

**TOWNSHIP OF UPPER DEERFIELD**

**ORDINANCE 772**

**CREATING CHAPTER 312 – RESOURCE EXTRACTION**

**WHEREAS**, the Township Committee of the Township of Upper Deerfield is desirous of Creating Chapter 312 – Resource Extraction which is in the interests of the residents of the Township of Upper Deerfield.

**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Upper Deerfield Chapter 312 – Resource Extraction is hereby created and established within the Township of Upper Deerfield as follows:

**§ 312-1 Resource extraction prohibited.**

Except as set forth in section 405-42, no person shall engage in the activity or business of excavating, digging or mining of sand, gravel, earth, soil or mineral products for sale or for any other commercial or industrial purpose within the Township.

**§ 312-2 Resource extraction license.**

- A. No Person shall engage in Resource Extraction as defined in Section 405-3 without first having obtained a license therefor from the Township as hereinafter provided.
- B. Upon compliance with the provisions of Section 405-42 of the Township Code, a landowner desiring to commence Resource Extraction operations shall make application to the Upper Deerfield Township Committee for a Resource Extraction License.
- C. The Resource Extraction License application to Township Committee shall include a copy of the Township Planning Board Approval as required by Section 405-42D, confirmation from the Planning Board Engineer, Planning Board Planner, Planning Board Secretary and Planning Board Solicitor that all conditions of the Planning Board approval have been satisfied. The License fee shall accompany the application for the license.
- D. The term of the Resource Extraction license shall be three (3) years. The term of the license shall commence upon issuance and shall terminate on the thirtieth day

immediately following the third anniversary date of the Planning Board approval authorizing the Resource Extraction activities.

- E. The License fee for a three year Resource Extraction license shall be \$1500.00.
- F. No Resource Extraction activities shall be commenced after Township Planning Board Approval unless the license required herein shall have been obtained.
- G. The Township Committee may revoke any license issued for Resource Extraction for any violation of this ordinance, Section 405-42, or any condition of the approval granted by the Township Planning Board.

**§ 312-3 Application for license.**

The application to the Township Committee for a Resource Extraction License shall contain:

- A. The Name and Address of the Applicant. In the case of a lease agreement between land owner and mining operator, both the lessee and the lessor become joint parties to the application for a license and are both bound to the conditions of the license.
- B. Verification that the applicant for the license has obtained approval from the Upper Deerfield Township Planning Board pursuant to the provisions of Section 405-42 of the Upper Deerfield Township Land Use Ordinance; that the existing resource extraction operation meets the requirements of this Chapter and qualifies for a renewal of the previously issued Resource Extraction License; and that such Planning Board approval is valid for the license period.
- C. A statement by the applicant that it agrees to perform and comply with all applicable standards set forth in this chapter.
- D. The posting of performance guarantees in the forms permitted pursuant to the New Jersey Municipal Land Use Law, or such other forms as may be approved by Township Committee, in the amount reasonably determined by the planning board engineer to assure compliance with the approved reclamation plan.
- E. The original application and four (4) copies thereof must be filed with the Township Clerk and shall be accompanied by the fees prescribed in Section 312-2E of this Chapter, the performance bond prescribed in Section 312-4 of this Chapter and an insurance certificate prescribed in Section 312-5 of this Chapter.
- F. Certification that the Township, its agents, servants and employees shall be held harmless from any monetary liability resulting from pollution originating at the mining operation, including, but not limited to, liability for bodily injury, property

damage, economic loss or clean-up costs for any and all pollution originating thereon. Said certification form shall be provided by the Township Clerk for signature by the applicant and shall state as follows:

- (1) "The Applicant, its successors and assigns, hereby agree and certify that it shall save and indemnify and keep harmless the Township of Upper Deerfield, its agents, servants and employees against any and all liability claims and judgments or demands for damages arising from pollution originating at the mining operation identified in the application, including, but not limited to, liability for bodily injury, property damage, economic loss or clean-up costs for any and all pollution originating thereon. The Applicant further certifies that it shall defend any and all suits that may be brought against the Township of Upper Deerfield on account of any and all liability claims resulting from pollution originating at the mining operation identified in the application and shall reimburse the Township of Upper Deerfield for any expenditures that the Township may make by reason of any such suit or other claim."

