

**ARTICLE XIV  
AMENDMENTS AND REZONING**

Section 1401 Authorization

Amendments to this Ordinance may be made as necessary, and shall be made in accordance with the procedures in this Ordinance and the Michigan Zoning Enabling Act of 2006, as amended.

Section 1402 Rezoning

For the purposes of this Article and other applicable Sections of this Ordinance, the term "rezoning" shall be considered an amendment to the Zoning District Map. The procedure for rezoning shall follow the procedure set forth in this Article for Amendments.

Section 1403 Initiation of Amendments

Proposals for text amendments may be initiated by the Township Board, Planning Commission, or any person or persons. Proposals for a zoning district amendment (i.e. a rezoning) may be initiated by the Township Board, Planning Commission, or any person or persons having a property interest in the land sought to be rezoned.

Section 1404 General Procedure

Except as provided in Section 1405, the procedure for proposals by owners of property shall be set forth in this Section 1404.

- (A) Each petition by one (1) or more owners or their agents, to amend the text or map (rezoning) of this Ordinance shall be submitted upon an application of standard form to the Zoning Administrator. A fee as established by the Township Board shall be paid at the time of application. The Zoning Administrator shall transmit the application and other information to the Planning Commission for its consideration and recommendation.
- (B) The Planning Commission shall consider each proposed amendment in terms of the likely effect of such proposal upon the development plans for the community as set forth in the Township Master Plan, as well as in terms of the merits of the individual proposal. The Planning Commission may recommend any additions or modifications to the amendment petition. Following the legally required notice(s) and public hearing requirements of this section, the Planning Commission shall forward a recommendation on the proposed amendment along with a copy of the public hearing minutes to the Township Board and the County Planning Commission.
- (C) Before making a recommendation on any proposed amendments to this Ordinance, the Planning Commission shall conduct a public hearing, with public notice being given by the Township as specified below, in subsections 1404 (D) Published Notice and 1404 (E) Mailed/Delivered Notices. Said notice shall contain the time, place, date and purpose of the hearing, the name of the applicant, a description of the property to be rezoned and

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the requested zoning change or, if a text change, an outline of the proposed amendment and where and when the text of the proposed amendment may be examined.

- (D) Published Notice. Notice shall be given by publication in a newspaper of general circulation in the Township not less than fifteen (15) days before the date of the hearing.
- (E) Mailed/Delivered Notices. Mailed or delivered notice shall be made in accordance with the following:
  - 1. To each railroad, electric, gas, pipeline, and telephone company that registers its name and mailing address with the Township for the purpose of receiving such notice. Said notice shall be made at least fifteen (15) days in advance of the hearing.
  - 2. To each owner of property as listed on the most recent tax roll of all real property located within three hundred (300') feet of the area proposed for a map amendment. An affidavit of the delivery shall be filed with the Planning Commission. Said notice shall be given not less than fifteen (15) days before the date the request will be considered.
  - 3. To each occupant(s) of all structures within three hundred (300') feet of the area proposed for a map amendment. An affidavit of the delivery shall be filed with the Planning Commission. Said notice shall be given not less than fifteen (15) days before the date the request will be considered.
  - 4. To the applicant and/or owner of the property in question.
- (F) Following the Planning Commission's public hearing, the proposed zoning amendment(s), including zoning map(s), shall be submitted by the Planning Commission to the Marquette County Planning Commission for its recommendation. Upon receipt of the Marquette County Planning Commission's recommendation or expiration of thirty (30) days, the Township Board shall review both the County and the Township Planning Commissions' recommendations.
  - 1. The Township Board may hold its own public hearing if it considers it necessary. The Township board shall also grant a hearing on the proposed amendment(s) to any interested property owner who has filed a written request for such a hearing with the Township Clerk. Said request shall be delivered by certified mail. The Planning Commission may be requested to attend the hearing. Notice of the hearing shall be published in a newspaper of general circulation within the Township. The notice shall be published not less than fifteen (15) days prior to the hearing.
  - 2. If the Township Board deems advisable any changes or additions to the amendment(s) recommended by the Planning Commission, it shall refer the changes or additions back to the Planning Commission for a report thereon within thirty (30) days. After receiving the report, the Township Board shall grant a public hearing on the proposed amendment(s) as is specified in Section 1404 General Procedure, (F) 1., above.
- (G) Following a public hearing or review of the Planning Commission's report, the Township Board by majority vote of its membership may adopt or reject the proposed amendment(s) with or without changes. Any proposed added, significant element of regulation

