

**FINDINGS AND MOTION  
ON PART I OF CONSIDERATION OF STONECO'S APPLICATION**

I offer the following findings and motion by the Planning Commission on Part I of the procedure under Section 5.12 of the Zoning Ordinance in response to Stoneco's application for mining. The findings and motion address the extent of need shown by the applicant.

**First, I offer these findings to support the motion:**

A detailed statement of the proceedings is on the attached notes which should be part of the findings and motion. Also, legal direction involving this motion was written by the Township Attorneys in a Memo Addressing Legal Points On the "Need" Issue, dated March 4, 2022, and this should also be a part of the findings and motion.

From the beginning, Stoneco's application did not provide information in sufficient detail for the Planning Commission to properly evaluate the extent of need as required by the Zoning Ordinance. Stoneco was given multiple opportunities to provide additional information and, although they have submitted more material, they still have not provided sufficient evidence for the Planning Commission to evaluate the extent of need. Stoneco's latest submission, an aggregate study prepared by FMI Consulting, was reviewed by the township's engineering consultant who summarized the report as being relatively vague on various points and offering contradicting and often extraneous information that does not help determine the need for a new facility, and does not cite sources for statistics. A similar FMI study commissioned by MDOT in 2016 has been widely discredited and is published on the state's website with a prominent disclaimer notation: "internal and external audits question the veracity of these studies" along with links to the audits.

As indicated in the Attorneys' memo, Stoneco has the initial burden to show that there is a need for the natural resources on the property by the person or in the market served by the person.

Considering need by the "person" for the sand and gravel, Stoneco says in its application that from its current Washtenaw County operations approximately 25% of the material is used to supply Stoneco's affiliated operation, Cadillac Asphalt's ten (10) asphalt plants throughout south eastern Michigan. But no data is provided on what quantity is supplied to each plant, and importantly whether each of these asphalt plants is within a radius of the proposed mine that would permit an economically feasible delivery. Cadillac Asphalt's website confirms that only three (3) of its facilities are within the 40-mile radius that Stoneco claims is a reasonable delivery radius; three (3) additional facilities are within a 60-mile radius; four (4) other facilities are between 65 and 85 miles from the proposed mine and therefore outside a feasible delivery radius.

Further, Stoneco has not presented evidence that other existing mines, operated by Stoneco or other owners, would not be able to provide any needed material. In addition to Stoneco's Zeeb and Burmeister Washtenaw County operations, Stoneco's website indicates the existence

of four (4) additional Stoneco mines within a 50-mile radius of the proposed mine, yet Stoneco has not provided evidence that these mines cannot provide material to fulfill the need created by the Zeeb and Burmeister mine closures. Also, it is relevant that Stoneco's Burmeister facility will remain open through 2026, several more years than originally predicted by Stoneco. Sharon Township is itself experiencing the pursuit of an existing facility expansion (M-52 Materials) that would supply 1,000,000 tons per year or more. So, it has not been shown whether there is a need for the sand and gravel from the Pleasant Lake Road property "by the person."

For purposes of the need for sand and gravel "by market served by the person," while Stoneco's FMI report and other evidence have cited an expected demand in the market by industry in general, applicant agreed at the meetings that the only customers that count for purposes of establishing a "need" are those within a radius to permit economic delivery, ideally no more than 40 miles. Unfortunately, applicant has not detailed customers that are either known or reliably expected which will create the need, or their locations. Need cannot be shown by speculation. Applicant's claim is that there is a lot of work that will be done somewhere in Michigan, and this property will provide the sand and gravel. We know, however, that Stoneco owns other properties, as do other owners, available to provide sand and gravel to satisfy need within the market area. So, without details, Stoneco's position only speculates on the extent of need for its sand and gravel within the feasible travel distance. This does not meet the applicant's initial burden to show need by the market served by the person.

In addition, evidence was presented that there is a significant need for the important farmland on the property, as determined in a grant review for a federal conservation easement by the Washtenaw County Parks and Recreation Commission. There has been a showing that 263 of the total 400 acres are prime farmland or locally important farmland that need to be protected. If the property is mined, it is unclear what fate the farmland would have, but it would be off the table for use for decades during mining, and the applicant acknowledged that, due to economics, only in very few cases does the property ever return to farmland after mining. This makes perfect sense because of the topography of the property after mining, and the prospect, as discussed at the February 28 meeting, of creating a lake on the property after mining. We are advised that there are no direct court decisions telling what the result should be where there is a conflict between use of the property for mining and use of the property for the favored use of farmland for the production of food and fiber. We know that both are given special treatment under the Michigan Constitution and the Michigan Zoning Enabling Act. The fact that this property has such important farmland, the Planning Commission should at least require very clear proof by the applicant of a specific need for the property for mining before ignoring the preservation of the property for farmland.

