

March 30, 2022

Sharon Township Board of Trustees
Peter Psarouthakis – supervisor@sharontownship.org
Michelle Mrocko – clerk@sharontownship.org
Brian Brickley – treasurer@sharontownship.org
Trudi Cooper – trustee1@sharontownship.org
Chelsea Mikel – trustee2@sharontownship.org
18010 Pleasant Lake Road
Manchester, MI 48148

Re: Michigan Materials & Aggregates (aka Stoneco) – Manchester Pit

Dear Sharon Township Trustees:

I am writing to you on behalf of Michigan Materials & Aggregate Co. (aka “Stoneco”) to request that the Sharon Township Board reject the recommendation of the Sharon Township Planning Commission, and find that Stoneco has sufficiently demonstrated a need, by Stoneco, for the natural resources proposed to be excavated from the proposed “Manchester Pit.”

Under Section 205(3) and (4) of the Michigan Zoning Enabling Act, MCL 125.3205(3)(4), “An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources...” and 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...” (emphasis added).

Stoneco currently operates two sand and gravel mines within Washtenaw County that will both be completely depleted within the next 2-3 years. The “Zeeb Road” pit will likely be depleted within the next year. The “Burmeister Pit” will likely be depleted within 3 years. Over the last three years, these two locations have consistently produced approximately 1.5 million tons of sand and gravel annually. These facts are not disputed. Stoneco clearly has a need to replace this annual production, and has provided uncontroverted evidence to prove both the consistent historical production and sales from these locations, and the future need of similar (and likely greater) production to meet its needs in the future.

The Michigan Zoning Enabling Act does NOT require that Stoneco prove *both* its own need AND a need in the market, but merely one or the other. However, as recently amended, the Sharon Township Ordinance appears to require both such showings, in violation of Michigan law.

Sharon Township Board of Trustees
March 30, 20225
Page 2

That is also how the Sharon Township Planning Commission has applied the ordinance in this case, again in violation of Michigan law.

Nevertheless, Stoneco, in an attempt to avoid unnecessary confrontation with the Township, hired one of the aggregate industry's leading third party experts on this topic, FMI Consulting, to perform a Market Study of the aggregate market within approximately 60 miles of the proposed Manchester Pit. FMI's Report dated December 2021 concluded that "Comparing the increased demand with the available capacity, even 100 percent of the MDOT-spec-S&G (sand and gravel) capacity available within a 60-mile radius [of the Manchester Pit] would fall 200,000 tons short of being able to replace the loss of spec material from Zeeb Rd. and Burmeister..."

Sharon Township's consultant ("Spicer Group") sent a letter to the Planning Commission dated February 16, 2022, in which Spicer Group was critical of certain aspects of FMI's report. For example, Spicer Group criticized that the counties included within FMI's construction forecast did not precisely match the 60 mile radius area (FMI initially used the readily available Detroit and Ann Arbor MSAs) (See Spicer Group comment no. 5); did not account for inflation (See Spicer Group comment no. 8); and did not look far enough into the future (particularly given that the Burmeister Pit had in the interim been given an extension of approximately 2-3 years) (See Spicer Group comment no. 3). Consequently, Stoneco and FMI agreed to re-run those forecasts, and FMI updated its initial report (see attached March 10, 2022 revision). Stoneco had intended to submit this revised report, as well as point by point responses to the Spicer Group's letter to the Planning Commission in response to questions that the Planning Commission had said (at its February 28, 2022 meeting) that it would present to Stoneco at the March 15, 2022 meeting. But rather than presenting questions for Stoneco to respond to and provide an opportunity to clear up any confusion (as the Planning Commission had said it would), the Planning Commission instead simply voted to reject Stoneco's need demonstration, without any additional input from Stoneco, or even a chance to respond to Spicer's criticism. Consequently, the revised FMI Report was never considered by the Planning Commission, but is now submitted for this Board's consideration. FMI's revised conclusion (after including the additional counties, accounting for inflation, and extending the forecast out to 2025) is a shortfall of 524,000 tons between the total available MDOT-spec material within the 60 mile radius and the amount of MDOT-spec material produced at Zeeb Road and Burmeister, which the Manchester Pit is intended to replace, (See page 4, third column, second paragraph in the attached March 10, 2022 revision).