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or proposed added land area to be changed in zoning classification, which did not proceed through the required public hearing process, shall be submitted through the required public hearing process before being considered for further action. A lesser portion (either regulations or land area) of a proposed amendment, which has received full public hearing consideration, may be considered for further action, including deletion without a new public hearing process.

- (H) If no effective date is specified, the amendment(s) will take effect seven (7) days after publication of the notice of adoption (Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, Section 401).
- (I) The amendment(s) shall be filed with the Township Clerk and one (1) notice of adoption shall be published in a newspaper of general circulation within fifteen (15) days after adoption. The notice shall contain:
  - 1. Either a summary of the regulatory effect of the amendment(s), including the geographic area affected, or the text of the amendment(s);
  - 2. The effective date of the amendment(s); and
  - 3. The time and place where a copy of the amendment(s) may be examined.
- (J) An amendment for the purpose of conforming a provision of the Zoning Ordinance to the decree of a court of competent jurisdiction as to any specific land may be adopted by the Township Board and the notice of the adopted amendment published without a hearing or referring the amendments to any other board or agency provided for in this Ordinance.

### Section 1405 Procedure for Petitions to Rezone to Permit the Extraction of Natural Resources

#### (A) Introduction

The following procedure shall apply to applications for rezoning property to permit the extraction of natural resources in accordance with the Michigan Zoning Enabling Act of 2006, as amended, Section 205 [MCL 125.3205(3) et seq. enacted by Act 113, PA 2011 ("Act 113")] with regard to property not situated within the RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning Districts established in this Ordinance. An application to permit the extraction of natural resources on properties that are situated in the RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning Districts shall be governed by Section 720. An application to permit the extraction of natural resources on properties that are not situated in the RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning Districts shall be governed by this Section 1405.

In conformance with Act 113, an application under this Section shall be divided into two parts.

Part (1) addresses whether the applicant has a sufficient property interest in the natural resource, whether valuable natural resources are located on

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the applicant's property, and whether there is a need for the natural resource sought to be extracted. Part (1) shall consist of an administrative proceeding. The Planning Commission shall conduct an initial hearing and make findings and a recommendation to the Township Board.

Part (2) addresses the decision on whether the proposed extractive operation would be appropriate in the Township in the context of whether or not very serious consequences would result from the extraction of the resource. Part (2) shall only be necessary in the event the applicant has satisfied the requirements of Part (1).

#### (B) Findings

As the Michigan Supreme Court determined in *Kyser v Kasson Township*, 486 Mich 514, 518 (2010) "In 1988, there were seven gravel mines operating in the township, and over the following six years, there were seven rezoning applications submitted to the Township Board to allow for additional gravel mining, resulting in both litigation and the establishment of new mining operations. In response, the township took several steps to address its overall mining policy, culminating in the establishment of a gravel mining district in accordance with the ZEA" ("Zoning Enabling Act" for clarification).

The Gravel Mining District in Kasson Township encompasses 3,100 acres, or over five square miles and was adopted as part of the 1995 Master Plan (amended in 2004) and incorporated in the 1997 Zoning Ordinance. The defined Gravel Mining District was intended, and continues to be intended, to protect the Township's stability and quality of life from the threats of *Ad Hoc* rezoning applications and approvals of gravel extraction operations in unplanned locations without notice to surrounding properties, and without consideration of the Township's long-term land-use planning concerns. The Gravel District was also intended to ensure that sufficient land was zoned to satisfy the need for gravel resources for the foreseeable future. Humboldt Township has over 75 square miles (the majority of the township) in zoning districts which permit natural resource extraction.

