

ORDINANCE No. 2011-03

**AN ORDINANCE ESTABLISHING A MORATORIUM ON EXPANSION AND
CREATION OF NEW NONMETALLIC MINING OPERATIONS**

The Board of Supervisors of the Town of Lucas, Dunn County, Wisconsin, do ordain as follows:

SECTION I. TITLE.

The full title of this Ordinance is "An Ordinance Establishing a Moratorium on Expansion and Creation of New Nonmetallic Mining Operations Within the Town of Lucas".

SECTION II. AUTHORITY.

The Town of Lucas Board of Supervisors has the specific authority:

- (1) To engage in proper planning including, but not limited to, consideration and adoption of amendments to the Town of Lucas Comprehensive Plan, pursuant to Sec. 66.1001, Wis. Stats.; and
- (2) To have the specific authority granted pursuant to Secs. 60.10(2)(c), 60.22 and 60.23, Wis. Stats., including, but not limited to, village powers.

SECTION III. GENERAL PURPOSE.

The Town of Lucas Board of Supervisors finds that substantial areas exist in which the existing planning and regulatory provisions in the Town of Lucas may be inadequate for the special environmental, public welfare, safety, transportation and farmland preservation concerns created by nonmetallic mining operations. Of particular concern is the consistency of such operations with the provisions of the Town of Lucas Comprehensive Plan. A temporary moratorium on the expansion of existing or creation of new nonmetallic mining operations is deemed necessary to provide the Town of Lucas with an adequate opportunity to examine all existing Town ordinances and Comprehensive Plan provisions regarding nonmetallic mining activities, and determine the regulatory circumstances under which these activities may be permitted or limited in the Town of Lucas. The Town of Lucas Board of Supervisors notes that federal and state courts have upheld the right of local governments to impose temporary moratoriums to properly effectuate planning and regulatory study and development. The purpose of this moratorium is to allow the Town of Lucas adequate time to study the possible impacts that nonmetallic mining operations

and related processing facilities may have on the health, safety, welfare and planning protections of the residents of the Town of Lucas, including, but not limited to:

- (1) Air quality and water quality concerns;
- (2) Impacts to and the adequacy of infrastructure of the Town, property values and the local economy;
- (3) To determine the advisability of amending the Town of Lucas Comprehensive Plan; and
- (4) To review and consider amending or adopting, pursuant to police powers conferred on the Town, regulatory and/or licensing ordinances so as to effectively regulate the impacts of nonmetallic mining activities and related processing plants in the Town of Lucas, including the new for developer agreements and reclamation plans.

SECTION IV. MORATORIUM IMPOSED.

The Town of Lucas Board of Supervisors hereby prohibits the expansion of any existing nonmetallic mining operation and related facilities beyond its present legally permitted physical dimensions as of the date of this Ordinance, and further prohibits the creation of any new nonmetallic mining operations and related facilities in the Town of Lucas during the pendency of this moratorium. Further, there is hereby established a temporary stay on the acceptance, review, and approval by Town officials, staff, and/or consultants of any applications for permits of any type for nonmetallic mining operations after the effective date of this Ordinance until the period of moratorium expires. Exempt from the provisions of this moratorium are existing state or county-owned borrow pit sites used exclusively for public purposes, with aggregate not being sold for profit.

SECTION V. DURATION OF MORATORIUM.

This Ordinance shall be effective for the period of not longer than one year following the date of adoption of this Ordinance by the Town Board, unless recinded or extended sooner by Town Board action.

SECTION VI. STUDY AND ACTION GENERALLY DURING THE MORATORIUM PERIOD.

