

TOWN OF PLEASANT VALLEY
Eau Claire County, Wisconsin

ORDINANCE NO: 12-15-05
CHAPTER 4 - BUSINESS REGULATIONS
ARTICLE - NON-METALLIC MINING

THE TOWN BOARD OF THE TOWN OF PLEASANT VALLEY DOES
ORDAIN AS FOLLOWS:

The following Article of the Code of Ordinances of the Town of Pleasant Valley is hereby created to read as follows:

4.1 Finding, Purpose and Authority

A. Findings. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse results. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations are undertaken. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured. Truck traffic from such operations can also generate off-site impacts including safety concerns to children and other residents. While certain aspects of mining operations are subject to state or federal regulation, there is no comprehensive state or federal regulation of nonmetallic mining operations. Many aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.

B. Purpose. The purpose of this Article is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Pleasant Valley.

C. Authority. This Chapter is adopted by the powers granted to the Town by the Town's adoption of Village powers under Wis. Stat. 60.10 and 61.34, its authority under 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Chapter made

after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal or recreation.

4.2 Applicability and Scope

A. This Article shall apply to all nonmetallic mining operations and mine sites within the Town except as set forth in Sub Section 4.2(B)

B. This Article shall not apply to the following nonmetallic mining operations:

1. Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

2. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.

3. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

4. Excavations for building construction purposes conducted on the building site.

5. Nonmetallic mining at nonmetallic mining sites where less than ten acres of total affected acreage occurs over the life of the mine.

6. Removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

4.3 Definitions

A. "Clerk" means the Town Clerk.

B. "Adjoining landowner" means any property within 2 mile of the proposed mine site regardless of whether there is a residence or structure on the property.

C. "Board" means the Town Board of the Town.

D. "Landowner" means every person who has title to land in fee simple or who is a purchaser in a land contract for the land.

E. A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, crushing, or screening facilities, private roads or haulage ways associated with nonmetallic mining operation; and all lands contiguous to the nonmetallic mining operation under common ownership or control of the owner or operator.

F. "Mining Operation" means operations or activities for the extraction from the earth of mineral aggregates and nonmetallic minerals and related operations or activities, including, but not limited to, excavation, grading, or

dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes including, but not limited to, stockpiling, crushing, screening, scalping, dewatering, and blending. It does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic mining minerals such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

G. "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

H. "Nonmetallic mining" means any or all of the following:

1. Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.
2. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, washing, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
3. Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
4. Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.
5. Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.
6. Disposal of waste materials.
7. Reclamation of the extraction site.

I. "Operator" means any person who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

J. "Operator's license" or "license" means the license required of mining operators in this Article to undertake nonmetallic mining in the Town.

K. "Town" means the Town of Pleasant Valley.

L. "Waste Material" means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

4.4 License Required

A. License Requirement. No person shall operate a nonmetallic mine within the Town without first obtaining an operator's license from the Board.

B. License Term

1. Except for the first year of operation under this Article, an operator's license shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Article, the operator's license will extend from the date of issuance until the second June 30th after issuance of the initial license.

2. An operator's license may be renewed as set forth in Section 4.8, except that a temporary operator's license may not be renewed.

3. License Amendment. If the Town has issued an operator's license, the operator may request an amendment to that license during the license term, using the same process as the original license application.

4. License Transfer. An operator's license may not be transferred. Any proposed successor in interest to a licensee must apply for its own license.

5. License Revocation. An operator's license may be revoked under the procedures in Section 4.9

C. Temporary Operator Licenses. The Board may grant a temporary non-renewable operator's license not to exceed six months, for mining operations within the scope of this Article that were in existence as of the effective date of this Article, provided that the operator certifies that its operation will comply with the minimum standards in Section 4.7 and that the operator submits a complete application under Section 4.5 within 60 days of issuance of the temporary license.

4.5 Procedures to Apply For a License to Mine

A. Application Form. The Application Form for a license to mine in the Town shall be available from the Clerk. In lieu of submitting an application on the Town form, an applicant may initially submit a complete copy of any conditional use permit application submitted to Eau Claire County for the mine. If additional information required by this ordinance is necessary for processing, the Clerk shall so notify the applicant.

B. Application Submittal. The applicant shall submit six (6) copies on paper, and one copy in an electronic format identified by the Clerk, of the Application Form and all required documentation required under Section 4.6 to the Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Article in amounts set forth in the Fee, License and Forfeiture Schedule. The fees shall be paid to "Treasurer, Town of Pleasant Valley." The Application Form shall be signed by the operator and by the landowner. At all times, the application, any additional or supplemental material, and any retained expert reports shall be public records as described in sections 19.35 (1) (a) and (am), Wisconsin Statutes.

