

KASSON TOWNSHIP CLERK KATHY FEYS' OUTLINE

MICHIGAN STATE SENATE

**NATURAL RESOURCES, ENVIRONMENT AND
GREAT LAKES COMMITTEE**

June 23, 2011

Good morning. My name is Kathy Feys and I am the Clerk of Kasson Township in Leelanau County, and I have served as the Township Clerk since November, 1988.

I am here today, on behalf of the Township, to discuss the Township's experience with gravel mining over the past 25 years, and to explain why Kasson Township pursued a zoning case, involving gravel mining, all the way to the Michigan Supreme Court. As you may know, that case resulted in the overturning of what is known as the "Very Serious Consequences Test" as it applies to gravel and other mineral mining.

For the following reasons, I would like to express the Township's opposition to Senate Bill 470 and House Bill 4746, in their current form,

and respectfully request this committee modify the proposed language as provided by our attorney, Mr. Gerald Fisher.

By way of background, Kasson Township is located west of Traverse City roughly in the center of Leelanau County. For those of you familiar with the area, the Township lies along State Highway M-72 as it passes westward from Traverse City to Empire on Lake Michigan.

More than half of the 36 square-mile sections in the Township are underlain with gravel. Because of these deposits, extensive gravel mining has occurred in the Township for several decades. When I took office in 1988, there were seven mines operating in the Township.

Between 1988 and 1994, there were seven rezonings that added another 600 or so acres to the existing mining areas. The rezonings occurred haphazardly because there was no defined Gravel District. Several of the rezonings were opposed by property owners in the area and referendums were passed by the citizens of the Township reversing the rezonings. The mining companies then sued the Township to overturn the referendums. These continuing conflicts caused the Township thousands of dollars in legal and other costs.

One of the worst effects of the rezonings was the uncertainty they created in the Township for people buying property and homes. People did not know where a gravel mine would open, and once a mine did open, it would make it very hard for people to live there, with the result that people wanted to leave, but then could not sell their homes. One young family filed a lawsuit against their realtor arguing fraud where a pending gravel mining rezoning was not disclosed to them prior to the time they purchased their home. The couple could not sell their home, so the real estate company bought it back to resolve the lawsuit.

You have to understand that gravel mines are really outdoor factories, and can have much worse effects than indoor factories, on neighboring properties including:

1. Noise and vibration from crushers, machines that crush stones within the mines.
2. Noise and vibration from the filling of gravel trucks within the mines.
3. Noise from gravel trucks traveling to and from the mines, particularly the braking noise as the trucks approach the mine

entrance.

4. Dust from the mines.
5. Noise from back-up alarms on trucks within the mines.

After this problem had gone on for several years, the Leelanau County Planning Department requested, and even demanded, the Township set up a defined Gravel District with fixed boundaries in order to avoid the negative effects of all these haphazard rezonings.

In order to create certainty in the Township with respect to the location of gravel mining, in 1995 the Township adopted a defined Gravel District for the first time with fixed boundaries. The District consisted of over 3,100 acres, or over five square miles, in a rectangular shape in the center of the Township.

And at the time it was created, only a small percentage of the total land area, less than 15 percent, was actually being mined, so there was ample area for future gravel supplies.

Since creating the defined Gravel District in 1995, the Township Board's goal has been to avoid a repeat of the problems associated with the prior rezonings. It is for this reason that the Township opposed an

attempt by Mrs. Edith Kyser to rezone about 115 acres of her property into the Gravel District. Mrs. Kyser's property is located outside of the southwest corner of the Gravel District.

The Township opposed her rezoning request because of our belief that the rezoning would reopen the past zoning uncertainty and encourage neighboring property owners to also seek to rezone their properties creating the same type of "domino effect" that the Township had experienced before the defined Gravel District was created.

In fact, the owners of large parcels surrounding the Kyser property, consisting of several hundred acres, said they would also consider rezoning their property for gravel mining if the Kyser rezoning request was granted. This, in turn, would have a negative effect on nearby properties that were already being used for residential purposes.

In order to defend the Gravel District, the Township spent a large part of its general fund for several years, including paying for a \$60,000 detailed study to determine the extent of gravel reserves in the existing 3,100 acre, five-square mile, district. That study concluded there were

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I am here today, on behalf of the Township, to discuss the Township's experience with gravel mining and zoning laws over the past 25 years and to explain why Kasson Township pursued a zoning case, involving gravel mining, all the way to the Michigan Supreme Court regarding the Very Serious Consequences Test. I would like to express the Township's opposition to Senate Bill 470 and House Bill 4746 in their current form and respectfully request this committee modify the proposed language as provided by our attorney, Mr. Gerald Fisher.

More than half of the Township is underlain with gravel. Because of these deposits, extensive gravel mining has occurred for several decades. When I took office in 1988, there were seven mines operating in the Township.

Between 1988 and 1994 there were seven rezonings that added another 600 or so acres to the existing mining areas. The rezonings occurred haphazardly because there was no defined Gravel District. Several of the rezonings were opposed by property owners and referendums were passed reversing the rezonings. The mining companies then sued the Township to overturn the referendums. These continuing conflicts caused the Township thousands of dollars in legal and other costs.

One of the worst effect of the rezonings was the uncertainty they created for people buying and selling property and homes. You have to understand that gravel mines are really outdoor factories and effect neighboring properties with noise and vibration from crushers, filling of gravel trucks, noise from gravel trucks traveling to and from the mines, some with braking noise, dust from mines, all day noise from back-up alarms, etc.

After this problem had gone on for several years, the Leelanau County Planning

Department requested, and even demanded, that the Township set up a defined Gravel District with fixed boundaries in order to avoid the negative effects of all these haphazard rezonings. In 1995 the Township adopted a defined Gravel District with fixed boundaries consisting of over 3,000 acres or over five square miles with less than 15% of the fixed area being mined.

Since creating the defined Gravel District in 1995, the Township Board's goal has been to avoid a repeat of the problems associated with the prior rezonings. The Township opposed Edith Kyser's rezoning request to rezone 115 acres of her property into the Gravel District because of our belief that the rezoning would reopen the past zoning uncertainty and encourage neighboring property owners to also seek to rezone their properties creating the same type of "domino effect" as before the 1995 defined Gravel District was created. This would have a negative effect on nearby properties that were already being used for residential purposes.

A \$60,000 study determined that there were 130 million tons of gravel in the existing Gravel District, providing a 50-100 year supply for the Traverse City region. Despite the fact that the Circuit Court found there was no need for Kyser gravel, based upon the Township's gravel study, and despite all the planning concerns, the Court allowed the rezoning to occur based upon the Very Serious Consequences Test. Under the Very Serious Consequences Test the Circuit Court granted a motion by Mrs. Kyser that prevented the Township from presenting evidence at trial about other possible uses of her property, particularly for residential development.

The Township believes that the uncertainty about the location of gravel mines in the Township has also slowed economic development.

In summary, the Township appealed the Circuit Court's Decision all the way to the Supreme Court because of its firm belief that the Kyser rezoning would create the same problems that the Township experienced before it created its defined Gravel District in 1995. The Township spent approximately \$200,000 to defend this lawsuit. The Township wants to avoid the hardship its residents experienced in the past.

For that reason, Kasson Township requests the pending senate and house bills not be approved in their current form.

Thank you for providing the opportunity to comment.