting to forward the Soil Removal Police Powers Ordinance to the Township Board for approval. Since the PC approved the Transitory Extraction Planned Unit Development and Soil Removal proposed ordinance earlier this meeting the timeline has been met to avoid extending the moratorium due to PC actions. If the Township Board acts on the PC recommendation at their July meeting there will be no need to extend the moratorium.
9. Public Comment – None
 10. Next Regular Meeting – Tuesday, August 13, 2024
 11. MMS J. Waterman, F. Hersha to adjourn. Motion carried. Meeting adjourned at 6:33 p.m.



Memorandum Administration Office

August 6, 2024

TO: Planning Commission
FR: Administration/Planning Office
RE: Torch Lake Township Zoning Ordinance

The Torch Lake Township Planning Commission, at their meeting of June 24, unanimously recommended “approval of Draft Zoning Ordinance to the Township Board.”

On July 15, Torch Lake Township’s Zoning Administrator, Sara Kopriva, submitted the draft zoning ordinance and unapproved Planning Commission minutes to the County. The 180-page draft ordinance is included in your packet.

As the draft ordinance is a complete rewrite, we requested that Ms. Kopriva, her assistant, or a Torch Lake Township Planning Commission member attend our meeting to walk us through the changes and answer questions. At the time of this writing, however, no one from the township has committed to attending.

The current 188 page ordinance is available [on the township’s website](#).

The following motion is presented for your consideration:

That the Antrim County Planning Commission finds no incompatibilities between the Antrim County Master Plan and the Torch Lake Township Zoning Ordinance, and recommends approval by the Torch Lake Township Board.

TORCH LAKE TOWNSHIP
ANTRIM COUNTY, MICHIGAN

Torch Lake Township
Planning Commission Meeting
Community Service Building
Draft Minutes
June 24, 2024

Present: Clarke, Walker, Ellison-Coats, Graves, Merchant, Carleton

Absent:

Others: S. Kopriva

Audience: several (20+)

Recording Secretary: J. Petersen

1. Call to Order Regular Meeting:

Meeting called to order at 7:01

2. Pledge of Allegiance - *Recited*

3. Consideration of Agenda:

M/S to approve agenda as presented; Clarke / Carleton. Vote 6/0

4. Conflict of Interest - *None*

5. Approval of Minutes of April 22, 2024

M/S to approve April 22, 2024 meeting minutes as presented; Merchant / Clarke. Vote 6/0

6. Public Comment on Agenda Items other than Public Hearing - *none*

7. Correspondence

All correspondence received was related to SUP 2024-01 or SUP 2024-02 to be discussed later

8. Unfinished Business - *None*

9. New Business

- a. Public Hearing - Draft Zoning Ordinance -** staff will be available to answer any questions.

Kopriva summarized where the ordinance rewrite stands and why and how it got to this point of completion. Graves Opened public hearing at 7:13pm and called for public comment.

1. Janet Killian spoke
2. Rita Service spoke

M/S to close public hearing Clarke / Merchant; Vote 6/0

M/S to recommend approval of Draft Zoning Ordinance to the Township Board Walker / Carleton. Roll Call Vote: Carleton - Yes, Merchant - Yes, Graves - Yes, Walker - Yes, Clarke - Yes, Ellison-Coats - Yes. passes 6/0.

- b. Public Hearing - SUP 2024-01 Randall Self Storage 05-14-324-044-00**

The applicant Rick Randall made his presentation of SUP 2024-01 which included a verbal and visual presentation by Randy Bishop regarding his expert analysis of the existing environmental conditions of the site. Graves opened public hearing at 8:05 pm and called for public comment.

1. (No name given) spoke
2. Dan Swanson spoke
3. Herb Roth spoke

4. Maureen Lorenz spoke
5. Vicki Fingerroot spoke

M/S to close public hearing; Merchant / Clarke; Vote 6/0

The commissioners discussed the application and decided to consider the application and decide at a later meeting when the applicant has responded to the request for additional details and when the commissioners have had a chance to review the items submitted 6.24.24 at the meeting which include:

1. Screen on north side
2. Fire Department review
3. Landscape plans turned in 6.24.24
4. Additional details on the calculations for lot coverage and impervious area (broken down)
5. All final plans turned in 6.24.24

**This hearing was not formally closed

c. Public Hearing - SUP 2024-02 Rose Short Term Rental 05-01-795-021-00, 2710 US

31. The applicant Chad Rose presented his request SUP 2024-02. The commissioners discussed and asked questions of Rose. Kopriva read Rose's house rules. Rose is asking for a max capacity of 8 guests, with 3 parking places. Restrictions are no fireworks, no camping. Graves opened the public hearing at 8:43pm and asked for public comments. None were given.

Correspondence received was from Pat McLamara (neighbor on US 31) wrote in support of granting the SUP. M/S to close public hearing Clarke / Carleton Vote: 6/0. The commissioners discussed and commented and discussed criteria and standards for approval. M/S to approve SUP 2024-02 Rose 05-01-795-021-00, 2710 US 31. for Short Term Rental as it meets all the standards of the ordinance with the following conditions; 3 parking places, 10pm-7am quiet hours, 8 overnight occupants maximum, no fireworks, no camping and provide a local contact number. Merchant / Carleton; Vote 6/0

c. Master Plan Outline

Kopriva outlined where the plan stands, the community engagement, community input survey etc... - will discuss at length next meeting and make decisions regarding timing and process.

10. On Going Reports

1. **Zoning Administrator Report** - as emailed at beginning of June
2. **PC Representative to ZBA** - No meetings have been needed
3. **TLT Board Representative on PC Report** Merchant stated there was nothing to report

11. Public Comment - *None*

12. Concerns of Commission

- A. **Chair** - congrats to PC for getting Draft Ordinance ready for board approval
- B. **Members** - *nothing*
- C. **Consultant** - *nothing*

13. Adjournment 8:59pm

M/S Clarke no second, vote: 6/0

Next Meeting: 7.22.24; 7pm