Applicant has asserted multiple times, in both testimony and correspondence with the township attorneys, that the requirements of the Sharon Township Zoning Ordinance regarding the demonstration of "need" are in conflict with Michigan statutes regarding mining operations. Township counsel has testified and opined a respectful disagreement with applicant's position. The Planning Commission is not charged with resolving this conflict of opinion. Rather, the

Planning Commission has a duty to adhere to the standards, application and data requirements, and the review process as outlined in the Sharon Township Zoning Ordinance. To that end, the applicant has presented evidence of some unquantified possible need but has not shown why such need cannot be accommodated from other operations it owns or from operations owned by others within the feasible delivery radius, and has provided no verifiable evidence as to the extent of need for sand and gravel from this property as required by the Zoning Ordinance.

### **Motion Based on the Findings**

Based on these findings, it is moved that the applicant has failed to provide evidence of need for the sand and gravel on this property as required under the law, and accordingly a recommendation is made to the Township Board that it should find that there is a no need to extract the sand and gravel from this property.

**STATEMENT OF PROCEEDINGS**  
**PART I OF STONECO'S APPLICATION FOR MINING**

The following constitutes the record upon which findings and recommendations offered at the March 15, 2022 Special Planning Commission meeting are based:

1. February, 2021 - Stoneco of Michigan's initial Mineral Extraction Special Land Use (SLU) Application – Demonstration of Need
2. March 23, 2021 – Carlisle Wortman Associates, Township Planner, review and recommendations regarding Stoneco's February, 2021 initial SLU – Demonstration of Need application.
3. April, 2021 - Stoneco of Michigan's Revised Mineral Extraction Special Land Use Application – Demonstration of Need
4. May 29, 2021 – Email exchanges between Ken Vermeulen, Stoneco Counsel and Township Attorneys Gerry Fisher and Ed Plato
5. June 18, 2021 – Carlisle Wortman Associates, Township Planner, review and recommendations regarding Stoneco's April, 2021 revised SLU – Demonstration of Need application.
6. August 2, 2021 – Letter from Garrett Singer, Stoneco Mine Engineer in response to the June 18, 2021 Township Planner review and the Planning Commission's July 2, 2021 request for addition information.
7. August 17, 2021 – Written public input and oral comments, submitted at or offered for consideration at the August 17, 2021 Public Hearing regarding the PC's preliminary determination of the need and public interest in natural resources proposed to be extracted to inform a decision on "no very serious consequences" for the Stoneco SLU application for extraction mining (all the above summarized and/or appended to the approved August 17, 2021 Special Meeting and Public Hearing minutes).
8. August 27, 2021 – Carlisle Wortman Associate, Township Planner, memo outlining the further information to be provided by Stoneco to fulfill the PC's motion at the August 17, 2021 Public Hearing.
9. December 23, 2021 – Letter from Garrett Singer, Stoneco Mine Engineer, in response to the PC's request for additional information as outlined in the August 27, 2021 Township Planner memo.
10. December, 2021 – FMI Consulting – Southeast Michigan Aggregates Study (commissioned by Stoneco of Michigan)
11. January 30, 2022 – Memo from Sharon Preservation Society regarding the December 2021 FMI Study.
12. February 16, 2022 – The Spicer Group, Township Engineering Consultant, Stoneco Pleasant Lake Road Site Need Analysis Review.
13. February 28, 2022 – Notes from Gerry Fisher, Township Attorney, regarding testimony regarding the need to conserve farmland.

14. March 4, 2022 – Memo from Gerry Fisher and Ed Plato, Township Attorneys, to the Planning Commission addressing Legal Points on the “Need” Issue.
15. March 15, 2022 – Additional information presented by PC Member Kelly regarding the veracity of a 2016 MDOT-commissioned aggregate study by FMI Consulting.
16. March 15, 2022 – Additional information presented by PC Member Kelly regarding Stoneco’s affiliate Cadillac Asphalt.
17. March 15, 2022 – Additional information presented by PC Member Kelly regarding additional Stoneco mining operations within a feasible delivery radius of the proposed site.