**§ 312-4 Performance bond.**

- A. Prior to approval of any license, the applicant shall submit a performance bond file with the Township Clerk as provided for in § 405-66 of the Township Code in an amount equivalent to three thousand dollars (\$3,000) per acre for the land described in the application as the area to be mined during each year for which the application is filed. In addition, the applicant shall submit a performance bond in an amount equivalent to three thousand dollars (\$3,000) per acre for all disturbed lands which are part of the resource extraction operation for which, as of the date of the submission of the application, a performance bond is not in effect. Said performance bond shall be conditioned for the faithful performance of the provisions of this Chapter and Section 405-42 of the Township Code.
- B. The performance bond shall be issued by a recognized surety company authorized to do business in the State of New Jersey and approved by the Township Attorney.
- C. All performance bonds pertaining to a resource extraction operation shall remain in full force and effect during the entire period that resource extraction operations are conducted and until such time as the aforesaid mined area shall be final graded, seeded and restored in accordance with the Planning Board's approval.
- D. Upon stabilization of the mined area and/or substantial completion of the final grading and restoration of the mined area, the license holder may apply to the Township Committee for reduction in the bond. Based upon the recommendation of the Township Engineer as to whether the mined area is adequately stabilized and

restored to protect the health, safety and welfare of the citizens of the Township, the Township Committee shall approve or disapprove the application for bond reduction.

**§ 312-5 Insurance.**

Every license holder shall deliver to the Township Clerk a certificate of insurance evidencing comprehensive general liability insurance on a combined single limit basis in an amount of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, injury and five hundred thousand dollars (\$500,000) for property damage for each accident. If available and economically feasible, specific environmental cleanup insurance shall be purchased by the applicant with limits to be set by the Township Committee. All insurance coverages shall name the Township of Upper Deerfield, its agents, servants and employees as additional insured parties and shall require that thirty (30) days' notice be given to the Township of Upper Deerfield and its agents, servants and employees prior to the termination of any such coverage. Said notice shall be given to the Township Clerk.

**§ 312-5 Escrow accounts.**

- A. Prior to the filing of the license application, the license holder shall submit an inspection fee and an application review fee, which shall be held in escrow accounts, each in the amount of five thousand dollars (\$5,000) to cover the reasonably anticipated costs associated with inspections and application review, including, but not limited to those costs incurred by the Township due to the failure of the license holder to comply with the provisions of this Chapter or those costs incurred by the Township due to special matters submitted by the owner or license holder for approval. Said costs shall include all costs associated with planning, engineering and legal fees incurred by the Township to ensure compliance with the provisions of this Chapter.
- B. The professional services mentioned in Subsection A above shall include the Township Engineer and any other planning or environmental professionals deemed necessary by the Township Committee, who possess the requisite qualifications.
- C. Within twenty (20) days after each inspection, the Township Engineer shall provide the license holder with a written statement detailing costs already incurred by the Township, including costs related to the compilation and submission of the requisite written report as well as costs the Township anticipates that it will incur due to the failure of this license holder to comply with the provisions of this chapter. If these projected costs exceed the sums already held in escrow, the license holder shall be required to deposit additional sums necessary to meet these projected expenses. Should the license holder dispute the validity or reasonableness of these projected costs, he may make a written request to the Township Committee for a hearing to determine same. Said hearing shall be held within ten (10) business days after receipt

by the Township Committee of such written request.

- D. Within forty-five (45) days after payment to the Township for said costs, the Township shall deliver to the license holder a statement itemizing the costs incurred and paid from the escrow account.
- E. If and when an escrow account retained by the Township of Upper Deerfield reaches one thousand dollars (\$1,000), the Township Treasurer shall notify the license holder who shall then be required to deposit additional sums to raise the balance of the account to five thousand dollars (\$5,000).
- F. Prior to the approval of any renewal application for a license, the applicant must deposit additional sums so that the balance of the escrow account is a minimum of five thousand dollars (\$5,000).
- G. The applicant shall be required to post with the Township Treasurer the sum of \$1,000 to be held in an interest-bearing escrow account by the Township for the purpose of guaranteeing appropriate surety to affect such cleanup in the event of the applicant's noncompliance or failure to maintain reasonable maintenance of the highway from debris emanating from the site. Said escrow account shall be maintained during the term of the resource extraction license and shall be replenished as necessary to maintain a minimum balance of \$1,000.

**§ 312-6 Compliance with terms of license and statutes required.**

- A. Nothing herein contained shall relieve a license holder or his assignees from complying with the terms and conditions of said license or licenses or agreement pursuant to which said license or licenses were issued.
- B. Nothing contained herein shall be construed to relieve any person of any more stringent or restrictive provision of any federal, state or local law or regulation.
- C. The license holder shall furnish the Township Clerk with copies of all licenses and renewals required by federal, state and/or local law for the mining operation, including, but not limited to Soil Erosion and Sediment Control, Wetlands, Storm Water Discharge and Stream Encroachments.

**§ 312-7 Enforcement.**

This Chapter shall be enforced by the Township Engineer, who shall investigate any violation of this Chapter coming to their attention, whether by complaint or arising from their own personal knowledge. If a violation is found to exist, or have existed, the Township Engineer shall serve a written notice by certified mail, return receipt requested, or personal service upon the license

holder, which notice shall require the violation to be abated within a period of seven (7) days from the date of service thereof or within such lesser period of time as the Township Engineer shall deem reasonable in cases where the danger to public health, safety and general welfare is so imminent as to require more immediate abatement. If such person fails to abate the violation within the time specified, the Township Engineer shall notify the Township Committee and may prosecute a complaint in Municipal Court.