During the moratorium imposed by this Ordinance, the Town of Lucas Plan Commission shall study and analyze the impacts of nonmetallic mining activities and shall make final recommendations to the Town Board. The Plan Commission shall make such recommendations to the Town Board no later than sixty (60) days prior to the end of the moratorium. The Plan Commission shall make reports to the Town Board as directed by the Town Board; the Plan Commission and Town Board may engage in joint planning meetings during this period. The Plan Commission shall be charged with researching the issues associated with nonmetallic mining operations and making recommendations to the Town Board regarding regulatory and police powers necessary to protect the public health, safety and welfare and to responsibly manage new,

existing and/or proposed nonmetallic mining operations. Issues under consideration by the Plan Commission include, but are not limited to:

- (1) Regulatory structures including licensing, blasting, bonding, infrastructure protection, groundwater safeguards, reclamation, and public safety ordinances and developer agreements;
- (2) Environmental impacts and health concerns;
- (3) Impacts on Town infrastructure; and
- (4) Fiscal impacts of such activities on the Town.

SECTION VII. DEFINITIONS.

The following definitions shall be applicable in this Ordinance:

- (1) ***Nonmetallic Minerals.*** A product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material, and includes, but is not limited to, rock, sand, stone, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- (2) ***Nonmetallic Mining.***
 - a. 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, dredging, crushing and washing of such materials.
 - b. 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 minerals transferred from off-site.
 - c. Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
 - d. Stockpiling of nonmetallic products for sale or use of off-site and stockpiling of waste materials.
 - e. Transport of extracted nonmetallic materials, finished products or waste materials to or from the extraction site.
 - f. Disposal of waste materials as defined in this Ordinance.
 - g. Reclamation of extraction sites.
- (3) ***Physical Dimensions.*** The external footprint of an existing mine site, quarry, pit, or other excavation areas within which nonmetallic mining or processing operations are occurring as of the effective date of this Ordinance.
- (4) ***Site or Mine Site.*** Land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the land owner or any agent or lessee of the land owner, including all land on which is or will be located any structures, equipment, storage facilities, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operations; and all contiguous lands to the nonmetallic operation under common ownership or control of the owner or his/her agent or lessee.

SECTION VIII. REVIEW OF EXCEPTIONS.

The Town Board shall be responsible for evaluating any applications for relief from this moratorium. Such relief shall only be granted upon clear evidence of extraordinary or unique circumstances that would warrant special treatment and relief from the general provisions of this moratorium Ordinance.

SECTION IX. PENALTIES.

Any person, partnership, corporation, limited liability corporation, or other legal entity that fails to comply with the provisions of this Ordinance shall, upon conviction, pay a forfeiture of not less than One Thousand Dollars (\$1,000.00), plus all applicable surcharges, assessments and costs of legal prosecution for each violation. Each day a violation exists or continues constitutes a separate offense under this Ordinance. In addition, the Town of Lucas Board of Supervisors may seek injunctive relief from a court of record to enjoin further violations.

SECTION X. ADOPTION.

This Ordinance adopted by a majority vote of the Town of Lucas Board of Supervisors on roll call vote with a quorum present and voting and proper notice having been given, provides for the imposition of a moratorium on the expansion of existing or creation of new nonmetallic mining operations within the Town of Lucas, Dunn County.

SECTION XI. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION XII. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and legal posting pursuant to Sec. 60.80, Wis. Stats. The Town Clerk shall legally post this Ordinance in at least three (3) places as required under Sec. 60.80, Wis. Stats., and such Ordinance shall be in effect one (1) day after the date of legal posting. To facilitate public notice of the adoption of this Ordinance, the Town Clerk shall, in addition, publish this Ordinance as a Class I Notice in a newspaper of general circulation in the Town of Lucas.

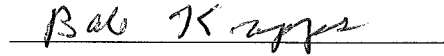
ADOPTED this 23 day of DECEMBER, 2011, by majority vote of the Town Board on roll call vote with a quorum present and voting and proper notice having been given.

TOWN OF LUCAS, WISCONSIN

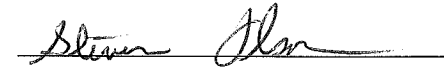


Chairperson

Supervisor



Supervisor



Attest: Town Clerk



Legally Posted and/or Published: Dunn County News

12-23-11 1-1-2012