The Kasson Township's study and approval of its Gravel District were actions directly and critically related to the public health, safety, and welfare in the Township, expressly recognized to be important considerations in Act 113.

Moreover, because the provisions of Act 113 are a part of the broader Zoning Enabling Act, under the rules of statutory construction recognized in *Kyser*, the exception to general rules of zoning and planning, set forth in Act 113, must be construed narrowly, and the applicant has a heavy burden to demonstrate that no very serious consequences will

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result from a change in the planning and zoning established in the Township and relied upon by Township property owners with respect to the established Gravel Mining District.

Act 113 specifies that the standards in *Silva v Ada Township*, 416 Mich. 153 (1982) ("*Silva*") shall be applied in reviewing an application to permit the extraction of natural resources. As dictated by *Silva*, the existing zoning ordinance, including the existing boundaries of the Gravel Zoning District, shall be presumed to be reasonable. Likewise, existing boundaries of the RP-10, RP-20, TP-40 and I Zoning Districts in Humboldt Township's case are also presumed to be reasonable.

While Act 113 establishes a "hybrid" analysis for zoning decision-making, Act 113 remains within the context of land use decision-making that is within the Zoning Enabling Act as a whole. Accordingly, in any decision to rezone additional property into the RP-10, RP-20, TP-40 or I Zoning District(s), the Township must consider the decision's effect not only upon a specific project or property, but also upon the impact upon the surrounding area, future planning and all projects in the Township.

#### (C) Definitions

1. As used in this Section, the phrase "Need for the Natural Resources," shall represent the phrase included in Michigan Zoning Enabling Act of 2006, as amended, Section 205 [MCL 125.3205(4) et seq. enacted by Act 113, PA 2011]: "Need for the Natural Resources by the person or in the market served by the person". "Need for the Natural Resources" shall mean a demonstrable need for a commercially meaningful quantity of the natural resources proposed to be excavated on the applicant's property. Demonstrating such a need shall require the applicant to show either of the following in relation to the natural resources on applicant's property: a commercial need for the natural resources to satisfy a current and ongoing requirement by an active business operated principally by the applicant using the natural resources in the production of a final product for sale that is different than the natural resources; or a present commercial need by purchasers of such natural resources from the applicant's property.

For purposes of this definition of Need for the Natural Resources:

- a. "commercial need" in relation to applicant's property will only be deemed to exist to the extent, if any, that the need for the natural resources cannot otherwise be met within the commercial market.
- b. "commercially meaningful quantity" shall mean that quantity, taking into consideration the quality and type of natural resources, that a person who is experienced and knowledgeable in the industry would require as a condition to expending the time and money necessary to commence and operate a mining enterprise that is expected to be profitable for a sustained

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period of time.

- c. “commercial market” means that geographic area within which there would be a commercial demand for the natural resources from the applicant’s property, considering factors including, but not limited to: the transportation expenses and other factors relevant to cost; and the actual or available alternative supply of the natural resources from active mining sites and vacant land classified to permit mining within the Township’s RP-10, RP-20, TP-40 and I Zoning Districts, as well as other active mines, quarries, and vacant land classified for such purpose that could provide an alternative supply to meet such demand in whole or part.

2. As used in this Section, the terms “natural resource” and “natural resources” shall mean and include “gravel,” as well as other minerals.

3. As used in this Section, the phrase “sufficiency of applicant’s property interest” shall mean a requirement that, with regard to the land which is the subject of the application, applicant has, as a matter of substance, a “possessory property interest” in the land, as that term is understood in Michigan real property law, including, but not limited to a fee simple interest. An option to purchase a possessory interest shall not be a sufficient property interest.

