

**AN ORDINANCE AMENDING THE TOWN OF COLFAX  
NONMETALLIC MINING SITES AND  
OPERATIONS LICENSING ORDINANCE**

The Town Board of the Town of Colfax, Dunn County, Wisconsin, do ordain as follows:

**SECTION I. REPEAL AND ADOPTION OF PROVISIONS.**

Section 1.14 of the Town of Colfax Licensing of Nonmetallic Mining Sites and Operations Ordinance is repealed and recreated to read as follows:

**Sec. 1.14 Mining Agreement; Property Value Guarantee.**

- (a) **Definitions.** In addition to the definitions in Sec. 1.03 of this Ordinance, the following definitions shall be applicable in this Section:
- (1) **Arm's Length Transaction.** A transaction in which the buyer and seller of real property act independently and have no relationship with each other. Such transactions ensure that both parties are acting in their own self-interest and are not subject to any pressure or duress from the other or another party.
  - (2) **Bona Fide Offer.** An offer to purchase by a potential purchaser of property of a neighboring landowner which would be an arm's length transaction, and which the purchase price offered does not take into consideration the amount that the neighboring landowner is to receive under a Property Value Guarantee pursuant to this Ordinance.
  - (3) **Eligible Landowner.** A neighboring landowner to a nonmetallic mining site or facility licensed under this Ordinance whose property meets the eligibility criteria of Subsection (c)(1) below to enable participation in the Property Value Guarantee system.
  - (4) **Fair Market Value.** The full value which could ordinarily be obtained for a property at a private sale conducted on an arm's length basis between a willing seller and a willing buyer, but assuming that the Town of Colfax Licensing of Nonmetallic Mining Sites and Operations Ordinance and its Property Value Guarantee system did not exist, and taking into account all other factors affecting the value of the property.

- (5) **Neighboring Landowner/Neighboring Property.** Shall have the same meaning as "Neighboring (Adjacent) Landowner or Property" in Sec. 1.03 of this Ordinance.
  - (6) **Qualifying Property.** The property of a neighboring landowner which is eligible to be in the Property Value Guarantee system under this Section.
- (b) **Mining Agreement Requirement.**
- (1) **Site-Specific Mining Agreement.** The Town and an operator shall enter into a Mining Agreement supplementary to any license issued under this Ordinance as a condition of license issuance, such agreement to provide additional site-specific provisions governing operations, guarantees, royalties to the Town, and indemnification. Any of the provisions of this Ordinance may be modified by agreement between the Town and the operator, but only if the Town Board and its retained experts, who shall provide professional recommendations to the Town Board regarding the agreement, determine that the proposed agreement provides protections for the public health and safety, at a minimum, at least equal to those of this Ordinance and is consistent with the goals and objectives of the Town of Colfax Comprehensive Plan.
  - (2) **Public Hearing.** As part of the development of any Mining Agreement, a public hearing shall be noticed and held on the proposed Mining Agreement pursuant to the procedures and notice requirements in Sec. 1.05(c).
- (c) **Property Value Guarantee Agreement.** The Town and the operator shall enter into a Property Value Guarantee Agreement, separately or as a component of the Mining Agreement, with neighboring landowners near the nonmetallic mining site and/or facility. Mining or processing activities shall not commence until the Mining Agreement and Property Value Guarantee Agreement are properly entered into. At a minimum, a Property Value Guarantee Agreement shall meet the following requirements:
- (1) **Initial Eligibility Determination.**
    - a. For a period to be negotiated as part of the agreement, but not less than twenty (20) years, commencing from the effective date of the Property Value Guarantee Agreement as to lands that are included within the definition of neighboring landowner, the operator shall provide a Property Value Guarantee pursuant to this Section.
    - b. Each neighboring landowner who desires to become eligible to participate in the Property Value Guarantee system must submit, by fax transmission, email, certified mail or personal delivery, a written notice to the Town Clerk to register the landowner's election to participate in the Property Value Guarantee system within eighteen (18) months from the beginning of the twenty (20) year period. The Town Clerk shall provide a written confirmation of receipt. Any neighboring landowner that fails to give written

notice to the Town Clerk within the required time shall not be eligible for the Property Value Guarantee. The Town Clerk shall provide the operator with a copy of each such participation notice after being received by the Town. The operator shall provide the Town Clerk and neighboring landowner with a written confirmation of receipt within three (3) days.

- c. Only neighboring landowners owning qualifying property at the beginning of the eighteen (18) month notice of participation period shall be eligible for the Property Value Guarantee.
  - d. Any neighboring landowner meeting the initial eligibility requirements of this Subsection shall be referred herein to as an "eligible landowner."
- (2) **Sale Required.** An eligible landowner desiring to sell his/her property and receive possible compensation under the Property Value Guarantee system shall notify, in writing, the Town Clerk of his/her intent not later than the earlier of either: (1) the end of the applicable twenty (20) year term set forth in Subsection (c)(1)a above; or (2) the date the operator has completed all operations at the licensed nonmetallic mining site and/or facilities subject to this Ordinance. The Town Clerk shall provide the operator with a copy of this notice. The operator shall provide the eligible landowner and Town Clerk with a written confirmation of receipt within three (3) days. The temporary cessation of operations at the licensed site shall not constitute an early permanent end of operations at the site and will not affect obligations under this Ordinance and related agreements.
- (3) **Determination of Fair Market Value By Agreement.** Provided an eligible landowner has originally provided the participation notice required under Subsection (c)(1) above, the eligible landowner, at any time during the twenty (20) year period, shall notify the operator in writing by fax transmission, email, certified mail or personal delivery of his/her intent to sell his/her qualifying property. The operator shall provide the Town Clerk and eligible with a written confirmation of receipt within three (3) days. The eligible landowner and operator shall enter into good faith negotiations to attempt to agree upon the fair market value of the qualifying property of the eligible landowner. If the parties agree upon a fair market value, the parties shall enter into a written agreement. If the parties fail to reach agreement on the fair market value of the property, the parties shall use the professional services of an independent appraiser who is licensed as a real estate appraiser in the State of Wisconsin to determine the fair market value of the qualifying property of the eligible landowner, and, if the parties agree to this arrangement, the property shall be appraised by the appraiser agreed upon at the operator's expense.