Mr. Philip Westmoreland in the Spicer Group letter, raised several other numbered criticisms of the FMI Report. However, as explained and demonstrated below, Spicer Group's evaluation is a complete fallacy. Stoneco submits the following responses to the numbered paragraphs in Mr. Westmoreland's letter:

1. The construction data is FMI's own data. The population data comes from the U.S. Census Bureau and can easily be verified by accessing the Census Bureau's website (<https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html>).

2. At the time of Stoneco's initial application (February, 2021) and when the Township issued its additional questions to Stoneco in August, 2021 (which was the point in time used for the initial FMI Study), the Burmeister Pit extension had not been granted. Since that time, Stoneco has received approval for an expansion of the Burmeister Pit which will likely allow that pit to operate through 2026. That new information was considered in the revised FMI Report. And regardless, that expansion does nothing to abate the need to replace the Zeeb Road pit, which by itself, would be sufficient "need" for Stoneco to meet its statutory burden.

3. This comment is difficult to understand and ignores the remainder of the discussion in this section of the FMI Report. Mr. Westmoreland begins by quoting from the Dec. 2021 report as follows:

"Theoretically, if (1) crushed stone and S&G were interchangeable, and (2) all of the capacity within the 60-mile radius were available for all types of end-uses (spec and non-spec), and (3) a 60-mile transportation haul were feasible, the existing operations within the 60-mile radius could fill the gap left by the loss of the Zeeb Rd. and Burmeister sites and still have 1.7 million tpy of additional capacity to spare."

He then adds, "Based on this comment, the supply chain has sufficient capacity to serve the need." But this conclusion clearly ignores the immediately following paragraphs in the report which demonstrate that the three assumptions (items 1-3 in the paragraph he quoted) are, in fact, NOT true. To the contrary, the indisputable facts that crushed stone is NOT interchangeable with S & G; that all of the capacity within the 60 mile radius is NOT available for all types of end uses, including both spec and non-spec; and that a 60 mile haul radius is NOT always feasible, are exactly the reasons leading to FMI's conclusion that existing supplies are NOT adequate to make up for the loss of the Zeeb and Burmeister Pits. The introductory paragraph cited by the Spicer Group was taken completely out of context, and their comment is misleading at best.

4. The anticipated production capacity of the Manchester Pit (aka "Pleasant Road plant") is clearly stated throughout Stoneco's application. See for example Section C.4.f. which states in relevant part:

The Site proposed by Stoneco in Sharon Township is intended to replace the market share currently maintained by Stoneco's Zeeb Road and Burmeister locations. As demonstrated above, Stoneco has consistently sold in excess of 1.5 million tons annually of sand and gravel products from pits that will no longer be available within the next two years. The likelihood of additional properties and operations being approved in the market areas are unknown in current climate.

Similarly the Stoneco Application also directly addresses the issue of production of MDOT-spec materials. See Section C.4.c. of the application which states clearly that:

The natural resource proposed to be mined at this location is a mixture of sand and gravel, samples obtained from the site identify the average make-up of the excavated material will be approximately 15% gravel ($G > 3/8''$), 65% sand ($3/8 > S > \#50/.3 \text{ mm}$), and 20% fines ($\#50/.3\text{mm} > F$). This composition of in-situ material will allow for the creation of numerous end use products such as MDOT Class 1, MDOT Class 2, MDOT Class 2a, MDOT Class 2aa, MDOT Class 3, MDOT Class 3a, MDOT 2NS, 34R (pea stone), 22a, 23a asphalt splits, and various other commercial aggregate products.

For clarification, all of the material preceded by “MDOT” are “MDOT-spec” materials.