**§ 312-8 Suspensions and/or revocations of licenses.**

- A. Upon ten (10) days' notice and an opportunity to be heard before the Township Committee, the license of any person may be revoked or suspended for such time or period as the Township Committee may determine for any violation of the terms hereof or the terms and conditions of any license granted or issued hereunder, or a violation of any County or State regulation pertaining to the operation of a resource extraction operation.
- B. The hearing conducted pursuant to this section shall be held not less than ten (10) days from the date the licensee receives written notice of said hearing. The licensee shall be permitted to present evidence at such hearing, and a verbatim transcript will be kept of the proceedings. Upon the close of the hearing the Township Committee shall set forth by written resolution its findings of facts and conclusions.
- C. The licensee shall be given a reasonable amount of time to be set by the Township Committee to correct any violations during a period of suspension. If said violations are not corrected within the time period allotted, the license may be revoked.
- D. Appeal may be taken to the New Jersey Superior Court by the licensee in accordance with the applicable rules of Court for an action in lieu of prerogative writ.

**§ 312-9 Abandonment and cessation of operations.**

- A. Abandonment: In the event a licensee, owner or operator abandons a resource extraction operation as defined in Section 405-42D(1)(c) of the Township Code, the Township may call upon any surety to fulfill any and all obligations of the licensee, owner or operator, or may perform any reclamation work necessary to meet minimum standards for the land to be reclaimed. In the event that the Township elects to perform any or all reclamation work, then the cost of the same shall constitute a lien on the property which shall be recognized, recorded and enforced as with any other municipal tax or other lien upon the property.

- B. Completion: In the event a licensee, owner or operator completes an operation as set forth in the license documents and reclamation plan, including the implementation of the reclamation plan, the operation and the licensee, owner and operator shall be released of all further obligations under this ordinance upon certification in writing by an engineer licensed by the State of New Jersey that the reclamation is in compliance with the approved reclamation plan as provided by the New Jersey Municipal Land Use Law.

**§ 312-10 Violations and penalties.**

- A. Any person who violates any of the provisions of this Chapter and/or Section 405-42 and/or engages in excavating, extracting or mining soil or other natural resources within the Township of Upper Deerfield without a license issued under this ordinance, shall be subject to a fine of five hundred dollars (\$500.00) and/or imprisonment in the county jail for not more than ninety (90) days, or both, per day for each day of violation. A violation of this Ordinance shall be deemed to be an on-going violation and each day during which such violation continues shall be a separate offense.
- B. Upon three (3) convictions in Municipal Court for violations of this Chapter and/or Section 405-42 which do not arise out of the same event, by the owner or license holder, within three (3) years of the first conviction, the license holder shall show cause before the Township Committee within thirty (30) days of the third conviction why the license issued should not be terminated and the license holder should not be required to cease and terminate all resource extraction operations and proceed to final-grade and restoration the excavated site in accordance with the approved plan within twelve (12) months after the termination of said license.
- C. Notwithstanding the provisions hereof, the Township may move, in a court of competent jurisdiction, at any time for injunctive relief to abate continuing violations of this Chapter and/or Section 405-42 for the revocation of a license issued hereunder.

**§ 312-11 Appeals.**

Any applicant or license holder may appeal to the Township Committee any decision of the Township Engineer by filing written notice with the Township Clerk within ten (10) days of said decision. The Township Committee is hereby authorized and empowered in such cases to hear and fully decide and dispose of such matters. The Township Committee shall hold a public hearing thereon and act upon the same no later than sixty (60) days after the notice has been filed, unless the Township Committee and the applicant consent to extend the time for such action.

**§ 312-12 Unpaid municipal assessments.**

No license shall be issued for resource extraction on lands for which the Township of Upper Deerfield has an unpaid bill for taxes, assessments or other municipal charges.

**§ 312-13 Severability.**

If the provisions of any section, subsection, paragraph, subdivision or clause of this Chapter shall be judged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Chapter and, to this end, the provisions of each section, subsection, paragraph, subdivision or clause of this Chapter are hereby declared to be severable.

**§ 312-14 Repealer; provisions saved from repeal.**

All ordinances and provisions thereof inconsistent with the provisions of this Chapter shall and are hereby repealed to the extent of such inconsistency only.

**§ 312-15 Construction of provisions.**

This Chapter being necessary for the welfare of the Township of Upper Deerfield and its inhabitants, shall be liberally construed to effect the purposes thereof; provided, however, that any penalty sections herein shall be strictly construed in any prosecution thereof.

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James Crilley, Chairman

Adopted: February 15, 2018

Attested:

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Roy J. Spoltore, Township Clerk

First Reading: February 1, 2018

Publication: February 5, 2018

Publication of Final Adoption: February 21, 2018