C. Initial Review.

1. Preliminary Review. The Town Board shall conduct initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Clerk shall schedule the application for a hearing under Sub Section 4.5(D).

2. Additional Information. If the Town Board determines that application is incomplete, it may request the applicant to submit additional information.

3. Additional fees. If the Town Board determines that additional expertise is required, the Board shall authorize retaining the services of an engineering firm or other qualified person or persons with appropriate expertise to advise the Board. The Board may determine that some or all of the retained expert's fees shall be charged to the applicant as an administrative fee. Retained expert fees for general advice or for education of the Board cannot be part of the administrative fee, but any services specific to an application can be charged to that applicant. The Clerk shall give written notice to the applicant of the additional administrative fee to be charged to cover the cost of the services of any such retained expert. The additional fee shall be paid before review of the additional information is undertaken.

4. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall advise the Board whether the application meets the requirements of this Article.

D. Decision by the Board.

1. Notice and Hearing. Once the application is complete and any report by a retained expert has been completed and filed with the Clerk, the Clerk shall place a public hearing for the application for a license under this ordinance on the agenda for a regular meeting of the Board. If a special meeting is requested by the applicant, the applicant shall pay the costs incurred for the special meeting. The Clerk shall post public notice of the hearing, shall publish notice of the hearing in the Eau Claire Leader-Telegram, and shall mail notice of the hearing to all owners of land abutting the proposed site, as shown on the most recent tax roll, at least fifteen (15) days prior to the date scheduled for the hearing. At the public hearing, the Board shall take information from the applicant and the retained expert and shall hear public comment on the proposed operator's license and conditional use permit.

2. Board Decision. Following the public hearing, the Board may take immediate action or set a date within 45 days for the meeting at which time they shall make a final decision on the operator's license. The Board shall review the complete application, the retained expert's report, and public

comments made at the public hearing. The Board shall grant the license if it determines that the operation of the mine will be consistent with the Minimum Standards Sec. 4.7 and the purposes of this Article. If the Board denies the license, the applicant may request a hearing under the provisions of Sub Section 4.9(C).

E. Special Exception Procedure.

1. Any special exception requested by the applicant in the initial application shall be processed with the application as set forth in this Section 4.5.

2. If, at some later date, a licensed operator requests a special exception, it shall apply for the same in writing, with sufficient information concerning the reasons for the request and the anticipated effects of granting the special exception. The procedure set forth in Sub Section 4.5(D) shall be followed to process the application.

F. Operator's Agreement. Either in conjunction with the application process or at some later time, the Town and an Operator may enter into an agreement which will permit operation of the mine in a manner which is consistent with all provisions of this ordinance. Before such an agreement can be executed, the procedure set forth in Section 4.5 shall be followed and the Board must determine that the agreement would limit the effects of the operation on the Town, its residents, and neighbors of the site at least as much as strict enforcement of this ordinance would limit that impact.

4.6 License Application. Except as excused by Sub Section 4.5(A), all applicants for a mining license shall submit the following information:

A. Ownership Information:

1. The name, addresses, phone number(s), and e-mail address of the operator of the nonmetallic mining operation. If the applicant is a business organization, the requested information shall be provided about the home office of the organization, about a corporate officer responsible for oversight of the operation, and about a local responsible contact person.

2. The name, addresses, phone number(s), and e-mail address of all owners, vendors, or lessors of the land on which the mining operation is proposed.

3. If the operation is proposed to be on leased land, a copy of a fully executed lease between the landowner and the operator who will engage in mining operations on the proposed site.

B. Site Information and Maps. Provided all legends on the map remain clear and visible, required mapping information may be combined on one or more maps.

1. A survey map of the site prepared and certified by a Registered Land Surveyor which also shows all parcel identification numbers of land

within the site.

2. An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.

3. A topographic map of the site extending 1/2 mile beyond the site boundaries at contour intervals no greater than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads shown on the map.

4. A map showing the location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

5. A map on which the all residential, agricultural and municipal wells within 2 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.

6. A map showing the location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the site.

7. A map showing the distribution, depth and type of topsoil on the site as well as the geological composition and the dimensions of the nonmetallic deposit to be extracted.

8. A map identifying the location of all other non-contiguous sites within the Town and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.