The following constitutes a record of Planning Commission meetings held and action taken:

1. June 29, 2021 – held a Special Meeting to review Stoneco of Michigan’s April, 2021 Revised Mineral Extraction Special Land Use Application – Demonstration of Need and, passed a motion to *“set a Public Hearing meeting date of August 17, 2021 at 7:00 pm at the Sharon United Methodist Church”*.
2. August 17, 2021 - per Section 5.12.C.5 of the Sharon Township Zoning Ordinance (STZO), held a Special Meeting and Public Hearing on Stoneco of Michigan’s April, 2021 Revised Mineral Extraction Special Land Use Application – Demonstration of Need, and passed a motion to *“defer a decision on the question of need until such time that the body has adequate information to make the decision”*.
3. August 27, 2021 – to fulfill the Planning Commission’s motion passed during the August 17, 2021 Public Hearing, the Sharon Township Planner provided Austin Fisher, East S&G Operations Manager of Stoneco of Michigan, a memo outlining the additional information to be provided by Stoneco of Michigan.
4. November 9, 2021 – at a regular meeting, passed a motion *“to require that the additional information requested of Stoneco in the August 27, 2021 memo from John Enos and Megan Masson-Minock to PC Chair Spiegel, and copied to Mr. Austin Fisher of Stoneco, be submitted to the Township no later than December 1, 2021 to allow sufficient review time for consideration at a future special Planning Commission meeting to be set no earlier than December 14, 2021, provided a venue of suitable capacity for the meeting is identified and secured”*.
5. December 8, 2021 – at a regular meeting, passed a motion *“to require that the additional information requested of Stoneco in the August 27, 2021 memo from John Enos and Megan Masson-Minock to PC Chair Spiegel, and copied to Mr. Austin Fisher of Stoneco, be submitted to the Township no later than January 4, 2022 to allow sufficient review time for consideration at a future special Planning Commission meeting to be set no earlier than January 20, 2021, provided a venue of suitable capacity for the meeting is identified and secured”*.
6. February 8, 2022 – at a regular meeting, passed a motion *“to set a Special Meeting to consider the “need” portion of the Stoneco application for an extraction mining operation to be held on Monday, February 28, 2022 at 7:00 pm at the Sharon United Methodist Church, 19980 W Pleasant Lake Rd, Manchester, MI 48158.”*

7. February 28, 2022 – at a special meeting, the Planning Commission heard additional testimony from both township and Stoneco representatives and others regarding the need portion of the Stoneco application for an extraction mining operation and passed a motion *“to postpone the meeting on the question of need to Tuesday, March 15, 2022 at 7:00 pm at the Sharon United Methodist Church for the purpose of PC review of testimony given at the February 28, 2022 special meeting and to develop questions regarding additional input needed from the applicant.”*

**MEMO ADDRESSING LEGAL POINTS ON THE “NEED” ISSUE**

**TO: SHARON TOWNSHIP PLANNING COMMISSION AND BOARD**  
**FROM: GERALD FISHER and ED PLATO, TOWNSHIP ATTORNEY**  
**DATED: MARCH 4, 2022**

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Several legal issues have arisen at the meetings held to review the “need” issue relating to the special use application for mining filed by Stoneco. Following are points of law intended to provide guidance to the Planning Commission and Board in formulating recommendations and decisions on the “need” issue.

**1. The “Need” Standard in PA 113 of 2011 and Township Ordinance are the Same**

State law, Act 113, states that the initial burden of showing that there is a need for the natural resources on the property by the person or in the market served by the person

Sharon Township Zoning Ordinance Section 5.12.C is faithful to Act 113 by clarifying that the applicant

has the initial burden of showing that there is a need for the natural resources by the person or in the market served by the person

**2. Explanation in Township Ordinance With Regard to “Need”**

The following explanation is provided in Section 5.12.C.1 as follows:

**[A] showing of “Need” for the resources to be extracted is to be the initial burden that must be met by the applicant. . . .** the Michigan Court of Appeals explains that the “need” issue must be ascertained in advance in order to know how to apply the “very serious consequences” standard. In the adoption of the “no very serious consequences” standard in its *Silva v Ada Township* opinion, the Michigan Supreme Court discussed a variable level of public interest, that is, need for the resources proposed to be extracted: “[t]he public interest of the citizens of this state who do not reside in the community where natural resources are located in the development and use of natural resources requires closer scrutiny of local zoning regulations which prevent development.” 416 Mich at 160. A more detailed explanation on this point was as provided by the Court of Appeals in *American Aggregates Corp v Highland Township*, 151

