

MICHIGAN ZONING ENABLING ACT (EXCERPT)
Act 110 of 2006

125.3205 Zoning ordinance subject to certain acts; regulation or control of oil or gas wells; prohibition; extraction of valuable natural resource; challenge to zoning decision; serious consequences resulting from extraction; factors; regulations not limited.

Sec. 205.

(1) A zoning ordinance is subject to all of the following:

(a) The electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575.

(b) The regional transit authority act.

(2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) 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. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources.

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

(a) The relationship of extraction and associated activities with existing land uses.

(b) The impact on existing land uses in the vicinity of the property.

(c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.

(d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

(e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.

(f) The overall public interest in the extraction of the specific natural resources on the property.

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

(7) This act does not limit state regulatory authority under other statutes or rules.

History: 2006, Act 110, Eff. July 1, 2006 ;-- Am. 2011, Act 113, Imd. Eff. July 20, 2011 ;-- Am. 2012, Act 389, Eff. Mar. 28, 2013

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2. Discussion- Oil/Gas Drilling

The Board heard public comment from: Jim Foulkrod 5739 - Paint Valley Drive Erin Howlett 3597 - Aynsley Drive Dick Michalski 3070 - Wains Way Jan Olson 4190 - Orion Road Gail Hammill 1434 - Burhaven Drive Rich Fusinski 3787 - Bridport Lane Pablo Fraccarolli - 1263 Cobridge Drive Henry Carols 5322 - Abbey Road Bob Yager 1146 - Bear Creek Court Philip Dingle 1195 - Bear Creek Court Chiu Hong 3174 - Glengrove Drive John Markel 245 - Birch Hill Drive Beth Markel 245 - Birch Hill Drive

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1. Discussion – Oil and Gas Drilling

MOTION by Ferriolo, supported by Langlois to move that the matter of zoning oil & gas drilling within Oakland Township be referred to the Oakland Township Planning Commission for review and consideration of amendments to the Township's Zoning Ordinances and that any such amendments or recommendations be provided to the Board of Trustees in writing within four months.

Motion carried unanimously.

The Board heard public comment from: Diana Noone – 1080 Sheffield Park Ln. Beth Markel - 245 Birch Hill Dr. John Markel - 245 Birch Hill Dr. Martin McClure – 920 E. Snell Rd.

MOTION by Ferriolo, supported by Reilly to move that pending a review and consideration of amendments to the Township's Zoning Ordinances by the Planning Commission and Township Board of Trustees, **a moratorium of six months** be placed on any zoning or permitting approval of any oil or gas drilling within the Charter Township of Oakland.

Motion carried unanimously.

CHARTER TOWNSHIP OF OAKLAND PLANNING COMMISSION August 5, 2015

OIL AND GAS DRILLING ORDINANCE Carter noted the BOT established a 6 month moratorium until the township can get something together. They have asked the Planning Commission to consider drafting an ordinance, which means they have about 4 months to get something to the BOT. Carter noted most people don't know they don't get mineral rights with the purchase of property. He noted the Hills of Oakland mineral rights were leased to someone else, and that **Kingsridge has a current lease meaning oil and gas could be drilled.**

Nix noted he has reviewed what Rochester, Rochester Hills, and Troy have been doing on the issue. He noted they appear to be regulating above ground to commercial and industrial locations. Where Oakland Township has those areas, they are currently developed as residential. There are a couple of other areas that could be utilized in the Township. **The Zoning Enabling Act restricts what a community can do with gas and oil drilling.** Other communities have allowed it as a Special Land Use and regulate things such as minimum size of parcel, fencing, and landscaping. **It is not a mechanism to deny an application, it can only minimize the impact on adjacent land uses.**

Nix noted he could work with the township attorney to draft some language to present to the Planning Commission. They will need to hold a public hearing, then review and amend the proposed language based upon feedback. Carter noted they generally do not make a decision at a public hearing, so we need to do something next month. Hein wondered if it was advantageous to have conversations about fracking. Carter doesn't want to see us focus on that level of detail at this meeting. He wants to see

something that is geared to Oakland Township and is defensible. Carter asked if there was anyone present that would like to comment on this item. The following spoke:

Gail Hammill, 1434 Burhaven Drive, Rochester Hills, suggested reviewing the Shelby Township ordinance. They worked with Jim Olsen, who has worked with many communities for changes in environmental ordinances. She noted that 3700 Dutton, adjacent to Musson Elementary, and Oakland Christian Church did sign up their property. In this area many entry leases are primarily in Orion Township.