C. Operation Plan

1. Dates of the planned commencement and cessation of the operation.

2. Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

3. Estimated volume of material to be extracted over the life of the mine and for the next calendar year.

4. A map showing the location of road access points and the proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.

5. Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site.

6. A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.

7. A listing of any hazardous materials, including fuel supplies that will be stored on site and a description of measures to be used for securing and

storing these materials.

8. A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.

D. Information Demonstrating Compliance with Minimum Standards.

1. The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 4.7.

2. For mining operations commenced after the effective date of this Article, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water within 2 miles of the site.

E. Special Exceptions. The applicant can request a special exception from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not be adversely affected thereby.

4.7 Minimum Standards of Operation. The Board may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met:

A. General Standards.

1. The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other equally effective measures.

2. The operator shall apply for and be granted such driveway permits as shall be used for access to the site.

3. The operator shall demonstrate compliance with all of the other provisions of this Article.

4. The operator shall have obtained a blasting permit from the Town for any blasting operations.

5. The operator shall demonstrate that all other applicable federal, state, county and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

6. The operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town.

B. Standards Regarding Off-Site Effects.

1. The operator shall undertake all measures necessary to control

surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under Wisconsin Administrative Code Articles NR 216 and NR 151 as applicable.

2. In the event that the mine site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.

3. The operator shall provide a wooded or natural buffer area of a minimum of 75 feet wide along bordering property lines and public roadways.

4. The operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, vegetation, additional setbacks or other effective measures.

5. The operator shall limit normal hours of operations to 12 hours a day Monday through Friday during daylight hours and not later than 6:00 p.m. and on Saturdays to no more than 10 hours from 8:00 a.m. to 6:00 p.m. to minimize off-site impacts to residents. Equipment maintenance may take place Monday through Friday until 8:00 p.m. The operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.

6. The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken to or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest. In the event of conflicts between hauling operations and school bus operations, the Board may impose reasonable restrictions on the hauling operations to protect the operation of school busses and the children waiting for, entering, or disembarking from the busses. Such restrictions shall be effective immediately, but may be appealed to the Board.

7. The operator shall limit night lighting on site to that which is minimally necessary for security and it shall be shielded from illuminating off-site areas. There shall be no illumination of required buffer areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

8. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code NR 415.075.

9. The operator shall control off-site noise levels to the maximum extent practicable. Noise generated by mining operations shall not cause the average noise level for any one-half hour between the hours of 6 a.m. and 8 p.m. to exceed 60 dbA or to exceed 50 dbA between 9 p.m. and 7 a.m. as

measured within 100 feet of any residential dwelling nor shall it cause noise that exceeds 80 dbA at the site's property lines.

10. Intermittent or impact noise caused by operation of the mine, including blasting, that is deemed by the Health Department or Town Board to be creating a public nuisance to area residents, shall be abated.

11. At no time shall more than 40 acres of any mine site be without vegetative cover, excluding the office, loading and parking areas.

C. Standards Regarding Groundwater and Surface Water.

1. Effects on Groundwater Quality. Mining Operations shall not cause groundwater quality to fall below the standards in Wis. Admin. Code Ch. NR 140.

2. The operator shall install at least one monitoring well, as defined and in Wis. Admin. Code ch. NR 141.

(a.) Mining operations shall not extract materials at a depth below any point that is 5 feet above the groundwater table.

(b.) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 2 mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

3. Effects on Surface Water. The operator shall comply with all requirements of Eau Claire County and the State of Wisconsin with respect to the effects of mining operations on surface waters.

D. Hazardous materials.

1. All hazardous materials shall be stored, used and disposed of in accordance with applicable state and federal law.

2. The operator shall not dispose of waste materials containing any hazardous chemicals on the site or elsewhere in the Town except at a facility licensed to store or dispose of said materials

3. The operator shall have a plan for responding to spills of any hazardous materials on the site.

E. Special Exceptions.

1. The operator can request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Article can be achieved through by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.

2. The Board can impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health safety and welfare will not be adequately protected without the imposition of additional measures.

4.8 Annual Report and License Renewal

A. Annual Report.

1. No later than March 1 of each calendar year, the operator shall

submit an annual report to the Board for all active and intermittent mining sites for which the operator has a license in the Town.