Mich App. 37, 42-46 (1986), where it was clarified that the public interest, that is, the “Need” factor, is required to inform the ultimate decision on “no very serious consequences,” noting that the entire foundation of the stricter “no very serious consequences” test (as compared to the standard that applies to nearly all other uses) rests on the important public interest involved in extracting and using natural resources. **Therefore, the degree and extent of need and demand** for the extraction of the specific natural resources located on the applicant's land is a relevant factor in reviewing the “no very serious consequences” issue. **The Court referred to this as a sliding scale determination of whether “very serious consequences” exist** in the landowner's specific situation. **If the Need for a specific landowner's resource is very high, the consequences resulting from the extraction of the resource will not reach the level of “very serious” as readily as in the case where Need in the specific resource is relatively low.** Accordingly, this Section 5.12 makes provision for a preliminary determination on the extent of need for the applicant’s resources in order to inform the ultimate decision on whether the applicant’s proposal would result in “very serious consequences.”

### **3. Commentary on the Relevance of Need to Further Proceedings**

There appeared to be a disagreement at the Planning Commission meeting on February 28, 2022 on the legal question of whether the showing of need involves a sliding scale or an “on-off” switch. The Planning Commission must take its direction from the Zoning Ordinance, which quotes state court decisions.

The disagreement that surfaced on February 28, 2022 can be summarized as follows:

- The applicant expressed that if the applicant shows any need, the “on-off switch” if flipped and this is all an applicant must show in order to meet its burden under the law to show the need. In other words, it is suggested that if an applicant shows that there is a need for 1000 tons of gravel, the “on-off switch” test is met.
- The advice of Township legal counsel is that the “on-off switch” concept ignores the court decisions referred to in the Zoning Ordinance. It is **necessary for the Planning Commission to determine the degree of need for the sand and gravel proposed to be mined.** If the need is found to be very high, then the Township will need to endure greater consequences resulting from the extraction. On the other hand, if the need for the sand and gravel proposed to be mined are very low, the Township may find the existence of “very serious consequences” based on a lower level of adverse impact. The simple point is that the whole reason for the creation



of the “very serious consequences” test for denying an application for mining is to try to make sure that sand and gravel will be made available **if they are needed**. If they are not needed, the Township is not obligated to endure such significant consequences.

#### **4. The Ordinance Clearly States What Must Be Shown in the Application**

Three important requirements for an application are specified in Section 5.12.C.4:

A description of the names and locations of all places anticipated to create the need, that is the demand, for the natural resources from the property within the foreseeable future, including the type of use to be made by the resources, such as building construction, road building, and the like.

A description of the names and locations of all properties and operations which exist, or have been approved, for the extraction of any of the natural resources proposed to be extracted on the property, along with a specification with regard to each property of the type of natural resource extracted, and an estimate of the remaining useful life for the particular natural resource on each of such other properties and operations.

Calculations and facts leading to a conclusion on the extent of need which is not being met, and could not be met, from the existing sources for each type of natural resource proposed to be extracted on the property. This calculation must apply past experience and take into account that new properties and operations will likely to be approved in the foreseeable future on other properties within the market area.

#### **5. The Need for the Important Farmland on the Property**

The State of Michigan has the gift of natural resources. In an effort to ensure that these resources are not wasted, Michigan’s 1963 constitution includes art 4, § 52, which pronounces that **both the conservation and development** of natural resources are of paramount public concern for the people.

For sand and gravel a section of the Michigan Zoning Enabling Act, relied on by Stoneco, provides a special preference.

For farmland sections of MZEA, MCL 125.3201, 125.3203, and MCL 125.3504, call for zoning recognizing natural resource preservation including for the production of food and fiber. USDA refers to important farmland being needed to provide for the nation’s food and fiber. The property in question has been determined to be important farmland by the Washtenaw County Parks and

Recreation Commission for a federal conservation easement grant, both prime farmland and farmland of local importance.

Because the glacier and other factors have blessed this particular property with **dual natural resources of a special nature**, we have a conflict of public interests which recognized for special treatment, both preserved and protected, by the Michigan constitution – one legal directive to preserve 263 acres for farmland, and one legal directive, subject to “need,” to favorably consider for mining. The commission must reconcile these competing interests.