

TOWN OF BROTHERTOWN  
CALUMET COUNTY, WISCONSIN

**AN ORDINANCE TO IMPOSE A TEMPORARY STAY  
ON THE TOWN'S ACCEPTANCE, REVIEW AND APPROVAL  
OF NON-METALLIC MINING APPLICATIONS**

The Town Board of the Town of Brothertown, Calumet County, Wisconsin, does ordain as follows:

**Section 1. Legislative Findings.** The Town is in the process of preparing a comprehensive plan in response to the passage of Wisconsin's comprehensive planning legislation found in Wis. Stat. § 66.1001. The Town also intends to amend provisions of the Zoning Ordinance applicable to non-metallic mining. (Hereinafter the Comprehensive Plan and the amendments to the Zoning Ordinance are together referred to as "Zoning Amendments.") The Town Board does hereby declare that a temporary moratorium on the Town's acceptance, review and approval of applications for conditional use permits is necessary as an emergency measure in order to permit the Town the time to complete its Zoning Amendments. The Town Board specifically finds that the moratorium is necessary for the following reasons:

- (a) To protect the Niagara Escarpment, which is a unique geological formation. Regarding the protection of the Niagara Escarpment, refer to the East Central Wisconsin Regional Planning Commission's *Outdoor Recreation and Open Space Plan for East Central Wisconsin, March 1977* (currently being updated), and the 2005 *Calumet County Outdoor Recreation Plan*. Also see the 2006 Wisconsin Department of Natural Resources report *Land Legacy Report*. The findings contained in these various reports are incorporated by reference;
- (b) The geological features of the Niagara Escarpment make the groundwater more susceptible to degradation by non-metallic mining because the soil is less able to perform its normal filtration process due to the numerous cracks in the bedrock. Unregulated non-metallic mining may have an adverse, direct impact to local drinking water resources;
- (c) Unregulated non-metallic mining could adversely affect contiguous property uses;
- (d) The Town currently has numerous non-metallic mining operations, and more such operations are anticipated. Without the use of the moratorium established by this Ordinance, land owners will have incentives to allow non-metallic mining on their property before the adoption of Zoning Amendments, thereby fostering inefficient and ill-conceived non-metallic mining activity;
- (e) Zoning Amendments are necessary in order to establish reasonable operational restrictions and controls on non-metallic mining activity including, without limitation, (i) location of quarry-related operations, activities and facilities; (ii) berms and related landscaping; (iii) quarry site access; (iv) hours of operation and days of operation; (v) setbacks; (vi) limits

on blasting resultants; (vii) storage of explosives; (viii) blasting monitoring; (ix) dust controls; (x) noise controls; (xi) groundwater monitoring; (xii) well protection; (xiii) home and well inspections; (xiv) spill prevention control; (xv) wetland preservation; (xvi) use of water; (xvii) security fences; (xviii) surface water collection and sedimentation control; and (xix) security to assure the performance of licenses that may be issued to non-metallic mining operations;

- (f) A temporary stay on the acceptance, review, and approval of applications for conditional use permits required to conduct non-metallic mining operations, will provide the Town with the opportunity to complete Zoning Amendments;
- (g) If there were no temporary stay, hasty and ill-conceived non-metallic mining projects may occur during the planning process because landowners and non-metallic mining operators may seek to rush their projects in order to gain approval before the Town completes the Zoning Amendments; and
- (h) The Town Board believes that the adoption of a temporary stay will promote the public health, safety and general welfare of the Town and encourage the orderly location and use of land for non-metallic mining.

**Section 2. Authority.** This Ordinance is adopted pursuant to Wis. Stat. §§ 60.10(2)(c), 60.22(3), 60.50, 60.61, 61.34, 62.17, 62.23 and 236.45. This ordinance is also adopted pursuant to the Town's police powers, which are being exercised for the purpose of protecting the public health, safety and general welfare of the residents of the Town of Brothertown.

**Section 3. Temporary Stay on the Acceptance, Review and Approval of Non-metallic Mining Applications.** Except as provided in this Ordinance, the Town Board does hereby declare a moratorium for a period not to exceed 12 months on the acceptance, review and approval of applications for conditional use permits to conduct non-metallic mining in the Town. All applications shall be returned without being considered. This moratorium will be lifted prior to the expiration of 12 months if the Town completes the Zoning Amendments. The Town Board reserves the right to extend this moratorium if an extension is necessary to complete the Zoning Amendments. Notwithstanding anything to the contrary contained in this Ordinance, the moratorium shall be lifted at such time as the Town Board approves the Zoning Amendments.

**Section 4. Exceptions.** The temporary stay on the acceptance, review and approval of applications for conditional use permits shall not apply to the following:

- (a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm;
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility;

- (c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster;
- (d) Excavations for residential building construction purposes conducted on the building site;
- (e) Non-metallic mining at non-metallic mining sites where less than 1 acre of total affected acreage occurs over the life of the mine;
- (f) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities; and
- (g) Permits relating to the operation of existing, opened non-metallic mining operations.

**Section 5. Inconsistent Ordinances Voided.** All ordinances or provisions of ordinances inconsistent with or contravening the provisions of this Ordinance are hereby temporarily voided and shall have no legal force or effect during the period that this Ordinance is in effect.

**Section 6. Scope.** This temporary stay applies throughout the Town of Brothertown.

**Section 7. Interpretation and Severability.** This Ordinance shall be liberally construed to accomplish its intended purposes. If a court of competent jurisdiction determines that any section or provision is invalid or illegal, the court is authorized to substitute reasonable language in order to preserve the intended purposes of this Ordinance. If any section or provision of this Ordinance is adjudged to be invalid or illegal by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.


**Section 8. Effective Date.** This Ordinance shall take effect upon adoption and publication as provided by law.

Adopted this 23rd day of May, 2007.

TOWN OF BROTHERTOWN

By:   
Town Chairperson

Attest:

  
Town Clerk