5. The counties included in the population analysis were restricted to the Detroit and Ann Arbor MSA’s because (1) more detailed data are available at the MSA level, and (2) these two MSA’s are the major drivers of aggregate consumption in the 60-mile radius. Nevertheless, as discussed above, FMI revised its forecasts (of both construction and aggregates consumption) to include the additional eight peripheral counties shown, and remove St. Clair Co. (where Port Huron is), as this is the one Detroit MSA county that does not fall within the radius. However, as discussed above, the inclusion of these additional counties did not change the ultimate conclusion of the FMI Report, namely, that other existing supplies of aggregates will not be sufficient to meet anticipated demand.

6. Mr. Westmoreland seems confused here, objecting that FMI’s construction forecasts did not identify the source. FMI is itself the source of the forecast. FMI is a professional consulting and research firm that has serviced the U.S. construction industry for almost 75 years and routinely publishes forecasts and analyses of U.S. construction markets.

7. The two major MDOT projects listed were included in the FMI analysis because they fall within the MSA that is served by S&G pits within the 60-mile radius. This is clear if one looks at the maps of existing S&G pits included with the original FMI Report. However, when FMI revised its report to be county and 60-mile radius specific, rather than tied to the MSAs, these two project were eliminated from consideration.

8. The direction and degree that U.S. inflation will take was considered too uncertain to be included in FMI’s original analysis. Mr. Westmoreland is likely aware that the Federal Reserve’s stance has been that inflation is largely a transitory phenomenon resulting from supply-chain constraints. Again, however, the inflation issue was subsequently addressed in the revised FMI Report as discussed above. Inclusion of an inflation adjustment factor did not change the ultimate conclusion of the FMI Report, that other existing supplies of aggregates will not be sufficient to meet anticipated demand.

9. The analysis FMI provided on the new federal infrastructure bill is hardly “extraneous” as characterized by the Spicer Group. Perhaps a better characterization would be “self-evident.”

The new federal bill represents a significant increase to Michigan's highway funding, and therefore is most certainly relevant to, and absolutely should be reflected in, FMI's forecast of highway construction spending in southeast Michigan. It would be interesting to know how critical the Spicer Group would have been had FMI NOT included the increased state and federal road funding in its analysis.

10. Here Mr. Westmoreland repeats William Langer's criticism of FMI's 2016 report, namely that FMI's analysis did not factor in potential expansion from existing sources. However, the purpose of this analysis was to determine whether existing, permitted facilities had the capacity to meet anticipated need. Were that not the case, every new proposal for expansion of an existing mine would likewise be asked to demonstrate the need for such an expansion, assuming that all of its competitors received all requested expansions. For all such questions, stakeholders need a *baseline* showing the *current* state of affairs, and that is what both FMI's 2016 and 2021/ revised March 10, 2022 reports provide.

11. Mr. Westmoreland repeats the objection of the Sharon Preservation Society ("SPS") memo that FMI's study should have been limited to a 30-mile radius. Like the authors of the SPS memo, Mr. Westmoreland should have been aware that the 60-mile radius was stipulated by the Township itself. Moreover, reducing the radius from 60 miles down to 30 miles could demonstrate an even greater need for replacing the Zeeb Rd. and Burmeister facilities, since it would result in the elimination of a number of the largest S&G sites from FMI's analysis, as can be seen from the maps included in the FMI report.

In short, although not required by Michigan law, Stoneco has demonstrated a need for aggregate by itself AND by the market.

Nevertheless, and notwithstanding that Stoneco's opponents did not produce a shred of evidence to controvert Stoneco's clear demonstration of need, the Planning Commission erroneously, and in bad faith, found that Stoneco had failed to meet its burden of demonstrating "need." We urge this Board to evaluate the evidence presented by Stoneco objectively, in which case the conclusion that Stoneco has met its statutory burden will be self-evident. If the Planning Commission's interpretation and application of the ordinance, in direct contradiction to the clear language of the Michigan Zoning Enabling Act, is allowed to stand, Stoneco will be left with no option but to challenge the entire Sharon Township Mining Ordinance, and have it struck down as a violation of the Michigan Zoning Enabling Act.

Sharon Township Board of Trustees
March 30, 20225
Page 6

Very truly yours,

HONIGMAN LLP

Kenneth W. Vermeulen

Kenneth W. Vermeulen

KWV:bb
Enc.