- (4) **Non-Agreement on Appraiser Services.** In the event that the eligible landowner and operator are unable, within thirty (30) days of the date the eligible landowner has provided the notice required under Subsection (c)(3) above, to agree upon either the fair market value of the qualifying property or on selecting an appraiser, the eligible landowner shall select a financial institution located in Dunn, St. Croix or Chippewa Counties, Wisconsin, that makes residential real estate loans and request that such institution provide to the eligible landowner and operator the name of an appraiser it regularly employs to conduct appraisals; provided, however, that if within seven (7) business days of the financial institution identifying an appraiser, the operator or eligible landowner may object to the appraiser so identified, in which event the financial institution shall identify another appraiser, which the parties shall be required to use if the appraiser meets the qualifications requirements of this Subsection. The identified appraiser shall then be retained to conduct the appraisal at the operator's expense and shall provide the eligible owner and operator with copies of the appraisal. Any appraiser nominated shall not have a business relationship with either the eligible landowner or operator.
- (5) **Listing Contract Requirement.** Following completion of the above procedural requirements, the eligible landowner shall then enter into a listing contract for his/her qualifying property with a Wisconsin-licensed real estate broker, which contract shall have a term of at least six (6) months and not more than one (1) year. The listing contract shall exclude the licensed operator as a potential buyer from the listing, so that if the operator purchases the property during the term of the listing contract no commission shall be due the broker. The listing contract shall provide that the broker will not suggest, recommend, or attempt to persuade a potential buyer to make an offer to purchase for the qualifying property at a price which takes into consideration the monetary amount that the eligible landowner is to receive under the Property Value Guarantee.
- (6) **Option to Purchase by Operator.** Before accepting any bona fide offer to purchase for the qualifying property received during the term of the listing contract at a price less than the fair market value, as determined in this Section, the eligible landowner shall provide the operator, by fax transmission, email, certified mail, or personal delivery, a copy of the offer. The operator shall provide the Town Clerk and eligible landowner with a written confirmation of receipt within three (3) days. The operator may, within fifteen (15) days of the receiving the copy of the bona fide offer, notify in writing the eligible landowner by fax transmission, email, certified mail, or personal delivery that the operator elects to purchase the qualifying property for its fair market value, and, if the operator makes such an

election, the eligible landowner shall sell his/her property to the operator at the fair market value and upon such other terms contained in the bona fide offer (which shall not include other purchase price modifications, since the purchase price shall be the fair market value). The eligible landowner shall provide the Town Clerk and operator with a written confirmation of receipt of the operator's response within three (3) days.

- (7) ***Sale of Property Pursuant to Offer - Payment of Property Value Guarantee Amount.*** If the operator does not so notify the eligible landowner within the required time per Subsection (c)(6) above of an intent to purchase, the eligible landowner may then accept the third-party offer and sell his/her property as provided in the bona fide offer. The eligible landowner shall provided the operator and Town Clerk with the terms of the third-party sale, and the operator shall provide the Town Clerk and eligible landowner with a written confirmation of receipt within three (3) days. In such event, the operator shall make a payment to the eligible landowner as required by the Property Value Guarantee. The amount of the Property Value Guarantee payment shall be equal to the difference between the property selling price pursuant to the bona fide offer and the fair market value as determined by this Section, less the amount of the commission that would have been payable pursuant to the listing contract on that difference. The Property Value Guarantee shall be paid by the operator within thirty (30) days of the closing of the sale of the property by the eligible landowner.
- (8) ***Exclusions.***
- a. The Property Value Guarantee shall apply only once for any qualifying property. Land constituting qualifying property which was offered for sale prior to the effective date of the Property Value Guarantee system is not eligible for the Property Value Guarantee.
  - b. Qualifying property shall not be eligible for the Property Value Guarantee if the eligible landowner sells or otherwise conveys the property to a third-party other than pursuant to a bona fide offer under this Section or by a transaction which is not considered an arm's length sale, such as a gift or sale to a relative.
  - c. The death of an eligible landowner shall not terminate rights under the Property Value Guarantee system if the qualifying property is transferred by will, descent, or survivorship.
- (9) ***Qualifying Property Eligible for More Than One Property Value Guarantee.*** If a qualifying property is eligible for a Property Value Guarantee from an operator and is also eligible for a similar payment

from one (1) or more other nonmetallic mining operators, the Property Value Guarantee and the cost of any appraisals shall be paid in equal shares by the operator and the other operator(s).

**SECTION II. SEVERABILITY.**

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

**SECTION III. EFFECTIVE DATE.**

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 8<sup>TH</sup> day of April, 2015.

TOWN OF COLFAX, WISCONSIN

Dan Klukas  
Chairperson

Rebecca Lisow  
Town Clerk

INTRODUCED: 4-8-15  
PASSED: 4-8-15  
POSTED/PUBLISHED: 4-22-15

State of Wisconsin:  
County of Dunn:

I hereby certify that foregoing ordinance is a true, correct and complete copy of an ordinance duly and regularly enacted by the Town Board of the Town of Colfax on the 8<sup>th</sup> day of

April, 2015, and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 8<sup>th</sup> day of April, 2015

Rebecca Kesow  
Town Clerk