2. The annual report and shall include the following information:
 - (a.) An identification of the operator and location of the mining site.
 - (b.) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area noting the number of acres for each type.
 - (c.) A description of activities and operations on the site for the previous calendar year.
 - (d.) A description of activities and operations on the site anticipated for the following calendar year.
 - (e.) A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Article. The report shall also include any groundwater, surface water and other monitoring results required by this Ordinance.
 - (f.) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

B. License Renewal.

1. The operator shall make written request to the Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Article in amounts set forth in Town's Municipal Code. If the Clerk has received no complaints concerning the mine operation during the preceding 12 months, and has no substantive information that the operator has, in the preceding twelve months, violated any Town or County ordinance in the process of miner operation, the Clerk may require an abbreviated renewal application and may refund the base administrative fee if no public hearing is held before the Board on the question of license renewal.

2. The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of Sub Section 4.8(A).

3. The Town Board shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Board.

4. The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case the Town Board may be

assigned to inspect the site. If no additional information or expertise is deemed necessary the Board shall schedule the application for a decision under Sub section 4.8(B)7.

5. Additional fees. If the Town Board determines that additional expertise is required, the Board shall authorize hiring an engineer or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.

6. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Board on whether the renewal application meets the requirements of this Article. The Town Chair shall place the request on the agenda of the next regular meeting or a special meeting of the Board prior to the expiration of the license.

7. The Board may grant the request for renewal if it finds:
(a.) there have been no material violations of the Article or the license which have not been appropriately remedied, and
(b.) The operator has not received multiple or recurring citations or orders for violations of the operator's license or this Article.
(c.) All applicable fees have been paid and financial responsibility requirements have been met.

8. If the Board denies the request for renewal, the Board shall notify the operator and provide the operator with an opportunity for a hearing.

4.9 Inspection, Enforcement, Procedures and Penalties

A. Inspection. The Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Article upon showing proper identification, and upon reasonable notice.

B. Violations. The following are violations under this Article:

1. Engaging in nonmetallic mining without an operator's license granted by the Board.
2. Failure to comply with the minimum standards and other requirements of this Article.
3. Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
4. Failure to timely file the annual operational report under Section 4.8

5. Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 4.10 or other order issued by the Town.

C. Hearings

1. Any person affected by a notice and order issued in connection with the enforcement of this Article under Sub section 4.9(D) or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Board, provided such person shall file with the Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served on the applicant or within 30 days of the denial of an application for a renewal. Upon receipt of the petition, the Clerk shall set a time and place for a hearing before the Board and shall give the petitioner written notice thereof.

2. After the hearing, the Board by a majority vote, shall make findings as to whether the provisions of this Article have been complied with, and shall sustain, modify or withdraw the notice under Sub section 4.9(D) or grant or deny the license or license renewal, and the petitioner shall be notified within ten days in writing of such findings.

3. The proceedings of the hearing, including detailed findings of fact and conclusions of law, and the decision of the Board shall be in writing and entered as a matter of public record in the office of the Clerk. Such record shall also include a copy of every notice and order issued in connection with the case. In addition, the Board may employ a person capable of producing a verbatim transcript of the proceeding.

4. Appeal. A person aggrieved by any decision of the Board made under this Article, may, within 30 days after the filing of the decision in the office of the Clerk, commence an action seeking the remedy available by certiorari. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

D. Remedies. The Board may take any appropriate action or proceeding against any person in violation of this Article, including the following:

1. Issue a stop work order.

2. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
 3. Issue a citation in accord with the Town's citation ordinance.
 4. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Sub Section 4.9(F) and injunctive relief.
 5. Suspend or revoke the operator's license under Sub Section 4.9(E).
- E. License Suspension or Revocation. After giving notice and a hearing, the Town Board may be suspend or revoke an operator's license for a violation under Sub Section 4.9(B).
- F. Penalties.
1. Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less that \$100 per violation nor more than \$5000 per violation and be subject to injunctive relief. Each day a violation exists is a separate violation.
 2. Any person or entity adjudicated to be in violation of this Article shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.
- G. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

4.10 Financial Assurance

- A. Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:
1. Road repair: An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site.
 2. Water Supply: An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within two miles of the site or such other area shown to be affected by the operator's operations.
- B. The form of financial assurance made to the Town shall be that form prescribed by the Board and may include performance bonds, irrevocable letters of credit or other measures.
- C. In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.
- D. The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

4.11 Damages to Private Water Supply

A. A property owner who owns a well within 2 miles of the mine site may seek remedies under Sub Sections 4.11(B-E) for any of the following damages to private water supply:

1. A preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.

2. A substantial adverse effect on the quantity or quality of water from a private well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.