Bobbi Gable, 3684 Dutton Road, is a neighbor of property with the lease and is not happy with what she heard. She is worried about fracking and wondered if they frack can they legally take anything from her property. She understands that once they lease they can put an access road in. She works at Musson Elementary and already dealt with the gas line that went through there. She also understood they have a five year lease.

Philip Parker, 1434 Burhaven Drive, Rochester Hills, has been researching oil and gas leasing, and attended quite a few MDEQ meetings. He noted they call it "acid well stimulation" instead of fracking. It can be done up to 2 miles horizontally. He stated that they percolate and stimulate underground for gas and oil extraction.

Renee Azure, 3575 Kern Road, stated this is concerning. They are clearing the church property, and trees have been removed. She felt the process is lengthy and wonders what is going on behind the scenes and hopes that time will be taken to consider this carefully.

Richard Pernell, 3390 Burhaven Drive, Rochester Hills, was present to voice his opposition and does not want drilling.

It was decided that the Planner and Attorney will draft something for the next meeting.

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4. Oil & Gas Structure Ordinance

MOTION by Bailey, supported by Ferriolo to authorize Attorney Kelly to work with Mr. Lewan to rewrite the Oil and Gas Structures Ordinance document to not cite particular lawsuit cases and to make any other revisions Attorney Kelly and Mr. Lewan deem appropriate, and to present back to the Board as a First Reading in January.

The Board heard public comment from: **John Griffin - Associated Petroleum Industries of Michigan**

Ayes: Giannangeli, Ferriolo, Reilly, Langlois, Bailey, Buxar

Nays: Gonser

Motion carried 6/1.

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2. Oil & Gas Structure Ordinance First Reading

The Board heard public comment from: Brandy Svensson – 1140 Knob Creek Dr. Dick Michalski – 3070 Wains Way

MOTION by Ferriolo, supported by Langlois to approve the First Reading of the Oil & Gas Structures Ordinance. To authorize the township administration to publish the ordinance as specified by state law and to schedule a Second Reading on the proposed ordinance for the regular meeting of the Board of Trustees on February 9, 2016.

Vote on the motion Ayes: Giannangeli, Ferriolo, Reilly, Langlois, Bailey, Buxar Nays: Gonser

Motion carried 6/1.

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4. Oil & Gas Structure Ordinance Second Reading

MOTION by Bailey, supported by Buxar to approve the Second Reading and Adoption of the Oil & Gas Structure Ordinance with publication in the Rochester Post.

Manager Stuart read a prepared statement as a request in the absence of Trustee Ferriolo as follows:

Although I cannot be in attendance this evening, I wanted to express my thanks to residents who encouraged our looking into what we as a township could put in place to protect neighbor's interests as well as resident property rights when it comes to oil drilling in Oakland Township. This ordinance as proposed by our Planning Commission with legal review does just that. We now stand with other Townships in the region in this regard.

The Board heard public comment from:

Denise Mack – Shelby Township resident Erin Howlett – 3597 Aynsley Dr., Rochester Hills Immanuel Eickholdt – 2675 Dutton Rd., Rochester Hills Emily Jernberg – Rochester Hills resident Nathaniel Jernberg – Rochester Hills resident Lassee Svensson – 1140 Knob Creek Dr.

Roll Call Vote:

Ayes: Giannangeli, Reilly, Gonser, Langlois, Bailey, Buxar Nays: None Absent: Ferriolo

Motion carried 6/0.