#### (D) Administrative Procedure.

1. The process of review for a request to permit the extraction of natural resources on properties that are not situated in the RP-10, RP-20, TP-40 or I Zoning District(s) shall be commenced by the applicant filing an application for an administrative determination with regard to the following, consistent with the terms defined above:

- a. The sufficiency of the applicant’s property interest; and
- b. A determination as to whether there are “valuable” natural resources on the applicant’s property, that is, whether the applicant can receive revenue and reasonably expects to operate at a profit if the natural resources are extracted, and
- c. The Need for the Natural Resources. This determination shall include the duration of the need.

The application submitted by the applicant shall provide written documentation and evidence describing in detail and making the requisite demonstration with regard to each of the three determinations. The Planning Commission shall conduct an administrative hearing on the application, which shall be a public hearing. Prior to the hearing, the Zoning Administrator shall review the application and

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documentation submitted in support of the application, and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The hearing on the issues specified in subparagraphs a. through c., above, shall not be noticed until the applicant has cured the deficiencies, if any, found to exist in accordance with this procedure. Public notice of the hearing shall be provided in conformance with Section 1404.

2. At the hearing the applicant shall have the initial burden of showing:
  - a. The sufficiency of the applicant's property interest; and
  - b. That the natural resources are "valuable," that is the petitioner can receive revenue and reasonably expects to operate at a profit if the natural resources are extracted; and
  - c. The Need for the Natural Resources. This determination shall include the duration of the need.
3. The hearing shall begin with an introduction by the Planning Commission chairperson, or a person designated by the chairperson. The applicant shall then be given the opportunity to make the showings required in subsection 2., above. At the completion of the applicant's presentation, the Township Zoning Administrator and/or Township Planner, any expert retained by the Township or other interested person and all interested citizens may address and offer evidence or argument on these issues.
4. Following completion of the public hearing, the Planning Commission shall make findings and a recommendation on whether the applicant has made a sufficient showing on each of the determinations in subsection 2., above.
5. The Planning Commission shall forward its findings and recommendation to the Township Board which shall, taking into consideration the Planning Commission's recommendation, then make its own findings and conclusions on each of the determinations in subsection 2., above. The Township Board may conduct an additional public hearing at its discretion. If the Township Board does schedule an additional public hearing, notice shall proceed in conformance with Section 1404.
6. Appeal. With regard to all findings and conclusions made by the Township Board, an aggrieved applicant or other interested party may appeal to the circuit court.

#### (E) Legislative Procedure.

1. Standards for Review  
The following standards shall be applied for the purpose of determining whether the applicant has proven that "no very serious consequences" would result from

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the applicant's proposed extraction, by mining of natural resources, to the extent each is relevant:

- a. The relationship of applicant's proposed extraction and associated activities with existing land uses; and
- b. The impact of applicant's proposed extraction and associated activities on existing land uses in the vicinity of the property; and
- c. The impact of applicant's proposed extraction and associated activities on property values in the vicinity of the property and along the proposed hauling route serving the property; and
- d. The impact of applicant's proposed extraction and associated activities on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property; and
- e. The impact of applicant's proposed extraction and associated activities on identifiable health, safety, and welfare interests in the Township. For purposes of this provision, "health, safety, and welfare" shall have the meaning attributed to such terms by the courts, e.g., *Berman v Parker*, 348 U.S. 26 (1954); *Village of Belle Terre v Boraas*, 416 US 1 (1974), *Kyser* (majority opinion), *Cady v City of Detroit*, 289 Mich. 499 (1939), and *Hess v Charter Township of West Bloomfield*, 439 Mich. 550 (1992), including the manner in which such meaning has been expressed by the Township legislative body in the Master Plan and Zoning Ordinance, read as a whole, including the crucial and material stability and quality of life achieved by establishing the fixed boundaries of the Gravel Zoning District [RP-10, RP-20, TP-40 and I Zoning Districts in Humboldt Township's case] (e.g. dissenting opinion of Judge (later Justice) Davis in the Court of Appeals opinion in *Kyser v Kasson Township*, 278 Mich.App. 743, 773 [referenced with approval by the Michigan Supreme Court in *Kyser*, 486 Mich. 514, 519 (2010)]); and
- f. The overall public interest in the extraction of the specific natural resources on the property; and
- g. Any other standard from *Silva*.