3. A lowering of surface waters which serve as a source of water for personal, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.

B. Any property owner under Sub Section 4.11(A) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine operator of the occurrence of the event under Sub Section 4.11(A) explaining the nature and extent of the problem.

C. Within 24 hours of receipt of such notice under Sub Section 4.11(B), the Town may use funds provided under Section 4.10 to provide an adequate interim water supply. The Town shall also use funds under Section 4.10 to indemnify the Town for any claims filed under Wis. Stat. 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under Sub Section 4.11(D).

D. Within 20 days of receipt of notice under Sub Section 4.11(B), the mine operator shall provide to the property owner and to the Town a report that demonstrates that the damage to the property owner was not attributable to the mining operation or to present a plan for a permanent alternative water supply to be paid by the operator.

E. The Town shall in consultation with the property owner review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.

F. A property owner who owns a well beyond 2 miles of the mine site may apply to the Town for use of funds under Sub Sections 4.10 (A-D) to remedy damages to a private water supply identified in Sub Section 4.11(A), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in Sub Sections 4.11(B-D).

G. Prior to commencing operations, the operator may test all wells within 2 miles of the site to determine water quality and flow levels. All testing must be done by a laboratory approved by the State of Wisconsin or an organization selected by the applicant and acceptable to the owner or resident and the Town. Reasonable and reasonably related costs of such independent testing shall be the sole responsibility of the applicant. Failure to test a well constitutes a waiver of the right to assert in any proceeding before the Town Board that the water from untested well was contaminated, unhealthy, or distasteful, or that flow rates were inadequate, prior to the commencement of operations. A landowner who does not permit the operator to test his or her well or wells has waived his or her right to receive funds or other assistance administered under this section.

4.12 PROPERTY VALUE GUARANTY. The purpose of this section is to protect the defined property owners from loss in real estate value because the Town has issued a license under this ordinance.

A. Prior to the initial issuance of a license under this ordinance, the assessed value and fair market value as of January 1 of the year of the issuance of the license of every quarter-quarter or smaller parcel of land, any part of which is one mile or less from any part of the mine site shall be determined and recorded.

B. Determination of Fair Market Value.

1. An owner desiring to sell any such property shall notify the Town of that fact not later than the 20th anniversary of the initial grant of permit under this ordinance by the Town Board for the mine closest to that property.

2. The owner and licensee shall then agree on an appraiser who is licensed as a real estate appraiser in Wisconsin.

3. In the event licensee and the owner cannot agree on an appraiser, the owner shall select a bank or credit union in Eau Claire County, with whom the owner does not do business, to provide the name of an appraiser it regularly employs to do appraisals.

4. The appraiser selected pursuant to 2. or 3. above shall provide applicant and the owner with an appraisal of the fair market value of the property assuming the non-metallic mine did not exist.

5. The licensee shall pay for the appraisal.

C. Sale of Property.

1. The owner shall then enter into a listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude licensee as a potential buyer so that if licensee purchases the property, no commission shall be due.

2. Before accepting any offer of less than the Fair Market Value, the owner shall give three business days notice by personal delivery of a copy of the

offer to license's agent named in the license application. If the licensee objects in writing within two (2) business days of receipt of the offer, the owner shall not accept such offer.

3. If the owner sells the property for less than the Fair Market Value, licensee shall pay the owner the difference between the selling price and the Fair Market Value less the realtor's commission that would have been payable on that difference. The licensee shall make the payment within 30 days of the recording of the conveyance of the property.

4. If the property is not sold within 180 days of the date of the listing contract, licensee shall immediately purchase the property for the Fair Market Value less the realtor's commission that would have been paid if sold under the listing contract.

D. Applicability.

1. The Guaranty shall apply only once for any property identified in Sub Section 4.12 A, above.

2. Properties do not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third party by a transaction which is not considered an arms length transaction (such as a sale or gift to a relative).

4.13 Severability, Interpretation, and Abrogation

A. Severability.

1. Should any section, clause, provision or portion of this Article be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Article shall remain in full force and effect.

2. If any application of this Article to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

B. The provisions of this Article shall be liberally construed in favor of the Town and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town.

C. This Article is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Article.

4.14 Effective date.

This ordinance shall take effect upon passage and publication by law.
Passed this 8th day of October, 2012.

Town Board, Town of Pleasant Valley

Dan Hanson, Town Chairman

Dan Green, Town Supervisor

Douglas Nelson, Town Supervisor

Attested _____
Dale Welke, Clerk