#### 2. Burden of Proof

Considering that the boundaries of the RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production and I, Industrial Zoning Districts are presumed reasonable, as dictated by *Silva*, at 162, and taking into consideration that zoning regulations seek to serve the interests of the community as a whole, *Silva*, at 158, the applicant shall have the burden of overcoming the presumption of validity of the boundaries of the RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production and I, Industrial Zoning Districts, including the burden of proving that, if approved, the applicant's



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proposed Extractive Operation would result in “no very serious consequences,” as such standard is defined above.

3. Review Process – Planning Commission
  - a. The applicant shall submit an application to amend a RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning District to permit natural resource extraction on the applicant's property if the Township Board has found and concluded under Section 1405, (D) Administrative Procedure, that the applicant has shown all of the following in the administrative procedure provided for above: a. The sufficiency of applicant's property interest; and b. That the resources sought to be extracted are “valuable,” that is the petitioner can receive revenue and reasonably expects to operate at a profit if the natural resources are extracted and c. The Need for the Natural Resources.
  - b. The application submitted by the applicant shall provide written documentation and evidence describing in detail and making the requisite demonstration with regard to each of the criteria on the issue of whether “no very serious consequence” shall result in relation to the property and haul route, and in the community, as set forth in MCL 125.3205(5) and as defined above. Prior to conducting a public hearing, the Zoning Administrator shall review the petition and documentation submitted in support of the application, and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The public hearing on the application to amend a RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning District shall not be noticed until the applicant has cured the deficiencies, if any, found to exist in accordance with this procedure. Notice shall be given in accordance with Section 1404.
  - c. The Planning Commission shall conduct a public hearing on the application. The hearing shall begin with an introduction by the Planning Commission chairperson, or a person designated by the chairperson. The applicant shall then be given the opportunity to make the showings required in this Subsection (E). At the completion of the applicant's presentation, the Township Zoning Administrator and/or the Township Planner, any expert retained by the Township or other interested person and all interested citizens may address these issues.
  - d. Following completion of the public hearing, the Planning Commission shall make findings and a recommendation on whether the applicant has made a sufficient showing on whether there would be “no very serious consequences” as a result of the proposed natural resources extraction operation, as defined in this Section.

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- e. Following all of the hearing procedures and requirements specified above, the Planning Commission shall forward its findings and recommendation on whether to amend the boundaries of a RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning District to include the applicant's property in accordance with Section 1404, (F).
4. Review Process – Review by County Planning and Township Board  
The proceedings following the findings and recommendation of the Planning Commission shall be in accordance with Section 1404 of this Ordinance, subsections (F) through (I), above. As part of the Township Board's action of adopting or rejecting the proposed amendment of the boundaries of a RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning Districts (with or without changes as provided in subsection 1404, (G), if the Board adopts the proposed amendment, the Board may consider that "extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses, and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations." *Silva*, at 160-161. Thus, the Board may take into consideration its findings with regard to the matter of "Need for the Natural Resources" and/or "public interest" with the view that, if reasonably feasible, a finite time period in which the applicant shall have a vested right to undertake the extractive operation shall be established, and following such time period, applicant shall be required to demonstrate a new "Need for the Natural Resources" and/or "public interest" as a condition to being entitled to continue the use. If such a time period is included in the Board's adoption of an amendment to a RP-10, Resource Production Ten, RP-20, Resource Production Twenty, TP-40, Timber Production or I, Industrial Zoning District(s) with regard to the property at issue, the property owner shall not be authorized to make any improvements on the property and commence any operation unless and until the owner of the property files an affidavit with the Register of Deeds attaching the adoption action of the Board under this Section, including any such time limitation. At the conclusion of the time limitation established for mining, if any, as such time may be extended consistent with this provision, the Township may rezone the property to a new reasonable classification. In such event, after giving the property owner a right to a hearing before the Township Board, the Board may order the stoppage of all mining activities and a reclamation of the property.